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Banking, Commerce and Insurance Committee  
February 16, 2016

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[LB740 LB796 LB856 LB1041]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 16, 2016, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB740, LB796, LB856 and LB1041. Senators present: Jim Scheer, Chairperson; Matt Williams, Vice Chairperson; Kathy Campbell; Joni Craighead; Nicole Fox; Mike Gloor; and Paul Schumacher. Senators absent: Brett Lindstrom.

SENATOR SCHEER: Good afternoon. Being about five minutes past the appointed time, I think we'll go ahead and start. Welcome to the Banking, Commerce and Insurance Committee. My name is Jim Scheer and I'm from Norfolk and represent the 19th District. I serve as Chair this year. The committee will take up bills in the order that they were posted outside the door. Our hearing today is your part of the public process; this is your opportunity to express your position on the proposed legislation before us today. The committee members will be coming and going during the hearing; we have other bills to introduce with other committees and are called away to do so. Please don't take this as an indication that we're not interested in the bill in front of us at the time, we just have to be part of the process in another committee. To better facilitate the proceedings today, I would ask you to do a couple of things. First of all, you could put your phones on either vibrate or turn them off. If you are going to be testifying, if you would move up in to the front seats, as these gentlemen have done, so we know when we are done with anyone that may be wanting to testify. The order of the testimony will be the introducing senator will make the introduction. We will have proponents, opponents, and then those that are in a neutral capacity, and then the senator has the ability to close on the hearing. If you are testifying, please sign in via this pink sheet; fill it out and bring it to Jan, which is to your far right, the committee clerk, and hand it to her before you testify. When you testify, if you'd be so kind as the first thing to do is to say your name and spell it so the transcribers can get that accurately in their reference as well. I would ask that you would be somewhat concise. We will be using a time mechanism. You will see there is a bank of lights in front of you as you testify. The green light will be on for four minutes; the next yellow light will be on for one minute. At the end of the five minutes, the red light will come on, that is your cue that you should stop talking. If you don't do so, I will help you do so. So, my immediate right is Bill Marienau, that has been with the committee as committee counsel for 38 sessions. And Jan Foster, our committee clerk, to your far right, has been the committee clerk for 34 sessions. So we have some longevity, just not as far as the senators are concerned. We will go ahead and introduce the remaining portion of the senators. I'll start with Senator Schumacher.

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

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SENATOR FOX: Nicole Fox, District 7, which is downtown and south Omaha.

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

SENATOR CRAIGHEAD: Joni Craighead, District 6, Omaha.

SENATOR CAMPBELL: Kathy Campbell, District 25, east Lincoln.

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

SENATOR SCHEER: And our page today is Kaylee Hartman from Douglas, Nebraska. And if you have anything you would like to have passed out to the committee, we will need ten copies. If you do not have ten copies, just get a hold of Kaylee and she'll go make those so you'll have them when you're testifying. It would be helpful to have those as you're testifying in case there is any questions about that material. Those of you that will be testifying, if I could ask you to please speak directly into the microphone so that it picks up everything. And as well, a reminder to the committee members themselves to please do the same. Having said that, we will go ahead and start today as in order and that will be LB740, Senator Hansen, your opportunity to open.

SENATOR HANSEN: Thank you. Good afternoon, Chairman Scheer, and members of the Banking, Commerce and Insurance Committee. My name is Senator Matt Hansen, for the record, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here today to introduce LB740. LB740 would require that insurance companies provide access to their market surveys to consumers that have cars totaled in a collision. A market survey is a tool used by insurance companies to figure out the value of the car. According to the National Automobile Dealers Association, sometimes insurance companies will use an outside source to help determine the value of a used vehicle. Some insurance companies will use NADA guidelines and total loss process. In this instance, they typically start with a clean retail value, then deduct for the condition of your vehicle before the total loss. LB740 was drafted based on an issue a constituent brought to my attention. This constituent had talked about the difficulties he faced when his car was totaled. He felt that the market survey was being used by his insurance company was undervaluing his car. When he asked for a copy of the market survey used to evaluate and price out his car for himself to evaluate the effective representation of insurance company, he was not able to get a copy of that market survey request. I will note that the constituent will be here to give a more detailed description of what happened to him in his specific instance. It is my intent with LB740 to just make sure that market surveys are provided to claimant before the settlement of the claim in question. That way, consumers can be confident they are being represented in the best way possible. It's my belief since the insurance companies already use market surveys,

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making them open and accessible to the claimant should not be too burdensome of a request. With that I'd close and be happy to answer any questions. [LB740]

SENATOR SCHEER: Thank you, Senator Hansen. Any questions? Seeing none, are you going to be sticking around? [LB740]

SENATOR HANSEN: Yes, I'd like to. [LB740]

SENATOR SCHEER: Okay, great. Now I'll entertain the first proponent. Welcome, good afternoon. [LB740]

WILLIAM HORD: Thank you. Chairman Scheer, and members of the Banking, Commerce and Insurance Committee, my name is William D. Hord, spelled H-o-r-d. I go by Bill Hord. I am a retired journalist and I live at 1011 Daybreak Circle in northeast Lincoln; in Senator Hansen's district. And I'm sure he has told you that is the "Garden Spot." And first I would like to say that it's a great privilege to appear here. This is the greatest legislative body in the land, and I'm sure you probably know that. I mean, it is unique and I've learned that over the years. And, excuse me... [LB740]

SENATOR SCHEER: Take as much time as you'd like, no hurry. Just compose yourself, you go right ahead. [LB740]

WILLIAM HORD: Well, Senator Hansen mentioned that he had a constituent and I am that constituent that brought this issue to him. Last May, my wife was on her way to work. She works at the State Office Building and she was T-boned at the intersection of 84th and Holdrege by a motorist who was ticketed for running a red light and hit our car going 50 miles an hour without so much as hitting a brake. And my wife was not badly injured. She had minor injuries. But at any rate, our car was totaled. And naturally the first interest from us was to try to think about, well, what are they going to give us for the value of our car. Well, before we ever heard a settlement figure, I went to the NADA guides and the Kelly Blue Books and they were fairly close to each other. And so made an assumption that, well, our settlement will be somewhere around there. Then we received a settlement offer that was more than \$3,000 less than that. And I was puzzled and not very happy. And I had already begun to look on the Internet about cars that we might replace our car with, and so I had a fair idea about what we might have to pay for a car similar. Ours was a newer car, we paid \$28,000 for it just a few months before. So we...when I got the settlement figure and found out that they were offering much, much less than what I expected, I wanted to know what their...well, I was told that, well, they don't necessarily use the NADA or Kelly Blue Book, that they often use market surveys, looking into cars, comparable cars, and that that's what they had done. And it was suggested to me, when I complained about it,

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that maybe I could do my own survey. And I looked on the same sites that I believe that they were looking on, and what I saw there tended to support the figure I was using, not the ones that they offered. But what prompted this idea is to me it should be standard business procedure to give the consumer the information about how that figure was arrived at. I mean, isn't that only fair? I mean, to know what cars did you compare it to? See I suspect, but I don't know, I suspect they were comparing it to models...different models or it didn't have the same features on the car. But I don't know. To this day I don't know. We ended up settling because our time, you know, they were paying for a rental car and that time was running out and we've got limited resources and we certainly weren't going to hire an attorney. So we accepted their offer telling them that we didn't like it, but we were accepting it anyway. But at any rate, I'm not here to complain about any particular insurance company. I assume...I mean, business, what are they doing? They're trying to hold down costs, aren't they? Kind of like state government, I'm just suggesting that if a consumer were to receive a report on what vehicles were compared with...were used in this market survey, it would tend, I would think, to encourage them to be...the insurance claims agents to be, maybe, more fair, I don't know. Maybe they were right on my car. I wouldn't expect you to agree with me without having information, you know, which I didn't have information. And so at any rate, that's...that's a simple thing that I think would take a step towards more fairness for consumers. And thank you very much. [LB740]

SENATOR SCHEER: Thank you, Mr. Hord. Any questions? Senator Schumacher. [LB740]

SENATOR SCHUMACHER: Thank you, Senator Scheer, and thank you for bringing this idea to us. I'm just a little curious; were you dealing with your own insurance company or the other guy's insurance company? [LB740]

WILLIAM HORD: We were dealing with ours. We were told...it was suggested to us to use our own, even though the other guy's insurance company was probably on the hook for the payment. We don't really get to know. I mean, I don't really even know about that. My insurance company cut us a check. I mean, as soon as we agreed to accept the offer. [LB740]

SENATOR SCHUMACHER: And did you have to sign a paper as part of that process that you wouldn't go after the other guy? [LB740]

WILLIAM HORD: No. I mean, we signed papers, and I don't think there was anything in there like that, and we didn't sign off on medical. My wife had some treatments that she did because of some strained back and things like that. And so...and we still haven't settled up on our \$500 deductible. We were told that we're only going to get \$400 of that back, but that still sits out there waiting. [LB740]

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SENATOR SCHUMACHER: So you still do have a claim against the guy that T-boned your vehicle for medical, for shortages on the car payment, and those kind of things? [LB740]

WILLIAM HORD: It sits out there all in the hands of my insurance company. My insurance company is State Farm and I'm not trying to bring heat on them. The other guy's insurance company is Progressive. And I'm not trying to bring heat on them. I'm just hoping to get something done that would just be a standard business procedure that would be helpful in the process. [LB740]

SENATOR SCHUMACHER: But even if you had a folder with this information in it, what would you do with it? If you're not suing the other party now and you don't want to go to lawyers, what would you do with the folder? [LB740]

WILLIAM HORD: That's a good question. I'm assuming that the claims agent would feel the need to provide evidence that their settlement figure is accurate, it's fair. And if...I never...they never had to provide me anything. So I don't know whether theirs is fair or not. I mean, I don't think it's fair because of what I looked up. But if I saw their market analysis, maybe they've got something in there that would suggest to me that it's fair. I don't think so, but I'm just suggesting that from their standpoint, if they had to provide that information, it would be an incentive to be...to not low ball the figure. And I suspect they do low ball the figure on a routine basis. Now, I have another family member who has had two vehicles totaled who has the same opinion. Now, I don't know if you talk to consumers across the land, how many of them think they got treated fairly in a settlement figure. You might find one or two, maybe more. I'd be surprised though. I just think it would be an incentive for them to maybe be a little more fair. [LB740]

SENATOR SCHUMACHER: Thank you. [LB740]

SENATOR SCHEER: Any other questions? Seeing none, thank you, Mr. Hord. [LB740]

WILLIAM HORD: Thank you. [LB740]

SENATOR SCHEER: Next proponent. Good afternoon and welcome. [LB740]

JOHN BUSH: Good afternoon. My name is John Bush, that's B-u-s-h. I'm from Omaha. I am a member of and represent the Independent Insurance Agents Association of Nebraska. And I'm here today to, just very briefly, say that we are very much in favor of this. We feel that this is going to facilitate fair settlement of claims. When this gentleman, the previous testifier's own insurer won't provide him with evidence of how they are arriving at their value, that's

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unbelievable. So as insurance agents, we're definitely behind this. In my 39 years in this business, I have seen so many little battles that really shouldn't have even happened at all. But I think this will help. So just that. Thank you. [LB740]

SENATOR SCHEER: Thank you. Senator Schumacher. [LB740]

SENATOR SCHUMACHER: Thank you, Senator Scheer. When you sell an insurance policy, do you do anything or do, typically, in the practice folks do anything to lead the insured to believe that it's the insurance company's obligation to go after their personal injury and go after any shortfall from the other driver? [LB740]

JOHN BUSH: Well, that's called subrogation and the insurer has a perfect right to subrogate against the insurer if their insured hasn't somehow waived it, you know, writing in advance of the loss. But this is a...it's frequently seen that an insured will turn in a claim under their own collision coverage, and we're talking just about the vehicle here for a moment, and then, of course, they have to pay their deductible and, you know, to get the car repaired or get the car replaced, and then the insurer will go after, in this case, Progressive and, theoretically, get the guy's...the insured deductible back. And then if State Farm, in this case, pays some medical payments insurance, they will subrogate against Progressive for those as well. [LB740]

SENATOR SCHUMACHER: Right, but we just heard testimony that an insured has got the impression that somehow his insurance company has got the obligation to try to recover something for him from the other guy's insurance. [LB740]

JOHN BUSH: That's usually what happens. That's how he gets his deductible back. [LB740]

SENATOR SCHUMACHER: The insurance company files a suit... [LB740]

JOHN BUSH: Well, they don't file a suit. They initiate a subrogation claim. [LB740]

SENATOR SCHUMACHER: So the gentleman we just heard testify, your position is his insurance company has an obligation to pursue the other driver for the medical expenses that his wife had and the shortfall in the payment? [LB740]

JOHN BUSH: And then...yes, and then in addition to her medical expenses, let's say that their medical payment limit isn't sufficient to cover her medical expenses, then there's a bodily injury claim against Progressive. [LB740]

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SENATOR SCHUMACHER: And his insurance company will assume the obligation of pursuing that and filing a suit? [LB740]

JOHN BUSH: I would say that they would have to do that. [LB740]

SENATOR SCHUMACHER: And that's what you represent to...would represent to people that you're selling insurance to? [LB740]

JOHN BUSH: Sure. [LB740]

SENATOR SCHUMACHER: Thank you. [LB740]

SENATOR SCHEER: Any other questions? Seeing none, thank you very much. Welcome, Mr. Mines. [LB740]

MICK MINES: Thank you, Chairman Scheer, members of the committee. My name is Mick Mines, M-i-c-k M-i-n-e-s. Today I'm...I'm a registered lobbyist today representing the NAIFA-Nebraska, the National Association of Insurance and Financial Advisors. Many of our...we have about a thousand members throughout the state, many of whom also sell vehicle insurance. And with that we support the notion that this would provide some kind of clarity for our customers, as well as transparency. And we would support this bill. And I'll answer any questions. [LB740]

SENATOR SCHEER: Any questions for Mr. Mines? Seeing none, thank you. [LB740]

MICK MINES: Thank you. [LB740]

SENATOR SCHEER: Any other proponents? Then we'll shift to opponents on (LB)740. Good afternoon. [LB740]

ANN PARR: (Exhibit 1) Good afternoon. My name is Ann Parr, A-n-n P-a-r-r. I am here today on behalf of the Nebraska Insurance Information Service, which is a state trade organization comprised of approximately 20 member companies doing business, in this case, specifically, auto insurance in the state of Nebraska. I am also general counsel at Farmers Mutual of Nebraska, so I offer that perspective as well. I appear here in opposition to LB740, but as I listen to the proponents, it occurs to me that I'm not sure that we're completely on opposite sides of this matter. I think there are a lot of points that they made that we would all agree with. I guess what I would like to do is just kind of briefly go through the insurance claims process with you a little

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bit and explain how we handle this and point out some concerns that we have with the way the bill is structured. The bill provides that insurers' failure to disclose any market survey information used in determining the value of a total loss to a vehicle is a violation of the Unfair Claims Settlement Practices Act. So in other words, the way I read it, if the insurance company uses market survey information in its determination of the vehicle's value, it must disclose that information to the claimant. One of our concerns is that in practice that might be a little bit vague as to what that market survey information that we're required to disclose is or whether we're required to disclose it in a certain format. I'll just give you experience working at Farmers Mutual. We rely on a couple of different programs to determine what we feel is a fair settlement offer in the case of a total loss of a vehicle. It kind of depends on what kind of car we're dealing with and where we're dealing with it to determine which one gives you the most accurate value. One of the programs bases its values on actual sales over a large geographic area in a pretty good span of time; takes into consideration vehicle condition and features and so forth, but it doesn't give any value on individual sales data of comparable vehicles. We use this program most often if the vehicle is an older model or unique for the area where there aren't, really, any direct comparisons that would be super valid on that. The other program we have uses data on individual sales in the local area. It's a lot more reliable if you have a common car that's a pretty late model car and so forth so you get a little more reliable so forth. Sometimes we'll run a vehicle through both programs just to kind of compare and come up with a compromise figure, because these programs can give you wildly different results and so we'll kind of adjust that and use some subjectivity, frankly, to see what might be a fair value. At least in our company, we explain all of this to the claimant. We tell them why we got the number we got. We invite them to give us information if they have something that contradicts this. My understanding is most companies do this as well. So I don't know that there's necessarily a widespread problem with people not having access to that information. Especially in Nebraska where the lower population base means that a traditional market survey isn't always going to be valid, we really have to rely on these kinds of programs and estimates to come up with fair values and that's what we do and we try to explain that to the best we can. So, I guess what I'm trying to get at here is that I'm not sure how that market survey information that's referred to in the bill would apply when a company uses programs such as this, and at the very least, I think there needs to be some clarification about this. Another area of clarification that I think Senator Schumacher realized was that first-party claimants and third-party claimants may have different things going on there. I assume that this bill is designed to just refer to first-party claimants which is when you are dealing with your own insurance company for a comp or collision loss under your own policy, but again, that's something that we would need to have clarified. The second is a more important point that I would like to make is that there are already safeguards in place for claimants who disagree with an offer. They are always free to refuse an offer. Obviously, they can provide their own information if they have something that shows that...why they would dispute the offer that was made by the insurance company. Also, it appears that this type of practice is already covered by the Unfair Claims (Settlement Practices) Act. The Unfair Claims Settlement Practices Act is a



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list of practices, regulations if you will, that are considered to be unfair if committed regularly by an insurance company. The purpose of this act is to set forth standards by which the insurer must abide when they're dealing with claimants. One of these is number 13 which sanctions an insurer who fails in the case of an offer of a compromise settlement to promptly provide a reasonable and accurate explanation of the basis for such action. I would say it's probably already covered by that. Furthermore, I would say that the act says any violation is an unfair claims practice only if it's committed regularly and in flagrant disregard of the claimant of the laws and regulations. And so to the extent that this bill is addressed to just...is intended to address just anecdotal issues, I would say it's unneeded. I'm out of time. In summary I would just say that it's unnecessary and possibly unworkably vague and ask you not to advance the bill. Thank you. [LB740]

SENATOR SCHEER: Thank you, Ms. Parr. Senator Craighead. [LB740]

SENATOR CRAIGHEAD: Thank you, Chairman Scheer. Hi, Ms. Parr; thanks for being here today. So am I understanding correctly that you share your comps in writing with the clients? [LB740]

ANN PARR: We do. [LB740]

SENATOR CRAIGHEAD: Okay. [LB740]

ANN PARR: At our company. I can't speak for all of the companies, but it's my understanding that the practice is to explain to the claimant where they got the figures, yes. [LB740]

SENATOR CRAIGHEAD: Thank you. [LB740]

SENATOR SCHEER: Senator Schumacher. [LB740]

SENATOR SCHUMACHER: Thank you, Senator Scheer. You heard earlier testimony that at least some agents make the representation that the person's insurance company is responsible for taking their legal cause of action against the other party in an accident and for medical claims and for property damage. Have you found that to be the practice? Is the person's insurance company also their lawyer, so to speak? [LB740]

ANN PARR: No, we don't do that. If you are involved in an accident and you are injured and there's damage to your car, you may make a claim under your own policy for the damage to your car if you happen to have physical damage coverage. In that case, your insurance company has

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an obligation to pay you under that coverage. They may then pursue the third party who caused that damage to try to recover that, and if they recover that, they will give you that share of your deductible back as well. But they do not pursue that unless they have paid you under that coverage. Same is true if you have a personal injury. If you have medical payments coverage under your own policy, your insurance company will pay for your medical expenses. They will then pursue the third party to try to recover those in your name. And if you have additional damages, they could also recover that as well. But you would pursue that thing on your way. [LB740]

SENATOR SCHUMACHER: So all they're doing is seeking reimbursement for what they advance. [LB740]

ANN PARR: That's right. [LB740]

SENATOR SCHUMACHER: And maybe a deductible. [LB740]

ANN PARR: Right. [LB740]

SENATOR SCHUMACHER: But the insurance company, at least in your interpretation, does not have an obligation to then go sue for general damages in and above what they advanced. [LB740]

ANN PARR: Correct. Yes. [LB740]

SENATOR SCHUMACHER: Thank you. [LB740]

SENATOR SCHEER: Any other questions? Senator Campbell. [LB740]

SENATOR CAMPBELL: Thank you, Senator Scheer. Ms. Parr, in the policy...in a policy such as that, would the policy give some indication that you would provide the information to the person, or require or say, you know, we will provide that information. Do any insurance policies state that? [LB740]

ANN PARR: It does not speak of that. [LB740]

SENATOR CAMPBELL: Okay, so it's mainly by the practice that you provide that information. [LB740]

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ANN PARR: Right. Right. So frankly, we have a much better chance of achieving a settlement if we explain to them where we came up with our figures. So as a practical matter, we do that. [LB740]

SENATOR CAMPBELL: Yeah. So if the person persists and says that's really not an accurate figure, I mean, I...and this...on the other cases, I'm owed more money than that, I feel. Then what do you do then? You just write a check for what your market says and that's it? [LB740]

ANN PARR: Yeah. No, you know, that happens on occasion where a claimant feels that their car is worth a lot more than we've offered them, and again, we invited them to show us why they feel that way. And in the vast majority of those cases, we're able to reach a compromise with them. If they've got valid information, we certainly consider it and usually reach a mutually agreeable number. [LB740]

SENATOR CAMPBELL: Thanks. [LB740]

SENATOR SCHEER: Any other questions? Senator Williams. [LB740]

SENATOR WILLIAMS: Thank you, Senator Scheer. Thank you, Ms. Parr, for being here. I would just like to get your response to an allegation that was made by a previous testifier and weigh it in conjunction with what you just cited, I think was...was it number 13, or whatever it was, of the Unfair (Insurance) Claims Settlement (Practices Act) that the insurance industry does not regularly low ball in cases of totals. [LB740]

ANN PARR: Right. Right. If they regularly commit a business practice that's in flagrant disregard of the rules and regulations that govern, then the Department of Insurance has the authority to step in and sanction them. They will hold a hearing to see if this really is a regular practice and they can impose fines and order them to stop doing business and so forth. So that's all how... [LB740]

SENATOR WILLIAMS: In your experience, have you seen that happen? [LB740]

ANN PARR: Off the top of my head I can't think of an example now. But insurance companies realize those regulations are there and they, you know, try to avoid behaviors that would make that happen. [LB740]

SENATOR WILLIAMS: Thank you. [LB740]

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SENATOR SCHEER: Senator Schumacher. [LB740]

SENATOR SCHUMACHER: Thank you, Senator Scheer. One follow up question: is...in all cases, is there some kind of an appraisal method used, or in some cases it's the opinion of the adjuster? [LB740]

ANN PARR: I will speak for our company only; we always use some sort of method to do it. We've got various computer programs that help us determine that. Again, it's hard in Nebraska because a lot of the claims are in a rural area where there's...it's just hard to find comparable sales information. So we are relying on those programs pretty often. [LB740]

