

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Banking, Commerce and Insurance Committee February 3, 2025

**JACOBSON:** OK. Well, welcome to the Banking, Commerce and Insurance Committee. I'm Senator Mike Jacobson from North Platte representing the 42nd Legislative District, and I serve as chair of the committee. The committee will take up the bills in the order posted. This public hearing is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill it out completely. When it is, when it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on the bill, there are also yellow sign-in sheets back on the table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last name to ensure we get an accurate record. We will begin each bill, each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents of the bill, and finally by anyone speaking in the neutral capacity. We will finish with the closing statement by the introducer if they wish to give one. We will be using a 3-minute light system for all testifiers. When you begin your testimony, the light will be-- on the table will turn green. When the yellow light comes on, you have 1 minute remaining, and the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It is just part of the process as senators may have bills introduced in other committees. A final few items to facilitate today's hearing. If you have hand-- if you have handouts or copies of your testimony, please bring up at least 12 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the room. Finally, committee procedures for all committees state that written position comments on a bill to be introduced-- in, in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at legislative-- nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifiers in person before the committee will be included in the committee statement. I will now have the committee members with us today introduce themselves starting at my left.

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**RIEPE:** Thank you, Chairman. I'm Merv Riepe. I represent District 12, which is southwest Omaha and the fine town of Ralston.

**von GILLERN:** Brad von Gillern, District 4, west Omaha and Elkhorn.

**BOSTAR:** Eliot Bostar, District 29.

**HALLSTROM:** Bob Hallstrom, Legislative District 1, southeast Nebraska, representing Otoe, Johnson, Nemaha, Pawnee, and Richardson County.

**HARDIN:** Brian Hardin, District 48: Banner, Kimball, Scotts Bluff Counties.

**WORDEKEMPER:** Dave Wordekemper, District 15, Dodge County, western Douglas County.

**JACOBSON:** Also assisting the committee today, to my right is our legal counsel Joshua Christolear, and to my far left is our committee clerk Natalie Schunk. Our pages are here today, and I'm going to ask them to introduce themselves and tell us a little bit about themselves.

**DEMET GEDIK:** Hi, my name is Demet Gedik, and I'm a student at UNL.

**AYDEN TOPPING:** Hi, my name is Ayden Topping. I'm also a student at UNL.

**KATHRYN SINGH:** Hi, I'm Kathryn Singh, and I'm also a student at UNL.

**JACOBSON:** All right. With that, we will begin our hearings today with LB609. Senator Bostar.

**BOSTAR:** Good afternoon, Chairman Jacobson, fellow members of the Banking, Commerce and Insurance Committee. For the record, my name is Eliot Bostar, that's E-l-i-o-t B-o-s-t-a-r, representing Legislative District 29, here today to present LB609, a bill that combats fraud by requiring clear fraud prevention notices for gift card purchasers and crypto-- and cryptocurrency kiosk users, as well as allowing for the forfeiture of electronic assets linked to theft by deception, forgery, or identity theft. Each year, scammers steal billions of dollars from unsuspecting consumers, causing deep financial and emotional harm. With criminals leveraging generative AI and other sophisticated methods, fraud is increasingly difficult to detect and prevent. In 2023 alone, the Federal Trade Commission reported \$10.3 billion in fraud losses, though some estimates place the actual number as high as \$137 billion. Most victims never recover their losses. The use of gift cards and cryptocurrency kiosks have emerged as major avenues for

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fraud. In 2023, more than 69,000 cryptocurrency-related complaints were filed with the FBI's Internet Crime Complaint Center totaling \$5.6 billion. Nearly half of all financial fraud losses. These kiosks allow quick, irreversible transfers, creating significant hurdles for victims seeking restitution. At the same time, gift card scams have been a persistent problem, costing consumers \$228 million in 2022. Criminals often coerce victims into purchasing cards or depositing money at a kiosk, thereby making victims unknowingly facilitate the theft of their own funds. LB609 responds to these challenges by requiring crypto, crypto kiosks and entities selling gift cards or gift certificates to post a notice warning purchasers about potential fraud. The legislation requires cryptocurrency kiosk operators to be licensed under the Nebraska Money Transmitters Act, adhere to daily transaction limits, clearly disclose fees and exchange rates, issue receipts with relevant transaction details, and offer refunds for fraudulent transactions. These measures aim to give consumers enough information to recognize and avoid scams before they become a victim and to help law enforcement investigate these crimes promptly. Retailers utilizing model notice language developed by the Attorney General's Consumer Protection Division will be considered in compliance. Retailers will be subject to written warnings for initial violations and a possible civil penalty of up to \$250 for repeat violations. Closed loop gift cards and prepaid cards issued directly by a financial institution are exempt from these requirements. Finally, LB609 allows for the forfeiture of controllable electronic records upon a conviction or a court finding that assets were wrongfully obtained through specific financial crimes such as theft by deception, forgery, or identity theft giving law enforcement a valuable tool to combat cryptocurrency-related fraud offenses. I offer amendment, AM132, with language requested from the Department of Banking and Finance that aligns the intent of this bill with current statutes. Additionally, the amendment includes compromise, definitional language and transaction limits requested by the cryptocurren-- crypto kiosk industry and notice language flexibility requested by the Nebraska Retail Federation. By placing standards on crypto kiosks and setting uniform fraud notice requirements, LB609 helps make it harder for scammers to prey on our fellow Nebraskans. While it will not end all forms of fraud, it represents a necessary step forward protecting consumers and giving law enforcement the tools they need to respond effectively. I thank you for your time and attention this afternoon. I'd urge your support of LB609. I'm happy to answer any questions you may have.

**JACOBSON:** OK. Thank you. Questions from the committee? Senator Hardin.

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**HARDIN:** Did you say that \$5.6 billion worth of fraud related to crypto had taken place?

**BOSTAR:** So 69-- so in 2023 alone, 69,000 complaints were filed with the FBI's Internet Crime Complaint Center related to cryptocurrency. And those all totaled \$5.6 billion.

**HARDIN:** And so a \$250 fine for repeat offenders would be exacted. Did we not have, like, soft bean bags, you know, not available or something as a punishment, so we're going to hit them with that instead?

**BOSTAR:** Well, I, I appreciate your concerns that the bill is too soft.

**HARDIN:** OK.

**BOSTAR:** The--

**HARDIN:** 5.6 billion soft bean bags. I'm just trying to find the [INAUDIBLE].

**BOSTAR:** I will say the fines certainly aren't for those that are perpetrating the fraud. The fines are for noncompliance for retailers who aren't posting the notices properly. So I feel that that's-- I think that's fair enough. The other provisions that relate to putting guardrails in place around this particular industry and these activities are really the, the meat of how we are able to combat some of this, as well as allowing for these digital assets to be seized after, you know, being found related to criminal activity through, through a court. And so that's, that's how we can then better try to provide some restitution for folks who have been taken advantage of. And, hopefully, if we're successful enough, make it so that this kind of fraudulent activity doesn't have-- doesn't come with those financial benefits and, hopefully, we can put a dent into it.

**HARDIN:** So the guardrails are a start, perhaps.

**BOSTAR:** I think this is a very good start.

**HARDIN:** OK.

**BOSTAR:** But I certainly would never expect this to end the conversation around what our-- where our responsibility lies in protecting our constituents and combating fraud.

**HARDIN:** Thank you.

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**JACOBSON:** Senator Riepe.

**RIEPE:** Thank you, Chairman. We received an amendment here. I think it's AM132. Because we've just now seen that, can you tell us, is there anything in there that's going to set our hair on fire?

**BOSTAR:** No, it's perfect.

**RIEPE:** OK.

**BOSTAR:** No, it's, it's-- so the amendment, the amendment does a few things. One is we've been working with the Department of Banking and Finance to ensure that what we are functionally tasking the department within the bill is better aligned with current statute and the notification and tracking processes that the department already utilizes. So this will streamline their work. It will help ensure that it's more effective and it will lower the fiscal note. So through our-- through the conversations with the Banking Department, by doing this, it will make the, the task a lot simpler and easier. So it does that. It also has some compromises in it from interested parties. So it, it changes some, it changes some of the requirements-- here let me-- there are provisions in the legislation that provide transaction caps for cryptocurrency users, and there's a difference between an existing user and a new user. So new users are limited to \$2,000 a day in transactions, whereas existing users in the bill would be \$5,000, but we compromised and that will now, through the amendment, go up to \$10,500. There are some other definitional compromises and then more flexibility was added on some of the notice provisions working with the, the, the retailers. So it's, it's an attempt to make the bill work better and provide some of those compromises to, to, to try to get everybody on board.

**RIEPE:** You had me at reduced fiscal note, so. Thank you.

**BOSTAR:** Me too.

**RIEPE:** Thank you. Thank you, Chairman.

**JACOBSON:** Further committee questions? Senator Hallstrom.

**HALLSTROM:** Senator Bostar, as part of your agreement, you're making a change to the daily transaction limit for existing customers from \$5,000 to \$10,500, not making any similar change for new customers. So the things that pop in my mind are the \$10,000 daily limit on currency transaction reports. What, what's that all focused around and, and

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what are you trying to accomplish in, in changing one but not the other?

**BOSTAR:** Well, certainly new users have more protections in this legislation than existing users. So that's one place you'll find them. Another place you'll find them is on the refund side. So new users are entitled to more relief on refunds than existing users. The idea being that the folks that are getting taken advantage of who don't have any real fluency around cryptocurrency or these kinds of transactions are, are being scammed upstream. And then this is the payoff method. And so new users are far more at risk. Whereas, if someone has been engaged in this for more time, hopefully has more fluency around this, they are-- they're being, they're being given, frankly, more flexibility to operate within this space, but also fewer guardrails. Right? That's, that's some of the logic there.

**HALLSTROM:** Thank you.

**JACOBSON:** Other questions? I guess I have a couple of questions. First, kind of a follow-up to Senator Hallstrom. So I'm trying to figure out this-- if you come into a commercial bank with currency and you want to buy something or make a deposit and you're over \$10,000, we're having to file against a currency transaction report with [INAUDIBLE] or-- to help prevent money laundering. Right?

**BOSTAR:** Right.

**JACOBSON:** I'm not sure how effective that is. I'm not here to speak about the effectiveness, but that's what the requirements are. And so I, I do have a little question about at what point do we draw the line at something and, and how would the feds look at this in terms of money laundering concerns that might be out there? Any thoughts there?

**BOSTAR:** Well, I think, I think money laundering is a, is a huge concern. You know, the numbers, the, the 10, 5 came through negotiations. Obviously, the industry would like no caps whatsoever. Right? The bill started with 5. They were back and forth and this is kind of where it landed. I, I don't disagree with you, though. And I think, you know, we require a lot of our financial institutions, not just, you know, the kind of reporting that's required over \$10,000 or really anything suspicious, frankly. But all of our, you know, know your customer laws, everything else, that doesn't exist in this space. And so I think from a philosophical perspective, as we, as the state of Nebraska, venture further into intermingling digital assets into our traditional financial system framework, I think it's important to

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try to also ensure that we are bringing with that the level of accountability that we, that we require from all of the financial institutions that, that we are responsible for already. Now, does this do that wholly and fully? No. Are there more conversations to be had? Absolutely. But this is going in that direction.

**JACOBSON:** I guess I do have one other question, and you may not be able to answer it, but my guess is you've probably got some testifiers here that might. So in the banking world or so with banks and credit unions that, that have ATMs, the ATMs may or may not be owned by the financial institution. They may have a third party that goes out and, and has an ATM, and then they have to find a bank sponsor or a credit union sponsor who's going to be willing to clear the transactions through them. So you've got someone clearing the transaction. So the ATM may be owned by a third party, but-- and, and, and there's a reason for that because they're going to get an interchange fee on every transaction where if a bank puts one out there, they're only going to get paid fees on foreign transactions. And so that's why they can justify going into lower volume areas and banks or credit unions cannot. But in those cases, they're going-- they're clearing through a host bank or credit union who's responsible for the transactions that occur there. Who actually owns these machines, and is it different than the folks that are ultimately ending up with the funds?