SENATOR SCHUMACHER: Thank you. [LB740]

SENATOR SCHEER: Any other questions? Seeing none, thank you very much. [LB740]

ANN PARR: Thank you. [LB740]

SENATOR SCHEER: Good afternoon. [LB740]

TAD FRAIZER: Good afternoon, Chairman Scheer, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r; local counsel and lobbyist for the American Insurance Association, a national trade association of property and casualty insurance companies. I think Ms. Parr has outlined the claims process pretty well and the reasons that we're not sure this bill is necessary at this point. We share the similar concerns about exactly what is intended by a market survey as to what exactly would be expected to disclose whether it's general information or possibly some proprietary information and how that's held. And as noted, it does...it seemed to be covered under the current version of the Unfair (Claims) Settlement Practices Act. And for that reason we would ask that the bill not be advanced. I would try to answer any questions you might have. [LB740]

SENATOR SCHEER: Senator Craighead. [LB740]

SENATOR CRAIGHEAD: Thank you, Senator Scheer. Thanks for being here, Mr. Fraizer. I guess I'm a little bit confused with this, and as a comparison the real estate industry, if you're going to sell a house for a client or help them buy a house you have comps, okay, to show and prove to them the price. So why in the auto industry would you not want to do the same thing in writing? [LB740]

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TAD FRAIZER: Well, I can't...or we have like 300 members, so I can't, obviously, speak for every member. And as Ms. Parr said, at least some companies do that. I think our concern is more what is intended by this market survey. Is it, you know, some companies kind of develop their own internal proprietary information; others, as Ms. Parr noted, go out to some of the standard, quote/unquote, standard sources such as Kelly or NADA. So I think if it could be defined a little better as to exactly what's desired, I think we'd probably have a better idea of whether it's something that would be easier to comply with than not. I think, obviously, if you've got your own...if you've developed your own proprietary internal program of information, you're probably less willing to disclose that than if you're relying on kind of outside third-party sources that you could point to. [LB740]

SENATOR SCHEER: Any other questions? Seeing none, thank you very much. Any other opponents for LB740? Anyone wishing to speak in a neutral capacity? Seeing none, Senator Hansen. [LB740]

SENATOR HANSEN: Thank you, Chairman Scheer, and members of the committee. Let me start by saying I'm absolutely willing to work with stakeholders and the committee on any language or definitions, technical changes; I'm always happy to do that. I just would like to point out that that might have been some of the nicest opposition testimony I've ever had on one of my bills, so I definitely think there is maybe some common ground to be found. I would like to continue working on the issue. Just a couple of things: kind of the need for this section, it was referenced section 13 might cover that. I can go and reread that as myself, but my interpretation of that was that was in the case of denial of claims. So it might not apply in every circumstance...situation. Maybe, a possible amendment as changing the language of 13 to show it's clear and applies, as well as my definition if we need to provide a definition of market survey or detail that details, be happy to do so. In kind of my sense of this bill, is I'm thinking about it from...I think Senator Craighead touched upon it, if, you know, when you're a professional and you have a fiduciary duty to a client of yours, kind of the notion that you wouldn't be providing information that's relevant to them, that impacts them, and they're essentially paying you as a client to do, we just wanted to make sure that that's open and fair. This may not be a thing that's very touched upon, but if you say...or have the unfortunate habit of getting your cars totaled, not at your own fault, and you find out that one company is consistently, say, giving you lower values than another company might, it might be something relevant and material for you to know. [LB740]

SENATOR SCHEER: Any questions? Seeing none, thank you, Senator Hansen. [LB740]

SENATOR HANSEN: Thank you. [LB740]

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SENATOR SCHEER: And that will conclude the hearing on LB740. We will now move to LB796. Senator Harr. [LB796]

SENATOR HARR: You did say LB976, (sic-796) correct? [LB796]

SENATOR SCHEER: LB796, correct. [LB796]

SENATOR HARR: Thank you. I don't want to screw it up like last time. Chairman Scheer, members of the Banking, Commerce and Insurance Committee, thank you for having me back. It's always a pleasure to appear in front of this committee. I am here on LB976 (sic-796) which is a very simple bill. The purpose of the...is to make sure that those individuals...to prevent a prohibition on insured from claims arising under the Minor Alcoholic Liquor Liability Act. The purpose of the Minor Alcoholic Liquor Liability Act is to prevent intoxicated-related traumatic injuries, death and other damages and to establish a legal basis for obtaining compensation for persons suffering damages as a result of provisions for service of alcoholic liquor to minors. This would further the purpose of the act by insuring that a victim injured by a drunk driver who is a minor because he or she was served by an adult has access to compensation. What the bill would do is it would prohibit an insurer from altering coverage just because a claim arises under the Minor Alcoholic Liquor Liability Act. As I stated, the goal is to prevent a homeowner from being in a position where they believe they are covered, but because of a provision buried in the fine print, they and all their assets are exposed. With that I would ask for your support on LB976 (sic-LB796) [LB796]

SENATOR SCHEER: Thank you, Senator Harr. [LB796]

SENATOR HARR: There will be others coming after me. [LB796]

SENATOR SCHEER: Just to clarify, I think we're talking about LB796. [LB796]

SENATOR HARR: No, really? [LB796]

SENATOR SCHEER: Really. I just did happen to look that up on the website, so we're going to call it LB796 for the purposes... [LB796]

SENATOR HARR: This is the second time I've done that. [LB796]

SENATOR SCHEER: Well, that's okay. We're fairly intimidating. [LB796]

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SENATOR HARR: This time it is not my fault. I apologize. [LB796]

SENATOR SCHEER: But just for the record, we are talking about LB796. [LB796]

SENATOR HARR: That is correct. [LB796]

SENATOR SCHEER: Okay. Any questions for Senator Harr? Senator Gloor. [LB796]

SENATOR GLOOR: Thank you, Senator Scheer. So how did this come about? I mean, did you have a constituent or someone you knew who ran afoul of this exclusion? [LB796]

SENATOR HARR: No one has run afoul of it yet. I'll be honest, it was brought to me by interested parties for fear that this may occur. Having their interest groups that, obviously, read our statutes that see problems out there, and this has occurred. If you're asking has it occurred? Yes. [LB796]

SENATOR GLOOR: Are we talking about homeowner policies here? Are we talking about a youth who falls off a deck and gets injured? [LB796]

SENATOR HARR: Yeah, well there will be some coming after that can give us more specific examples, but it could be that situation yes. [LB796]

SENATOR GLOOR: But it does involve motor vehicles? [LB796]

SENATOR HARR: No. [LB796]

SENATOR GLOOR: This is specifically a homeowners-type policy? [LB796]

SENATOR HARR: That is correct. [LB796]

SENATOR GLOOR: Okay. [LB796]

SENATOR SCHEER: Senator Schumacher. [LB796]

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SENATOR SCHUMACHER: Thank you, Senator Scheer. The Minor Alcoholic Liquor Liability Act, that's one of them that I'm not familiar with. Are you familiar with that one at all? Can you explain what it does. [LB796]

SENATOR HARR: Well, we did vote to pass it, if that's what you're asking. [LB796]

SENATOR SCHUMACHER: No, but that doesn't mean anything. (Laughter) No, but what does it provide for? [LB796]

SENATOR HARR: Well, the purpose of that bill is what we're looking at is ways to prevent or discourage minors from drinking. And it was a bill that...I mean, it's just to that degree. As I said, there are those others coming after that understand it better than I. I have a copy of it if you want, I can make it available to you. [LB796]

SENATOR SCHUMACHER: Well, I just was provided with a copy. [LB796]

SENATOR HARR: Okay, you have one too, okay. [LB796]

SENATOR SCHUMACHER: It was 2007, so no wonder you couldn't remember it. And I'll read it for myself. And thank you, Senator Harr. [LB796]

SENATOR HARR: Thank you. [LB796]

SENATOR SCHEER: Senator Craighead. [LB796]

SENATOR CRAIGHEAD: Thank you, Chairman. Hi, Senator Harr. So are you looking to add E&O, is that what it is with this? Errors and omissions, basically? In case something happens, then a policy... [LB796]

SENATOR HARR: Yeah. [LB796]

SENATOR CRAIGHEAD: Okay, so you're adding E&Os, basically. [LB796]

SENATOR HARR: As I understand it, but again, there are those coming after me that understand this better than I. [LB796]



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SENATOR CRAIGHEAD: Okay, thank you. [LB796]

SENATOR SCHEER: Any other questions? Well, obviously, you're going to stick around, you've got the next one, so never mind. [LB796]

SENATOR HARR: Thank you. [LB796]

SENATOR SCHEER: First proponent. [LB796]

KATHLEEN NEARY: Good afternoon. [LB796]

SENATOR SCHEER: Good afternoon, welcome. [LB796]

KATHLEEN NEARY: Mr. Chairman, members of the committee, my name is Kathleen Neary. I am current president of the Nebraska Association of Trial Attorneys or commonly called NATA. I'm here to testify today in support of LB796, and the reason for that is it is a consumer protection bill. It ensures that homeowners and tenants can buy a policy of insurance to protect them and their families and their assets against harm. [LB796]

SENATOR SCHEER: Excuse me, could you spell your name. [LB796]

KATHLEEN NEARY: Sure, it's Kathleen, K-a-t-h-l-e-e-n, last name is Neary, N-e-a-r-y. [LB796]

SENATOR SCHEER: Thank you. [LB796]

KATHLEEN NEARY: You're welcome. And the point of insurance, as we all have it, is to protect against unforeseen harms so that...so we buy insurance and know that insurance is there when something unforeseen happens. The policy of insurance then also insures that an injured party can be justly compensated for their injuries and that the cost of the injuries would not fall upon the public. When there is no insurance or inadequate insurance for injuries, the medical expenses often fall upon the public if the health insurance or other liability insurance is not there to pay for medical costs. Now, insurance companies are eager to sell insurance and that...they make sense, I mean, they want to provide a coverage for a certain amount of money. But in cases like this, they are not eager to point out the exclusions in these policies. And Senator Craighead, you asked about whether it's an E&O policy. That's not the way I read the bill. I think what the bill is doing is that it would prohibit insurance companies from excluding coverage for claims

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arising out of the minor alcohol act, liability act. And as we all know, we get them in the mail sometimes where your insurance company, your homeowners insurance company will send you a new exclusion or an addendum which will exclude things in very cryptic language. And even me, as a lawyer, don't even always understand it. So what happens is homeowners who think they are covered, the insurance company can change the game in the middle...change the terms in the middle of the game which then would exclude coverage which would then pass the harms or the costs onto an unwary homeowner. So the results...I guess there's one other public policy aspect of this. And we know that insurance companies are good at providing insurance to protect against harm, but insurance companies are also very, very good at educating the public against bad things like minors drinking alcohol. And so long as we have a law that would exclude writing out coverage for these type of claims, that gives the insurance companies incentive to educate the public about these things that are not good for our society like underage drinking. So as long as insurance companies are required to write comprehensive policies and not exclude coverage based on the type of claim, they have incentive to educate our public. And for that reason I would respectfully request on behalf of the trial lawyers and consumers in the state of Nebraska that you advance LB796. [LB796]

SENATOR SCHEER: Senator Gloor. [LB796]

SENATOR GLOOR: Thank you, Senator Scheer. Can I can you a hypothetical? [LB796]

KATHLEEN NEARY: Sure. [LB796]

SENATOR GLOOR: So, father/mother leave home, son or daughter invites friends to come over and have a party, break in the liquor cabinet, get drunk, somebody gets injured. Here's a scenario where nothing was done by the owner, the father and mother that would have encouraged the drinking, but it happened nonetheless. Is your understanding that currently if there was this built into an insurance policy, it's still applicable? [LB796]

KATHLEEN NEARY: Well, a couple of things, Senator, you mentioned that the teenagers, or the underaged people in the absence of their parents broke into a liquor cabinet. So that tells me that the parents were acting appropriately and trying to restrict the teenagers from alcohol. [LB796]

SENATOR GLOOR: Okay, they had a keg in the garage, it was for their personal use. [LB796]

KATHLEEN NEARY: Right. And I think...and I'm no expert on the minor liquor liability act, but I think in order to have liability under the act, there would have to be some... [LB796]

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SENATOR GLOOR: It has to be overt. [LB796]

KATHLEEN NEARY: ...affirmative encouragement by the parents. [LB796]

SENATOR GLOOR: Have a party; we're here, we'll help mix the drinks. [LB796]

KATHLEEN NEARY: Exactly. And that would be an act covered and make the parents liable. [LB796]

SENATOR GLOOR: Were buying alcohol for the kids. Gotcha. Thank you. [LB796]

KATHLEEN NEARY: Um-hum. [LB796]

SENATOR SCHEER: Other questions? [LB796]

KATHLEEN NEARY: Thank you. [LB796]

SENATOR SCHEER: Just one, you're saying you don't want them to have exclusions, but to be real honest, any homeowners policy is full of exclusions, I mean, there's a multitude of them in there. So to a certain extent, would it not be the buyer beware. I mean, somebody's responsibility to know what's in the policy, so, I'm a little concerned about saying, well, you can't exclude anything because that's already common practice in the insurance world. There are exclusions in every policy. So, why just this one, why now? [LB796]

KATHLEEN NEARY: Well, I mean, because, I think this came up for a variety of reasons and that is members of NADA were receiving notices. We're always on the look out about what things are going to hurt our clients or potential harm or to push costs off onto consumers or raise prices for everyone for health insurance...not health insurance, but medical treatment. But when you say buyers beware, you are absolutely right. But there's very few people who really sit down and read the fine text of their insurance and they believe that they are paying good earnest money, whether it be \$1,500 or \$2,000 or \$4,000 a year to protect their family and their assets and themselves from exposure for potential harm, that I've never had an insurance agent that has sold me coverage to say now we're specifically excluding claims under the Minor Alcoholic (Liquor) Liability Act. A person who is not sitting in this body or a lawyer would not know what that meant so...and the harm is significant. So for this body to pass that law, and that is the law of the state, and insurance companies to circumvent that law by saying we're not going to write on that or we're going to exclude that during the term of a policy or the renewal of a policy, when you get exclusions like this thick, it is something that a consumer... [LB796]

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SENATOR SCHEER: But it would not stop a insurance company though from excluding it and providing it as an optional coverage. I mean, if you look at a homeowners policy, I suspect that the majority of those are not on replacement costs basis and...maybe most are now, but years ago they weren't. And there was always an extra charge. So, I mean, you have a coverage that certainly excluded some things and then for an additional charge you would have what would be considered optional. So doing this would also restrict them from that doing that, I mean. [LB796]

KATHLEEN NEARY: Well, you know, I understand what you're saying and I actually looked at it and so I got a rider from State Farm; I'm an insured of State Farm, and they said, now, if you want additional insurance for jewelry, home computers, blah-blah-blah, and they give you a list of things that are...that I as a normal person can read and understand. And then it says--you are not currently covered for flood insurance or...you know, a certain thing that are easily understandable. But if I would have gotten on my exclusion policy claims arising under the Minor Alcoholic (Liquor) Liability Act, I would not know what that is. So I'm not... [LB796]

SENATOR SCHEER: Well, I understand. I guess you're saying it can't be excluded, and I sort of have a concern because there are some things that are excluded that you'd buy back. And so using your first comment that you don't want them excluded, but included; that precludes them from offering that as an optional coverage, correct? [LB796]

KATHLEEN NEARY: No, I understand what you're saying, Senator. [LB796]

SENATOR SCHEER: Well, if you can't, if you can't exclude it, then they can't exclude it; where what I'm saying is they could exclude it, but offer it as an optional coverage. And you, by this bill, would preclude them having that exclusion and offering it as an optional coverage. [LB796]

KATHLEEN NEARY: I think the way...and I see exactly what you're saying and I agree, insofar as, I think it would be important that if an insurance company was allowed to exclude certain claims like flood insurance or jewelry or furs or whatever it is, that it be done in such a manner that it was very, very clear so that the consumer knew and intelligently waived their right to not buy that insurance coverage. [LB796]

SENATOR SCHEER: So you would also be receptive to different language within a policy case then? [LB796]

KATHLEEN NEARY: But I think that insurance companies, they have a multitude of people who are experts in writing the claim and the underwriters that talk about how much this is going

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to cost the insurance company and what they can sell it for a fair price for. So it's not like the insurance companies are going to be losing money on this. We all know that the biggest buildings in any city are usually insurance company buildings and they employ lots of people. So that's all good. [LB796]

SENATOR SCHEER: Well, that may be, Ma'am, but I think you're being a little oversimplistic because reading...and I'm not, you know, rocket science, but when a hail storm hit Omaha, I got to believe that those companies probably lost a ton of money during that year. So when you buy every other house...or two out of three houses a new roof, I think it's disingenuous to say, well, they've got plenty of money so they've got the biggest buildings so we don't have to worry about them. [LB796]

KATHLEEN NEARY: But when they have hail coverage, your exclusion is going to say you're not covered for flood, for tsunamis, for hail, I mean, there is a... [LB796]

SENATOR SCHEER: Not necessarily, Ma'am, I mean, if you look at your policy... [LB796]

KATHLEEN NEARY: Which I did. [LB796]

SENATOR SCHEER: ...right now, for example hail, you will have a separate item, which I'd almost virtually guarantee, you're going to have a separate deductible for wind and hail. Now unless you look at your policy very closely, and I...go back and look at it, I'm going to tell you you probably do, that it is there. Now, I don't know that "Joe Blow," you know, regular guy looks at that until you already have a claim. I get that. I mean, insurance is complicated and I'm not trying to minimize that, but I go back to my original concern is--by this policy, you're stopping an insurance company from excluding something that they then can offer as optional coverage. And you agreed with that, and you said the reason for that, if I understood you correctly, was because the language is so obscure that somebody may not know that, so my point to you was that perhaps language clarification with the policy itself is as equal to not having them have the ability to exclude something. It's sort of tying their hands from my perspective a little bit. [LB796]

KATHLEEN NEARY: Right, and I guess that would be fair, Senator, that if an insurance company wanted to exclude, there would have to be something as simple language that regular consumers could understand like hail, flood, jewels, computers, and that they could buy it. [LB796]

SENATOR SCHEER: I'm not an expert on writing a policy language, but... [LB796]

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KATHLEEN NEARY: Me neither. [LB796]

SENATOR SCHEER: ...but that's just where I was trying to get to. I appreciate you coming so much. [LB796]

KATHLEEN NEARY: Thank you. [LB796]

SENATOR SCHEER: Thank you very much. Next proponent. Seeing none, are there any opponents to (LB)796? Welcome back, Ms. Parr. [LB796]

ANN PARR: (Exhibit 1) Thank you. It's Ann Parr, A-n-n P-a-r-r, appearing here today in opposition to LB796 on behalf of the Nebraska Insurance Information Service. The bill provides that no homeowners or OLT policies shall exclude, limit, reduce, or alter liability coverage for a claim against an owner, landlord, or tenant solely because that claim arises pursuant to the Minor Alcoholic Liquor Liability Act. Our concerns with this bill stem both from what we feel is very unclear or misleading wording in the text, but even more importantly, as well as problems that we have with the overall concept of the policy behind the bill. The bill is somewhat confusing in its application. I think we kind of hit on some of those points already today. A great concern to us, of course, is that it says...it states that no policy shall exclude, limit, reduce, or alter liability coverage. By saying that, is the bill actually stating that there are no limits on coverage if a claim arises under this act? Not only do you have insurance coverage for damages that result from you allowing minors to drink, but there are no limitations on the amount of this coverage? I think that's one way to interpret it and to the extent that it's interpreted that way I think the bill is...has faulty language, somewhat dangerous. Also, Senator Gloor, you pointed out one thing that I just wanted to clarify. You asked whether this had anything to do with claims that would rise from drinking and driving. I think, actually, it could. The bill speaks to homeowners' coverage which provides general liability coverage for homeowners. If I as a parent allow a bunch of high schoolers to come and knowingly drink at my house, and then one of those high schoolers goes out and gets into an accident while drunk driving, any liability that I would have for being a social host that provided that alcohol could very well fall under the homeowners policy. So I think there would be times when driving claims would be implicated as well by that. Just want to clarify that. More importantly than the semantics and so forth though, I think what we need to look at is that the bill underlines, really, how insurance is supposed to work. Liability insurance is supposed to cover you for damage if you...damage that you cause if you make a mistake; not when you knowingly do something that creates a risk. Ms. Neary correctly pointed out that insurance is for unforeseen things that happen. The Minor (Alcoholic) Liquor Liability Act talks about when you knowingly provide alcohol to an underage drinker and damage results from that. Liability insurance covers things that happen when you stumble, when you make a mistake, when you inadvertently cause damage as a result of your negligence, not when you knowingly

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do something that creates a risk. Liability insurance policies already exclude coverage for acts that are expected or intended by an insured person for that very reason. The idea being that those acts are preventable and therefore not what insurance is intended to cover. Likewise, many policies nowadays have exclusions for coverage for acts of an insured that are criminal in nature. Again, because that's what insurance is for. Insurance is supposed to cover you when you make a mistake which leads to results that could not have been anticipated. Conceptually, this bill creates what we call a mandated benefit in that it requires all insurers to cover this exposure. This effectively results in an insurance subsidy for those families that allow high school kids to drink at their house, while penalizing those households who don't have kids or don't allow those kids to drink. But we think it's better to let the marketplace provide different insurance options for that exposure, as you mentioned, Senator Scheer. Why require everyone to have that coverage, the cost of which will be rolled in to everyone's premium if they don't have that exposure. But finally and most importantly, strong consideration needs to be given to the message that this bill would send if passed. As Senator Harr noted, the purpose of the Minor Alcoholic Liquor Liability Act was to prevent intoxication-related injuries by providing a disincentive for adults to facilitate drinking by minors. If we pass legislation that forces insurers to cover acts that fall under that Minor Alcoholic Liquor Liability Act, it completely thwarts the purpose of that act by encouraging adults to allow minors to drink since they would have no personal risk. We're encouraging parents or homeowners to knowingly allow minors to drink in their presence or even to provide alcohol to minors because insurance coverage for any injury that result would be guaranteed. You'd be covered for any damage caused by your actions. The Legislature can't think that it's good public policy to encourage underage drinking by mandating insurance coverage for adults who knowingly allow the minors to consume the alcohol. So therefore, the proposed legislation is misguided in its intent and we would respectfully ask that you not advance LB796. Thank you. [LB796]

SENATOR SCHEER: Thank you. Senator Schumacher. [LB796]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for your testimony. I've had an opportunity to read through this act and it's a mean, mean, mean act. And this is what questions I kind of...comes into mind. This says: Any person who sustains an injury as a result of the negligence of an intoxicated...it doesn't say how intoxicated...minor shall have the right to sue a social host, somebody who bought the booze or retailer who sold the booze, and then it goes on, it says: it shall be a complete defense and any action under this act that the intoxication did not contribute to the negligent conduct. So one of the jobs of an insurance policy is to defend you against claims. And if you were the host, you gave somebody a glass of Mogen David wine at Christmas dinner, okay, so you arguably the kid was maybe intoxicated, who knows what it takes to intoxicate a kid on Christmas dinner, but you have a complete defense because the kid drinking had nothing to do with the injury that happened. Would the insurance exclusion that would be in the policies now exclude the insurance company from having the responsibility to

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defend the homeowner against this claim which defense, if it were successful, would mean that he didn't violate this Minor Alcoholic Liquor Liability Act? [LB796]

ANN PARR: Right, right. [LB796]

SENATOR SCHUMACHER: Is the innocent homeowner being, by having these clauses in a policy, being deprived of a defense that he is paying insurance for? [LB796]

ANN PARR: Yeah, I understand your question. And these hypothetical are always difficult because, of course, you know, they're so factually specific, but to me it would be most analogous to an intentional acts coverage question. We get these all the time. As you know, the duty to defend is very broad. And if there is a question about whether an exclusion applies, we usually end up providing that defense. We will see claims where, for instance, an insured gets into a fist fight with somebody and while it appears on the face that we could deny that based on the intentional act exclusion, if the insured says it was completely self defense, that's a defense to that exclusion applying and we will provide them a defense in those cases where there's some question about whether that really is factually something brought within the exclusion and so forth. Again, I hate to say yes or no on a coverage decision under a hypothetical, but I think there are sometimes when there would be a coverage dispute about whether the act applied and whether the exclusion applied and we would probably provide a defense in a lot of those cases. Not to say we would cover the claim, if it turns out that they actually did violate the minor act, but...transcribe that...Minor Alcoholic Liquor Liability Act, that's a mouth full, but yeah...but that's my best guess as to how that would turn out. [LB796]

SENATOR SCHUMACHER: Thank you. [LB796]

SENATOR SCHEER: Any other questions? Seeing none, thank you, Ms. Parr. [LB796]

ANN PARR: Thank you. [LB796]

SENATOR SCHEER: Any other opponents? Welcome back, Mr. Fraizer. [LB796]

TAD FRAIZER: Good afternoon, Chairman Scheer, members of the committee, again, my name is Tad Fraizer, T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of property and casualty firms. And as usual, Ms. Parr is far more eloquent than I am, but I would like to touch on a couple of points, kind of going back to, I think, Senator Gloor's original question about the social host. Under the Minor Alcoholic Liquor Liability Act, section 53-403(7), a social host means a person who knowingly allows consumption of alcoholic



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liquor in his or her home or on the property under his or her control by one or two minors. And there's an exception if you're giving it to your own child or if there is some sort of a religious organization involved, but this isn't, you know, leaving the liquor cabinet unlocked. This is a knowing provision of alcohol...or knowing...permitting the consumption of alcohol by minors on your premise, and that's the only grounds that a social host is liable under this act. There are separate provisions as to retailers and such. But as far as the social host, which is where you get into the homeowners policy area, that requires knowing action on the part of the homeowner or the property owner. And as Ms. Parr indicated, this gets to a very fundamental area of insurance, the concept of moral hazard or intentional or illegal acts. I think there was some discussion by a prior proponent about, gee, there's an expectation we'd be covered. I'm not sure it's a reasonable expectation for a property owner to say--if I knowingly allow a minor to consume alcohol on my premise, of course my insurance is going to cover me. I'm going to allow an illegal act of letting a minor...an underaged person consume alcohol on my property with my knowledge and permission and, of course, my insurance is going to cover. To me that seems like a rather unreasonable expectation. It works against any incentive to say, gee, I can let the kids have a kegger, I can give them alcohol and if someone gets hurts, I don't have to worry, my insurance is going to cover it. That would seem to go totally contrary to the concept of encouraging people not to allow minors to consume alcohol. I mean, to a certain extent you want it to hurt, and it's just the same...and I might put it in a car situation. Insurance companies will insure you if you negligently drive your car and injure someone. It's not going to cover you if you willfully run someone down. If you decide I don't like my no-good SOB brother-in-law and I'm going to run him down, your insurance is not going to cover you for that any more than if you take out a gun and shoot him or something like that. It's really important to the concept of insurance to avoid moral hazard because that's kind of where your underwriting tends to start going out the window. You don't know what people are going to do intentionally. You can kind of get some averages of how many people are going to be careless or negligent over a broad pool, but when someone starts acting intentionally or willfully, that really just undercuts any nature of insurance, a sharing a risk. Then you're no longer sharing a risk of something happening, you're sharing an intentional act that someone may decide to engage in. And so for those reasons we would encourage the bill not to advance...excuse me, encourage the committee not to advance this bill. [LB796]

SENATOR SCHEER: Thank you. Senator Schumacher. [LB796]

SENATOR SCHUMACHER: Thank you, Senator Scheer. And thank you for your testimony today. Were you around in 2007 when this was passed? [LB796]

TAD FRAIZER: I was around, I wasn't actively involved in it, but I was an observer. I think it was Senator Kruse who brought the bill when it got...I think it was a much broader bill and it got

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cut down by the Judiciary Committee to what you see before you with limitations on both retailer liability and social host liability. [LB796]

SENATOR SCHUMACHER: Do you happen to recall whether or not the trial attorneys supported the bill? [LB796]

TAD FRAIZER: I'm pretty sure they supported the bill in its original form. It was a rather broad dram shop bill as I recall, that then got reduced down to this bill. [LB796]

SENATOR SCHUMACHER: Then it's a bit...if the purpose of this rather draconian bill that would put the fear of the lord and if you served booze to a kid is to save the children, then one has to wonder isn't...and the trial attorneys are here today saying--oh, we want insurance coverage, but the real purpose of the bill had nothing to do with children but creating cause of action. [LB796]

TAD FRAIZER: One might draw that conclusion. [LB796]

SENATOR SCHUMACHER: Thank you. [LB796]

SENATOR SCHEER: Any other questions? Seeing none, thank you. [LB796]

TAD FRAIZER: Thank you. [LB796]

SENATOR SCHEER: Any other proponents? Seeing none, are there any in a neutral capacity for (LB)796? Seeing none as well, Senator Harr. [LB796]

SENATOR HARR: Thank you, Chairman Scheer, members of the Banking, Commerce and Insurance Committee. I think this has been a good discussion, but we've forgotten one person, and that's the innocent third party. If I am hit and I sustain damages, and the person who hits me happens to be a kid who was drinking with the permission of his parents at his parent's home, I don't give two tails what...I want to be compensated. I don't care what happened. I don't care if the parents accepted it or not. I was damaged. That's what this bill is about. It's analogous to the situation of a drunk driver. If you're driving a vehicle and you're drunk and you hit the other party, it's not as though we say--oops, sorry other party; you don't get any money because this person was drunk. We don't do that. I understand the argument about moral hazards. But when you're hit by a drunk kid, you don't care about the moral hazards. You want to be compensated for a wrong that occurred to you. And similar to the situation with a drunk driver, if there is a claim made against your policy, I guarantee you, going forward, they have ways of encouraging

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you, insurance companies, not to allow that. They will look at your premiums and they will say you're a risk. And I'll be honest, you probably are. And they should raise your rates. But in the mean time, we've said moral hazards and we have this poor, innocent third party out there who is paralyzed for life who gets no compensation. That's what the bill addresses. That's what the bill is about. So, I understand the points making. I'll look forward to working with legal counsel to make the bill better, but I think it's an important bill. With that I would take any questions you may have. [LB796]

SENATOR SCHEER: Senator Schumacher. [LB796]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you, Senator Harr. But in those cases where the homeowner or the person who had the policy has assets, there still would be compensation. The fact that their insurance wouldn't cover it. [LB796]

SENATOR HARR: You're assuming they own the home. The bank owns my home. [LB796]

SENATOR SCHUMACHER: Yeah, but you've got assets. They would come after your assets, not your home. [LB796]

SENATOR HARR: After six years here I'm not sure I do. (Laughter) [LB796]

SENATOR SCHUMACHER: So we're not...but we're not precluding compensation, we're just eliminating responsibility on the part of the insurance company under the existing law. [LB796]

SENATOR HARR: We're reassigning when the blame is made...or when the costs comes. [LB796]

SENATOR SCHUMACHER: Thank you, Senator. [LB796]

SENATOR SCHEER: Senator, along the same lines, I mean, speaking of a car accident, I don't know what the percentage is, but there's a percentage of the population that drives without automobile insurance, even though it's required by law. And if I ever happened to be drunk, regardless if I got drunk at Mr. Marienau's house and stumbled out and got in my car and hit you, he may or may not have any home or renters' insurance and he may not have any assets to sue against. And if my car is not insured and I have nothing, that innocent third party still is going to be void of any compensation, correct? I mean, that doesn't stop you from... [LB796]

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SENATOR HARR: Sure. Sure. [LB796]

SENATOR SCHEER: ...doesn't stop anyone from filing a claim against you. [LB796]

SENATOR HARR: And I think we would all agree that that's probably a wrong that you're...that that third party...there are no...way to make them whole. And so, you know, what we want to do is that's the purpose of insurance, right, is to assign risk. [LB796]

SENATOR SCHEER: But you're assigning risk, but there...I suspect that there is a larger percentage of people than you would think that probably certainly do not have a renters' policy, I would guess, that the vast majority of people that own homes do protect themselves. [LB796]

SENATOR HARR: Yep. [LB796]

SENATOR SCHEER: Not all, but I would think that there is a higher percentage than one might assume that do not provide themselves with...or promote a coverage of a renters' policy. [LB796]

SENATOR HARR: That's fair. And what I would say is, you're exactly right, this is...we can't live in perfect world, but this is one small bit to hopefully make the world just a little better. [LB796]

SENATOR SCHEER: Okay, fair enough. Any final say? [LB796]

SENATOR HARR: Thank you. [LB796]

SENATOR SCHEER: All right. And that will...well, wait a minute, nope we're still good; so that will end the hearing on LB796. And we will now open LB856. Senator Harr, welcome back so quickly. [LB856]

SENATOR HARR: (Exhibit 1) Thank you. Chairman Scheer, members of the Business and Labor Committee, (sic-Banking, Commerce and Insurance Committee), my name is Burke Harr, H-a-r-r. I represent Legislative District 8 located in midtown Omaha in Douglas County, and I am here on LB856. And I think some of you may be a little bit more familiar with this bill, some of you may have received some e-mails on this. So, last night I saw Tom Rinaldi so I'm going to start with...try to imitate him a little. Imagine if you will, you're in a hail storm. Your roof is destroyed, there's water pouring into your house. You want your roof repaired and you want it

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done quickly. And lo and behold, here comes someone knocking at your door, says--hey you have a thousand dollar deductible. I know you're in a bad spot, trust me, I'm an expert. This is what I do for a living. You don't do this; you're a state senator, you're a whatever. This is what I do, I'm an expert. You pay your deductible, we'll take care of the rest; everything is taken of. Go back to relax, we'll have this taken care of before the next storm...before the next rain because we realize how important your house is. Who is going to say no? No one. It seems easy; it seems probably too easy. You're stressed out. Your car is damaged; your house is damaged, your siding is damaged, you got water coming in. And so they take advantage of these people and that's what's going on. Well, you've now assigned your rights to your everything. And contrary to what you may have read recently, we don't always just assign our insurance rights away. But you have here. And so what happens? You get a bid at \$7,000 and you say--sure, that works. You'll come back, sure--says the roofer, I'll come back. Well, you've signed all your rights away. So let's say you want to cancel because it's been six weeks and they don't come back. You've assigned your contract rights away. Let's say they now go to your...you've gotten three bids like you're suppose to; they are all for "seven." Now all of a sudden, they're saying it's "14." And you say--whoa, whoa, whoa, no, no, it's "seven," I'll go to someone else. You assigned your rights away. They go ahead and finish your roof. Now guess what they say? It's \$23,000, and they turn it into your insurance company. Now your insurance company says: nope, we're not going to pay that. So what happens? You now sue your own insurance company through this person you've assigned your rights to. That's going on right now. You may not even know you're suing your own insurance company. So that's the situation we have. We have people who are in a vulnerable situation, who are at their wits end, I wish Senator Pirsch was still on this committee because he will tell you what happened to him. He was in a vulnerable situation just like this. He had a hail storm; he lost his skylight and he lost his roof. You want it done quickly. You assign your rights. They take advantage of the fact that you're vulnerable. Look, I am a hundred percent for the rights of individuals to contract. I think that's very important. It's somewhat of the basis of our society, but it's not an unlimited right. We have public policy reasons why we limit when and how you make contract. We don't let minors make contracts. We don't let incapacitated people make contracts. We have habitable living requirements so that if you're poor, you may want to live and just have a roof over your head. But we say, no, you can't contract in certain situations. There has to be running water. There has to be heat available. We constantly say, and we look, when are there situations where a person is taken advantage of? This is one of those situations. You assign your rights away, and when you assign those rights away, you may be doing something that is to your own harm, suing your own insurance company. Now you say, but does this happen? And I will tell you, the vast majority of the time, no. We have very good and very reputable roofers, we are very lucky. But there are some bad actors out there. And that's what this bill is aimed at. In the last two years, there have been over 154 lawsuits totaling over...almost \$13 million...\$12.8 million. That's real money folks. That has an affect on our policy's cost. That's what this bill is about. It's about protecting the policyholder. You saw my last bill. I'm not a shill of the insurance company. They testified against my last bill. I get it. What I'm here for is the

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individual. That's what this bill is about. Is that individual who trusts this party who then turns around and sues the insurance company on their behalf. That's why I'm here; nothing more/ nothing less. By the way, you all got the e-mails that says we assign our medical rights. The fact of the matter is, that just isn't true. There's case law on point that says you can't do it. I have it right here. I'll make a copy if you'd like it. I'll read it into the record actually. It's Blue Cross and Blue...well, excuse me, Obstetricians-Gynecologists, P.C. v. Blue Cross and Blue Shield of Nebraska, and you know what we found in there? They found that you can't assign your rights. We don't allow...who would...who would be crazy enough, first of all, to assign their rights to their doctor. Hey, you go ahead and do whatever the heck you want on my body, don't worry about it, I trust you. We don't do that. So why would you do it on your roof? That's what this is about. Is this part of a plan? Well, I can tell you this abuse is going on in other states. And it always...what usually happens is after storms you have what they call "storm chasers." And to be fair, they're on both sides. You have claims adjusters who are storm chasers who come in after and you have roofers who come in after a storm and are storm chasers. What we want to do is to make sure that this is fair. I have an amendment here that just says...it limits the bill to assignments; that you can't assign your right. I've eliminated all the other parts of the bill. I've listened; I've tried to compromise. As a matter of fact, in my close I'll talk a little bit more about my compromise that I tried to work, but know that I've worked to try to come to a compromise. I think this is fair. I don't think we should be assigning these rights. And when people come up and testify against this bill, ask them what they do. Are they currently suing any insurance companies? Or the clients they represent currently suing any insurance companies and how much and how successful they've been? This is about the policyholder, because it costs the policyholders. It costs you and me when we have bad actors out there. With that I'd entertain any questions you may have. [LB856]

SENATOR SCHEER: Senator Craighead. [LB856]

SENATOR CRAIGHEAD: Thank you, Senator Scheer. Hi, Senator Harr. I have several questions. [LB856]

SENATOR HARR: Good. [LB856]

SENATOR CRAIGHEAD: First of all, who asked you to carry this bill? [LB856]

SENATOR HARR: Who asked me to carry this bill? [LB856]

SENATOR CRAIGHEAD: Who asked you to carry the legislation? [LB856]

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SENATOR HARR: First of all, I'm not sure that's relevant, but I...no one did. [LB856]

SENATOR CRAIGHEAD: Okay. Just wondered. Okay, and you also gave the case study of Blue Cross/Blue Shield, and we're talking health insurance versus homeowners. That's apples and oranges. [LB856]

SENATOR HARR: No, what I'm saying is, what I was saying was to draw on the fact that they said that they assign...we assign our medical in that e-mail that you've received, and the fact of the matter is, we don't. That's the purpose. And it isn't apples and oranges in that you are assigned your rights to a third party that may be to your disadvantage. [LB856]

SENATOR CRAIGHEAD: Okay. You know, one of the responsibilities of home ownership is just what you're talking about. It's like buyer beware. And I think most people...or many people who buy homes take classes. I know I teach classes for low income housing on this kind of thing about not to do that. And I...this is just a statement, but that's... [LB856]

SENATOR HARR: So you would agree it's bad public policy. [LB856]

SENATOR CRAIGHEAD: Well, I think it's responsibility of home ownership that you need to figure out what you need to do. Now, here's the other thing though. You mentioned there were 154 lawsuits. [LB856]

SENATOR HARR: I did. [LB856]

SENATOR CRAIGHEAD: Okay, out of how many roofs replaced and what are your demographics here? [LB856]

SENATOR HARR: Well, I'm glad you asked, and I encourage you to ask others. So some of those lawsuits have multiple parties within there. So they would sue one insurance company. I can't give you the exact amount, but I can get that information to you. But I can tell you...well, I'll leave it at that for now. [LB856]

SENATOR CRAIGHEAD: Okay. Okay, in regarding Senator Pirsch, I lived in the same neighborhood he did at the same time, two houses away. That was the year that two tornadoes went through the neighborhood and 400 houses of that development got damaged. [LB856]

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SENATOR HARR: Yeah. So you understand the storm chasers. You understand that people come from outside the state. Correct? [LB856]

SENATOR CRAIGHEAD: You tell them no. [LB856]

SENATOR HARR: Okay. And that's great sitting here on a beautiful day in a nice room in a controlled situation. When you have four other homes in your neighborhood being attacked that were...excuse me, destroyed by, in this case, tornado, hail damage, it's a little different. You're cold, you're scared, you're wondering--am I ever going to get my life back to normal? And they prey on that. And that's exactly what happens. And so it's easy for us to sit back and say--buyer beware, hey, hey. It's a little more difficult when you're in that situation, when you see all this damage around you and you don't know where you may...maybe not even know where you're going to sleep that night. You're not knowing if your house is even habitable. And that's what we're trying to prevent here is the roofers who take advantage of that...residential roofers who take advantage of that situation. [LB856]

SENATOR CRAIGHEAD: Okay, so we're, again, this is a situation of trying to protect people from themselves. [LB856]

SENATOR HARR: No, we are trying to protect them from people...outside parties who are not looking out for their best interests. Preventing them from assigning their rights because of a situation they're in where that assignment is not in their best interest. [LB856]

SENATOR CRAIGHEAD: Thank you, Senator Harr. [LB856]

SENATOR HARR: For people who prey on them. [LB856]

SENATOR SCHEER: Senator Schumacher. [LB856]

SENATOR SCHUMACHER: Thank you, Senator Scheer. And thank you again, Senator Harr. In your original bill, you were going to prevent the contractor from doing one of two things, or both, I guess. One, that the contractor could not negotiate and represent to the policyholder in an insurance claim. And the second thing is taking assignment of those claims. [LB856]

SENATOR HARR: Um-hum. Yes. [LB856]

SENATOR SCHUMACHER: You've now punted on the first one... [LB856]



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SENATOR HARR: Yes. [LB856]

SENATOR SCHUMACHER: ...and the first one, in my mind, was the most important one because under the first one you say to the contractor--take the ball and run with it, you stand in my shoes, I'm out of the picture and you fix my roof. And there's a little damage on the roof;... [LB856]

SENATOR HARR: Yep. [LB856]

SENATOR SCHUMACHER: ...not terrible, but a little. And the contractor now is standing in your shoes and in a position to make a mountain out of a molehill where a few singles might have fixed it, they are looking for dings in the gutter, dings on the side of the house, any color of shingle from one side to the other side and they're self-dealing because they get to fix it all and then they got your insurance claim. [LB856]

SENATOR HARR: And by the way, when they go from doing the roof to the gutter, they go from being roofers to general contractors and they get a little bit more premium that way, too, but go ahead. [LB856]

SENATOR SCHUMACHER: Okay. And the second one, on the assignment, well basically you're saying, you know, you go collect the money, we'll do the deal for the...patching the few shingles and here's an assignment of my proceeds so I don't have to middleman the money. That's seems to be far lesser evil than the first one. [LB856]

SENATOR HARR: The second one is the incentive for the first one though. What I would say is, you're right, but the problem with the first one is, probably, cast the net too wide. And so you catch reputable roofers who do have your best interests. You may have an adjuster come out to your house and say--yep, we're going to have to redo your roof and they agree. And there's a system called...I think it's called Xactimate...it might be esti...I can't...something like that. And they say here's what it's going to be and everyone kind...it's the industry norm, everyone kind of agrees with it. Well, there may be a situation where they go and they tear off your roof and they realize, oh, there's another layer of roofing under here. Or they may say, oh, the wood underneath there is rotted, we need to replace that because there's more damage than we thought. Well, that's where you want a reputable roofer. And by the way, they know who the reputable ones are, the insurance companies do. And so they'll call and say, claims adjuster Schumacher, hello, sir; hey, we did this and we found this. Can you go ahead and give us an extra \$2,000? You know what, I know who you are and based on your reputation and your experience, yes, yes I will. And that's fine and that's in the best interest of the homeowner. And so I'm okay with that. What I want to do though...but there are the ones who aren't so reputable. And so, yeah, they'll call and say that.