**BOSTAR:** So the machines are, are owned generally by third-party operators, right, they're-- and then there'd be some agreement with the, the retailer or, or whoever owns the space that they're ultimately being placed, but they're owned third party. Whether or not--

**JACOBSON:** I'm thinking more in terms of who's responsible for the, the crypto piece of this transaction.

**BOSTAR:** Right. So they may just-- the kiosk may just be facilitating transfers. It may utilize a wallet that is also owned and controlled by the operator. It may not. But some of the provisions of this bill on the refund side would require for new users if it is found that they are victims of fraud and there's requirements for them to do in order to, to, to sort that out, that they would be entitled to a full refund. So, in effect, we are putting more responsibility on these operators to-- you know, if I was an operator and I knew that within, you know, 90 days someone could make-- could, could say I've been defrauded, I here's the police report, here's the investigation, and then it's going to go through and ultimately decide one another whether they were victims, I would probably want to hold-- have a hold

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process on transactions clearing, especially for new users because they're entitled to, to these provisions should we pass this bill. So I think it, I think it brings more folks into the space of being accountable for what's happening.

**JACOBSON:** Thank you. And I, I guess I'd just add to that, that obviously the State Department of Banking is also currently still reviewing an application for a stablecoin bank, and I'm assuming that will likely be approved. And we're now dealing with an entirely different kind of digital currency. In that case, you know, it's a stablecoin backed by dollars clearing through a likely subsidiary of a commercial bank. And so they're likely going to have ATMs out there as well. And we'll probably have to have another set of rules because those are going to operate differently, they are going to operate more like the, the banks do today with their ATM network. So it looks like it's, it's a good start, but. So with that, I don't have many more questions. Does the committee have any more? If not, thank you.

**BOSTAR:** Thank you.

**JACOBSON:** And I would encourage-- I'd ask for any proponents to step forward. Good afternoon.

**AARON HANSON:** Good afternoon. Thank you, Mr. Chairman, members of the committee. My name is Aaron Hanson, H-a-n-s-o-n. I am the sheriff of Douglas County. Very appreciative of Senator Bostar for introducing this very, very important bill. So as in my previous career, I spent much of my previous career focused on organized violent crime groups, drug organizations, transnational gangs, transnational terrorist groups that may be transporting weapons, cash, drugs. Never in my wildest dreams that I think to flash forward to the years that I'm sheriff that I would be passionate about financial crimes. Oddly enough, as sheriff, not only did I observe firsthand the terrible disruption that these financial crimes, especially these cryptocurrency scams, are having on residents of Douglas County and, and even specifically retirees in Douglas County, but was shocked to learn that at the core of many of these criminal organizations are, transnational criminal organizations, gangs, cartel groups, the same groups that I was combating in my previous career. You know, in Douglas County, although the sheriff has county-wide law enforcement jurisdiction, essentially we have primary jurisdiction over one-sixth of the population, 100,000 people in unincorporated Douglas County. If they call 911, it's going to be a sheriff-- Douglas County sheriff's deputy that will respond and the sheriff's office that will follow up. And just in that one-sixth of unincorporated Douglas County, in 2024,

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we had \$1.14 million in loss at the hands of scammers for residents of unincorporated Douglas County. Most of those scams ended at a Bitcoin cryptocurrency kiosk. I shudder to think about what those numbers are for the rest of the county. And I know for a fact that many, many people are not reporting these crimes either because they're embarrassed or they think they alleviated either one. For me, it's even more difficult because a lot of these scammers use my name and my agency to scam people out of their money. I will tell you, I brought with me Investigator Mike Dechellis, he is probably the leading subject-matter expert. He's going to testify after me. He would be the one to ask all of your detailed questions on. He is truly a regional and probably national subject-matter expert working with the FBI, working with Homeland Security and investigating these groups in Douglas County. This, this, this statute, this bill, if passed into law, will truly help us to disrupt these scammers, one of which recently in 2024 over a 30-day period, scammed one retiree out of over \$500,000 in multiple transactions at a cryptocurrency kiosk. I thank you for your attention to this, this crucial bill, and I'll take any questions you might have. But, again, Investigator Dechellis would probably be the best one to answer any questions.

**JACOBSON:** Thank you for your testimony. Questions from the committee? All right. Seeing none, thank you for your testimony. Further proponents? Welcome.

**MICHAEL DECHELLIS:** Thank you. My name is Deputy Michael Dechellis. It's spelled D-e-c-h-e-l-l-i-s. I've been an investigator with the sheriff's office for 7 to 8 years and with the sheriff's office at a whole for approximately 18 years. Obviously, we could go on for hours about the various types of scams and methods, methods that the scammers are using. But I think it's more appropriate to use, with my brief 3 minutes here, two examples to kind of elucidate the scope and scale of the problem that we're dealing with in law enforcement. In one instance, a 71-year-old Douglas County victim got a pop-up on his computer, had a phone number, called a scammer posing as a U.S. government employee. He was convinced to mail off \$40,000 to a, a dummy address from which it was no doubt picked up by a courier. Through some search warrant service to Google for the content of messages involving that scammer's phone number, I identified 85 other intended victims throughout the country, some of whom had lost hundreds of thousands of dollars. I was able to identify one instance in which that particular group used-- had the-- a victim in Utah deposit money into a Bitcoin ATM. From that one wallet address, we identified five accounts held by Binance, all five owned by individuals residing in India. And those accounts cumulatively had

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received over \$54 million in the previous year. So that just kind of shows you the scope and scale on how big the problem of money transfer via cryptocurrency gets. In a second instance, an elderly female who had recently lost her husband got on an online dating site, ended up engaging in a 4-year relationship with somebody who I have identified in Guyana, ultimately sent him \$419,000. A significant portion of that via cryptocurrency. And I'll just note that, that victim was willing to come and testify for this committee today. However, the impact on her life was such that she now, in her mid to late 70s, is working in order to support herself and to avoid losing her home. So with that being said, these are real victims. The crimes are being enabled primarily in the modern day and age through cryptocurrency ATMs, and I welcome any questions that I can answer.

**JACOBSON:** Thank you. Questions from the committee? All right. Seeing none, thank you for your testimony. Further proponents? Welcome.

**AIMEE MELTON:** Mr. Chair, thank you very much. My name is Aimee Melton. It's A-i-m-e-e M-e-l-t-o-n. I am here as a council member for the city of Omaha. We actually passed an ordinance in this last year in the city of Omaha requiring that notice be posted on all of these crypto ATMs. I worked in conjunction with Sheriff Hanson and the Omaha Police Department and actually Sheriff Hanson volunteered for purposes of a fiscal note for the city of Omaha. He's actually covering the expense of the placards that are going to be required to be posted on all of the ATMs. What it says is no government agency will ever request or accept money through this ATM, and they give a number to call for a scam, 402-444-scam, which is a fabulous number and anybody can call. We were getting-- I was getting reports and it wasn't just from constituents, but also in my other job, I'm an attorney as well. So I had clients actually calling. I had one client that was scammed out of \$300,000 and I was currently representing him. And he never-- he didn't call me until after the fact. Again, he was embarrassed. It was a dating site and he was getting divorced and didn't want to admit that. There was another woman in Sarpy County, she's retired military, she got scammed out of \$6,000 because they claimed she had missed jury duty. She had never been involved with the courts, and she was convinced that she needed to go post \$6,000 so that she would not get arrested. And she was afraid she was still doing consulting, that that would affect what she was doing. She posted that \$6,000 into a crypto ATM, I believe, at a Walgreens in Sarpy County. Another client was convinced, \$3,000. She thought she had missed jury duty. She had five children, thought I just missed it in the mail. She fortunately called one of the attorneys in my office before she posted the money into the ATM, and we were able to convince her it was a scam. Every single one

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of those victims said they knew in their gut something was wrong. But these scammers are so good they aren't speaking broken English. It doesn't sound like they're calling from another country. They are impersonating sheriffs. They sound like sheriffs, they are even giving real sheriffs' names and providing the address for the Douglas County Sheriff's Office. So for every single one of the victims, they said, have they maybe just seen that, that one last thing where their gut was telling them this is wrong, they may have called that phone number. They may have checked to see if there was a warrant for their arrest. So it's something very small. Now, I have to say, I know Senator Hardin thought maybe this statute wasn't as-- maybe the punishment wasn't as, as much as it should be. In Omaha, we made it a Class II misdemeanor, \$500 fine. It could be up to 6 months in jail for anybody that has an ATM that is not posting this. Now, my intent is not to jail anyone. My intent really isn't even to fine anyone. But if one of those places that has these ATMs is refusing to post the placard and somebody comes into their business and they are scammed, then I do think there should be some repercussions and maybe that'll keep, maybe, some of these people from having the ATMs. I'm sorry. I know my time is up.

**JACOBSON:** Thank you. Questions from the committee? Senator Riepe.

**RIEPE:** Thank you, Chairman. I have a quick one. Are the notices bilingual as well because--

**AIMEE MELTON:** Sheriff Hanson-- I think they can be. Right now, the notices that we have are not bilingual, but they can be because we do want to target some of the places in south Omaha where we do have bilingual people. So I think upon request, if we have any, that we-- the sheriff's office, can do them in, in Spanish and maybe some other languages.

**RIEPE:** Are you also recommending that we look at the \$500 instead of the bean bag that Senator Hardin--

**AIMEE MELTON:** I-- you know, I, I, I really appreciate what Senator Bostar has done so I'm not here to--

**RIEPE:** Not here to [INAUDIBLE]?

**AIMEE MELTON:** --say that-- I'm not, I'm not here to, to say that, that, that should necessarily be changed. I'll leave it up to this committee. Really, what we need is to educate the public. That's part of what this is, it's educating the public, especially the older

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people, but even younger people, the ones I was talking about, the one woman was in her 40s. It's not just older people that are, that are being scammed. It's people that have never committed crimes that don't know how bond is posted. And they're being convinced that they missed jury duty or one of their loved, loved ones is in jail and they're going to sit in jail for the weekend if they don't get bonded out. My father actually was one that got a call and was told that his daughter, Aimee Melton, was in jail because I rear-ended someone and they determined-- the police determined that I was texting, and if he didn't come down with \$1,000, I was going to sit in jail. My-- they called and said that they were from Legal Aid and they were my legal aid attorney. Of course, my father said why isn't one of her law partners calling if that's the case? So, you know, he didn't buy it. But, again, they're out there and they're trying and they're trying really hard. And by the way, they're successful. And I think this is one little thing that we can do. I only have jurisdiction for the city of Omaha. And I think it's working. Unfortunately, 2 weeks ago I saw in the news, Sarpy County residents were getting targeted for this scam more so. So I was wondering, well, maybe they're not calling people in Douglas County because of this ordinance. Well, I really would like people all over the state of Nebraska to be protected, not just those within the city limits of Omaha. So I really appreciate this going statewide.

**JACOBSON:** Thank you. Other questions from the committee?

**RIEPE:** Thank you for being here.

**AIMEE MELTON:** Thank you, Senator.

**JACOBSON:** Other proponents? Looks like we have the director. You'll be next up, Director.

**CYNTHIA KOENIG-WARNKE:** Senator Jacobson and members of the Banking, Commerce and Insurance Committee, my name is Cynthia Koenig-Warnke, C-y-n-t-h-i-a K-o-e-n-i-g-W-a-r-n-k-e. I'm an investigator with the Lincoln Police Department Technical Investigations Unit, which is responsible for financial crimes. I am a 27-year law enforcement veteran and have investigated financial crimes for the past 19 years. I'm here testifying in support of LB609 and would like to thank Senator Bostar for introducing the bill. I have worked with many victims of gift card and cryptocurrency scams throughout my career. Such scams typically involve the promise of a romantic relationship, an employment opportunity, a lottery win or other prize, paying an outstanding debt or tax or payment for a fine or an arrest warrant

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issued by law enforcement. Victims are typically contacted by email, phone, text message or social media, then directed by the scammer to go to a particular retailer and purchase gift cards in specific amounts or make a cryptocurrency deposit via a compatible ATM. A quick Internet search revealed at least 85 cryptocurrency compatible ATMs throughout the state. I would like to provide two examples of fraud investigation-- investigated by the Lincoln Police Department. A 74-year-old victim reported they were directed to deposit \$30,000 in a cryptocurrency ATM to prove they were not involved in alleged ongoing criminal investigation. The victim complied with the scammer's demands, completed two \$15,000 transactions. Upon learning of the events, the victim's family contacted law enforcement and demanded the funds be removed from the ATM. Unfortunately, this wasn't as easy as opening the ATM and recovering the funds as the transaction had already occurred. Another 74-year-old victim fell victim to a cryptocurrency scam via social media. Upon learning their social media account had been hacked, the victim called what they believed to be customer service for assistance. Unfortunately, they were not calling customer service, but instead a scammer, the victim was instructed to withdraw \$25,000 and deposit it into a cryptocurrency ATM. The victim complied with this request and only realized this was a scam after they were instructed to make an additional \$40,000 deposit. They, too, called law enforcement. However, the funds were already gone. The challenge and frustration for law enforcement investigating these scams is the funds are almost impossible to trace and recover. Typically, once the victim completes the initial transfer, the funds are often moved to other accounts multiple times before the victim realizes their mistake. As law enforcement is able to follow the transactions, they usually lead to other jurisdictions or out of the country, making recovery next to impossible. We have a duty to protect--

**JACOBSON:** Could you-- I'd like to have you--

**CYNTHIA KOENIG-WARNKE:** Yeah.

**JACOBSON:** --wrap up your comments if you could.

**CYNTHIA KOENIG-WARNKE:** Sure. We have a duty to protect all Nebraskans from scams, especially those most vulnerable. This legislation would enhance the protection for all Nebraskans.

**JACOBSON:** Thank you.

**CYNTHIA KOENIG-WARNKE:** Thank you.

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**JACOBSON:** Questions from the committee? All right. Thank you. Director Lammers. Welcome.

**KELLY LAMMERS:** Good afternoon, Chairperson Jacobson and members Banking, Commerce and Insurance Committee. I'm Kelly Lammers, K-e-l-l-y L-a-m-m-e-r-s, director of the Nebraska Department of Banking and Finance, appearing today in support of LB609 and its proposed amendment. LB609 would adopt the Controllable Electronic Record Fraud Prevention Act. My comments are limited to Sections 2 and 3 of the bill requiring operators of the cryptocurrency kiosk ATMs to be licensed under the Nebraska Money Transmitters Act, which is under the jurisdiction of the department. These operators are not currently subject to regulation by the department. An Internet search indicates there are approximately 140 cryptocurrency kiosks located in Nebraska, number of operators of these kiosks unknown. Under LB609 kiosk operators are required to register each kiosk with the department and obtain our prior approval for each. Thereafter, operators must submit quarterly reports to the department containing associated controllable electronic record addresses for each kiosk. LB609 is intended to combat fraud that is being facilitated via cryptocurrency kiosks. The department's in full support of that goal as we investigate securities and financial institution fraud as part of our statutory mandate. And we know that using these kiosks to transfer funds to fraudsters almost always means the money is lost forever. LB609, as introduced, would give significant impact on the operations of the department. As described in our fiscal note, there would be major new expenses because the preapproval processes for each kiosk, the increased examination staff that would be required to supervise these licenses, and the fact that we do not currently receive data from the money transmitter licenses on a quarterly basis that includes any associated controllable electronic record addresses. A system to electronically collect such data would need to be developed and additional staff hired to process it. The department has had discussions with Senator Bostar and his staff. We propose that the kiosk be deemed authorized delegates under the act, allowing us to use existing procedures for this kiosk registration without preapprove-- preapproving each site. This approach would maintain our ability to examine the operator and authorized delegate locations as well as to take enforcement action against them if necessary. We would still need to collect controllable record address information separately, but a portion of the reporting could be handled with our current processes. The department's proposed revisions comprised today's amendment. If the amendment is adopted, I believe our fiscal note would show a reduction in the estimated additional staff needed. If it is not adopted, the fiscal note would

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need to be funded in full. I appreciate Senator Bostar's willingness to discuss the department's concerns. We remain committed to continuing discussions with all stakeholders of LB609 Thank you for the opportunity to comment today. Happy to answer any questions.

**JACOBSON:** Thank you. Questions from the committee? I guess I do have one. Well, Senator--

**HALLSTROM:** Go ahead.

**JACOBSON:** --Hallstrom.

**HALLSTROM:** Go ahead, Chair.

**JACOBSON:** So I'm looking at the fiscal note and are you charging fees for these? I guess, I'm just wondering, given the neediness of these, can you cover the fiscal note by charging a fee for the placement of these ATMs to begin with?

**KELLY LAMMERS:** The fee that would be charged is identified in the fiscal note under the revenue, if they are considered money transmitters, it would not offset the total expenses.

**JACOBSON:** I'm just wondering if there could be a different fee or a much higher fee?

**KELLY LAMMERS:** That is certainly something that could be considered, Senator. The proposal that was made, made would be to align this with the existing protocols of the money transmitters.

**JACOBSON:** Money transfers, yeah. OK. Thank you. Senator Hallstrom, did you have a question?

**HALLSTROM:** Yeah, Director, just on pages 2 and 3 of the bill. I think those are the sections that you were interested in where we talk about controllable electronic record kiosk operator. It also references money transmission kiosk. And I didn't find any definition of a money transmission kiosk. Do you know what that refers to?

**KELLY LAMMERS:** In this particular bill, I am uncertain, Senator.

**HALLSTROM:** OK. Thank you.

**JACOBSON:** Any other questions from the committee? All right. Seeing none, thank you.

**KELLY LAMMERS:** Thank you.

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**JACOBSON:** Further proponents? Mr. McIntosh. Welcome.

**RYAN McINTOSH:** Thank you, Chair Jacobson, members of the committee. My name is Ryan McIntosh, M-c-I-n-t-o-s-h. I appear before you today as a registered lobbyist from the Nebraska Bankers Association to testify in support of LB609. The [INAUDIBLE] of member banks have seen a significant uptick in all forms of fraud aimed at our member bank customers. Some of it is very unsophisticated check fraud. Other schemes do involve crypto kiosks like you've heard about today. We believe-- we're here to weigh in specifically on the provisions of Section 12 dealing with gift cards. We believe that these are appropriate measures in place. We appreciate Senator Bostar for working with us on creating workable language in that section. And with that, we would urge the committee to advance the bill. Any questions?

**JACOBSON:** Questions from the committee? Seeing none, thank you--

**RYAN McINTOSH:** Thank you.

**JACOBSON:** --for your testimony. Further proponents? Welcome.

**DEXTER SCHRODT:** Good afternoon, Chairman Jacobson, members of the committee. My name is Dexter Schrodt, D-e-x-t-e-r S-c-h-r-o-d-t, president and CEO of the Nebraska Independent Community Bankers Association, here today to express support for LB609. We thank Senator Bostar for introducing this piece of legislation. This bill represents a significant step forward in protecting consumers and businesses from a growing threat of fraud associated with controllable electronic records such as cryptocurrencies and digital assets. The rise of usage of controllable electronic records has been accompanied by alarming increase in fraud, identity theft, and other deceptive practices. I hear from my bank members all the time that they see these issues frequently among their customer base and they try their best to dissuade their customers from engaging in these transactions. Unfortunately, it is sometimes not enough and further disclosure from controllable electronic record entities can go a long way in convincing consumers to be wary of fraudulent scams. The bill addresses these challenges head-on by implementing essential safeguards and regulations for the control of electronic record kiosk operators to the benefit of our shared consumers. Here are four key reasons why we support the bill. The first is consumer protection. The bill mandates that controllable electronic record kiosk operators provide clear and conspicuous disclosures to customers regarding the risks associated with the transaction. This includes warnings about

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potential fraud, the irreversible nature of the transactions, the commodity nature of cryptocurrency and digital assets. By ensuring that consumers are well informed, we empower them to make safer choices. However, if I could improve the disclosure requirements, I would also include romance or pig butchering scams among the list of common scams to be disclosed, which are found on page 5, lines 3 through 19 of the bill. These types of scams are what I hear most frequently from our member banks and their customers. The second key reason is fraud prevention. By requiring kiosk operators to utilize blockchain analytic software, the bill enhances the ability to detect and prevent fraudulent transactions. This proactive approach is crucial in combating the tactics employed by criminals who exploit these technologies for illicit purposes. The third reason is accountability and compliance. The establishment of licensing or reporting requirements for control-- controllable electronic record kiosk operators ensures that only responsible and compliant businesses operate in Nebraska. This will help to create a safer marketplace for consumers and foster trust in the industry. And we do support the amendment put forward by the Department of Banking. We have one of the most highly regarded departments of banking in the country, and I am fully confident in their abilities to enforce this bill. And, finally, the key point is the, the adaptability to evolving threats. The bill recognizes the dynamic nature of technology and fraud by including provisions for ongoing evaluation and revision of anti-fraud policies. We ensure this regulatory framework remains relevant and effective in addressing emerging threats. In conclusion, LB609 is a comprehensive forward-thinking approach to addressing the challenges posed by controllable electronic records and the associated risks of fraud. And we urge the committee to advance the bill as it may see fit. But at minimum, at least, the, the disclosure requirements required under the bill.

**JACOBSON:** Thank you. Questions from the committee? Seeing none, thank you.

**DEXTER SCHRODT:** Thank you.

**JACOBSON:** Further proponents? Welcome.

**JOSHUA PLANOS:** Good afternoon, members of the Banking, Commerce and Insurance Committee. For the record, my name is Joshua Planos. That's J-o-s-h-u-a P-l-a-n-o-s. I'm the vice president of Marketing, Communications and Public Relations for the Better Business Bureau. I'm here to testify in support of LB609. And today, I want to share with you Dave's story. Dave is a lifelong Nebraskan who retired from

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his blue collar job of 40-plus years in 2024. And I met Dave in our Omaha office in August. And the reason I met Dave is Dave got an email from someone impersonating the Federal Trade Commission who told him that a Chinese agency was attempting to infiltrate his bank account. Dave was shown a dashboard of his savings that updated every few minutes. So under the pretense that he was actually safeguarding his money, Dave was manipulated into withdrawing his retirement savings. The largest amount of money that Dave could withdraw at a given time was \$30,000. So Dave had to make six trips to his bank and put the cash into a paper bag. Dave was told to go to various Bitcoin ATMs around the city and to send that money to a particular wallet. If you're curious, Dave says it takes about 30 minutes to dispense \$30,000 in cash into one of these ATMs. So Dave goes through this process six times and not once is he ever stopped by anybody. All told, Dave lost \$190,000 in 2.5 weeks. Victims of scams often describe the feeling as though you are in a trance. You accept the presented reality without question, and you follow along step by step without fully processing what it is that is happening. Just one foot in front of the other, moving cash from a bank account to a paper bag to an ATM. Dave takes full accountability for his actions, and he certainly regrets not confiding in somebody. But he didn't see any red flags. I asked him to go back to those 2.5 weeks and if a message might have deterred him from following through, if it might have slowed things down, if it might have jolted him awake? And he said it would have. LB609 is a necessary step to provide knowledge and help those to protect themselves against the growing number of fraudulent scams. And I urge the committee to advance it. Thank you for your time. I'll answer any questions.