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But if they can get the assignment, they know they can get the money and they can turn around and sue. And so if we take their incentive away to get paid, hopefully that affects number one. [LB856]

SENATOR SCHUMACHER: But how... [LB856]

SENATOR HARR: Because what they'll do is they'll take \$7,000 job and make it a \$23,000 job. [LB856]

SENATOR SCHUMACHER: Right. But if we allow them to negotiate and they go ahead and do the work, they still have a claim against the homeowner for the \$23,000, whatever, to fix the roof. [LB856]

SENATOR HARR: Well, it's what I talked about earlier; a lot of them sign the you pay the \$1,000 deductible and we'll take care of the rest. And they may have a claim, but if they do turn around and sue, you know, again, this bill isn't perfect. But what we're looking to do is to disincentivize those bad actors out there. And I think this goes a long ways toward that because they know it's a lot more trouble to sue "Johnny" than it is an insurance company because Burke Harr pockets are not nearly as deep as an insurance company...as State Farm. The juice isn't worth the squeeze. And then they have to sue each one individually as opposed to one lawsuit suing with multiple homeowners suing one insurance company. [LB856]

SENATOR SCHUMACHER: Thank you, Senator Harr. [LB856]

SENATOR SCHEER: Senator Harr, just like in your previous bill, we're talking about would a solution simply be just more accurate language if an estimate is indeed going to turn...turns into an assignment that it has to be more specific in laymen's language what a person is actually signing. And if that were the case, then perhaps, you know, if it's...I don't want to call it bait and switch, but if, in deed, somebody says, you know, your roof is going to cost \$7,000 to repair and all of a sudden they call the insurance company and say, well, now \$14,000 or \$15,000. If indeed the assignment has the value that you've assigned there then that then becomes the price for the repair. So they can't adjust that other than what they've already offered to repair it for. [LB856]

SENATOR HARR: That's definitely an option. But again, it goes back to the situation, if I understand it correctly, where you might have a roofer, an honest roofer who starts at \$7,000, gives a bid of \$7,000. But once they get into the job, they realize, hey, this is more complicated than originally thought, and now it's \$9,000. And that's legitimate. [LB856]

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SENATOR SCHEER: But that happens a lot during insurance. [LB856]

SENATOR HARR: Right. Right. [LB856]

SENATOR SCHEER: I mean, there are supplemental costs that are brought forward to almost every insurance company. [LB856]

SENATOR HARR: But now you've opened up to an uncertainty of who determines what's a valid supplemental and what isn't. And so it doesn't really get at the root cause. So what we're trying to do is take away their incentive by preventing assignments. [LB856]

SENATOR SCHEER: Okay. Fair enough. Seeing nothing...you're staying? [LB856]

SENATOR HARR: Yes. [LB856]

SENATOR SCHEER: Okay. I would entertain proponents for (LB)856, please. Good afternoon, welcome. [LB856]

JOEL NELSON: Good afternoon, Chairman. Thank you, thank you, Senators. Joel Nelson, J-o-e-l N-e-l-s-o-n, of the Keating O'Gara Law Firm, a block west of here. I'm here in support of Senator Harr's bill and hope to be able to give you a little bit of perspective as a lawyer who is involved in some of the many cases he described, seeing the real effects of these assignments. Currently, one roofing company has filed, as I counted, 43 pending lawsuits, almost all of them in Douglas County District Court, and if you add up the claims, aggregated in those 43 lawsuits it is 500 or more individual houses. Another roofing company has joined in. They have so far filed seven suits; the total houses involved is about 290. I'm defending three lawsuits. In one there are 54 claims; in another there are nine. In the third, there are 48. So one lawyer is defending lawsuits involving 111 separate claims for storm damage to homes. Each one of these lawsuits that Senator Harr is talking about that is just one roofing company, Acme Roofing, but they have bundled together 10, 20, 50, 100 separate claims that they are alleging have been assigned to them by those different homeowners. This is not a situation in which the insurance companies have not paid or denied coverage. The insurance companies have paid according to the software that they use and that all the roofers use, Xactimate. What we're talking about is the roofing companies...and again, it is at this point really just a couple of them, not the vast majority saying--we want more. And what we see as we go through these files is, they pay the gutter subcontractor a thousand dollars and then list \$3,000 for gutters to the insurance company. They pay the roofer and for roofing supplies, \$5,000; they list that as \$17,000; 200 (percent), 300 percent, 400 percent markup over what they're actually paying in supplies and for labor. Two

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hundred, forty-five thousand dollar house, the claim is the roof and gutters cost \$74,000. It's about a third to a fourth of the value of the entire house. Ask yourself if that seems a little bit funny. Ten percent profit and 10 percent overhead routinely tacked onto each claim, as Senator Harr suggested, because the roofer claims, hey, we're not just a roofer, we're a general contractor. So no matter how big or small the job, no matter if it was two subs or seven subs, they're saying an extra 20 percent on every one of these hundreds of claims. Why? Why do we have this logjam of litigation? I would suggest it is because of these assignments. And there was an evolution. First it was sign the agreement, we will be your representative. There was an attempt to get a public adjuster from out of state involved. And then the one roofing company started saying to the people, you need to sign this assignment. Now it's actually been buried in the language of the basic service agreement document that the homeowners are asked to sign. If the homeowners were given an option, hey, you know, you can just do it the old traditional way, we'll talk with you, we'll talk with your insurer. Or you can assign your claim to us, here are the benefits of this, here are the benefits of that. Any a different question. That's not what's going on. I've met with the owners of 30 of these houses and they're not saying that it was presented to them as a helpful option. They're saying we were told we needed to sign this; insurance company wouldn't to talk to us if we didn't have the assignment. That's not true in my experience. We can't start the work if you don't sign the assignment; also not true. We can't get paid without the assignment; also not true. I talked to one couple who said--when we told the roofer we didn't want to sign the assignment, they said--well, then we'll bill you for the difference between what we think should be paid and what your insurance company says should be paid...\$16,000. Homeowner said--but, wait a minute, you told me at the beginning I would never be asked to pay more than my deductible and the cost of any upgrades, which would have been about \$750. And the answer was--tough luck; we're going to get all our money from somebody. And if you won't sign the assignment, we're going to get it from you. So to answer your question, Senator Schumacher, it's not as simple as either they're going after the homeowner or they're going after the insurance company. We have seen situations where they're saying--we will go after you, homeowner, if you don't do what we want you to do. If this wasn't being abused, there would be no reason to be here. Senator Harr is absolutely right. The idea of saying you shouldn't be able to assign a claim seems wrong at a gut level, but with the level of abuse we're seeing with the tremendous jam of cases in Douglas County District Court, it is appropriate. Because the real effects of these assignments are not good. It's not helping promote efficient resolution of these claims. It is not speeding up the work. There are people still waiting for the work to be done. I'll tell you one quick anecdote if I may, I see I'm out of time... [LB856]

SENATOR SCHEER: Twenty seconds. [LB856]

JOEL NELSON: Very short. Within three days, homeowners cancelled their agreements with the roofing company. No work was done. Nonetheless, for over one year the roofing company included in its lawsuit a claim of \$57,000 for that house. These homeowners, Senator Craighead,

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did the right thing and were aware and canceled it within three days per the statute. Didn't make a difference. It took a lawyer over one year to get those people's claim for their house out of the case. Thank you. [LB856]

SENATOR SCHEER: Questions? Senator Gloor and then Senator Campbell. [LB856]

SENATOR GLOOR: Thank you, Senator Scheer. Thank you for your testimony. We're talking about a...in a statute here that lumps the good with the bad. And that always makes us uncomfortable because it would seem that there must be other ways...I mean, I'm sure we all know contractors here who are legitimate and whom we would very comfortably, as I have done in the past, and I come from a family that was in the building industry, so I know both the good and the bad of contractors. But there are folks in the past I've said, you bet, you can represent me, because I know who they are, I know their kids. So that's a good business arrangement for me because I trust them and I feel like I'm in better hands with them representing me. Now they wouldn't be able to really do that anymore. And that makes me uncomfortable, yet I know that there is abuse out there, but there are also building departments. And I don't understand why...I mean, in Grand Island when the tornadoes hit in 1980, it took a little while, but they figured out who the people were, who were in town, storm chasers, taking advantage of the situation. And they were no longer allowed to do work in the community anymore. That's the reason we have building departments. I don't understand why we're falling short on the building department issuing permits, allowing these people to still do the job within their communities. Help me understand why the oversight that we built into our government appears to be failing us here, I guess, because these folks shouldn't be allowed...shouldn't be issued building permits anymore to be able to do the work. Instead, we're chasing after them with a pretty sweeping statute...and I understand the purpose behind it, but I'm trying to figure out why the system is failing us. [LB856]

JOEL NELSON: I don't know, Senator. And your points are certainly well taken. All I can tell you is it's not the majority of roofers, it's barely any roofers that are doing this. [LB856]

SENATOR GLOOR: Sure. [LB856]

JOEL NELSON: Should there be a better solution? Sure. But right now there just isn't. And what we're seeing is these suits being filed wholesale involving hundreds of claims. Would it be nice if there was a more local answer? Sure. But so far there just hasn't been. It certainly ought to be much more difficult to do this type of assignment, I would suggest, if not prohibited. [LB856]

SENATOR GLOOR: Well, in the old days, they were chased out town, I mean literally chased out of town. So I don't understand why the system fails us here. I don't understand. I certainly

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understand and get frustrated by the problem, but they shouldn't be getting jobs, they shouldn't be able to get jobs. [LB856]

JOEL NELSON: It may be also that this is happening really only in the Omaha metro area. It's not happening, maybe, in some of the smaller cities and towns where word of mouth and swift local action is more likely. [LB856]

SENATOR GLOOR: Okay. [LB856]

SENATOR SCHEER: Senator Campbell. [LB856]

SENATOR CAMPBELL: Thank you, Senator Scheer. My question is...follows up like that, because we're going to hear this afternoon from local contractors, probably been in the business a lot of years and they're going to say, you know, I'm being penalized here for the few bad. Have you had the opportunity to look at any other state in terms of any other action that could be taken or bond or fee put into place to ensure that that...the local contractor that's a very good business isn't just thrown out with the poor? [LB856]

JOEL NELSON: I have not. And perhaps some of the other witnesses will have had more experience or be more well-versed in that. [LB856]

SENATOR CAMPBELL: Okay. Thank you. [LB856]

SENATOR SCHEER: Senator Craighead. [LB856]

SENATOR CRAIGHEAD: Thank you, Senator Scheer. Thank you, Mr. Nelson, for being here today. Kind of impressed by the numbers you're throwing out. You almost have class-action lawsuits going on, don't you? [LB856]

JOEL NELSON: It feels that way. [LB856]

SENATOR CRAIGHEAD: Yes, okay. And my other question, and again this is kind of along the same line as Senator Gloor's question, are these roofing companies that you're referring to, can they legally...are they licensed to legally to do business in the state of Nebraska? [LB856]

JOEL NELSON: They are, they are. And to be clear, most people say they've done a quality job on the roof. That's not the issue. Competence of the work is typically not the issue. [LB856]

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SENATOR CRAIGHEAD: Thank you. [LB856]

SENATOR SCHEER: Senator Schumacher. [LB856]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for your testimony today. Am I correct in thinking that when you sue your insurance company and win, you get your attorney fees paid? [LB856]

JOEL NELSON: Typically, yes. [LB856]

SENATOR SCHUMACHER: Okay. Now...so these folks that are taking an assignment and standing in the shoes of the homeowner, and they're filing these lawsuits, not only are they filing lawsuits presumably for what they're owed, but also for their attorney fees. [LB856]

JOEL NELSON: That's correct. [LB856]

SENATOR SCHUMACHER: Okay. Could we solve this problem by making them ineligible for attorney fees if they're the assignee? They pay their own attorneys. Because the idea of suing your insurance company was if you're a big bad insurance company persecuted you and gave you the runaround and you had to go hire an attorney and you won in court, you got to have your attorney fees paid. Well, this isn't the case when you're dealing with a contractor who is filing mass lawsuits, that's his business. So why shouldn't it be treated like any other business where you don't get your attorney fees paid? [LB856]

JOEL NELSON: That's a very timely question. There have different rulings, conflicting rulings from different trial judges on whether the contractor with the assignment gets to claim attorney fees as the insured would. All I can say is that I think that's an interesting idea on changing the incentives for this type of behavior. And I certainly think if what Senator Harr has proposed is not workable, other ideas to disincentivize those type of behavior make a lot of sense. [LB856]

SENATOR SCHUMACHER: Thank you. [LB856]

SENATOR SCHEER: Any other questions? Thank you, Mr. Nelson. [LB856]

JOEL NELSON: Thank you. [LB856]

SENATOR SCHEER: Any other proponents? Good afternoon. [LB856]

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AIMEE BATAILLON: (Exhibits 2 and 3) Good afternoon, Chairman. Good afternoon, Chairman, and senators of the committee. My name is Aimee Bataillon, A-i-m-e-e B-a-t-a-i-l-l-o-n. I appreciate the opportunity to talk with you today about my comments on LB856, changes to the Insured Homeowners Protection Act. I am an attorney, licensed to practice law in Nebraska. I have been practicing here for 15 years, most recently with the law firm of Woodke and Gibbons in Omaha. Of the cases that Mr. Nelson mentioned, we are defending or have defended about 12 of them. So I've had the opportunity to meet with many of the homeowners who have given assignments to various roofing companies. And I think that it is important for you to hear what some of their experiences are, because LB856, I believe, does protect them and I don't think that it takes away any of their rights. One experience is reflected in an affidavit that I've given you which is from Lois Olsen and her husband Curtis Starks. They are in their 70s and they are retired. They live in a very modest home, about 1,600 square feet in north Omaha. Their experience is very similar to the other homeowners with whom I met. And that experience is as follows: Their home sustains damage from a storm. They want to get it fixed right away. They make a claim with their insurance company. The insurance company inspects the home; their adjuster gives them an estimate on how much they think it's going to cost to repair. And the homeowner either calls a roofing company or they call the number to a coupon that a roofer has given them on door-to-door sales. The roofing company comes out, they say--you know what, you do...you've got some damage, we're going to handle everything. We are the ones that have the experience. You don't have to pay anything more than your deductible, but all you need to do is sign these papers. And if it sounds too good to be true, it is. One of the documents presented to the homeowners is an assignment of benefits. And the homeowners are told simply that all this does is allow us, the contractor, to do the work. And it allows us to talk to your insurance company, because without this document, we wouldn't be able to talk to your insurance company, and we should be able to since we're the experts. The homeowners are never told that the assignment means that the homeowners are handing over their rights under the insurance policy and they're never told that they're handing over their claim to this roofing company. They're never told that by signing the assignment, they are cut out of the claims process. And in most cases, like in Lois and Curtis' case, they're never ever told how much the roofing company is even going to charge to undertake the repairs. Many times the homeowners don't even get a copy of the assignment to see what they actually signed, and a lot of the people that I met with are elderly and they are very trusting people. They invited me into their home, which I think says a lot for these people. And so their nature is to trust people who say--I'm the expert, I know what needs to be done, all you need to do is sign this. And it's a reasonable explanation that they're giving these people which is sign it so that I can help you. And you're not going to have to do anything more than pay your deductible. But what's happening is is that once the homeowners signs this assignment, one or more of the following things occur. I presented to you a list of those things, and there are five of them that we have seen. One of them is that if the roofing company actually submits an estimate to the homeowner, it is much different than what the insurance company receives. Oftentimes, it's two to three, sometimes even four times more than



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the amount of the roofers original estimate or what the insurance company has estimated. I've given some examples for you in my document, in my presentation, just talking about how you've got homeowners who get several estimates: one for \$3,500 for a roof; one for \$5,000; the insurance adjuster saying--I think it's \$4,500. And then you've got the company that obtained an assignment saying it's \$12,000. So those numbers are not very insignificant. Another thing that happens is that the roofing company gets the assignment; they do some of the work, and then they refuse to do the rest of the work. So what the homeowner is left with doing is saying, okay, how do I get this fixed? How does my kitchen ceiling stop leaking? They've got to hire somebody else to do it. But they can't...they don't want to pay that person because they've made an agreement with another roofing company to do the work, to pay the deductible, and that's not happening. So the homeowner, again, is left in limbo. There are additional examples that I've listed and one of them is that roofing companies will send collection letters to people. And as you'll see in this...in the affidavit that I gave, people are threatened by these letters and they don't understand. If they paid them their deductible and they've given them all the money that the insurance company has paid them, then why are they getting collection letters for \$12,000...\$13,000? I would appreciate you advancing this bill. I think that homeowners deserve better treatment than this and I think that LB856 is needed. Thank you. [LB856]

SENATOR SCHEER: Ms. Bataillon, were you done? [LB856]

AIMEE BATAILLON: Yes. [LB856]

SENATOR SCHEER: Okay. Questions? Senator Campbell. [LB856]

SENATOR CAMPBELL: Thank you, Senator Scheer. I'm going to ask the same question and then...same as Senator Gloor's. In your experience, is there some way to require, through the building department, whatever that's called, or a fee or a bond or whatever, that can clearly separate the legitimate company from the companies that are just out to scam people in the examples you've given? [LB856]

AIMEE BATAILLON: You know, there probably could be, but I think that this bill does that. I think that this bill accomplishes that. And I don't think that this bill is going to penalize those who are good contractors. I think that the good contractors have, by and large, good reputation with the insurance carriers and the insurance carriers listen to them when they say, you know, we think this is \$9,000 not \$7,000. Those are not the contractors that are coming back saying that it's three times or four times more. I think another important part about this bill, especially with the amendment, offered by Senator Harr is that this does not...this bill is not going to preclude companies from reaching out to the insurance companies and representing the homeowners and saying this homeowner deserves this repair to his or her roof. They can still do that. All this does

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is say to the contractors--you can't assume the homeowner's claim and take their rights under the claim or under the policy. [LB856]

SENATOR CAMPBELL: Okay, thank you. [LB856]

SENATOR SCHEER: Senator Williams. [LB856]

SENATOR WILLIAMS: Thank you, Senator Scheer. And you have had an opportunity to review the amendment. So when you're testifying, you're testifying to the amendment and the bill, right? [LB856]

AIMEE BATAILLON: Correct. [LB856]

SENATOR WILLIAMS: Okay. And just to be sure, and not that you would have this percentage, but we're not just seeing a scam, if that's the right word, that is hitting the insurance companies, it's hitting the homeowners right in their pocket. The percentage of cases that you have been involved with, what would you say is the percentage that are directly having an effect back to the homeowner? [LB856]

AIMEE BATAILLON: I would say of the...well, in every case, almost every case that I have, which many of them involve multiple properties, most of those cases have people who have been severely affected by this because many of them are still waiting for repairs to be done and the company who they gave the assignment to is refusing to do any of the repairs until they're paid more money. [LB856]

SENATOR WILLIAMS: All right. Thank you. [LB856]

SENATOR SCHEER: Other questions? Seeing none, thank you very much. [LB856]

AIMEE BATAILLON: Thank you. [LB856]

SENATOR SCHEER: Welcome again. [LB856]

ANN PARR: (Exhibit 4) Welcome, again. I'm Ann Parr, A-n-n P-a-r-r, here on behalf of the Nebraska Insurance Information Service, testifying in support of LB856. And might I even say in strong support of LB856. I think the previous testifiers that we've heard have done a really good job of explaining the types of problems faced by homeowners that this bill attempts to

solve. I know you've heard testimony on LB223 last year that was very similar, and I think there's been a lot of talk about LB856 in the interim. So I think you're aware, generally, of the problem. Hopefully, I'm just hoping to add a little perspective today from the insurance industry standpoint so we can kind of talk about how the claims process works and why we believe that this bill is so important. The main point I want to make today is that the assignments of benefits are not necessary for the homeowner to have successful resolution of his claim to his home...for damage to his home. In fact, quite the opposite is usually true. The attorneys that have testified here before me have provided some wonderful examples how assignments can often get in the way of successful claims resolution from the homeowners perspective. I know that there are detractors of this bill who claim that eliminating assignment of benefits will hurt the homeowners; that homeowners somehow need to assign their claims; that without being able to assign the rights and benefits under a contract, the homeowner is going to be forced to deal with the insurance company with no help at all from the contractor. The implication is that the contractor won't be able to talk to the insurance company and the homeowner is going to have somehow try to fend for himself in assessing the damage and working out a deal. This is simply false. It's not how it works. Insurance adjusters and contractors work together all the time to adjust claims. No assignment of benefits is necessary or needed for a roofer to talk to an adjuster about the extent of damage and the needed repairs and a fair price for those repairs. This is the way claims are normally handled. Once a claim is reported, the insurance adjuster will work with the contractor, usually, a contractor that is chosen by the homeowner, unless the homeowner doesn't have any idea where to start, then the insurance company will help them try to figure out who might be a good match. And the insurance adjuster and the contractor will work together to figure out what kind of work needs to be done to put the home back in its normal condition and they will work together to negotiate a fair price for that work. If the contractor doesn't agree with the price, which happens, he can haggle with the insurance company about that. And nine times out of ten, we come up with a good compromise figure and we get to work. If it really can't be resolved, the roofer can always say--I don't want to do the work for that price, and off they go, at which point the insurance company will help the homeowner find another contractor who is willing to do the work for a fair price. The point is--the homeowner may or may not be involved in this process, but the important point is, it's really up to the homeowner. If the homeowner wants to know what's going on with the claim, if they want to express an opinion about the quality of the work or who's doing it, or they want to complain about the timeliness of the work, he can. If he wants to, he can keep an eye on the work that's being done to his home. And when it's done to his satisfaction, he can, if he chooses, sign a direct pay authorization that will allow the insured to pay the contractor directly for the work; makes it easy. That's the way it's done all of the time without an assignment of benefits. In general the process works pretty seamlessly. If the homeowner signs that assignment of benefits right up front, however, it's completely different. The ability of the homeowner to be involved in how that claim is progressing and the ultimate outcome of that claim ends completely. I know we're worried about scooping up the good ones with the bad by banning assignments, but a good contractor doesn't need an

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assignment for this process to work. The only person whose rights it eliminates is the homeowners. Once that homeowner signs the assignment, they have no rights under their insurance contract. Any right they had under their contract now belongs to the contractor; they've given up all the rights in regards to that claim. They have no say in how the claim is handled. They're helpless to do anything in regards to the repairs of their home. And then as we've seen, the contractor could then increase the estimate, do sloppy work, charge for work that's not necessary, delay in finishing a project, etcetera. And there's nothing the homeowner can do about it because it's now a transaction solely between the contractor and the company. This form, which many homeowners report being bullied or intimidated into signing completely removes all the rights that they have under the insurance contract. I think we've talked a little bit about the explosion of litigation. I won't belabor that point other than to say that I think that also is something that shows that the assignment of benefits doesn't necessarily result in a seamless process for the homeowner. Those homeowners whose claims are part of those lawsuits are now being deposed, they're being forced to be witnesses at trial, the work on their home may not have been done, and so forth. They would say it is not been a smooth process from their standpoint. I'm out of time, but I'd be glad to take some questions. [LB856]

SENATOR SCHEER: Thank you, Ms. Parr. Any questions? Senator Williams. [LB856]

SENATOR WILLIAMS: Senator Scheer, thank you. Aimee (sic-Ann), one quick question. Can you explain in a little more detail for me the...I think you called it the direct payment option. [LB856]

ANN PARR: Um-hum. And it's...again, it's something that may or may not be done again; it's up to the homeowner if they want to do that. All that says is that once the homeowner is satisfied with the work that's been done and they say, yep, that's...my roof looks good, go ahead and pay, that tells the insurance company they can just pay the contractor directly, as opposed to putting the insured on the check, too. It just eliminates that middle man step. It's optional. [LB856]

SENATOR WILLIAMS: Okay. Thank you. [LB856]

SENATOR SCHEER: Senator Schumacher. [LB856]