**JACOBSON:** Questions from the committee? We'll welcome Senator Dungan to-- back to the committee.

**DUNGAN:** Happy to be here.

**JACOBSON:** All right. Seeing none, thank you for your testimony. Further proponents of LB609?

**JINA RAGLAND:** Good afternoon, Chair Jacobson and members of the Banking, Commerce and Insurance Committee. My name is Jina Ragland, J-i-n-a R-a-g-l-a-n-d, here today testifying on behalf of AARP Nebraska in support of LB609 and also here in support of AM132. We believe strongly-- strong consumer protections against fraud are needed as cryptocurrency and gift cards used as a payment for scams is a fast-growing problem. The impact of fraud on victims and their families is wide reaching and can be financially and emotionally

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devastating, especially for older adults. Criminals are becoming more sophisticated in their approach, thereby making it harder for individuals to detect the fraud. The FBI's annual Elder Fraud Report revealed that in 2023, individuals over the age of 60 reported losses exceeding \$3.4 billion, marking an almost 11% increase from 2022. Older adults are disproportionately affected by fraud and scams using cryptocurrency, ATMs, and gift cards. In 2023, the FBI received over 5,500 complaints involving cryptocurrency kiosks, and Americans reported over \$189 million in stolen funds alone. Over 65% of the theft losses and cryptocurrency kiosk fraud were experienced by adults 60+. In 2023, the Federal Trade Commission received over 40,000 complaints about gift card payment scams as well. Although only a slightly higher percentage of older adults being-- report being victims of scams compared to those who are younger, the financial losses are significantly greater for older adults. According to FTC data, those 80 and older have an average of loss in over \$1,450 stolen from them compared to those 20-69 who lost an average of \$480. As you've heard, there's often little chance for restitution because of the belief that most fraud criminals exist outside the U.S. Victims are also hesitant to report because of embarrassment and many other things. Cryptocurrency ATMs are largely unregulated at the state level compared to traditional financial institutions like banks and other money service businesses. And they also lack similar fraud protections. As a result, as we've heard today, criminals are using crypto ATMs to steal hundreds of millions of dollars from Americans each year through fraudulent purchase schemes. Criminals you've heard again often impersonating government officials or businesses convince individuals that they must address an urgent financial matter. And then it goes from there. I do want to talk about the epidemic that we have. And I know Senator Bostar has talked, we have worked very extensively with the industries and those interested parties on this bill. We have the gift card bill last year. We've made some concessions there, but we really feel like we've come to the table. We've made a lot of compromises and we feel that we have got a good bill here, especially with the amendments that have been put forth. The last thing I want to mention is also in your packets. We have been educating consumers. I know that's a piece we continue to hear from state senators and lawmakers. Education is key. We do have a fraud watch network that AARP has. I put some materials in your packet for you to look at, but we are fielding hundreds of thousands of calls from concerned Americans every day from across the United States, Nebraska included, not just on crypto and gift cards, but the mass of that. So in closing, thank you to Senator Bostar for introducing this important legislation. We strongly encourage your support and the

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support of the amendment and would ask you to advance the bill. Again, the rest of my testimony you have in front of you and I'd be happy to answer any questions.

**JACOBSON:** Thank you. Questions from the committee? Yes, Senator Hallstrom.

**HALLSTROM:** Just make a quick comment. I appreciate AARP's involvement in, in consumer education. I know you were active in the elder financial exploitation bill a few years ago and I think it's a multifaceted approach that we have to, have to keep working on. Thank you.

**JINA RAGLAND:** Thank you, Senator Hallstrom, and, and I appreciate that. And, yes, consumer protection is very important and appreciate your work on that as well.

**JACOBSON:** Further questions? Seeing none, thank you. Further proponents? Anyone else wishing to speak in favor of the bill? If not, we'll entertain opponents? Welcome.

**SPIKE EICKHOLT:** Thank you. Good afternoon, Chair Jacobson and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in opposition to the bill. I want to make one thing clear. We're-- we are opposed to one small, and in our opinion, really perhaps misguided component of the bill, and that is the provision that allows for civil forfeiture to be imposed by a court on a conviction of forgery, theft, or criminal impersonation. In other words-- and no one's really spoke about the necessity of that component of the bill. We're not speaking at all about the first, maybe 12, 13 pages of the bill, the notice requirement, the registration requirement of the, of the online kiosks. None of those things we're speaking against. I'm passing out a Flatwater Free Press article about civil forfeiture and I'm also passing out my testimony so you can read along. But one thing that should be made clear from the record, civil forfeiture is not restitution. Restitution is money that goes back to people who suffer a loss. Forfeiture means the government gets the money or the property. And in our state, our constitution provides that it goes to the schools' fund. Does not go to victims. It cannot go to victims. It can only be restored to the school fund itself. I did meet with Senator Bostar's office and explained our concerns with the bill. It was clear to me he was uninterested in accommodating our wish. So that's why I'm here and opposed. We did rewrite our civil forfeiture

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laws in 2016 to address an issue that's not really important now. What has happened since then, there's some ambiguity in the current statutory scheme that allows for law enforcement to seize money and property without a criminal conviction. And you see that happening in the drug cases on the interstate. Last year, Senator Brewer introduced a bill that would have resolved that inconsistency to require a conviction that did not pass. In our opinion, expanding civil forfeiture as a remedy for other crimes is just going to exacerbate the problem that we have already. And, in our opinion, is a problem that is people getting money seized off the interstate primarily and not being convicted of a crime whatsoever and crimes not being pursued against those people. Now, this is a little bit different because perhaps civil forfeiture has some sort of utility in drug cases. Because in those cases, you don't have a victim. Oh, there are victims, obviously, the drug case, but you don't have an identifiable victim that relates to the cash that law enforcement seizes when they're doing drug enforcement. This is different and you've heard about people who suffered losses due to this. And I admit, and will acknowledge that this is a problem. It's a state problem, it's a national problem, it's an international problem. Then, respectfully, you don't want to have civil forfeiture involved in it. If you look at page 29 of the bill, current statute delineates exactly what happens to forfeited money. It goes to the school pursuant to Article VII, Section 5 of our constitution. Restitution is altogether different. There's a statute that provides for a court's order of restitution at the time of sentencing. This bill doesn't disturb that either way. And I'll answer any questions if anyone has any. But that's the only concern we have. We would suggest the committee simply take the part out of the bill that amends the civil forfeiture statutes. Because, in our opinion, first, it's not necessary for the intent of the bill and it really just brings up another issue that I don't think really many of the proponents have even talked about.

**JACOBSON:** To be clear, you'd be in support of the bill if, if that were out or would you be neutral?

**SPIKE EICKHOLT:** I don't know whether you want my support necessarily, but we, we wouldn't have any issue whatsoever with the bill. I mean, I, I can go back and check with my members. I think it's a well-intended bill. I think it actually does something and I don't really think, respectfully, the civil forfeiture part has any-- is not needed for that.

**JACOBSON:** Thank you. Further questions? Senator Dungan.

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**DUNGAN:** Thank you, Chair Jacobson. And thank you, Mr. Eickholt. I think you've identified my biggest issue with this bill. I think it seeks to fix a real problem, which is having that consumer protection. But when I was reading through this, I was also, I guess, confused as to why this would need to be changed. I know you had a very short period of time, and we're not the Judiciary Committee, could you just briefly, I guess, give us a broader explanation of what is civil asset forfeiture? Because in the statute, they specifically say: in addition to the existing penalties available for a violation, including any criminal attempt or conspiracy, a sentencing court may order forfeiture as provided in 28-1601 to 28-1603. What is that current process for civil asset forfeiture and how would this even work with that?

**SPIKE EICKHOLT:** Well, it hasn't really been utilized that much. In 2016, the Legislature rewrote the civil asset forfeiture statutes, and that's because there was a couple of cases from our Supreme Court that held that-- civil forfeiture is, in fact, a criminal proceeding. And you can't-- could not charge somebody with a crime and then also in a separate action try to forfeit their property because it violated the double jeopardy law. So in 2016, the Legislature says, well, let's try to make this one truly civil. And second, let's make it sort of piggyback or follow the criminal case. If you look at page-- the bill actually has a statute-- if you look at page 30 of the bill, lines 24 through 27, there was an exception that was made when they rewrote the statute for criminal forfeiture or for civil forfeiture to allow for law enforcement to sort of seize property that had been abandoned and simply convert it. And then, again, it goes to the government, doesn't go to victims. That exception there is how law enforcement in the drug cases sort of deals with cash that they seize and stops or in drug investigations. In other words, somebody sort of says that's not my money. I don't want anything to do with it. I'll sign this acknowledgment saying it's not my money. Drug forfeiture is a little different because the state police authorities work with the federal DEA and Homeland Security to have a cost-share agreement for money to seize and so on in those situations. I don't know if there's anything similar for this cryptocurrency stuff, never deal with that. But if you look at our constitution, which delineates what happens with forfeited money, it goes to the school fund. There's an exception for drug money that's seized or money that's forfeited pursuant to the drug laws that allows for 50% to go to a drug enforcement purpose and then also to the schools. Just the remaining half. I know that's a lot of all over the place, but that's just a separate issue. And I know it seems like I'm talking about a different bill, and in some respects I

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am. And that's the only concern that we have with the bill. And I understand everyone's sort of intent to make victims whole and to be responsive to the proponents. But when the law is amended, it sort of trickles back into the statute books. And what this is going to do is allow for civil forfeiture and all the consequences that I've already talked about to end up in other crimes besides just drug crimes.

**DUNGAN:** And so in your reading of the statute, if you were to sever that part and take out the civil forfeiture modifications, the rest of the statute would stand on its own. It doesn't need that in order to be effective?

**SPIKE EICKHOLT:** I don't think so.

**DUNGAN:** And would there still be criminal penalties available for fraud and things such as that?

**SPIKE EICKHOLT:** Absolutely. Yeah.

**DUNGAN:** OK.

**SPIKE EICKHOLT:** I mean, this-- sorry.

**DUNGAN:** No, go ahead, go ahead. Thank you.

**JACOBSON:** Further questions? Yes, Senator Hallstrom.

**HALLSTROM:** Mr. Eickholt, you, you referenced restitution as perhaps a better alternative. And, in your opinion, is, is restitution, in fact, available under current law for these types of violations?

**SPIKE EICKHOLT:** Yes, if you look at 29-2281, and I, I cite it in my letter. Restitution can be ordered by a sentencing court, not only to the victim, but anyone who sustains a loss. For instance, I had a case years ago where my client tried to run over the new boyfriend of his ex-girlfriend, missed, but then he hit 3 or 4 parked cars in the parking lot. He was found guilty of attempted second degree assault, but the court ordered restitution for all the people's vehicles that have been damaged. They weren't even victims necessarily, and the case law supports that interpretation. So it's very broad. The court needs to make a finding that someone has suffered a quantifiable loss and the defendant has to be found to have an ability to pay that loss.

**HALLSTROM:** Thank you.

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**JACOBSON:** Further questions? If not, thank you for your testimony. Further opponents? Anyone else wish to speak in opposition to the bill? Any neutral testifiers? All right. Seeing none, Senator Bostar, you're welcome to close on LB609. And there were three proponent letters, two opponent letters, two neutral letters. And, let's see, we did not receive any written ADA testimony regarding this bill.

**BOSTAR:** Thank you, Chairman Jacobson, and members of the committee for your attention on this matter. You know, after I introduced this bill, I had a, a surprising number of people come to me. Some sent emails. Some people I knew would come to me to talk about their own experiences being defrauded or, or nearly defrauded. And a not insignificant number of people that I know and have known for years came to tell me their own stories about times that they were scammed out of money. And I had, I had no previous knowledge of this happening, even though some of these people were close friends and acquaintances. And I had asked all of them, well, you know, ultimately, did you, did you report it? Did you go to authorities or anything? And almost universally, the answer was no. So that leads me to two conclusions. One is I think the numbers we have on this are really low. The numbers we have are extraordinarily high for what they are, but I think they're still underrepresented-- under representative of what the actual cost is from this kind of activity. And the second was, you know, when I, when I asked these folks why they weren't-- why they didn't report it, why this was the first I'm hearing-- you know, someone who is my friend, why did I not hear about the time that, you know, 18 months ago they were scammed out of a lot of money and, you know, just never came up even in friendly how you doing kind of conversation? And, and they talked about they're embarrassed. They feel like, they feel like they should have known. Right? And that the only reason this happened to them is because, you know, they were foolish or, or stupid or somehow deficient in some way. And that leads to a great deal of embarrassment. And the reality is, is, you know, none of these people are, are, are foolish or stupid. Right? They-- there are extraordinarily accomplished, intelligent professionals who are getting scammed every single day. And so we also need to do a little bit-- and this, this may be actually the harder thing to do. We, we need to also do a better job of trying to ease some of the stigma around being victimized in some of these situations. Right? Especially when you play a role in your own victimization, it can be really difficult. And so, you know, I, I think as we, as we engage on this topic and we talk to folks in the community, you know, anything we can do to help individuals understand that it's, it's not their fault. And these are sophisticated international criminals who are

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operating these scams effectively all around the country, all around the world. And we need to stop it. But also, if, you know, if you are a victim, you should engage with the process, report it, and, and try to see what you can do to, to rectify it. The, the provisions related to forfeiture-- you know, look, I, I actually-- I think that there is a worthwhile conversation to be had around civil asset forfeiture. And, you know, it was stated, right, that this is different than a lot of what that conversation entails, which is, you know, the kind of the roadside stop where someone can feel pressured to give up their property or money in exchange for not having to go through, you know, some kind of legal proceeding. And I, and I think that there's, there's a lot to be discussed there. This-- and, and, again, I'm acknowledging, as was said, isn't that this goes through a-- its own judicial process? And, currently, even though money can be seized for, for these crimes, we have-- that's, that's allowed. Digital assets cannot. Right? So what was requested of me was to bring into parity that what is now commonly being used and associated with these kind of crimes, the, the, the means of them being brought up to the same level that standard currency is currently exists. And I, and I do think that there is absolute value in that. I think, look, if law enforcement can track a crypto wallet that is the recipient of fraudulent, I'm going to call them funds, and can identify that, goes through a judicial process, if they can go in and they can claw that out-- if, if we can make these crimes less profitable, we will see a decline in these crimes taking place. People are doing this to make money. If we make it harder to make money, they're not doing it because they like it. They're doing it because it makes them rich. If we can make it more difficult for people to get rich off of taking advantage of the people of Nebraska, maybe we can get them to stop. Anyway, with that, I appreciate all of you and be happy to answer any questions.

**JACOBSON:** Questions from the committee? Yes, Senator Dungan.

**DUNGAN:** Thank you, Chair Jacobson. And I apologize, I missed your opening, so you might have covered some of these questions. I'm sorry about that.

**BOSTAR:** I did, and I did it well.

**DUNGAN:** I believe that. So I, I apologize. I am hung up on the civil asset forfeiture, and we can talk about it after the hearing in more detail, but to make sure I understand, is the money that we're talking about being seized in the civil asset forfeiture, the money that has been taken from somebody through fraud? So a fraudster commits fraud, they take X amount of Bitcoin, they then have that Bitcoin, and we're

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saying that that would then be taken through civil asset forfeiture and given to the state instead of back to the victim?

**BOSTAR:** My understanding is there are mechanisms to support restitution through this process. But, but if, if the question is related to, like, what, what are we talking about being seized, like this bill, because dollars are currently available to be seized through, through forfeiture. Yes. What this bill is doing that is different from existing law is it is allowing these digital assets and records to be seized through the, through the forfeiture process.

**DUNGAN:** OK. And that makes-- I, I-- that explains, I guess, what you're trying to do. I just want to make sure that at the end of the day, the victims of this who it seems like this bill is trying to protect get made whole and not at the windfall of the county or whatever. Because if they can already be ordered to have restitution, I just don't see why it would be necessary to also achieve that civil asset forfeiture in order to give more money to the county at that point. But I, I could be misunderstanding so we can chat more about it. It just seems unnecessary to achieving the ultimate goal of victim protection and making victims whole.

**BOSTAR:** So, no-- and I-- and look, I get it. And I'm not-- you know, I don't live in this space day in and day out. The folks that do-- I think one of the challenges with restitution is when they don't have access to the criminals, right? They don't-- the, the person who was using generative AI and getting on the phone with, with the victim and, and scamming them through and taking their life savings over the course of 3 days, we're, we're not going to get our hands on that. I mean, overwhelmingly unlikely. Right? And we're, we're probably not going to get our hands on their property because it isn't here. You know, these are very sophisticated organized crime organizations that are existing outside of the United States. But if we can get their, their digital wallets, right, that's, that's-- was used to take their, their resources, as, as, as my conversations with, with the folks who have been working the space, that will help us accomplish this. So I think that's one. And then, two, just going back to what I said before. I think we protect victims by also trying to work to prevent the victimization in the first place. And we can't obviously go back in time. But if we can prevent a future victim from being victimized by making it less profitable, in general, as, as for someone to, to engage in this activity by being able to seize these assets, that also has-- it has a victim focused-- is, is a victim-focused effort as well, I, I, I believe.

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**DUNGAN:** And then the last question I have, and I, I genuinely don't know the answer to this question. Is there currently any mechanism in place with which those funds can be frozen but not seized? So, like, let's say you're a fraudster who takes X amount of Bitcoin, is there any mechanism with which those can be frozen so you can't use those and enrich yourself, which would be different than seizing it by the state?

**BOSTAR:** So my-- I'm not-- you know, I'm not fully fluent on especially on the federal side of all of this. I, I do not believe at the state level. I mean, functionally, and, and I-- you know, I-- I'm, I'm sorry that you missed some of the, the hearing because, you know, we-- the, the director of the Department of Banking and Finance testified to how this bill would sort of bring this money transmission sort of into the fold, right, because right now it exists wholly separate and apart from what they're looking at. And so right now, we, we have no idea what's happening. We don't know where the money's going. We don't have the, the digital address for these wallets. We don't, we don't have any of that. And so this would help us sort of not, not fully, and we kind of went over that, but get closer to bringing some level of oversight and parity with the traditional finance institution model and protections that are afforded to consumers in that space. And, and so right now, I, I don't think so is the answer to the question.

**DUNGAN:** Thank you. And, and the whole goal of the bill, I think, is fantastic. And I totally support what we're trying to do. I just want to make sure we-- I understand all the different dynamics. So we'll talk more after the hearing, but thank you.

**BOSTAR:** Thanks.

**JACOBSON:** Further questions from the committee? I would just have one more. I, I-- as it relates to the fiscal note, I've seen the breakdown that the director brought. Do you see a way of skinning that fiscal note down? And I guess, I guess, something I've thrown out the director, are, are you charging enough of a fee or should there be a separate fee that a money transmitter fee to establish these ATMs and maintain them on an annual basis?

**BOSTAR:** Well, well, as far as the fee goes, I mean, I think that I'm always open to a conversation about all of this. My-- and, and if you allow me to confirm with the department, but if I remember correctly, hopefully I can, I can repeat it accurately. With the amendment, it is my understanding, and I will, again, I will double check, but that the department would require the senior examiner but not the

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administrative positions. So that's-- you know, right now they've got an examiner and two admin positions listed. So it would take two of those three positions off the fiscal note. Again, I'll, I'll double check if that's true. But from my conversation from a few days ago, that is what I recall. So that should be significant savings on that front. But I think that there's always a worthy conversation to be had around ensuring that we are-- we're, we're having these systems like so much within the-- that is covered by the Department of Banking and Finance that we're, we're delivering a level of self-sufficiency within the revenues that they take in order to do the task that's at hand. And I think that that's worth pursuing.

**JACOBSON:** And, and I raise that only because banks and credit unions pay basically fees and for examination fees and, and that really funds the department. And, and I'm just thinking if we've got an entity out here that's separate and distinct from banking and, and, and credit unions, that maybe they ought to be self-sustaining as well in terms of cost to, to manage their regulation. So that's the only reason I brought that. Other questions? If not, thank you for, for your testimony--

**BOSTAR:** Thank you.

**JACOBSON:** --and bringing the bill. That will conclude our hearing on LB609. And next on the docket will be LB241. Senator Hallstrom. Welcome, Senator Hallstrom.

**HALLSTROM:** Chairman Jacobson, members of the Banking, Commerce and Insurance Committee, for the record, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m. I'm the state senator for Legislative District 1, here today to introduce LB241, a bill pertaining to cybersecurity. In its simplest terms, LB241 requires a higher burden of proof for a class action lawsuit in the event of data breaches. What it does not do is eliminate the right of any individual victim for the data breach or cybersecurity event as defined in the bill to file a lawsuit in Nebraska to seek redress. However, in many of these cases, we have personal information such as driver's license numbers or birthdates that are accessed after a business faces a cyberattack. Although no business wants their customer data stolen, it is a business that faces the ransom demand from the hackers. There is often no monetary loss on the part of the customer. Recent years have seen a rise in class action lawsuits relating to cybersecurity incidents often filed even when plaintiffs have not experienced actual monetary harm. These cases typically focus on speculative risks, such as the potential for identity theft or data misuse rather than tangible financial losses.

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This trend has several implications. First, strain on judicial resources. Courts are burdened with handling lawsuits that often lack substantive claims of actual harm, diverting attention from cases with genuine grievances. Second, cost to businesses. Businesses facing these lawsuits incur substantial legal fees and reputational damage, even when the claims lack merit. This can disincentivize investment in innovation and security improvements. Further, it has caused a spike in premiums for cybersecurity insurance. Third, minimal benefits to plaintiffs. Plaintiffs in such cases rarely receive meaningful compensation. Instead, settlements often result in nominal payouts or extended credit monitoring services that may not address genuine risks. This surge highlights the need for balanced legal standards that protect consumers without unfairly penalizing businesses for breaches that occur despite reasonable precautions. LB241 was brought to address these situations. If a business acts unreasonably in protecting customer data, there would be no protection under this bill. However, where reasonable precautions are taken, businesses should not be subject to class action lawsuits, particularly where no customer has suffered monetary loss. In those cases in which customers do suffer monetary loss, this bill would have no effect on the ability of the individual to file a lawsuit against the business. The legislation is modeled most closely to Tennessee law. However, other measures have been introduced in a number of states that go one step further and provide an affirmative defense or safe harbor for businesses who take certain protective measures. These include the states of Florida, West Virginia, Ohio, Utah, and Iowa. LB241 does not go as far and instead is a reasonable balance between customer protections and costs to businesses. LB241 defines a cybersecurity event as nonpublic information stored on an information system. Nonpublic information includes Social Security numbers, driver's license or state ID card numbers, financial account or credit or debit card numbers, and biometric records. The bill would cover any private entity, whether incorporated or unincorporated or for profit or not for profit. The operative language of LB241 provides that a private entity shall not be liable in a class action lawsuit resulting from a cybersecurity event unless the cybersecurity event was caused by willful, wanton, or gross negligence on the part of the private entity. In other words, this bill provides a heightened standard of proof requirement in order to bring and successfully win a class action lawsuit. That being, again, willful, wanton, or gross negligence instead of an ordinary negligence standard of proof. Yet, this legislation would still allow and not prohibit a consumer to bring an individual direct lawsuit against a defendant seeking the recovery of money damages for a cybersecurity event based on an

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ordinary standard of negligence. I have attached to my opening statement to assist your understanding and the definitions of the different standards of proof for negligence cases the definitions contained in the official jury instructions adopted in Nebraska, and I would leave those for your review, but they do set up and cite and note the difference between a general negligence standard and gross negligence, which is brought about by case law decisions as reflected in Nebraska civil jury instructions 2.01(B). So the practical effects of LB241 can be summarized as follows: one, liability protection for private entities. This provides a safety net for businesses, allowing them to operate without excessive fear of litigation over cybersecurity breaches that occur despite reasonable precautions. Two, encouragement of proactive cybersecurity measures. By defining clear terms for liability, in essence, gross negligence, the bill incentivizes private entities to maintain strong cyber security practices without the risk of undue legal repercussions. Third, focus on data privacy and security. The bill emphasizes the importance of protecting nonpublic information, including sensitive personal identifiers like Social Security numbers, financial account details, and biometric records. And, finally, support for business growth and innovation. By limiting liability to cases of true misconduct, the bill fosters an environment conducive to growth and innovation, as businesses are less likely to face crippling lawsuits for cybersecurity breaches beyond their control. These benefits collectively aim to balance the protection of consumer data with the operational realities and legal risks faced by private entities. I believe business trade associations or representatives will testify in support behind me and I would ask your favorable consideration in advancing LB241 to General File for consideration by the full Legislature.