SENATOR SCHUMACHER: Thank you, Senator Scheer. And thank you, Ann, for your testimony. Earlier testifiers talked in terms of part of the practice is to say, look, sign the assignment, pay the deductible and everything is going to be hunky-dory. But then they come back and ask for additional money after the fact and say, well, you owe us more than this now. Has that been your experience? Does that happen? [LB856]

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ANN PARR: Yes. I've seen that. [LB856]

SENATOR SCHUMACHER: Okay, now on what basis is that claim for extra money if the contract was for a plain assignment? I mean, do they ever win on that claim? [LB856]

ANN PARR: Well, if I understand the question correctly, I think the assigned...the assignment of benefits, and that's just a one-page contractual thing that says any claim that we have...or any work that is done now belongs to us and the claim is ours. I don't think that assignment form sets out the estimate and so forth. That's separate from the estimate that's been shown to the insured. When they come out and they talk to the insured directly and they say we've looked at your roof and we think it's going to cost \$5,000 to fix, if you want us to fix that, here's the authorization form that says we're your contractor and we get all your rights under the contract. The homeowner signs it thinking, you know, that's all they're doing; and instead they are signing away their rights. And then the estimate that the roofer turns around and gives to the insurance company is \$10,000. And so I think that's...is that what you're referring to that they come back and ask for more? [LB856]

SENATOR SCHUMACHER: Not with...I mean, some of...one of the items on this letter that the roofing company and its lawyers send threatening letters to homeowners demanding an additional payment, something over and above the deductible and the assignment. And my question is, that demand for an additional payment when they were told that this assignment covers the deal if you pay the deductible...does that have any merit? How do they get off making such a claim and not being guilty of mail fraud or something like that? [LB856]

ANN PARR: Yeah, honestly, I don't know if I can answer that because my experience has just been the dealings with the insurance company and the contractor. So I'm not sure how that...they would come against the insured personally and demand more money. I know that it's been done, but I can't tell you exactly how that's...what their basis is for that. [LB856]

SENATOR SCHUMACHER: Okay, thank you. [LB856]

SENATOR SCHEER: Seeing no other questions, thank you. [LB856]

ANN PARR: Thank you. [LB856]

SENATOR SCHEER: Any other proponents? Good afternoon. [LB856]

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KELLY CAMPBELL: Good afternoon. Thank you, Mr. Chairman. My name is Kelly Campbell, that's K-e-l-l-y C-a-m-p-b-e-l-l and I represent the Property and Casualty Insurers Association of America. We're a national trade association and our member companies write approximately 41 percent of the homeowners insurance here in Nebraska. PCI supports LB856 and the amendment that was proposed by Senator Harr. With snow on the ground and a bit of a brisk wind today it's hard to imagine that severe weather season is just around the corner, but, in fact, it is. And residents all across Nebraska are vulnerable to severe storms, including tornado and hail. Severe weather accounts for the majority of insured losses in the United States, and the trend lines for catastrophes continue to point to more frequent and costly events. However, in addition to the potential for devastating losses that drive costs up, insurers in some states must increasingly contend with activity that unnecessarily adds costs to losses. In states like Florida, Texas, and Colorado, states with extreme exposure to catastrophic weather events, they continue to take steps to mitigate losses. But some contractors and lawyers are abusing the legal system and driving up not only the rate of disputed claims but...and court actions, but also costs; costs that we are seeing borne by consumers in these states. For example, in Florida the influx of assignment of benefits lawsuits is putting pressure on the state's insurance system. In recent years, unscrupulous trial lawyers and vendors have used the assignment of benefits to inflate claims and file costly lawsuits against insurance companies driving up the cost of insurance for homeowners. The Florida Office of Insurance Regulation reported recently that water claims involving assignments of benefits are on average 50 percent more costly than water claims that do not have an assignment of benefits. The Office of Insurance Regulation report also warns that if current assignment of benefit trends persist, consumers may face rate increases of 10 percent or more annually as private insurers grapple with the rising losses associated with the surge of assignment of benefit claims in many parts of Florida. Although here in Nebraska we see fewer water claims than Florida, the trends we are seeing in hail-related assignment of benefit roofing claims here in Nebraska follow those trends we're seeing in Florida. One example of this is a roofing company...and you've heard several examples today, here in Nebraska that has filed suit against an insurance company using assignment of benefits that involves 154 claims alleging underpayment regardless of whether or not the claim was settled to the satisfaction of the homeowner. Unfortunately, there are many more examples. In fact, in the last two years, two roofing companies in Nebraska have filed more than 60 lawsuits involving more than 850 claims using assignments of benefits. And in fact, one of these roofing companies is using a law firm out of Florida to file these...this litigation. By means of comparison, in Florida in 2009, there were 70 assignment of benefits claims. In 2014, there were 2,014 assignment of benefits claims. This is an increase of 2,700 percent. This kind of upward trend we do not want to see in Nebraska and it's the kind of upward trend that LB856 is intended to protect against. Although Florida and Nebraska have different kinds of severe weather, understanding what is happening in Florida could help us...in how it could impact Nebraska consumers is not a bridge too far. In Florida, a coalition of insurers and business groups, including many contractors, are supporting legislation similar to (LB)856 that prohibits the assignment of benefits. These contractors who

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are supporting this legislation understand that the purpose of the assignment of benefits is to create a business model that allows the contractors who use these assignments of benefits to profit from litigation that everyone else pays for. Colorado and Texas are also seeing increases in litigation when third-party insurance adjusters and contractors encourage legal action on behalf of homeowners citing underpayment of claims, even though the claims were settled to the satisfaction of homeowners. In some areas of Texas, 10 to 30 percent of all hail storm claims end up in litigation. Colorado is also seeing an increase in litigation because the courts have allowed them to sue on behalf of insureds. So roofing companies, similar to here in Nebraska, are filing lawsuits without the knowledge of consumers and regardless of whether or not the consumers are satisfied. So as we look to these other states: Colorado, Texas, Florida, we can see where the trends are and that we are starting to see those trends here in Nebraska. (LB)856 is intended to provide protection to consumers who suffer losses to not sign away their rights to these outside entities whose main motivation is litigation and to protect all other Nebraskan insurance consumers from bearing the cost of increased litigation. That concludes my testimony. [LB856]

SENATOR SCHEER: Thank you. Any questions? Senator Williams, then Senator Schumacher. [LB856]

SENATOR WILLIAMS: Thank you, Senator Scheer. And thank you, Ms. Campbell, for your testimony. Since you do represent and have watched this in numerous other states, have you seen other solutions to this problem in addition to the assignment of benefits issue? [LB856]

KELLY CAMPBELL: You know, Senator... [LB856]

SENATOR WILLIAMS: Or attempted solutions, I should say? [LB856]

KELLY CAMPBELL: Yeah, right now a lot of the legislation is moving its way through the process. And the most analogous legislation we have is in Florida, which is also currently moving its way through the process, and it is very similar to (LB)856. And some of the other states like Texas and Colorado, the legislation is a little bit different simply because of the statutes that currently exist. And some things that exist within public adjusters statutes in Colorado is dealing with a bad faith statutes that has some language with the words "on behalf of." So although the actual bill or the legislation may look different, it is this practice of, essentially, eliminating the homeowners rights or taking the homeowners out of the insurance claim process and putting it into the hands of these third parties and often contractors, or public adjusters that can take a little different tact in each state, but that is the primary behavior that a lot of this legislation is attempting to address. [LB856]

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SENATOR WILLIAMS: And I want to be sure I understood one of the things you said that there are two roofers in Omaha that have currently have 850, roughly, claims going, is that correct? [LB856]

KELLY CAMPBELL: Senator, just to be clear, it is two roofing companies that...there are 60 lawsuits. But as you've heard, in each of these lawsuits, there's numerous different claims. And so it does involve about 850 different claims for different properties. [LB856]

SENATOR WILLIAMS: Claims, correct. [LB856]

KELLY CAMPBELL: Yes. [LB856]

SENATOR WILLIAMS: In the other states, in particular Florida, that you mentioned that's using something very similar, how has the relationship been with the roofers that are doing a good job and are more the local roofers? [LB856]

KELLY CAMPBELL: Senator, what I can tell you is we...in Florida, we have built a coalition with the business community, insurance companies, as well as certain contractors, including the Association of Builders and Contractors, as well as the roofers and sheet metal contractors to support legislation to eliminate the assignment of benefits. So in many cases we have very good relationships with those contractors in the... [LB856]

SENATOR WILLIAMS: How novel would that be in Nebraska? Thank you. That was a joke by the way. (Laughter) [LB856]

SENATOR SCHEER: Senator Schumacher. [LB856]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for your testimony today. So far we've heard about the abuse of nature of this particular practice. But I would guess we will soon hear the flip side of that and that's a claim that, well, if you didn't have the expertise of these roofers and them willing to aggressively go to bat for you, you'd be victimized by some adjuster looking to hoodwink an innocent homeowner into settling for far more than they were entitled to and half the repairs and the adjusters are, basically, cheating the homeowner out of their rightful due. What standard do we as a committee use to test whether or not...if we were to put this law into effect whether or not homeowners would be cheated out of their rightful due? [LB856]



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KELLY CAMPBELL: Thank you, Senator. And I think there is a bright line that exists. And I think Ms. Parr talked about some of this in her testimony and we've heard about it from some of the attorneys as well, is in the claims process, you know, there is a lot of room within the claims process for negotiation. And currently as the claims process exists, insurance companies talk with roofers, with contractors, they negotiate it, they go back and forth, here's what we saw, here's what we saw, what does this mean? So there is a lot of back and forth and coming up with that ultimate resolution. In my mind, here is what the bright line is, is...we think that's how claims should be handled, it should be a negotiation process. But what we're seeing with this assignment of benefits, that is when the homeowner is taken out of it. And I think, more importantly, that is when we are seeing these third-party entity come in and set up a business model that is focused around filing litigation that will, in fact, allow them to sue on behalf of the homeowner and allow them to take the benefits of the homeowner; things that have been talked about before--the attorneys fees, the breach of contract, those types of things that the third-party entity wouldn't normally have. Those are usually rights that are limited just to the homeowner. So when those rights that the homeowner has are being transferred to allow this third-party entity to sue for breach of contract or bad faith, I think that's really the bright-line test. [LB856]

SENATOR SCHUMACHER: I can't help but feel that the attorney fees are part of this paradigm. What if what was good for the goose is good for the gander; and if a contractor loses a contract it pays the insurance company's attorney fees? [LB856]

KELLY CAMPBELL: You know, Senator, I know that that concept has been talked about in a variety of different capacities for a variety of different law...the litigation that exists out there. It is, certainly, something that we look at as a whole in dealing with litigation. It's not something I've necessarily specifically looked at in this situation, but certainly we remain open to conversations about that. [LB856]

SENATOR SCHUMACHER: I wouldn't apply that rule toward the homeowner, but once it becomes a business proposition, if we're playing with attorney fees as incentives, which it looks like to me we are here, then the incentive should run both directions. [LB856]

KELLY CAMPBELL: Certainly, Senator, that is a concept that we have supported in other realms. I would have to look at it more closely, in specific...specifically with assignment of benefits to see if there are other issues that are involved. Because again, the heart of our concern is taking away the rights that the home...when the homeowner signs a contract with the insurance company, when they pay that premium they get certain rights with that premium. So taking away the homeowners' rights that they pay for as a party to that contract, I think attorney fees may go towards addressing some of that, but I don't know if it completely addresses the problems that are involved. [LB856]

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SENATOR SCHUMACHER: Okay, thank you. [LB856]

SENATOR SCHEER: Other questions? Seeing none, thank you very much. [LB856]

KELLY CAMPBELL: Thank you. [LB856]

TAD FRAIZER: Good afternoon, again, Chairman Scheer, members of the committee. My name is Tad Fraizer, T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, another national trade association of property and casualty firms. Again, I guess I'm kind of tail-end Charlie here, but I think the points have been well made by the prior proponents. I think one thing to remember is roofs and homes have been getting fixed in Nebraska for years without assignments, before this new trend, this business model, this fad, even, came along. For years insurance companies have worked with homeowners and contractors to work out the details of the claim. As noted, the important thing from both the homeowners' point of view and the insurance companies' point of view is when an assignment is taken, the homeowner loses control of the claim. They can't call up the insurance company and say--well, withhold payment because I don't like the job the contractor is doing for me. At that point they've given away their rights of payment to the contractor. So they've lost their leverage; they've lost their ability to really get involved in the situation short of bringing an independent lawsuit against the contractor for some sort of a failure to carry out the roofing contract or the siding contract, whatever the repair might be on their own. As noted, Senator Harr is limiting this bill to the assignment which we feel is the core of the matter. I think there's been some confusion caused by some of the discussion of negotiation and such. I think that got into more questions of are you treading on the unauthorized practice of law or are you treading into the area of being an unlicensed insurance consultant. And that's, generally, not a problem when you're dealing with a reputable contractor. It's just the give and take of what's the situation, what information do you have? What's your estimate look like? Is there undiscovered damage? Things have been discussed before. It's where an entity starts claiming to really represent in the sense of I'm your advocate, almost your lawyer or your hired adjuster, which we don't really have in Nebraska as an entity that that issue came up. Just to remove that confusion, Senator Harr has removed it from the bill. So we're really down to the core of the assignment, which I think is the crux of the problems experienced. And again, removing an assignment does not mean homes don't get repaired, it just continues the practice that has gone on in Nebraska for years and years where homes have gotten repaired with work between an insured, the client, and whoever the contractor may be in a given situation. So I don't think it will be any reversal of...or any retreat to some sort of bad situation. It will just continue the situation that's been in Nebraska for years. And I'd be happy to try to answer any questions you might have. [LB856]

SENATOR SCHEER: Thank you. Senator Schumacher. [LB856]

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SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for your testimony. One quick question--do any of the existing policies out provide that the homeowner shall have the right to assign this contract. So that if we pass this legislation, we aren't treading on...trying to disturb those agreements? [LB856]

TAD FRAIZER: I don't honestly know that one, Senator. Off the top of my head I tend to think there probably isn't, but there could be some company's policy, so I can't give you an unequivocal answer on that one. [LB856]

SENATOR SCHUMACHER: So if we were to advance this or pass it, we would want to make it perspective just in case on any new policy? [LB856]

TAD FRAIZER: Well, if there's...maybe I misunderstood your question, I thought if there is an anti-assignment provision... [LB856]

SENATOR SCHUMACHER: If there is a pro...if the insurance contract...if there are such animals, says the homeowner shall have a right to assign this contract. Then we can't override that right with post hoc legislation. [LB856]

TAD FRAIZER: I suppose for those few insurance contracts, assuming they exist, one could write it to handle that situation by being perspective as to them specifically. [LB856]

SENATOR SCHUMACHER: Thank you. [LB856]

SENATOR SCHEER: Any questions? Seeing none, thank you. Could I see a hand of how many more proponents we might have? Two. Just for everyone's knowledge then, as soon as we're done with the proponents, we're going to take about a five minute break and then we will come back and start with opponents. We've been here for two and a half hours, maybe just need to stretch our legs a little bit, so bear with us. Good afternoon. [LB856]

JIM DOBLER: (Exhibits 5 and 6) Senator Scheer, members of the committee, my name is Jim Dobler, that's J-i-m D-o-b-l-e-r. I am a registered lobbyist appearing today on behalf of the Professional Insurance Agents Associations of Nebraska. And I'm appearing in support of LB856 with the amendment. The PIA consists of about 1,000 agents located across the state of Nebraska and it represents roughly 180 agencies throughout the state of Nebraska. To Senator Schumacher's question first about the homeowner's policy and the issue of assignment, generally a policy will contain a provision that says you cannot assign the policy itself, but there is not anything in the policy with respect to an individual claim. From the agent's perspective, and I

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know you all appreciate this, but generally the first thing that happens when someone sustains hail damage to their roof is they call their agent. The agent starts that process. The agent is involved in that process; and they want to be. After all, when you decide to purchase your insurance through an agent, part of the benefit of doing that is that you have a source...somebody that's your advocate that you can call and ask about these things. So as we see it, the issue of an assignment is something that doesn't need to be there. There isn't, in our view, any need to have that assignment process. The entire claims process can work even though you don't have an assignment. We think it's a much better process to keep the policyholder in the loop and involved in the adjustment of that claim. So you've got a situation where a policyholder is involved, the contractor giving an estimate to fix the roof is involved, the adjuster is involved, the agent is involved. Collectively, things can work out and you negotiate and you get the claim resolved. Another aspect of this is that, to me, technically, when you assign that claim and you're giving it to a contractor, you're violating one basic insurance principle and that is the principle of insurable interest. If you want to insure a car, you have to be the owner. If you want to insure your house, you have to be the owner. You don't take out a policy of insurance on something that's not yours. When you assign that claim to a roofing contractor, contractor has no insurable interest in that house, none. Now having said that, I'm sure in most cases they try to get things fixed the way they should be fixed, but you end up in a situation where there's no insurable interest, you've got nobody involved in that process that's looking first hand at something that they own that they want to get fixed. It's just an odd thing. I think it's part of why historically you didn't see this sort of thing, you didn't have assignments because it seems to me to run contrary to the concept of insurable interest. Finally, on page 2 of my handout, I've included a part about the Unfair Claims Practices Act; and I think it should be noted, the regulator plays a part in all of this, too. And they, through their market conduct examinations, they look at what the insurance companies are doing, how they're handling catastrophic losses and that sort of thing, hail storms. And I highlighted one part there that gets at one thing in particular involving roofs. If damage is to the south slope of the roof, not to the north, but you cannot find shingles of the same quality or color or size, you've got to replace the whole roof, you just can't replace part. Siding is damaged on one side of the house; if you can't find matching siding, the regulation says you got to replace all of the siding. So it's just to point out that the regulator is involved in this. They watch this process, too, obviously, as part of the protection that's out there for the insurance consumer. And with that, I'd be happy to try to answer any questions. [LB856]

SENATOR SCHEER: Questions? Senator Williams. [LB856]

SENATOR WILLIAMS: Thank you, Senator Scheer. And thank you, Mr. Dobler. Just going to ask a general question that I would like to have people think about as they come up and testify on this. Would it be your contention that the legitimate roofers that have been doing business for years in our state don't need to have an assignment of benefits to be sure they get paid? [LB856]

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JIM DOBLER: That would be my contention, yes. I mean, as I see it, Senator, and what I think generally happens is once the adjuster has given the adjuster's estimate of the cost to repair to the policyholder, the policyholder goes to anyone they want, whatever contractor they think would be the best and that contractor shows up and compares their estimate. And at that point, there is a comparison between what the insurance company has written up and what the roofing contractor has written up. And if it's not the same figure, everyone gets together and resolves the differences. Once it is resolved, that's when the work begins. So it seems to me that at that point the contractor knows what they're going to get paid. I just don't see the need for that assignment. [LB856]

SENATOR WILLIAMS: Second part of the question then is--would you say the assignment of benefits sets up a system that protects the bad actors? [LB856]

JIM DOBLER: Well, it is, as I see it, a business model that, I think, is intended to provide leverage and advantage to the contractor. [LB856]

SENATOR WILLIAMS: You're sounding a lot like a politician. (Laughter) [LB856]

JIM DOBLER: Well, it's difficult to...it's...you can't...assume what people are thinking. [LB856]

SENATOR WILLIAMS: I'm asking you that question so that those that are going to come up and testify in opposition will be ready to address that issue when they come up. [LB856]

JIM DOBLER: Yes, okay. [LB856]

SENATOR WILLIAMS: Thank you, Mr. Dobler. [LB856]

SENATOR SCHEER: Senator Schumacher. [LB856]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Do we have any...and thank you for your testimony today. [LB856]

JIM DOBLER: Thank you. [LB856]

SENATOR SCHUMACHER: Do we have any law or regulation that would prevent the insurance companies from digging out the small print typewriter and putting another line in the policy that

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says claims made under this policy shall not be assigned so that you don't have to bring it to the Legislature to...for what you could do to help yourself? [LB856]

JIM DOBLER: That's a good point. This is my response: I found that...there are some situations where you need to be able to assign the claim. So to put something like that in the policy is probably not a good idea. And the situation I've had is where you're selling your home and it has hail damage on it right now. But it's not going to get fixed for several months down the road. You now have a buyer who wants to buy your home. That hail claim is still sitting there. As a part of the process of negotiating the sale of the home, I think it's appropriate for the policyholder owning the home as part of the closing of that real estate transaction to assign the hail claim to the buyer so that when the insurance company and adjuster and contractor eventually get out there, that new owner has a right under that contract to make sure it gets done. [LB856]

SENATOR SCHUMACHER: Well, wouldn't the same problem then exist if we pass this law that says you shall not make an assignment as if it were written in the insurance contract? Don't we need to create an exception in here if we're going to move ahead with this? Or couldn't you say in the insurance contract without the consent of the insurance company there shall be no assignment? [LB856]

JIM DOBLER: I think the bill is limited to an assignment to a contractor. So if you're going to assign it to a potential home buyer, I don't think that falls within the parameter of it. [LB856]

SENATOR SCHUMACHER: But you can use the same language and limit it to a contractor in the tiny print of a policy couldn't you? [LB856]

JIM DOBLER: Yes, you could. You're right. Right. [LB856]

SENATOR SCHUMACHER: Thank you. [LB856]

SENATOR SCHEER: Other questions? Seeing none, thank you, Jim. [LB856]

JIM DOBLER: Yep, thank you. [LB856]

SENATOR SCHEER: Good afternoon. [LB856]

KORBY GILBERTSON: Good afternoon, Chairman Scheer, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing

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today as a registered lobbyist on behalf of the Nebraska Realtors Association here to make Senator William's day...that there's other people other than the insurance industry interested in this. I have to be honest, and most of you know that I also represent the insurance industry; I also represent the homebuilder...the Lincoln and Omaha home-builders groups. And when we did bill review with both the realtors and the home builders on this, we went through what was going on in the bill and especially with the home building group they said, well, we don't use assignments, we don't really care. We can talk to people as long as you explain to us that this isn't going to hurt our ability to do anything, we don't care about the bill. The reason why I'm here today is because yesterday afternoon I got a phone call and an e-mail that the members...some members of the realtors were contacted by opponents of the bill asking them to take a position in opposition to the bill. So ironically, after full discussion of the intent, the actual impact of the bill, the realtors voted to actually support the legislation. Opponents claimed that this legislation seeks to limit how homeowners can make a claim against an insurance company. This doesn't have anything to do with making the initial claim; this has to do with the process after that claim has been made. The second thing that they assert...and I'm taking this directly from one of the e-mails I was sent for a call to action for a group. Second, they claimed that the bill prohibits a homeowner from choosing to have a contractor negotiate on their behalf with an insurance company. There are different types of negotiation that should be considered: the form of negotiation that takes place every day between contractors and insurance companies is not what this bill is intended to address. Rather, it is the type of negotiation that crosses the line into the unauthorized practice of law that homeowners should be protected from and that this committee wisely advanced from committee last year and is sitting on the floor of the Legislature right now. However, because of the confusion that has been created by the opponents to this legislation, we think it is best to remove that language so that there is no question about whether or not your contractor can call your insurance company, or a lot of times it will have to do with fire claims and those, the adjuster and the insurance company, are on the phone all the time with the contractors going through what's going on in those projects. So we want to make sure that's clear so the realtors are also in support of the amendment that is addressed. Finally, the opponents claim that the bill prohibits a homeowner from assigning their claim after a loss to a contractor which enables the home to be repaired while the contractor is working with the insurance company. There is absolutely nothing in the law or the insurance contract that would prohibit a contractor from doing the work on your home while you're negotiating with an insurance company. That is a completely hollow assertion used to scare people or scare other contractors into opposing this legislation when it simply is not true. It happens every day without any problems and it should continue to be able to happen. The biggest reason why the realtors have taken this position in support of the bill is because we want to protect the homeowners to have the right to control who works on their behalf. This is about protecting their rights to their insurance policy. The only thing we've talked about today that would rob a homeowner of their rights to their insurance policy is the assignment. Imagine if you're a homeowner who gives an assignment thinking the roofing contractor will be your advocate, you do not know, and many