**JACOBSON:** Thank you. Questions from the committee? All right. Seeing none,--

**HALLSTROM:** Thank you.

**JACOBSON:** --thank you and I'll ask for the first proponent.

**RYAN McINTOSH:** Chair Jacobson--

**JACOBSON:** Welcome again.

**RYAN McINTOSH:** Thank you. Chair Jacobson, members of the Banking, Commerce Insurance Committee, my name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear before you today as a registered

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lobbyist for the Nebraska Bankers Association to testify in support of LB241. I've also been asked to testify on behalf of the Nebraska Grocery Industry Association, the Nebraska Retail Federation, and the Nebraska Insurance Federation. LB241 is a straightforward bill seeking to prevent frivolous class action lawsuits for cybersecurity events where no financial harm actually occurs to a business's customers. Although no business wants their customer data stolen, it is the business that faces the ransom demand from the hackers. There's often no monetary loss on the part of the customer. Recent years have seen a rise in class action lawsuits over some security incidents often filed even when plaintiffs have not experienced any actual monetary harm. These cases typically focus on speculative risks, such as a potential for identity theft or data misuse rather than tangible financial losses. This trend has led to a strain on judicial resources and costs to all businesses, particularly with the ever-rising premium costs for cybersecurity and liability insurance. If a business acts unreasonably in protecting customer data, there would be no protection under this bill. However, where reasonable precautions are taken, businesses should not be subject to class action lawsuits, particularly where no customer has suffered monetary loss. I would note that the nonpublic information defined in LB241 is generally covered under the Data Privacy Act advanced by this committee and adopted by the Legislature last year. In doing so, the Legislature recognized that in these instances, the Nebraska Attorney General was best suited to litigate these matters where no harm-- financial harm was actually done to the customers. I would submit that Attorney General Hilgers has been effective in doing so, having filed multiple lawsuits against companies in December over data breaches on behalf of Nebraskans. I thank you for your consideration and urge the committee to advance LB241 to General File. Thank you.

**JACOBSON:** Questions from the committee? Seeing none, thank you. Further proponents?

**TIP O'NEILL:** Senator Jacobson, members of the Banking Committee, my name is Tip O'Neill. That's spelled T-i-p O-'-N-e-i-l-l. I'm president of the Nebraska Telecommunications Association. The NTA is a trade association that represents 20 companies that provide landline, voice, and broadband telecommunications services to Nebraskans across the state. We support LB241. I'm not going to repeat the points that Senator Hallstrom and others made, made in support of the bill. As stated, the bill does not prohibit individual claims against private entities for ordinary negligence. It does provide a higher evidentiary standard for a case to be certified as a state court class action. The NTA and its companies work closely with Region 7 of the federal

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Cybersecurity and Infrastructure Security Agency or CISA to adopt best, best practices in the cybersecurity space. Our companies assess cybersecurity risks, identify possible cybersecurity risk mitigation measures, and use ongoing monitoring with special emphasis on vendor risk mitigation and internal IT usage. The cybersecurity space is a jungle. Sometimes bad people get information on our customers and systems, notwithstanding our best efforts to keep them at bay. There is no perfect defense. LB241 will keep large law firms from holding us hostage with ransom demands that have no bearing on the actual loss to our customers. We urge you to advance LB241 to General File and I'd be happy to answer any questions you may have.

**JACOBSON:** Thank you. Questions from the committee? All right. Seeing none, thank you.

**TIP O'NEILL:** Thank you.

**JACOBSON:** Further proponents?

**RON SEDLACEK:** Chairman Jacobson and members of the, of the Banking, Commerce and Insurance Committee, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce, Lincoln Chamber of Commerce, Greater Omaha Chamber of Commerce, and Tech Nebraska, all in support of LB241. Generally, all of our member companies, regardless of industry, have become acquainted with stories of and some have even experienced a cyber attack or ransomware incident. In a case of such an event, once it is contained, the task of remediation and rebuilding follows. There's then legal reviews of impacted data and the legal responsibilities and notification of potentially impacted individuals. Sometimes state attorney generals and regulators and so forth. Not too long ago this would signal then the end of the incident. But today, however, there is an increasing number of companies that hit with cyber attacks, it just is the prelude to the next stage, and that's litigation. Class action litigation arising from ransomware and data breaches is an increasingly common occurrence for our companies across many industry sectors and is the fastest-growing segment of class action filings. Companies are often targeted by multiple action lawsuits, as high class action firms typically seek to represent nationwide and state specific subclasses. So a single incident can lead to hundreds of complaints. These cases are filed in federal and state courts across the country, and the primary targets for data breach class actions have generally been healthcare providers, financial institutions, credit rating agencies. In response, several state legislatures have responded to this wave of litigation, and in 2024, Tennessee law was

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enacted to establish a heightened security standard for class actions resulting from these types of events. Other states have also reacted, now Nebraska with the introduction of LB241. Addressing this issue, this particular legislation appears to be modeled after Tennessee-- Tennessee's law. As stated before by the previous witness, no system is immune from all cyber attacks, and it's unreasonable to expect companies to have a perfect defensive system as even state-of-the-art systems can be breached. Additionally, it's unusual for an entire class of claims to suffer direct damages. Instead, these class members have incurred mitigation costs such as credit monitoring or intangible injuries, such as loss of privacy or potential future injury due to lost or stolen data or damaged by overpaying for the services they expected to be secured from cyber theft, cyber theft. Whether these types of damages create a case and controversy sufficiently like claims to proceed in court has been frequently litigated as well. So inconsistent holdings in the courts make it difficult to predict what happens. I'll conclude my testimony by saying that the, the Nebraska Chamber and those who I testify on behalf of would urge the committee to advance favorably this bill for further consideration on the floor.

**JACOBSON:** Thank you. Questions for the testifier? All right. Seeing none, thank you.

**RON SEDLACEK:** Thank you.

**JACOBSON:** Further proponents? Welcome.

**BRANDON LUETKENHAUS:** Thank you. Good afternoon, Chairman Jacobson, members of the Banking, Commerce and Insurance Committee. My name is Brandon Luetkenhaus and I'm appear, appear before you today on behalf of the Nebraska Credit Union League. Our association represents Nebraska's 52 not-for-profit member-owned credit unions.

**JACOBSON:** And you can-- can you spell your name?

**BRANDON LUETKENHAUS:** Yes. Thank you. Brandon, B-r-a-n-d-o-n, L-u-e-t-k-e-n-h-a-u-s.

**JACOBSON:** Thank you.

**BRANDON LUETKENHAUS:** Thank you. We are here in support of LB241. We want to thank Senator Hallstrom for introducing the bill. The protection of sensitive personal financial data of credit unions is of the utmost importance to Nebraska's credit unions. We understand that credit unions are financial institutions and they spend quite a significant amount of, of funds beefing up cybersecurity protections.

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And those costs are increasing each year as-- each year to fight the burgeoning threats and sophisticated methods of bad actors seeking to defraud credit unions and their members. One credit union I talked to and, and they provided me some information on, on an event they had. And they say in Nebraska-- they say they were a victim to a cybersecurity event in which a ransomware attack was attempted but was not successful. However, the perpetrators were able to attach scanning software to the network that was active for less than 10 minutes before being isolated and removed. Because the scanned drives included some files with member lists, they opted to notify the entire membership. As soon as the notice went-- was sent, attorneys from across the country started running online marketing campaigns, primarily through Facebook and Twitter, targeting account holders and encouraging each to join class action lawsuits. The solicitations were simply shotgunned out with no regard for specific facts related to their specific event, which indicates they had little regard for understanding the feasibility of facts that would be necessary to bring forward a lawsuit. This type of frivolous action taken by attorneys that seek to profit from these situations come at a high cost. Credit unions are not for profit, as I said, whose assets are the assets of the entire membership of the credit union. Firms that solicit plaintiffs for these lawsuits suggest, as noted above, that specific facts are irrelevant because they know that instead of fighting such a case, which is very expensive, the credit union will likely decide to settle with the attorneys despite the lack of negligence on the part of the credit union and the firm will fake-- take the settlement proceeds under the guise of collecting their out-of-pocket expenses and time spent on filings. Simply put, it is costly to settle a frivolous case, but it's far more costly to spend the financial and human resources necessary to fight such a civil action. I want to reiterate that the number one priority of credit unions is to protect their members, including their sensitive financial data. For this, we, we believe LB241 protects both private entities from frivolous and expensive litigation while also protecting consumers. So we ask that the committee advance LB241.

**JACOBSON:** Thank you. Questions from the committee? Seeing none, thank you for your testimony. Further proponents? Welcome back, Mr. Schrodt.

**DEXTER SCHRODT:** Thank you. Good afternoon, Chairman Jacobson, members of the committee. My name is Dexter Schrodt, D-e-x-t-e-r S-c-h-r-o-d-t, president and CEO of the Nebraska Independent Community Bankers Association, here to support LB241. We'd like to thank Senator Hallstrom for introducing this legislation. Just real quick, I won't add much more, just wanted to give the community bank perspective on

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this issue. You know, community banks are subject to the same federal and state regulations in terms of data privacy, data protection, cybersecurity, as our large bank counterparts and, in particular, we're subject to the same regulations dealing with third-party vendors, which can often be seen in a lot of these cybersecurity events. It's the third-party vendor that was accessed. The differences between community banks and our large bank counterparts is we don't fully have the resources and staff that our big bank counterparts do to fully implement and, I guess, keep watch over not only internal cybersecurity events, but third-party security events. I do know that our community bank members do the best they can to ensure that all the account information and private information of individuals is kept confidential and unable to access. However, incidents do occur. And that's why I like the provision of the bill that if it's, you know, not willful or negligent that the protections under this bill would apply because our community banks are out there doing their due diligence and the best they can with limited resources. And when we see, as Mr. Luetkenhaus just said, with these types of events, it's just solicitations from larger companies looking to take a large percentage of the fee that is provided for in any, any winnings during a class action lawsuit. So we do feel confident that Nebraskans' data and financial information is protected fully here in the state and we do support LB241. Thank you.

**JACOBSON:** Thank you. Questions? Senator Dungan.

**DUNGAN:** Thank you, Chair Jacobson Thank you, Mr. Schrodt, for being here.

**DEXTER SCHRODT:** Yes.

**DUNGAN:** This question isn't specific to you. I just decided to ask you, I guess. It sounds like this whole notion is sort of, all of this assumes that frivolous lawsuits are being filed in an effort to essentially force a settlement. Is that fair to say? That's kind of what we've heard from other testifiers, that there are these large, frivolous class action lawsuits being filed with no underlying merit, which are expensive for the banks to then litigate. So rather than go through the litigation on what you believe you'd be successful at, if you had the money and the time to fight, you instead just settle. Is that the main issue we're getting at here?

**DEXTER SCHRODT:** So, to me, I think the issues are you can bifurcate the issues, especially from our context, which I can only speak to, is if there's a cybersecurity incident in any of the community banks, you

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know, the customers-- the bank is going to work with the state and federal regulators and the customers to make the customers whole in the event any actual dollar loss has occurred. So, to me, these lawsuits, frivolous or not, are seeking remedies beyond, I guess, the damages that were done by the cybersecurity incident.

**DUNGAN:** OK. And that makes sense, especially from your perspective as a community bank. I, I guess my, my bigger question, which you can answer if you'd like or maybe it's for Senator Hallstrom or others, is if the concern is these frivolous lawsuits are being filed, I'm not entirely sure how an increased burden of proof is going to prevent the lawsuit from being filed in the first place. Certainly, an increased burden of proof may change the outcome at a certain juncture if you actually get to the point of litigation. But if the desire is to stop a frivolous lawsuit from being filed, I guess I'm not sure how increasing this is going to prevent somebody from bringing that same frivolous lawsuit in the future to achieve the same goal. So I guess that's-- I don't see how this seeks to achieve the goal that we're trying to achieve.

**DEXTER SCHRODT:** Yeah. The only thing I would say to that, Senator, and I'm an attorney who has never practiced in tort law or anything of that nature, I've never even been in a courtroom, so, so take this with a grain of salt. But, to me, this just seems like a deterrent to prevent anything from being filed because they know that if somebody were to not balk and not settle and go to trial, then those defenses are there and the burden is on those trying to bring the claim.

**DUNGAN:** Makes sense. Thank you.

**JACOBSON:** Thank you. Further questions from the committee? Seeing none, thank you for your--

**DEXTER SCHRODT:** Thank you.

**JACOBSON:** --testimony. Further proponents of LB241? Proponents? Does anyone wish to speak as an opponent? I'd welcome the opponents. And I'd invite the opponents to the front row, but there's not very many seats there. Welcome, Mr. Lindsay, to the Banking, Commerce and Insurance Committee.

**JOHN LINDSAY:** Thank you, Senator Jacobson, members of the committee. First, I would suggest we get a people mover from the back of this room for me. I wasn't going to start this way, but I heard the last testifier make-- oh, excuse me.

**JACOBSON:** Can I get you to spell your name?

**JOHN LINDSAY:** My name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys. I wasn't going to start this way, but I heard someone say this will be a deterrent from lawsuits. I would remind you that just a few years ago, Senator Ernie Chambers filed a lawsuit against God. And his point was to prove anybody can file a lawsuit, but that doesn't mean you're going to win. And that's, I think, what this is based-- all of this is based on is a maybe a misperception of the law. I should first say that NATA, my client's position, their mission statement is that they protect the right to access the civil justice system in Nebraska. That's their job, whether it's through legislative lobbying, whether it's through seminars on trial skills, they-- that's what their job is. The-- in this particular case, this is an immunity against or, excuse me, immunity from liability, which means that this, this legislation will override any plaintiff's right to a Seventh Amendment right to a jury trial or to the right under the First Article of the Nebraska Constitution, to a jury trial and to article-- excuse me, Section 13 of Article I of the Nebraska Constitution, which says courts must be open and must allow-- there shall be a, a, a remedy for every grievance of a Nebraska citizen. This is going to say the Legislature doesn't know the facts of the case, doesn't know how the plaintiff was injured. But we're going to decide it today that it's not going to-- that there's not going to be liability. So as a general rule, we oppose any, any immunities from liability. In this case, and I've told Senator Hallstrom-- I, I don't mean to undermine my own testimony, but I've told Senator Hallstrom we're not going to the wall on this bill because, frankly, it doesn't do that much. Senator Dungan mentioned it changes the burden of proof. That's actually not quite right. It increases how much-- excuse me, decreases a little bit how much negligence we're going to say is OK. What this-- what the bill does, it first, it refers to class actions, which in my quick talk to members of, of, of my association, a room of about 20 lawyers, including those on Zoom, none of them have done a state class action because they're just not used very much in the-- under the state law. This is just going to send them all to where they're going anyway, federal court, under federal law, federal class actions. And, and so it's not going to have much impact. I should point out before I get further, that it's also in conflict with current law, Section 87-806, and the statutes before and after that which were passed in, I think, 2006, which deal with, with this area. And this is going to override, for example, the Attorney General's authority to bring actions under that act. So I would suggest that if you are going to

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advance it, we'd prefer you don't, but if you're going to, that it, that it would be harmonized with the existing Chapter 87. Thank you, Senator.

**JACOBSON:** Questions from the committee? I guess, I've got one. It seems to me that when we start looking at deterring, if you know you're not going to prevail unless there's willful, wanton or gross negligence on the part of, of the private party, that seems to move the standard back, at least on state court, that you're going to think twice before you expend, expend the resources to go after a case, like Mr. Luetkenhaus spoke of,--

**JOHN LINDSAY:** Yes.

**JACOBSON:** --where there was, there was no, there was no-- nothing done in that case that should have caused parties to sue. And, yet, they did in many cases with the idea of a settlement and, I think, that's what this bill, if it does anything, would still provide, is that unless you meet that higher standard, that, that that's going to be protected.

**JOHN LINDSAY:** Right.

**JACOBSON:** Thoughts?

**JOHN LINDSAY:** I think it, it will deter action, but it will deter the action between negligence and gross negligence if you are not grossly negligent by not doing that upgrade, that security patch in your system. If that's just ordinary, well, we forgot, it's not that big a deal unless it becomes gross negligence. Gross negligence is a very high standard. It is a very high standard. There are cases in Nebraska where drunk driving is not considered gross negligence. You have to do a lot. A lot. It's-- I think, the Nebraska definition-- and if, if Senator Hallstrom said he gave you the CJI, the jury instructions, that would tell you what gross negligence is. And it-- typically, it means it borders on recklessness. So what we're saying is we will be OK with activity being careless as you want until it gets to recklessness.

**JACOBSON:** And, and I think what we find in-- I mean, I'm looking at our own situation. I'll bet every week we're getting notification of a new patch that has to be put in place. And you've got some are more time critical, come are less time critical. So that's where the gross negligence comes in because, you know, OK, you didn't, you didn't do the patch within 3 days so were you negligent? Well, you've got a few

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other things going on. OK? And, and I think particularly in smaller institutions that can become a little more challenging. And I, I guess the thing I get back to is it seems like it would have to be a, a slow day in the trial attorney world to bring a case where the, the-- if you're, if you're going to prove that you're, you're going to breach this standard--

**JOHN LINDSAY:** Yes.

**JACOBSON:** --in a, in a cyber attack.

**JOHN LINDSAY:** They-- that, that's true. They're not going to-- as I told you, my association is not all that fired up about this just simply because they don't happen.

**JACOBSON:** Yeah.

**JOHN LINDSAY:** We don't get people coming in here and saying we need to do a state class action when some attorney from Texas is already handling a whole bunch of federal class actions over the same breach. And by the way, I have two notices of breach on my dining room table right now that I've received within the last week. They happen a lot. And the question is, how do you stop them? And that's probably where the focus should be.

**JACOBSON:** That's a, that's a big challenge. That's exactly right.

**JOHN LINDSAY:** Oh, yeah. I don't, don't disagree with that at all. It's a big challenge.

**JACOBSON:** Well, thank you. Other questions? If not, thank you.

**JOHN LINDSAY:** Thank you.

**JACOBSON:** Further opponents? Opponents of the bill? If not, anyone wishing to speak in the neutral capacity. All right. Seeing none, Senator Hallstrom, you're welcome to close. And while he's getting seated, I would say that there were-- let's see, there were two proponent letters, seven opponent letters, and the committee did not receive any written ADA testimony regarding this bill.

**HALLSTROM:** Chairman Jacobson, thank you to you and the committee for your patience in hearing this out this afternoon. One of the handouts that I gave was a Lincoln Journal Star article from December 16 relating to two separate class action lawsuits that had been brought against First Liberty Credit Union. I certainly didn't expect to be

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the flag bearer for the credit union industry when I was elected to this position, but glad to do so. And as you can tell, there are many other business interests that are interested in this particular legislation. I think the witnesses-- testifiers indicated that these are bad actors, they're smart, they stay one step ahead of the law. And what we're trying to do in LB241 has dual purpose: continue to provide consumer protections and provide a modicum of protection for businesses from unwarranted civil-- or class action lawsuits. And with respect to Mr. Lindsay's testimony, I do appreciate the fact that he made it clear up front that they were going to oppose the bill. He did suggest to me, as he admitted here in the hearing, that it might be tepid opposition. And I appreciate that as well. But I think there is a significant difference on the continuum of negligence to gross negligence to immunity. I want to make it perfectly clear there is no immunity under this bill. I looked quickly at 87-806, which has to do with the Attorney General's ability to bring actions on behalf of individuals, certainly willing to talk to Mr. Lindsay and, and his organization. But I'm not sure at first blush that I see that this has any adverse impact on the ability of the Attorney General to take actions. But if you look at negligence versus gross negligence versus immunity, there are countless indicators in the statute where the trial lawyers have come in when an actual immunity is requested and they are willing to accept the placement of the gross negligence, willful or wanton negligence into the statute, and there are myriad examples of that, so. And, and as, I think, Mr. Lindsay testified, there are significant differences between negligence and gross negligence. It is in my testimony, but basically the standard for gross willful and wanton negligence, gross negligence is great or excessive negligence, which indicates the absence of even slight care in the performance of a duty. So with that, I would encourage the committee to advance LB241 to General File and be happy to address any questions that you may have.

**JACOBSON:** Further questions for Senator Hallstrom? All right. If not, thank you.

**HALLSTROM:** Thank you.

**JACOBSON:** And that concludes our hearing on LB241. And we'll move to LB-- open the public hearing on LB504. Senator Bosn. I would just ask that your opening is not as lengthy as Senator Hallstrom's.