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times...and you've heard from prior testimony, the homeowners do not know what they're assigning. They are told that this is the only way that the contractor can talk to your insurance company; they're given other reasons for signing this. And unfortunately you don't have homeowners, as Senator Craighead brought up, that are savvy to what these contracts mean. They think it just means they are assigning their rights to negotiate. They don't know it means they are assigning all of their rights. So you think that the contractor is there as your advocate to then negotiate on your behalf. The roof repair/replacement is done and the insurance company has paid the claim based on the bid given to you by the roofing contractor. You're satisfied. You, in this situation, don't matter because then if the roofer decides to sue your insurance company because they want more money. Imagine you don't even know this lawsuit has been filed and you decide that you would like to sell your house a few months down the road. Guess what? You're not going to be able to because your house is involved in litigation. So who are we really trying to protect? I'd be happy to take any questions. [LB856]

SENATOR SCHEER: Thank you. Senator Schumacher. [LB856]

SENATOR SCHUMACHER: Thank you, Senator Scheer. This is so...you just said your house is involved in litigation. It wouldn't be in litigation unless there was some kind of mechanics lien or something filed against it, would there? [LB856]

KORBY GILBERTSON: Not if they assigned the claim and then they can...they sue under breach of contract. [LB856]

SENATOR SCHUMACHER: But how does that put a lien on your house to prevent you from selling it? [LB856]

KORBY GILBERTSON: Because you are asked before you sell your house are you involved in any litigation having to do with your home? [LB856]

SENATOR SCHUMACHER: Okay. And you don't even know that the contractor has done that. [LB856]

KORBY GILBERTSON: Right. And many times I do think...it's my understanding that many times there are then also liens filed against...or on the property for the remainder of the amount so that...no differently than if you...if you're having a home built and you haven't finished paying for the...the home. The builder might put a lien on the home for the remainder of the amount listed until you close. [LB856]



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SENATOR SCHUMACHER: Do you happen to have...maybe I should have asked some of the earlier witnesses this, copies of what these assignments look like? [LB856]

KORBY GILBERTSON: Yes, we do. And I can get those for you. [LB856]

SENATOR SCHUMACHER: Thank you. [LB856]

SENATOR SCHEER: Any other questions? Seeing none, thank you. [LB856]

KORBY GILBERTSON: Thank you very much. [LB856]

SENATOR SCHEER: It is about 12 after. We will reconvene at 20 after, that's about 8 minutes. [LB856]

BREAK

SENATOR SCHEER: Okay, we have passed the 4:20 point, so that was the last of the proponents. We will now have the opponents to (LB)856; the first opponent would like to testify. Can I see a...hands, how many might want to testify in opposition to...okay, okay, great, thank you. Welcome. [LB856]

TED BOECKER: Thank you. May it please the committee, Ted Boecker, B-o-e-c-k-e-r. I'm an attorney in Omaha. I'm appearing on behalf of affected homeowners, at least one contractor-- Millard (Roofing and) Gutter Company, as well as a separate client that has an insurance claim-- Central States Property Management Company. The insurance lobby has done a masterful job of portraying this as a needed bill to correct some wrong, but it is simply a false narrative. The reality is is that this bill arises out of the insurance company being held accountable. Pending right now before the Nebraska Court of Appeals is a case that's based upon an assignment. It is the case of Millard Gutter Company v. Farm Bureau Property and Casualty (Insurance Company). Farm Bureau, whose attorney appeared today, Ms. Bataillon, has submitted their brief; it's right here. In this brief, Farm Bureau, as they've argued before the county court that tried the case, before the district court that heard the first appeal, and now before the court of appeals, has argued that assignments are invalid in Nebraska. They argue it based upon anti-assignment language in the policy. That is a position taken by every insurance company that I am aware of in the state of Nebraska that faces one of these claims. Now what happened in this case is that Farm Bureau insured a gentleman by the name of Howard Hunter. Mr. Hunter had a roof that had damage to two sides...at least two sides of his roof. To effectuate a proper repair, it was necessary to replace all four sides. Despite all efforts, the insurance company refused and said--

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there's only damage to one or two sides at most, you don't need to replace the entire roof. Millard (Roofing and) Gutter Company said--we can't comply with code and replace only two sides of the damaged roof, it can't be done. The testimony at trial was that there were repeated efforts by Millard (Roofing and) Gutter to ask Farm Bureau to replace the entire roof. They refused. After consultation with Mr. Hunter, Millard (Roofing and) Gutter received an assignment of claim. It was only because they received the assignment of claim that Millard (Roofing and) Gutter was able to proceed to do that work. Mr. Hunter wasn't going to go out of pocket and pay the \$5,000 necessary for the replacement of the entire roof. Millard (Roofing and) Gutter was willing to do it because they could take an assignment of the claim from Mr. Hunter and go pursue the claim against the insurance company at their sole risk and their sole expense. Now, they only did the work because they had the assignment. Before pursuing a claim, they did the work. They replaced the entire roof. Mr. Hunter appeared at trial and testified he was happy with the work. Mr. Hunter testified that he knew with the assignment that Millard (Roofing and) Gutter had the right to proceed to perform the work and sue his insurance company because they refused to pay the entire cost that was necessary to give him the replacement that his policy required. A judge heard a day of testimony. Farm Bureau even brought multiple witnesses in to say it wasn't necessary; brought in their own roofing expert to say it wasn't necessary to replace the entire roof. The judge heard the evidence and heard the case and determined that it was necessary to replace the entire roof, and as a consequence the judge entered a judgement in the amount of \$5,252.66 against Farm Bureau based upon the assignment. Thereafter, this judge also awarded attorney fees...ordered attorney fees in the amount of \$11,668. It's not because it was profitable for Millard (Roofing and) Gutter, it's because that's how hard the insurance company fought Millard (Roofing and) Gutter to recover. They put them through such an expense to recover \$5,000 it was going to cost them \$11,000 legal fees. That didn't stop there. Farm Bureau appealed to the district court. The district court heard the case and determined, yes, this repair was necessary and affirmed the lower judge; awarded additional attorney fees of \$5,000. Farm Bureau continued to prosecute an appeal now up to the Nebraska Court of Appeals. Whereas the insurance company is now before you saying, oh, this assignments we're taking advantage of them and it's be abused. The insurance companies refuse to recognize them. In their brief, signed by Mr. Gibbons, who appeared before this committee last year on LB223, that said it was a loophole, he asserts to the Nebraska Court Appeals that they're invalid. This isn't the only case. There's a separate case Millard (Roofing and) Gutter pursued against State Farm based on an assignment by Ignacio Sanchez for \$3,000. The insurance company, State Farm, went through five different attorneys, including an attorney from Chicago who bills at \$800 an hour. They had two attorneys at every deposition costing them over \$1,000 an hour over a \$3,000 claim. They expended conservatively \$50,000 on this \$3,000 claim. No homeowner would ever have fought that; no homeowner would have been able to withstand that challenge. It was only because you had a contractor willing to incur the expense that they fought for that money. The contractor performed the work before pursuing litigation and the assignment of claim. What the insurance industry is... [LB856]

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SENATOR SCHEER: I don't want to shut you off, but you have used your five minutes, so if you could just...I'll give you some time to sort of finalize, but your time has run out on you. [LB856]

TED BOECKER: There are innumerable inaccurate statements on what the insurance company is trying to portray. I defy them to identify one case where a homeowner has recovered...or an insurance company has proved that these claims are invalid. It's the opposite. The cases on assignment are against the insurance companies. They're trying to make an end run around the courts. Yes, there are cases with other contractors that are pursuing claims including Millard (Roofing and) Gutter Company. This committee should not take action; the Unicameral should not take action until it sees how those claims turn out. It's a lie, frankly, that they say the work is not being done. The contractor can't sue until they've performed the work. On this case before the Court of Appeals, the work was done in 2011. They still haven't been paid. The committee should wait to see how this litigation turns out before it takes action. There is a complete misrepresentation of the facts. They are taking an inconsistent position that they take relative to the meaning of the policy. And if you adopt this law, what you're going to do is prevent homeowners like Howard Hunter, like Ignacio Sanchez who don't have the wherewithal to take on the insurance company from getting the full repairs they're entitled to receive. It's because we have the assignments of (inaudible)... [LB856]

SENATOR SCHEER: Sir, I do have to stop you. [LB856]

TED BOECKER: Okay. Thank you. [LB856]

SENATOR SCHEER: Just a moment. Are there any questions? Seeing none, thank you very much. And again, I apologize for the time. Those that are wishing to testify, if you could sort of move toward the front so we can move things fairly quickly along so we don't have the down time in between. Welcome. [LB856]

JUSTIN SHANAHAN: (Exhibit 7) Hi, Chairman. Thank you. Senators, my name is Justin Shanahan, J-u-s-t-i-n S-h-a-n-a-h-a-n. I'm speaking on behalf of policyholders who want to retain the right to assigned claims. I live and work in Omaha, District 39. And I'm here to speak in opposition to any bill that would limit or eliminate the ability of an insured property owner to be represented by a contract in their dealings with an insurance company on a claim. My home and my business are within blocks of each other. In the summer of 2014, both were impacted by a hail storm. As a business, we attempted to deal with our insurance company directly after having the scope of damages assessed and verified by multiple Omaha-area roofing contractors. Our carrier refused to acknowledge our contractor's report to directly address any issue our contractors brought to their attention. Instead they employed an out-of-town contractor who quickly determined minimal repairs were necessary. To date we've spent significant time,

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resources, and legal fees in an attempt to recover the cost of necessary repairs to our facilities. As a homeowner, I decided to assign my claim to a roofing contractor, Millard Roofing (and Gutter Company). After assessing the damage, Millard Roofing (and Gutter Company) met directly with our adjusters to verify the necessary scope of repairs. Within a week of the assignment, the first steps in repairing our home had begun. Within a month of the assignment, our insurance company had paid our claim in full. This, in my opinion, would not have been possible without the assignment of our claim. It is my experience that insurance companies will attempt to limit their liability when settling a claim by taking advantage of the insured's experience and the lack of knowledge concerning construction practices and pricing. By allowing a licensed contractor to help represent them, the insured can level a playing field and put themselves in a better position for a fair settlement. This is a right every property owner who purchases insurance should have. Denying this right, in my opinion, would be a detriment to Nebraska business and property owners everywhere. Senators, I've gone down both roads as far as filing a claim and pursuing it. I'm just one example, anecdote, but it's far easier the assignment route...it was far more beneficial to me and to my home than what I'm going through still trying to deal directly with the insurance company. There's a lot of talk about what...that the insurance companies have to listen contractors or that contractors are allowed to present their...whatever findings they have, but the problem you run into is that insurance companies won't listen to them. So we've, you know, only after I signed my claim on my home then the insurance company listened. Then they listened to my contractor, met with him. And so in my opinion, and it's just one opinion, that's...to deny that right for the insured I think is a bad thing to do. I also think it assumes that the insured aren't capable of making their own decision on their policy, on their...whatever decision they make as far as pursuing a claim. Thank you. [LB856]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much for coming. Thanks for being patient. Good afternoon. [LB856]

JOSH ROZA: Good afternoon. Thank you, Senator Scheer; thank you, committee. My name is Josh Roza, J-o-s-h R-o-z-a. I am a resident of Gretna, Nebraska. I'm here today to oppose bill, LB856. I have been a professional in the construction industry since 1996. My current employment is with Millard Roofing and Gutter Company. I have been there now for four years. In my 20-plus years of experience I've worked on both the residential and the commercial sides of contracting. I've worked with homeowners, general contractors, subcontractors, suppliers, and insurance companies. In the last four years, I've handled over 600 insurance claims. Over those 600 insurance claims, I can honestly say that not one was resolved without my experience. It is my experience that insurance companies are motivated to pay as little as possible. If LB856 were to pass and become a law, homeowners would be subject to additional burdens, and quite frankly, an already broken claims process system would become less effective. On a storm-related property claim, I spend over ten hours with the adjuster bringing them up to speed with building codes, defending the homeowner on damages that the insurance adjuster is not familiar with, and

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providing actual site inspections over and over again. At the end of the day, it is my experience that homeowners are not experts when it comes to identifying storm damage to their home; homeowners do not know what the current building codes are; and without a professional, homeowner will not support the need to deal with the insurance company. I personally was the salesman on the previous testimony. And the insurance company absolutely will not listen to a contractor if we do not have the assignment. There's been a lot of talk about that they will. It has never, ever listened to us; it is still a fight. When we have the claim assigned to us, that they listen to us. I'm out in the field. I meet with the adjusters; I meet with the homeowners. So if there are any questions that you guys have, I'd love to be able to try to answer them. [LB856]

SENATOR SCHEER: Thank you. Questions? Senator Williams. [LB856]

SENATOR WILLIAMS: Thank you. And thank you, Mr. Roza. And you have great experience in this. How often do you ask for an assignment on a job? [LB856]

JOSH ROZA: When it's on an insurance claim, on every single one. [LB856]

SENATOR WILLIAMS: So you do it regularly, normal course of business, you ask for it? [LB856]

JOSH ROZA: Yes. [LB856]

SENATOR WILLIAMS: Second question is: how often do you not get paid on a job? [LB856]

JOSH ROZA: On every claim that I work with, there is components from their...the insurance company's estimate that are not on our estimate that are code requirements that we work to try to get paid on. [LB856]

SENATOR WILLIAMS: So but the...of course if you file the assignment, you're ensuring that you're getting paid? [LB856]

JOSH ROZA: We are ensuring that we're going to stand in the shoes of the homeowner and try to get paid, yes. [LB856]

SENATOR WILLIAMS: Okay. Have you ever had to sue a homeowner? [LB856]

JOSH ROZA: No. [LB856]

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SENATOR WILLIAMS: Okay, thank you. [LB856]

SENATOR SCHEER: Other questions? Thank you very much. [LB856]

JAMES EGGERS: Good afternoon. My name is James Eggers. [LB856]

SENATOR SCHEER: Can you pass your pink sheet over to... [LB856]

JAMES EGGERS: Oh, sorry. [LB856]

SENATOR SCHEER: Thank you. [LB856]

JAMES EGGERS: Thank you. Good afternoon, Senators. My name is James Eggers. [LB856]

SENATOR SCHEER: Can you spell that for us. [LB856]

JAMES EGGERS: I'm sorry. J-a-m-e-s E-g-g-e-r-s. [LB856]

SENATOR SCHEER: Thank you very much. [LB856]

JAMES EGGERS: I'm here today to oppose bill, LB856. I'm the owner and operator of Millard Roofing and Gutter Company in Omaha, Nebraska, along with my wife. I've been in business for over 20 years. Our business has seen over 10,000 claims. We've handled over 10,000 claims for homeowners in the Omaha area. We are a local business with real employees. We have a real facility on 145th and Industrial Road. It's been my experience without the right of an assignment the homeowner becomes at a disadvantage with respect to the correct components that are required under our building ordinance and law. What ends up happening in an insurance claim is if a homeowner doesn't have representation there, they get denied. We see denials on every single claim where a contractor is not present. They might give a certain component of a roof or gutters or windows or doors or siding, but ultimately a large portion of the claim is denied. There's this sense within our industry, from our experience, that insurance companies are for profit and attempt to minimize loss. If you look at...in 2013 in Omaha, I know there were questions about how many claims are against insurance companies and there's two companies. Well, I'm one of them. And we're an A-plus business with the Better Business Bureau. We honor our workmanship for a minimum of five years. If there is an issue whatsoever, we're there to fix it. When I heard of these bills, LB223 and (LB)856 I immediately called a friend of mine at the Better Business Bureau, Jim Hegarty, he's the president of BBB; and we have a really good

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relationship with him. And I asked him if he could look at this and what his thoughts were. And he agreed with me. This is bad for homeowners. And I then called the city and I talked to Jay Davis and I said, hey, what's going on with this; I saw you wrote a letter. He said--I thought it was over assign issue. I said, okay, well, you know, what do we need? And we both agreed. We need better bonding for storm chasers. This really isn't an issue about storm chasers. This is an issue about companies like mine that hold insurance companies accountable. This is an issue about the claims that we have in front of the court. They talked...the lawyers talked about all these 800 claims. Well, there was 49,000 filed claims in 2013 in Omaha alone. We're talking about 2 percent that don't get resolved. Why don't they get resolved? These insurance companies come in with these cat (catastrophe) teams that don't know anything about our building ordinances of law. They come in and for the neighbor that lives four doors down, they'll cover everything correctly. The cat (catastrophe) guy four doors down will not cover everything correctly and no matter what we present to them they deny the claim. One of the things that really caught my attention with some of the testimony was that there is this notion that contractors want litigation. I can tell you I'm out millions of dollars, I've had to borrow money to cover the work I've done because I'm standing in the shoes of these homeowners. I do the work, and we do it in a good workman-like manner. You heard them testify. This isn't about good workmanship. This is about these storm chasers. But they're...it's not true, because all the claims are brought by me and another local contractor because we're doing it by the book. They hate that we're doing it by the book. We've held these insurance companies responsible and have never lost. The judges have found in our favor that we were right. I sit here before you and I say--why is the insurance industry paying lobbyists to bring this type of law over 2 percent of the storm in 2013? Any questions? I would love to answer them. [LB856]

SENATOR SCHEER: Thank you, Mr. Eggers. [LB856]

JAMES EGGERS: Thank you. [LB856]

SENATOR SCHEER: Any questions? Senator Williams. [LB856]

SENATOR WILLIAMS: Thank you, Senator Scheer. And thank you for being here. When we have a storm like the storm that you're talking about, are there enough local contractors to get the work done in a reasonable amount of time? [LB856]

JAMES EGGERS: No, there is not. And it's really a very difficult situation. We end up taking on more than we should just to try to take care of our community. [LB856]

SENATOR WILLIAMS: And I think that's the way it is everywhere. [LB856]

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JAMES EGGERS: Sure it is. [LB856]

SENATOR WILLIAMS: Not just Omaha. Same way where I'm from in Gothenburg. If this isn't a way to help protect against...I'll use the term storm chasers. [LB856]

JAMES EGGERS: Sure. [LB856]

SENATOR WILLIAMS: Because legitimate businesses like yours are using it to protect yourself and the homeowners. Have you thought about a way that we could solve this issue? [LB856]

JAMES EGGERS: Yeah. You know, I don't know if you're ever going to solve the issue with storm chasers, because it's not going to matter if we take an assignment or not. They're going to have a contract with the little old homeowner and take advantage of them and they're still going to have rights to pursue against the homeowner. I mean, we're not...that's not going to stop dishonest people. I think what we need to do to protect homeowners is we...just like Jay Davis and I discussed, we need to increase the bond. I talked to Jim Hegarty; he's a proponent of why aren't we increasing the bond for these contractors that come in? Why aren't we making the licensing more formidable for contractors that come in...the Better Business Bureau, he told me that the Better Business Bureau doesn't allow accreditation or even...they don't allow storm chasers even come in to our market. They have to set out a year before they can be even a member of the Better Business Bureau. So they're taking action. The city has a \$10,000 bond in Omaha. Unfortunately, we have significant homes in Omaha and \$10,000 isn't going to cover a contractor that does \$50,000 worth of damage because he didn't use ice and water shield in the eaves and valleys and he was a storm chaser from Texas and they don't freeze down there. So those are the components that we're dealing with. And I think, honestly, if we had better...there's really not a watchdog for these guys. There's nobody really to police these storm chasers that come in. And it's not only the contractors, but these cat (catastrophe) teams that come in because the insurance industry has to have people hit catastrophes to meet the needs or the requirements by the Department of Insurance to get to somebody's house within 15 days. So it's an epidemic, and I think for the contractors' side we have to have some type of increased bonding requirement. [LB856]

SENATOR WILLIAMS: Thanks, Mr. Eggers. [LB856]

JAMES EGGERS: You bet. [LB856]

SENATOR SCHEER: Senator Campbell. [LB856]



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SENATOR CAMPBELL: Thank you, Senator Scheer. Mr. Eggers, you talk about the bonding, and I raised that issue earlier, but nobody sort of picked up on it, and so I'm glad you brought it up again. Isn't bonding through the local building and whatever? [LB856]

JAMES EGGERS: Through the city. [LB856]

SENATOR CAMPBELL: Through...what you call the department. [LB856]

JAMES EGGERS: Yes, Ma'am. [LB856]

SENATOR CAMPBELL: Have you looked at the regulations in Grand Island, Lincoln, North Platte, I mean... [LB856]

JAMES EGGERS: They don't have any. [LB856]

SENATOR CAMPBELL: In Lincoln they don't? [LB856]

JAMES EGGERS: They don't have a...I don't believe they have a bonding requirement. The last time we did any work in Lincoln, they didn't. [LB856]

SENATOR CAMPBELL: Do you really want us to take that kind of action on a statewide basis? I guess we should ask some of the senators over there. [LB856]

JAMES EGGERS: Right. [LB856]

SENATOR CAMPBELL: But I'm trying to figure out if bonding is the whole problem here, that's a city issue, isn't it? [LB856]

JAMES EGGERS: Um-hum. I think so. [LB856]

SENATOR CAMPBELL: Okay. [LB856]

JAMES EGGERS: Again, there isn't anybody to police them or hold them accountable. So if something happened to your roof, you could go back to the city and say, hey, these guys didn't do it right; we need to put a claim on his bond. [LB856]

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SENATOR CAMPBELL: So do people complain to the building department? [LB856]

JAMES EGGERS: You know who is doing the complaining are the insurance industry. I'm glad you asked me that, because when I talked to Jay he said he had to literally tell State Farm that if another one of his adjusters calls about ice and water shield, he's not going to allow them to operate within our city. The biggest issue he has is the adjusters dealing with us holding them accountable to what we have to do. [LB856]

SENATOR CAMPBELL: Okay. [LB856]

JAMES EGGERS: Because ice and water shield alone on a house can cost \$1,000 to \$3,000 just on that one component. [LB856]

SENATOR CAMPBELL: So why do you think we're not seeing this statewide then? [LB856]

JAMES EGGERS: Because what's happening is, the more sophisticated contractors get, the more they realize that they're setting themselves up to fail. I'll tell you why I started taking assignments. In 2008, I had a homeowner in Bellevue, and we're bonded in Bellevue, and we're licensed in Bellevue. And we did...we went out, met with the homeowner, insurance adjuster. Insurance adjuster would not agree to replace the step flashing on the house, this old corroded metal. And we would say, hey, the code requires this, R903.4 (sic-R905.2.8.3)...I don't know if that's the exact number, if I had the IRC I could tell you, it's a R9-something; it's a roofing 903. Long story short, they said, well, it's not covered under their policy. A year later, we get a call--hey, we've got a leak in our house. We go out to the house; the ceiling is collapsing. And we're like what the heck is going on? We do it right, the right way. We get up on the roof, the flashing that they wouldn't let us replace, the homeowner didn't have the money to pay for it, failed. They then take my...their insurance company then sues my insurance company, my general liability insurance company for \$7,300. And I said how can you sue me? You said you wouldn't cover it; I have all your e-mails, I have everything documented. They said, well, you didn't meet the code. I vowed from that day that I wasn't going to be a victim anymore, I was going to fight to do the right thing. And that's how we got here. And as contractors have that more experience to what the right thing to do is, they've got to stand up for them at some point. And that's what we've been doing. That's what we've decided as a company that we're going to hang our hat on. And it's unfortunate, but 10 percent of the jobs we do we don't get paid so we have to hold the insurance company accountable. And it's for charges that are already being paid for on the house four doors down. I gave our lobbyist, he's like I can't believe that. I said let's pull them up. Hey, Jamie, (phonetic) pull three jobs where one homeowner is getting these same charges paid for with the same insurance company under the same policy and let's show them. Give me three different insurance companies. She did it in five seconds; she pulled them out. I gave them to

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him. I go, look at this. How is it possible that you...one person deserves the coverage for the same policy and the other one doesn't. I'll tell you how. It's all based on how old your policy is. If yours...you've been doing it for 20 years and not had a claim, then the guy just moved in four doors up and was two years, that's how they do it. And I can tell you that's my experience. I'm telling you, I'm on the front lines. We do thousands of these. And this is what happens over and over and over again. So what do we do? If we're going to truly help the homeowner, we need to have the right to hold them accountable. If you take that right away from us... [LB856]

SENATOR CAMPBELL: Thank you, Mr. Eggers. Chairman is going to shut us down pretty quick. [LB856]

JAMES EGGERS: I was waiting for a red light, sorry. [LB856]

SENATOR CAMPBELL: You're fine. [LB856]

SENATOR SCHEER: You don't get a second one. (Laughter) Thank you very much. [LB856]

JAMES EGGERS: Thank you very much. [LB856]

SENATOR SCHEER: Next opponent. Welcome. [LB856]

KELLIE EGGERS: Thank you. Hi. My name is Kellie Eggers, K-e-l-l-i-e, Eggers is E-g-g-e-r-s. You just saw my husband. We own Millard Roofing and Gutter. I work in the accounting department and handle the accounts payable and receivables. I work with the homeowners on insurance claims and deal with the insurance companies on a daily basis. I'm here today to oppose LB856. In my experience, insurance companies do everything they can to slow down the payment process. I've been involved with over 10,000 claims. This bill will only encourage the insurance companies to slow it down even further. With the homeowner's ability to assign the claim proceeds the homeowner effectively reduces the claim process. By allowing our company to work directly with the insurance company saves time and money. And then I just want to address one other thing. When the insurance company said they talked about direct pay, I have never had a check written out directly to us. It's always gone to the homeowner. So I don't even know...I never even knew that was something that was out there. I have never seen that. Is there...does anyone have any questions? [LB856]

SENATOR SCHEER: Thank you. Any questions for Ms. Eggers? Seeing none, thank you very much. [LB856]

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KELLIE EGGERS: Thank you. [LB856]

SENATOR SCHEER: Good afternoon. [LB856]

RITA MASON: Hi. I tell you what, I have a renewed respect for all of you; I mean, it's amazing coming in here. But anyway, my name is Rita Mason, R-i-t-a M-a-s-o-n, and I live just outside of rural Ashland/Greenwood area. And I've never done this before so...but I've been through some recent storm damage to my property and I just feel it's important for me to speak out against this bill that's trying to go through. I'm intimidated being here, but it's nothing... [LB856]

SENATOR SCHEER: Well you just take a deep breath, you're doing fine. [LB856]

RITA MASON: Okay. But it's nothing...I really feel more intimidated talking to my insurance company. And when I try to get through this maze with them, but I'll get back to my script because it's a lot easier that way. [LB856]

SENATOR SCHEER: Okay. [LB856]

RITA MASON: Okay, and I just...as intimidating as it is here, and you're a neutral party, it is much harder to deal insurance companies who may or may not have my best interest at heart. I don't know what I would have done if it had not been for my contractor, Todd, to handle the details of my claim. He knew the language of claims and codes, and most importantly, he was always there to answer my questions and concerns and I never felt out of the loop with him at all. The damage to my home happened in June of 2014 and I'm still trying to get the work completed. And that's with Todd's help. When I contacted my local State Farm agent for help, I'm told it's entirely out of our hands, so they can't help. And I tried to contact a former agent because they decreased my replacement coverage and I didn't know that, and the other agent wouldn't even call me back. So I've been grateful that Todd of Millard Roofing has been here to help. Having been divorced a number of years and I figure I can handle these things on my own, I found out I wasn't even prepared for something like this. And I can't imagine how difficult it would be for elderly people or others like me to get through this. So I work and I volunteer with many older folks and I think it would be a hardship for them not to have a third party in the picture. My opinion is that both sides of this issue have their own vested interests in this, but at least they are on the same, they are all on this level playing field; they know how to deal with each other. While I feel like myself and others like me don't even know the rules of this game, so I hope you don't take this resource away and that this bill doesn't go through. So as far...with State Farm, I really tried to work with them, but I almost feel like I was being harassed. They call me constantly saying they can't work with my contractor, they have to talk to me first. And I was just...I would see that on Caller ID and I just wouldn't answer any more because I didn't know

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the answers to the questions. I don't have that skill that they have to answer it. So when the second adjuster came out here recently, the example that I kind of feel left in the dark, she sat in her truck waiting for Todd to show up. She didn't come in; she didn't introduce herself or anything. So I went out and introduced myself; left...she never told me what she discovered. I find it second hand through Todd. So I just don't feel real...I'm kind of jaded right now though about insurance companies so a grain of salt here. But so I'm listening to all these people and I've jotted a few things down. I don't want to miss out. But I think the big thing I'm hearing when I'm listening to everybody talk is, you know, I'm thinking this phrase comes in, I'm telling my age, but don't throw the baby out with the bath water. So that's kind of it. But I've never felt pressured to sign this agreement. But I figure if I trust somebody, I'm going to...I'm willing to turn that over to them. That's why I signed it and I knew what I was doing and never felt pressured. That's it. [LB856]

SENATOR SCHEER: Okay. Thank you. Any questions? [LB856]

RITA MASON: Any questions? Maybe if there's some I can make it more pertinent, I'd be glad to answer. [LB856]

SENATOR SCHEER: No. Senator Craighead. [LB856]

SENATOR CRAIGHEAD: I can agree. I just want to say thanks for being here. It's scary sitting on that side. [LB856]

RITA MASON: Oh my god, my face is red, isn't it? [LB856]

SENATOR CRAIGHEAD: No, you're great. It's hard sitting over there. [LB856]

RITA MASON: But no, it's hard sitting on your side. I can see that happening, too. But you know, give it some thought and thank you. [LB856]

SENATOR SCHEER: Appreciate you coming down. Next opponent. [LB856]

KRISTINE KAPPIUS: I am a newcomer to this table also. [LB856]

SENATOR SCHEER: Well, we were nice to her, we can't be nice twice in a row. (Laughter)  
[LB856]

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KRISTINE KAPPIUS: Pardon me. [LB856]

SENATOR SCHEER: I said we were nice to her, we can't be nice twice in a row. [LB856]

KRISTINE KAPPIUS: Oh, uh-oh, I'm in trouble. Okay, I'm Kris Kappius, K-r-i-s K-a-p-p-i-u-s. I'm from Gretna, Nebraska, and I'm a widow. In the spring of 2014, we had a storm. I lost shingles. Probably two days later after talking to my dad, he says, call your insurance agent. So I did. And in the meantime, well, I called the agent and they said that they would be out in like a week. So in the meantime, I thought well, I'll call Millard Roofing. And the contractor, Todd, he come out in three days, before the agent. And he looked at my roof and siding and he threw a tarp over the missing shingles area and told me that I had hail damage. And so I told him that I was going to meet with my agent on the following Monday. So he come with me...or he come and met with the agent also. And they both went around the house, up on the roof, and looked at everything that was to be looked at. Which I felt so happy that he was there and to look at things and to talk to this agent. And so therefore with that said, I'm here to speak out for other widows and other people that are in my position. I had a good experience with Millard Roofing and I think it's a good thing to have, I really do. [LB856]

SENATOR SCHEER: Thank you very much. Any questions? You made it through. We were nice twice in a row. [LB856]

KRISTINE KAPPIUS: Good. Thank you. [LB856]

SENATOR SCHEER: All right. Next opponent. You know you're not going to get liked. (Laughter) [LB856]

TODD TEVELDE: No. My name is Todd Tevelde, T-o-d-d T-e-v-e-l-d-e. I'm a homeowner in southwest Omaha, but also work for Millard Roofing and Gutter here to oppose LB856. I resigned from the Omaha Fire Department after ten years to take my current employment at Millard Roofing and Gutter where I've been for the last three years as a salesman and estimator. In my three years, I've overseen over 550 insurance claims, both residential and commercial. It's my honest opinion that not one of the 550 claims would have been reconciled without my knowledge, the assignment, and co-documentation we provide to the insurance company. As a matter of fact, the majority of claims I have worked on over the last three years were either denied or the adjuster had approved only a portion of the damage to be repaired leaving the homeowners frustrated and discouraged. If LB856 is passed, it will leave homeowners helpless against an industry who can take advantage of their lack of knowledge. How many homeowners can attend a class to learn how to document hail damage or find the necessary documentation in the 710-page, 2009 international residential code? How many homeowners know how much ice

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and water they need, where gutter apron goes, or that we have uniform appearance law in Nebraska? Homeowners pay for replacement coverage to bring their home back to where it was before the storm. If this bill passes, it will give the insurance companies an opportunity to take advantage of their lack of knowledge of the customers they serve. I'm out in the community every day looking at roofs, gutters, siding, windows. Just the other day, I went to a home where we were referred by one of my previous customers and this homeowner had a leaky skylight. It's not somebody we did work for. His roof was replaced two years prior and the insurance told him the skylight wasn't damaged. He didn't know the skylight should have been replaced per code. The homeowner had to pay out of pocket for something that should have been paid in his hail claim. I could tell you more stories of costs homeowners pay later because of the claim wasn't handled by reputable contractor, but time doesn't permit. Please vote no on this bill. Give the homeowners of Nebraska the right to hire a contractor and fight for the right to bring their home back to where it was before the storm. I did take care of both of these ladies; they were incredible to work with. Well, I'm still helping Rita, but Kris's adjuster was one that I had dealt with on previous claims. Two of the previous claims he had gone to homes with other contractors, denied the roof in total; came back out, because we have an assignment he totaled the roof out, no question asked, just did the right thing and it all worked out. So he knew that we had an assignment. That's why her claim went so simple. Rita's has been more difficult, but we get to the point where they just flat say we're not going to document the damage and it ends up a very difficult proposition. And one thing I did want to say, they kept talking about contractors knocking on doors. I have never knocked on a door; been to thousands of homes and every one is a referral or somebody that called in from the Better Business Bureau. If you guys have any questions, I'm more than happy to answer them. [LB856]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much. [LB856]

TODD TEVELDE: Thank you. [LB856]

SENATOR SCHEER: Any other opponents? Good afternoon. [LB856]

PATRICK MUHS: Good afternoon. Chairman Scheer, members of the committee, thank you. My name is Patrick Muhs, P-a-t-r-i-c-k M-u-h-s and I'm an owner of The Roofing Moose in Gretna, Nebraska; been a contractor in the Omaha area for the last 20 years. I may bring a little bit of unique perspective to this panel. I spent a lot of years, approximately seven years of my life working in the insurance industry as a claims adjuster and five years as an insurance auditor person who is involved in the day-to-day process of seeing things from the inside, the inner workings of an insurance company dealing with business owners, dealing with agents, claims people, underwriting, so on and so forth. And my experience and hearing some of the testimony that was going on here earlier today is quite contrary to what the testimony that was given.

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Again, I've been doing contracting work for 20 years. And I think part of the answer to the question that's being asked here is that there's a paradigm that exists in this industry. Paradigm being the way things have been done because that's the way they always were. Right? And we've seen a paradigm shift over this last several years in the way that the insurance companies deal with contractors. And what I'll call the old days, even though I realize I'm not all that old, is that we used to go and meet across the hood of a pickup and meet with an insurance adjuster out on a job site and those adjusters that would come out and meet with you were people who had authority to make decisions and who were quite competent in their field. They had knowledge, experience. And the shift that we've seen in this paradigm over the last several years, and I'm dealing in a quite a few cases now, and one of them I'll say that we've not had occasion many times to use an assignment of claim, but for a situation where I helped the homeowner who was stuck in that situation with a real estate deal where the insurance company had denied a claim. The house was sold. The inspection had been done by the buyers and they said there's a lot of hail damage on here and the insurance company wouldn't budge on it and it was necessary for us to get involved in the purchase of that home in order to make the deal go through. This paradigm shift that we've seen, in my opinion, in the years that I've been doing this, looking at it from a contractors' perspective, and from a homeowners' perspective, because I've had claims on my own property, and then also from the adjuster's side of thing is that the paradigm shift, this issue that we're seeing that occurs is that there are fewer and fewer insurance adjusters who have got the authority to make decisions in the field, who are able to resolve a claim. The information is gathered by people who don't have the experience and the training necessary to do the job that they need to. It's sent back to a desk in another state, many times, where we're being forced to make phone calls then and to write our own claims. And then if the insurance company decides not to talk to us, we no longer have that ability in many cases to go out there and meet with the insurance adjuster and get a decision made, get them to talk about over the hood of a pickup to resolve a claims issue for a homeowner. I'm also working with a claims situation where...this issue with the assignment is not going to be resolved...it's not going to resolve the issues with somebody coming in and taking money from an insured and then not being able to complete a job. I've got a case in point in Stanton where I'm working with a homeowner who had a different contractor for their insurance process. And they...the contractor had come in there, a preferred contractor, who had done...taken ten claims and the first three were handled fairly well and the second three were put together marginally. And I'm working with one of the guys that's in that second batch of three. And the last four, the contractor took the homeowner's money and left. The assignment of claim problem issue, the debate that we're talking about is not going to solve that homeowner's problems, whether there was an assignment or not, it's not going to resolve their issues. If any of the senators have any questions. [LB856]

SENATOR SCHEER: Thank you, Mr. Muhs. Any questions? Seeing none, thank you for being patient and waiting to testify. Any others to speak? Good afternoon. [LB856]



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MICHAEL MEYER: Hello. My name is Michael Meyer, M-i-c-h-a-e-l M-e-y-e-r. And I'm an owner of a roofing company here to oppose LB856. I was not actually planning to testify today, but just basically wanted to maybe elaborate on maybe how it's not quite as simple as it may have sounded previously to deal with insurance companies as Patrick just said--the good ol' way, where we can go make a phone call, negotiate, plan out a number and all goes away. There's getting to be more and more language and requirements from the insurance companies. We actually...or I have never used an assignment yet, but it's beginning to appear like this may be the only course of action. Because when somebody at this point tells us no, and it's only \$3,000, either we have to go and front the money to get a lawyer or we have to ask the homeowner to present some money in order to get the appropriate stuff paid for. Some insurance companies have even gone as far as asking for unredacted statements of our workers and our suppliers and then off of those numbers they make their own assessment of if we made enough money, whether or not they're going to allow overhead and profit on that claim. If it's over 20 percent, we don't get overhead and profit. And so if it's 21 percent, we're asked then to work on those margins. And any legitimate business who pays insurance and has an office and has employees can't work on 20 percent. I just feel like this is potentially the only way we're going to be able to move forward and truly negotiate for the homeowner in the future. [LB856]

SENATOR SCHEER: Thank you, Mr. Meyer. Any questions? Seeing none, thank you very much. [LB856]

MICHAEL MEYER: Thank you. [LB856]

SENATOR SCHEER: Good afternoon. [LB856]

STEVE SHANNON: Good afternoon. Mr. Chairman and members of the committee, for the record my name is Steve Shannon, S-t-e-v-e S-h-a-n-n-o-n. I, too, am a Nebraska resident and homeowner. I am, too, one of the contractors that was referred to earlier and I've been here for a long time under Valley Boys Roofing and then I also work with DRG Insurance Network as well. I'm a business owner, a contractor; I'm also an estimator. I'm a construction expert; I get used quite a bit for that. I'm an insurance appraiser, so I do have experience doing appraisal of claims. I'm also an insurance umpire and a homeowner policyholder advocate. And I, too, use assignment of claims. I believe in doing the right thing the right way with the right people all the time. I'm here today to oppose and testify against the legislative bill, LB856. I greatly appreciate your...this committee's interest in this important legislation. I do think it is important. And the property, because we all own property of some sort, and specifically buildings, makes up some of the largest investment that homeowners, and even business people can make. And while it's infinitely better for that property to be damaged than someone to be caused personal harm or injury to befall those who occupy it, storms do cause a tremendous amount of costly problems.

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Storms do cause more than \$26 billion in property damage every year in the United States. In one storm a few shingles may blow off or a window might leak, but in another storm your entire home could be destroyed and you lose everything. Either way, picking up the pieces, however many there may be, is something that every homeowner, and I think we've heard from the homeowners today testify, they're left to try and pick up those pieces by themselves. And I think that's the way that it's mostly always been done. And that is why people like me exist and why we're here to help. We understand that dealing with storm damage and insurance can be confusing, it's frustrating, and it can be a complicated thing. And so as a professional, I assist Nebraska homeowners during this difficult time. LB856, and again I wasn't...I didn't get a chance to see the amendment before today or hear about that, but LB856 would make it...that existing process obsolete. I wouldn't be able to do that anymore. And it also lengthens the amount of time to make repairs. So it's victimizing that homeowner a second time after they just went through this devastating storm or whatever the case may be. One of the rights LB856 would take away from homeowners is a right to choose a professional to assist and represent them and to assign their insurance claim in consideration for the performance of the work according to the contract. Some of the benefits that homeowners can see from specifically assignment of claims...or assignment of benefits, is they get quick remediation of existing damages and threats of...existing damages on threats of continued damages without the need to come out of pocket for those expenses at the time of the repair. It also allows for disputes over scope and pricing to be resolved between the carrier and the assignee, or in this case, it could be a corporation to corporation, as opposed to having that homeowner stuck in the middle of the process. It also allows the assignee accepting the assignment to enforce the rights of the insured without that homeowner having to face the fear of the insurance company seeking retribution. For example, I have personal experience where we have insurance agents have actually assigned their claim to us. I have insurance adjusters that have done that; insurance employees, etcetera. People with medical insurance assign their benefits every time they see a doctor. And assignments are used in many other areas of insurance every day: auto, life, even by the insurance companies themselves use assignments; real estate transactions use assignments. As an assignee who takes an assignment of claim, we obtain no additional rights than those of the insured at the time of the loss and the authorization of that assignment. We get no additional rights. Once that loss has occurred and the claim has been filed, the risk and/or exposure to an insurance company has fully occurred and an assignment of claim does not increase the insurance company's risk and/or exposure that insurance company would be responsible for under the policy already over the cost to restore that homeowner to a pre-loss condition. The assignment also benefits the insurance companies by mitigating damages that that contractor saves the insurance industry substantial amounts of money and preventing further damage from happening. And I know I'm running out of time, I'm sorry. I'll try and get through this. As I talk to other senators on the floor about a similar bill, LB223, I understand that senators are looking for ways to protect homeowners from out-of-state contractors who overcharge and take advantage of them. Taking away a homeowner's right to choose and to assign an insurance claim does not address these issues. And

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I would appreciate an opportunity to work with the committee to find true protections homeowners facing losses to their property for that. At the end of the day, homeowners rely on contractors and insurance companies to work together toward a common goal and a purpose assisting the homeowners and restoring their home to a pre-loss condition. I'm confident you all do the right thing for Nebraska homeowners and oppose LB856. I know a couple of suggestions that I had for...that could be looked at is require statewide contractors licensing requirements. Why don't we have licensing requirements for these people? That would be a great place to start: statewide building code requirements for contractors to follow; licensing requirements for all the insurance adjustors. I know we've heard a lot of adjustors that I've dealt with...and I just got back from... [LB856]

SENATOR SCHEER: Sir, I'm going to have to ask you sort of wrap it up. [LB856]

STEVE SHANNON: Okay. Sorry. So I'd be happy to answer any questions if you guys have any. [LB856]

SENATOR SCHEER: Thank you. It's just getting late and we more behind us. [LB856]

STEVE SHANNON: Sorry, I know, I'm sorry, Senator. [LB856]

SENATOR SCHEER: Any other questions? If not, thank you again, appreciate it. [LB856]

STEVE SHANNON: Thank you. [LB856]

SENATOR SCHEER: Any other opponents? Good afternoon. [LB856]

BILL MUELLER: Good afternoon. Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r, I appear here today on behalf of the Nebraska Association of Commercial Property Owners, the Eastern Nebraska Development Council, and Millard Roofing (and Gutters) Company, who you've heard from previously. I want to thank the committee for listening to us today. It was nice to have an opportunity this year to come and testify on this matter. I think that it is interesting that the statute that we're seeking to amend is called the Insured Homeowners Protection Act. I think that what this bill is about more accurately can be described as the insurance company protection act. I've not heard yet how we're protecting homeowners. We hear the stated problem being storm chasers. Well, as the last witness started to talk about and others have talked about let's look at regulating those out-of-state contractors who come into the state and presumably rip people off. It that's the stated problem, this doesn't appear to me to be the solution. We have talked about assignments and what I think the committee needs

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to understand and I think knows is assignments are common, assignments are not uncommon. When you go to get your car repaired oftentimes, you will assign your claim to your auto repair person so that they can deal with the insurance company. Collection actions are oftentimes assigned. There was a question about whether we should put language in a policy-making policies unassignable. There is probably language in your policies that do make them unassignable. The courts have ruled that they are unassignable prior to a loss occurring. Once a loss occurs, the common law that goes back to the late 1800s is they are assignable. That's what we're talking about. That's the issue that's on appeal in our court of appeals. There's a suggestion that once you assign a claim, if there's faulty work, if the work is not done, because you've assigned your claim, a homeowner couldn't maintain a lawsuit against the bad contractor. That's not true. That's not true. You're not assigning that claim....or that claim has not been assigned to the contractor. There still is a requirement that good work be done. And again, the testimony I heard from the proponents is this was not a question of bad work being done. I think good work is being done. You heard testimony that when a roofing company, even with an assignment, gets paid, their name is not on the check. So again, with an assignment the names on the check, as I understand it, are the insured; and if the insured has a mortgage, the bank. The bank has to sign off, has to endorse that check before the money is paid. And again, the bank's interest is if there's loss, the bank wants it repaired, they want their property repaired. Again, if this is not what...well, my client tells me their name is not on checks even with an assignment. There has been talk about an amendment. I assume that it is AM2070, although I didn't see what Senator Harr provided you. We have reviewed that. We oppose the amendment. The part of the amendment that we do not oppose, and this issue was discussed, that is once an assignment is taken, that contractor should not be able to then turn around and sue the homeowner for the work covered by that assignment. And again, if that's part of this amendment, that would be page 1, lines 12 and 13, we don't like that language, but again, the concept is once an assignment has been taken, you cannot then turn around and sue the homeowner. Now, if the homeowner wanted additional work done, that would be something else. But if you've assigned your claim, you shouldn't then be turned around and sued. That makes sense. The amendment, at least the one I'm looking at, also has mandatory, nonbinding arbitration before you can take an assignment. Who pays for that? I don't think the homeowner should be required to go to arbitration and nor should they be required to pay for that. That's why we have a court system. And one more thing quickly, there was talk about maybe the winning party should not be able to collect their attorney fees. Realize when a roofing company files a lawsuit against a contractor, they've hired a lawyer, they are paying that lawyer. The only time they receive attorney fees is if they prevail, is if they win. If they lose, they don't collect attorney fees. I'd be happy to answer any questions the committee may have. [LB856]

SENATOR SCHEER: A little tongue-tied there. [LB856]

BILL MUELLER: I was. [LB856]

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SENATOR SCHEER: Any questions? Senator Campbell. [LB856]

SENATOR CAMPBELL: Thank you, Senator Scheer. The amendment that was distributed today is AM2144. [LB856]

BILL MUELLER: It looks longer than my amendment. My amendment is this; so I've not seen the amendment that you're looking at. We will certainly do that. [LB856]

SENATOR SCHEER: Any comments, questions? If not, thank you very much. [LB856]

BILL MUELLER: Thank you very much. [LB856]

SENATOR SCHEER: Any other opponents? Seeing none, are there any that wish to speak in a neutral capacity? Seeing none, Senator Harr, would you like to close? [LB856]

SENATOR HARR: (Exhibit 8) I would. I assume you would expect as much. Thank you for sitting through this hearing. I know it was rather long one. There's a lot of information that went around. I want to first start by addressing some of the issues senators have. Senator Gloor, you talked about how in Grand Island you know the good versus the bad. Here's the problem: you don't know the bad until they do something bad. What we're trying to do here is pre-empt the bad by saying you can't assign because that's where the problem is. Let's talk about what the issue here is. I've heard it's out-of-state contractors. I've heard it's storm chasers; I've heard it's contractors who take the money and leave. No. Let me tell you, this bill is focused like a laser on one issue and one issue only and that's dealing with contractors who take assignments and then for the work they might do a good job, they might not, let's assume they do, turn around and sue that insurance company for three, four times the actual cost, not 10 percent more, but more than double. That's what we're trying to address. And the policyholder, by the way, when they have a question, when they call their insurance company, guess the insurance company says--can't talk to you, you assigned your rights away. All right. You assigned your rights away. I've heard--well, if it's bad, you can still sue them. No, you've assigned your rights away. Let me tell you what assignment is. It's giving away your rights. It's a claim to your rights. Senator Campbell, I'm going to get to your issue with bonding; again, that doesn't address the issue because the issue here isn't whether the job has been done in a good or a bad way. The issue here is you have individuals who do the job. And then because the rights are assigned to them, they turn around and charge the insurance company two to three times more. So the bonding won't address that issue that we are trying to deal with here. Senator Schumacher, pay your own attorney fees. You know what, I'm not a shell for the insurance companies. And at times, reasonable minds may differ and you might have someone who has a reasonable cause. And I think the insurance company, if reasonable minds differ and I'm the policyholder and I win, you should pay.

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Insurance companies should pay. I don't have a problem with that, but I have a problem where you have individuals who, quite frankly, have a business model who use large plans' firms out-state to address these issues, who this is part of their business model in the way they make their living. You know, sometimes I wish I had better handwriting, I should have been a doctor. What we've heard here is that when there are assignments in other states, the cost is 50 percent more. And what I didn't see here was one of those homeowners who the insurance company is suing on their behalf saying, you're darn right, I'm happy they did it for me; because they don't exist. As a matter of fact, I challenge you to Google Mike McKnight Roofers. What you're going to see is an article Mike McKnight did on this situation. And in there, you have policyholders who said, look, I didn't even know I was being sued...that I was suing. It would have been nice if they gave me a heads-up. These guys are good. What they do is they take the middle man out so that the homeowner doesn't know what's going on...purposely. And they deal with the insurance company. That's the MO. And so they sue. Homeowner doesn't even know. They find out when the news contacts them. We got a problem here, folks. Senator Schumacher, you talk about maybe we can allow that you can't assign when you renew. If we pass this law, we could say, hey, when you renew, maybe we can do a private. There is a case in front of the court of appeals, I would maybe disagree with somewhat of the description of the case. But there is clear case law based on medical that insurance you can't assign. Now, it's case law and that's being used against them. How much the lawyer charged, I don't know why that's relevant, but apparently it is, but there's a question here. And right now the courts are deciding. But we're the policymakers. We make the policy. We decide what's good public policy. The courts don't like to do that. When they do, they like to look to what we say and what our legislation is. And that's what we're trying to do is give the courts guidance on what we think is good public policy. I got a lot more to do. This isn't about how to protect the homeowner...this is about how to protect the homeowner. It really is. You've heard...there's millions upon millions...\$13 million I think is what I have in cases, out of 500. That's a lot of money. Imagine if this grows. That's what's going on in Florida, that's what we're trying to stop here. Right now is merely with residential roofers. In Florida, it's everything. It's windows, it's...you name it after a storm. But the hope is we can nip this in the bud and set public policy to say--not in our state; we stand up for our policyholders. You heard a lot of conversation and, you know, to be honest with you, sometimes I wonder which side to believe. Can I hand this to you. You all know me. You know what my passions are, what my mission is. I'll be quite frank, this bill is not one of them. Okay. But there was...a lot of e-mails have gone around. As a matter of fact, one that went around by DRG Insurance Network, written by Mr. Steve Shannon who testified here today and, you know, I ask you to read it. What it does is...and this is what we see is, we take a little grain of truth and we exaggerate it and we create fear. You create fear for that homeowner--you need to assign your rights or something terrible is going to happen. And that's why these people out of fear, you heard it here today, fear your insurance company. Well, that's what they do is they play on our fears. And when we are most vulnerable, right after a storm, that's what they prey on. They're good salesmen. I appreciate the work they do. They do do good work. I'm not going to say they don't. What I object to is what

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happens after the work is done and how the insurance companies are treated which, ultimately, come back to us the policyholders. So I understand...oh, I do want to address what Senator...Bill Mueller talked about, AM2070. And that's referenced in here. And what I did was, I worked with a senator in the building who used to be in the roofing industry, who understands the industry well, who will tell you he never took an assignment. Most people don't take assignments, most roofers. You heard one of the guys here say most of us don't take assignments. And so to address the issues that we heard complained about where insurance companies are refusing to pay, we came up with compromise language because that's what I do. And what it was, was if you're denied you can assign your right. If the insurance company outright denies you, you can assign your right. Two, if...and this was based on conversation with experts in the field. There's really three strikes, so what you do is your adjuster comes out, give a price. You either accept it or you don't, as a roofer. Two, you can ask for a second visit. So I would require a second visit. And then three, you can go to nonbinding arbitration, and there's person who does it, and the insurance company pays for it. All right, that's going on right now. That's, again, the industry norm. And by the way, it's nonbinding for a reason. I could have made it binding. I made it nonbinding to help the roofers as part of a compromise so that if they still don't agree with it, they can still sue...have an assigned and still sue. That's why I made it nonbinding. Okay. I made this compromise; I offered it out there. Not only was it rejected, you can see in this it was used against me. So that's who we're dealing with here. That's the kind of people we have to look at and say, okay, what are we trying to do? I ask for your support on this bill and I would entertain any questions you may have. [LB856]

SENATOR SCHEER: Are there questions for Senator Harr? Seeing none, thank you. [LB856]

SENATOR HARR: Thank you very much. I appreciate the time. [LB856]

SENATOR SCHEER: (Exhibit 9) Have one letter of opposition from NAI FMA Realty, from Scott Vyskocil, V-y-s-k-o-c-i-l. And I'm sure I did not pronounce that appropriately, but I took a shot at it. So with that being said, that ends the hearing on LB856. Thank you. [LB856]

SENATOR HARR: Thank you. [LB856]

SENATOR SCHEER: And we will now move to LB1041, Senator Cook. While Senator Cook is coming up, just so everybody knows, we will not be execing tonight, obviously. We're running fairly late so, there's something that has to be done, we can always do it underneath sometime during the week. Senator Cook, it's all yours. [LB1041]

SENATOR COOK: (Exhibits 1 and 2) Thank you, Senator Scheer, and members of the Banking, Commerce and Insurance Committee. My name is Tanya Cook, T-a-n-y-a C-o-o-k, I represent

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the 13th Legislative District in north Omaha and Douglas County. I come before you today as the introducer of LB1041. LB1041 is a very simple consumer protection bill which closes a gap in Nebraska's insurance statutes. As they exist currently, these statutes ban auto and property insurance rates that are deemed to be discriminatory. Other than race, national origin, and religion, the statutes offer little guidance as to what constitutes discrimination. LB1041 adds language to specifically ban price optimization, a practice that is banned in 17 other states and the District of Columbia. For the purposes of LB1041, price optimization is defined by three key characteristics: First, at an insured propensity to shop around for insurance; second, their history of asking questions about their premium; and third, whether they have filed complaints in response to a previous increase in their premiums. In plain language, price optimization means that not complaining about or questioning a policy increase or not shopping around enough makes you more likely to be singled out for rate increases in the future. The language in LB1041 is taken from a November 2015 report compiled by the National Association of Insurance Commissioners. Our own Nebraska Insurance Commissioner told the World-Herald that he is waiting for this report before taking any regulatory action on price optimization. It is now available and I have provided a copy for each of you. In that report, beginning on page 14, the NAIC recommends that "two insurance customers having the same risk profile should be charged the same premium for the same coverage." The report also specifically advises that the three rating practices targeted in LB1041 are "inconsistent with statutory requirements" that rates not be discriminatory. It is difficult to say exactly how common price optimization is in our state as insurance companies are not required to disclose whether or not they use it. But a 2013 survey by Earnix, a provider price optimization software to the industry, found that 45 percent of large insurance companies and 26 percent of all insurance companies in North America were factoring price optimization into their rates. If companies in Nebraska are not currently using price optimization, then this bill should not cause them any concern. In deed, they should be pleased that their competitors will be banned from the practice which can increase profits, but at the expense of consumers. Price optimization is insidious because it targets those who have limited access to information provided by local insurance agents or the Internet. It also targets those whose language skills, job demands, or life experiences make them less likely to shop around, for example, an 18-year-old with a policy found by their parents or someone with limited English proficiency. Increasingly, it also punishes consumer loyalty if a customer is simply happy enough to not shop around. Every vehicle owner is required by the state of Nebraska to have car insurance if they want a license to drive. Drivers should not have to schedule time to complain about their insurance, along with their oil change, just to avoid having their rates hiked. I would like to stress that LB1041 does not prevent insurance agents from using their judgement in setting insurance rates. It simply requires that the factors they consider be directly related to the client risk and hazard profile. There were to be proponent testifiers following me, they had to leave, so I'm going to read into the record a letter from one of the proponent testifiers that was going to testify and also ask some of your questions from an expert perspective today. Dear Senator Scheer and committee members: I would like the committee to consider LB1041. I am



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speaking as a taxpayer and a resident of Nebraska who lives in Legislative District 13. I have also been an independent insurance agency owner for three years. My views do not reflect any affiliates or companies I may do business with. Price optimization leaves a lot of gray area when determining insurance rates, which in many cases can lead to policies that may be totally different in cost, but the customers have the same client profile. This may lead to distrust with insurance companies, frustration with the agent, and truthfully, very difficult phone calls at renewal explaining increases when the logic of explanation is not present. For example: no accidents, traffic violations or claims or low claim frequency. Being rated up for factors other than these and what is reasonable and underwriting related is not good policy. For example, it is fair to be rated on the company you keep or even being...is it fair to be rated on the company you keep or even being a single parent with children? Does that make you more of a risk than a married couple? Zip codes currently play a factor in rates, but does it make sense to increase rates of someone in a zip code who is single and may have a better financial situation or bill pay history so that they pay higher rates than those in the same zip code who just happen to be married? I would encourage the committee to follow the lead of the previous 17 states that have banned this practice with the most recent being the state of Maryland. And this is sincerely Floyd Brown, and he gives his phone number there. Thank you for your consideration of LB1041. I consider this an important consumer protection measure. I will be happy to answer any questions that you may have about the green copy of the bill. Thank you. [LB1041]

SENATOR SCHEER: Thank you, Senator Cook. Senator Schumacher. [LB1041]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for being here, Senator Cook. I do have one...your bills are ultimately short bills so it's pretty easy to read and digest. And it says price optimization means the use of factors to help determine or adjust an insurance premium that are not specifically related to the insured risks or hazards. And then, including but not limited to the three things you talked about: shopping around, asking questions, filing complaints. What other things do you see as being price optimization besides those three things? [LB1041]

SENATOR COOK: Thank you for asking that question. In the report that I handed out, beginning on page 14, they list some possible action items for regulators. Then over on page 16, I think it's highlighted in the photocopy, with due consideration as to whether practices are cost based or in compliance with state rating law, the task force, the one that put this report together, believes the following practices, at a minimum, are inconsistent with statutory requirements that, quote, rates shall not be...unfairly discriminatory. That letter A is what our friends in bill drafters couldn't sort of list point by point and that point A is price elasticity of demand. What you're asking is this underlined part in F is reflected in B and D from page 16 at the top--propensity to shop for insurance, policyholders' propensity to ask questions or file complaints. It was just more

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difficult to sort of quantify or list those and that is how they're reflected per bill drafters.  
[LB1041]

SENATOR SCHUMACHER: So we're talking about a broader world than those (inaudible).  
[LB1041]

SENATOR COOK: A potentially broader world. [LB1041]

SENATOR SCHUMACHER: So let me ask you this--last year, maybe it was the year before, we had a bill in which the issue was whether a town hit by a hail storm two years in a row that those folks could be treated differently, for no meteorological reason, just because...just because it was hit two years in a row. Do you envision...and you probably couldn't logically say, well, this town is a bad risk, it's just because it got hit. Do you envision this covering that kind of situation, too?  
[LB1041]

SENATOR COOK: No, my only motivation in bringing this bill proposal is to raise awareness and ideally make it unlawful to practice discrimination for the reason of the practice of price optimization. So I hope that answers your question. I don't have...I'm trying to think of an example that would be a human being like a town that got hit two years in a row for whatever reason by a hail storm. The purpose of this bill proposal is so that a person shopping around, or not shopping around is not penalized with a higher insurance rate. [LB1041]

SENATOR SCHUMACHER: So would you have difficulty with us just defining price optimization as those three things, period? [LB1041]

SENATOR COOK: Not at all, Senator. [LB1041]

SENATOR SCHUMACHER: Thank you. [LB1041]

SENATOR SCHEER: Anyone else? Thank you. Are you going to stay? [LB1041]

SENATOR COOK: No, unless you guys want to. I would waive closing and if you've got questions, I'd be happy to follow up with any member of the committee or with committee staff to get those questions answered. Thank you for your consideration. [LB1041]

SENATOR SCHEER: That's the kindest thing that was said all day. [LB1041]

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SENATOR COOK: Really? What? And this was my first time before the Banking, Commerce and Insurance Committee, so thank you very much. [LB1041]

SENATOR SCHEER: Well, thank you so much. [LB1041]

SENATOR WILLIAMS: In eight years? [LB1041]

SENATOR COOK: Yes. [LB1041]

SENATOR WILLIAMS: Wow. [LB1041]

SENATOR COOK: I know. Is there some sort of first time... [LB1041]

SENATOR WILLIAMS: You live a sheltered life. [LB1041]

SENATOR SCHEER: Yeah, you were supposed to bring munchies. [LB1041]

SENATOR COOK: Some snack. I apologize, Mr. Chairman. [LB1041]

SENATOR SCHEER: Especially this time of day would have helped. [LB1041]

SENATOR COOK: I know. [LB1041]

SENATOR SCHEER: And you expect to see this bill out? [LB1041]

SENATOR COOK: (Laugh) No. You live and you learn. Thank you. [LB1041]

SENATOR SCHEER: (Exhibit 3) Okay. Thank you, Senator Cook. First proponent for LB1041. Seeing none, are there any opponents for LB1041? While she's being seated, I do want to read in the record a letter of support on LB1041 from the Consumer Federation of America, J. Robert Hunter. It's all yours. [LB1041]

KELLY CAMPBELL: Thank you, Mr. Chairman, members of the committee. My name is Kelly Campbell, that's K-e-l-l-y C-a-m-p-b-e-l-l, and I represent the Property and Casualty Insurers Association of America. We are a national trade association and our member companies write approximately 43 percent of all property and casualty business here in Nebraska. And PCI

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opposes LB1041. Insurance rate making is a complex process that is kind of a combination of science and art. According to the Casualty Actuarial Society, four principles of property and casualty insurance rate making include the estimate of the expected value of future costs; provides for all costs associated with a transfer of risk; provides for all costs associated with an individual transfer of risk, and a rate is reasonable, not excessive, inadequate, or unfairly discriminatory. What this essentially means is that for decades it has been well-accepted practice to consider costs associated with acquiring consumers, servicing claims, and the overall market conditions, as well as loss trends and individual respecters when setting rates. However, in the last year, this concept of price optimization...in the last couple of years, this concept of price optimization has been tossed around. There is no single definition of price optimization, but to some it began to mean using any rating factor other than individual risk, and this is the concept of price optimization which is reflected in LB1041. After a lot of discussion in the past year, the National Association of Insurance Commissioners got together and began to study this concept of price optimization in order to provide clarity and guidance to regulators. In December of this last year, they adopted a 22-page white paper to provide guidance to regulators on what is acceptable rate-making practices. Nebraska insurance regulators have a full set of legal standards, powers and enforcement tools to deal with any insurance pricing practices that violate public policy. So additional legislation is simply not needed. For example, under section 44-7508, the regulators' powers include approval, authority, and grounds for disapproval including unlawful discrimination and the use of subjective factors. The proposed language in (LB)1041 is vague and therefore troublesome for regulators, the public, and insurers. It uses the term "price optimization" that is ambiguously defined and includes factors that are not specifically related to the insurance risk or hazard. Exactly what this means is unclear. While PCI agrees that it is not good public policy to price on the basis of an insurance propensity to shop for insurance, ask questions, or file a complaint as noted in the bill language we still think the whole issue is better handled by the regulators who have a better ability to carefully gather information from all interested parties and weigh the costs and benefits of various limitations on companies. Finding the right balance between restrictions and innovation, competition, and solvency in a rapidly evolving area such as insurance pricing is best left to the regulators who can apply and implement the general standards already in Nebraska law in the context of due process and regulatory transparency for all interested parties. In a point of clarification, I would like to note that 17 states have not actually banned the use of price optimization, instead, regulators have issued bulletins or advisory memos to clarify what they believe to be price optimization or their definition of price optimization in order to help provide insurers clarity on what they see as allowed practices. PCI would commit to all of you today to work constructively with the Nebraska regulators to help find that right balance on this issue should they desire to take such action. Because we believe that Nebraska regulators already have the necessary tools and statutory support to determine if rates are excessive, inadequate, or unfairly discriminatory, they are in the best position to accurately review and assess insurance rates and we oppose LB1041 as unnecessary legislation. [LB1041]

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SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much. Anyone wishing to testify? If you could move forward, it is getting late in the day, so any time that can be saved would be appreciated. Welcome back, Mr. Fraizer. [LB1041]

TAD FRAIZER: (Exhibit 6) Good afternoon, Chairman Scheer, members of the committee. Again, my name is Tad Fraizer, T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of property and casualty firms. Since the hour is late, I'm distributing a statement from AIA regional vice president Steve Schneider, for you to read at your leisure. I'll just touch on a few of the main points. As noted, one of our big concerns about LB1041 was the wide scope of the language including, but not limited to, which Senator Schumacher raised the question about, if...as indicated, Senator Cook would be considering removing that language, that would address at least part of our concerns. As Ms. Campbell noted, the states that have dealt with this issue so far have dealt with this through their various departments of insurance, through the actual regulators process. I don't believe any other states have actually passed the statutes on this issue since it's still being addressed, to a certain extent, by the National Association of Insurance Commissioners, the NAIC, and they've issued some guidance already and it sounds like some more guidance will be forthcoming. We think the better route, as far as addressing this issue, would be relying on our very competent Department of Insurance to kind of amalgamate all the information coming out of the NAIC. And if they deem it necessary under using the powers already existing under Nebraska statute to issue either guidance in the form of bulletins or regulations addressing the issue, we think that is probably the preferable route under the circumstances. And I would be happy to try to answer any questions you might have. [LB1041]

SENATOR SCHEER: (Exhibits 4 and 5) Thank you. Any questions? Not at 5:50 there aren't. Any other opponents? Seeing none, we do have two letters of opposition: one from the National Association of Mutual Insurance Companies by Mark Johnston, and from the Nebraska Insurance Federation from Janis McKenzie. No other opponents, are there any wishing to speak in a neutral capacity? And we waived closing so we are adjourned with LB1041. Thank you all for sticking around. [LB1041]