**BOSN:** No problem.

**JACOBSON:** Welcome.

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**BOSN:** Thank you. Good afternoon to the Banking, Insurance and Commerce Committee. Thank you, Chair Bosn [SIC]. My name is Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n, and I represent District 25, which is southeast Lincoln, Lancaster County. We're here today on LB504. The internet apps and social media are ever-changing. As a parent of young children, it is hard to stay a step ahead of every new opportunity to protect my children's privacy, mental health, and keep them safe. Online safety concerns for juveniles have been a concern for years expressed by law enforcement, educators, parents, pediatricians, therapists, and even young adults are now asking us for help. For these reasons, I introduce LB504, which is a bipartisan bill. Serving in the Legislature as a mom with young children provides me a unique opportunity to advocate for these issues on behalf of children across our state. In 2023, the U.S. Surgeon General released an advisory regarding social media and youth mental health. It provided some insights on what policymakers could do to protect youth, and some of those recommendations were to develop age-appropriate health and safety standards, require a higher standard of data, data privacy for children and ensure technology companies share data relevant to the health impact of their platforms. LB504 implements some of the recommendations, such as age-appropriate design code, which helps to prevent the compulsive use of social media and protect children's private information. It also provides users with easily accessible and ready-to-use tools to protect their privacy in app purchases, control personalized recommendations, and restrict the sharing of the precise geolocation information. Last September, there was a Nebraska family impact seminar research brief published. This brief mentions that on average, teens engage with screens for 7.7 hours a day. It also mentions that Instagram and Snapchat, Snapchat were the most used social media platforms and watching online videos on TikTok and YouTube were the favorite activities. This same brief mentions that social media constitutes a new social context for teens that has consequences for neurobiological development and mental health. They have found that the more time a teen spends on social media, the more that teen can have adverse effects such as a greater risk for mental health disorders. Last week, we learned that Nebraska students' reading test scores have dropped yet again. 28% of Nebraska fourth graders were proficient in reading, which is down from 34% only 2 years ago, which is 3% lower than the national average. 27% of Nebraska eighth graders met the standard, which is down from 29% in 2022. The New York Times published an article last week regarding this drop in national reading scores, which mentions a new paper that was authored by Nat Malkus, an education researcher at the American Enterprise Institute. The paper points out that the declines in

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American children's performance are echoed in tests of adult skills over the same time periods. He proceeds to detail that the causes are often attributed to screen time, cell phone use, and social media. As policymakers, parents, and grandparents, we all want to keep our children safe. Unfortunately, even people who work in the technology industry who thought they were making educated decisions were led astray by these companies. You may hear opponents behind me say that this bill takes away First Amendment rights for our children. And I can assure you this is simply not true. This bill is the product of over a year of work that I have done with an organization, Reset Tech. A previous version of this bill was passed in California with bipartisan support and was ultimately challenged on First Amendment grounds. Scholars and advocates worked to amend the bill to avoid any content moderation, which is what triggered the First Amendment complaints-- excuse me, the First Amendment claims. This bill is Nebraska's version of that modified and updated bill, which passed in California as well as in Maryland. Additionally, I will be followed by First Amendment scholars who will be discussing this issue in further detail. You may also hear opposition say that these companies will be forced to have a heavy burden of figuring out if a person is a minor or not. I would like to point out that on many of the apps we use today, or when we create a new account on different sites, they ask for your birth date. It's easy to forget how often you are asked for your birth date when you are creating a new online account. Respectfully, also to this committee, everyone here has enough experience with social media and online programs to know that these companies are quite capable of gathering information, including your date of birth already. Colleagues, if I were to start talking to you about cute 4th of July shirts for my daughter, I can assure you that my Facebook news feed in no time would start being filled with ads of 4th of July shirts for young kids over the next 2 weeks. And everyone here, including those in opposition to this bill, knows that. It is laughable to believe that this bill will result in social media companies gathering more data than they already do. Unfortunately, the Attorney General had a change in schedule and is not able to attend today's hearing so I have passed out a letter of support from him and I hope you will consider it. There were also a number of proponents who submitted comments online in regards to this bill, and they took a lot of time to draft those very thoughtfully. And I would ask you consider those as well. We think about safe design features in every other product we provide our most vulnerable children. So why wouldn't we do that online? Thank you for your time and attention. And I ask that you help me to protect the youth in Nebraska. And while I am

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happy to answer any questions, I do have some testifiers who are on a short-time crunch so I'd be even happier to answer them at the end.

**JACOBSON:** Thank you, Senator Bosn. Questions from the committee? All right, seeing none. It looks like we've got a fairly modest fiscal note that's primarily just additional staffing for a partial person in the Attorney General's Office.

**BOSN:** Yes, sir.

**JACOBSON:** All right. Thank you. All right. Are you, are you going to stick around for close or--

**BOSN:** Oh, yes.

**JACOBSON:** I figured you might. OK. Proponents?

**PHILIP BOUCHER:** Good afternoon.

**JACOBSON:** How we doing?

**PHILIP BOUCHER:** Good. My name is Philip Boucher, P-h-i-l-i-p B-o-u-c-h-e-r. I am a pediatrician here in Lincoln, Nebraska, and--

**JACOBSON:** Could I get you-- oh, you spelled your name. That's correct. OK.

**PHILIP BOUCHER:** Yeah. Yes.

**JACOBSON:** Sorry I asked, I was trying to pick up all the letters. All right.

**PHILIP BOUCHER:** There's one thing that I can tell you with certainty is that it's hard to be a kid right now. And it's also hard to be a parent. Today's kids are living under a microscope and inside a pressure cooker where every thought, every picture, every moment can be documented, judged, and used against them. I won't spend a lot of time going through the data, but we all know and have seen the reports that show that anxiety, depression, and self-harm are at alarming rates and continue to increase. The pressure is relentless, and children aren't equipped to handle it. They're not supposed to be at their age and developmental stage, and they don't have the impulse control, emotional regulation, and decision-making to meet what we're offering them with the unlimited access to the Internet and to all of the voices and information that they're put up against. Parents are also overwhelmed. As a pediatrician, I see parents who feel like

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they're losing control. They set the screen time limits, they try and keep track of where their child is with their screens, but there's new content and new algorithms and new platforms and new devices, and it's too much for parents to keep up with. I know for myself as a parent, it's hard to keep track of all of the apps and screen time settings and everything, despite our very earnest attempts to just keep a, keep a handle on it. And kids don't always know better, but these tech companies do. We don't let children sign legal contracts. We don't let them drive cars before they're ready. And, yet, we allow them to sign away their personal data to be targeted by addictive algorithms and face pressures that no generation before has faced. These companies know how to keep children engaged and what triggers their compulsive behaviors and what makes them click. They've known for years, and there's plenty of leaked internal documents from Facebook and other companies that show that they're aware of the actual harms that their platforms are doing. But they haven't stopped it because nobody has stood in their way and the money is just too good. And this bill makes them responsible for protecting kids, not just profiting from them. I have looked through this bill and read a lot on the subject, and I know that this bill isn't about banning the Internet. It's about making sure that the digital world plays by the same rules we expect everywhere else to when it comes to protecting children. It's hard for parents to keep up on the platforms and all of the different settings. So parents deserve built-in safeguards, controls to make it a little bit easier to set screen time limits, to block harmful content, and prevent strangers from contacting their children online. Without autoplay, without that keeps them scrolling, without the constant dopamine hits that are hijacking their brains, we'll have children that are able to [INAUDIBLE], critically think, and spend more time in the real world with their friends outside avoiding the tricks that keep them online when they should be sleeping, studying, or playing. We have seatbelt laws, we have age restrictions on alcohol and tobacco, and we have safeguards against child labor. We don't leave it to kids to protect themselves in those situations, and we shouldn't leave them defenseless in the digital world either. Thank you for your time and I urge you to move forward LB504 to give parents the power to protect their children.

**JACOBSON:** Thank you. Questions from the committee? All right, seeing none, thank you for your testimony.

**PHILIP BOUCHER:** Thank you.

**JACOBSON:** Further proponents on LB504? Welcome.

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**JOE TOSCANO:** Hello. Good afternoon, members of the committee. My name is Joe Toscano. That's J-o-e T-o-s-c-a-n-o. I am a former Google consultant and technologist, author of "Automating Humanity" and featured expert in Netflix "The Social Dilemma," which is the most watched technology documentary in the history of the world. I'm also here today as a proponent of this bill. There's going to be a lot of arguments about what can and cannot be done. But I'm here to talk to you from a product development perspective and an Internet historian perspective. So let me start you with this. If you go back about 15 years in time when we had desktop computers, primarily, you may remember that there was tabs or separate pages dedicated to content you could discover. About 2010 to 2015 that got moved into our timelines because we moved into what was called the mobile computing era. That means they had less screen space, so they had to put it all into one smaller space and force us to see the things, the ads or the pieces that they wanted us to discover, became part of their business model to have algorithms. And at Google, I can tell you that we were taught to figure out how to feed people the contents we believe they need at the moment they need it. So when someone comes in here next and tells you that removing the algorithm from the timeline is restricting freedom of speech, I'd like you to ask them, were they restricting freedom of speech at the beginning of their platform when they did not have these algorithms in there? Secondarily, I would like you to consider the fact that if you have an algorithm that is discerning what should and should not be fed, are we by, by definition not censoring freedom of speech itself? Algorithms are the problem. There's a lot of different details in this bill, but I'm here to support the banning of the algorithms. I have also helped draft, fight for, and pass a similar bill in New York State called the Safe for Kids Act. And that is exactly what this is. You are protecting children on the Internet, not only here, but making steps to where we can make this a federal issue, have a bigger impact over time. When I got on that Google bus every morning to go down to Mountain View, there's a password on the back of our seats that says: Do no evil. I would argue any one of you that does not vote in support of this bill would be, in fact, doing evil. And I will leave it at that. I don't need more stats, I don't need more stories. That is the facts of what you're looking at and is what I support sitting here today.

**JACOBSON:** Thank you. Questions from the committee? Yes, Senator Hardin.

**HARDIN:** Love your documentary.

**JOE TOSCANO:** Thank you.

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**HARDIN:** Tell us more.

**JOE TOSCANO:** Yeah, so I'm in it for a few minutes. What they brought me in for was teaching the psychology of, of the applications. How do they make those intermittent rewards? Basically, gambling on our screens. The, the dilemma-- sorry. The Social Dilemma is about how technology implements into society, how it impacts our families and our larger community at large. I left Silicon Valley because I felt there's no amount of money that's worth the downfall of our democracies. I believe these algorithms and the way they skew our information are part of that problem. It goes all the way from the news that we receive day to day to the fact that we can't even have a family dinner anymore because our kids are so addicted to these platforms and parents are having to be the bad guys, say put this down. The government needs to step in. We need to protect children and do the things that parents are being forced to do in favor of a better society, both from education and community.

**HARDIN:** Can I ask a follow-up?

**JACOBSON:** Sure, go ahead.

**HARDIN:** Since you were involved in these algorithms, what was the design length of time from inception to addiction for a kid?

**JOE TOSCANO:** Oh, man. That's a great question. And you'd have to talk to the research about how long it takes them to get addicted. But the fact of the matter is, the mechanics of it is exactly what a slot machine is. So I, I ask you, would you allow your children to go gamble? Would you give them cigarettes? Would you do any of these other things that we've banned historically, or would you sit and protect them against those things? Because that's what you're talking about today.

**HARDIN:** I appreciate you being here.

**JOE TOSCANO:** Yeah. Thank you.

**JACOBSON:** Further questions from the committee? Well, I appreciate your background and being willing to come and testify here today. I think it was compelling testimony. So thank you.

**JOE TOSCANO:** Thank you, all.

**JACOBSON:** Further proponents for LB504? Welcome.

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**MONTY LOVELACE:** Welcome. Good afternoon, Chairperson Jacobson and members of the Banking, Finance [SIC] and Insurance Committee. My name is Lieutenant Monty Lovelace, and I'm the director of the Nebraska Information Analysis Center for the Nebraska State Patrol. And I also serve as the Nebraska State Internet Crimes Against Children Task Force Commander.

**JACOBSON:** Could you spell your name for us?

**MONTY LOVELACE:** Yes, it's M-o-n-t-y L-o-v-e-l-a-c-e.

**JACOBSON:** Thank you.

**MONTY LOVELACE:** The image of the child predator lurking around playgrounds and shopping malls has given way to an anonymous figure hidden behind the computer screen. Offenders no longer need to venture outside their houses when computer technology provides a level of supposed anonymity provided online. Technology provides countless opportunities to solicit and exploit potential victims and to connect with like-minded offenders in neighborhoods, cities, and countries around the globe. Internet crimes against children encompasses a broad spectrum of offenses that threaten victim's safety, exploit vulnerable children, and have long-lasting effects on their mental health. From the time I started to work Internet crimes against children in 2011, the way in which kids communicate with others online and the information they are exposed to has greatly evolved, and in some instances has become unmanageable for parents in law enforcement. The use of social media platforms has exploded on the digital stage and has created a wide range of ways kids can communicate with other people and an increase of exploitation risk that they're exposed to. Without parental involvement, privacy controls, or the cooperation from social media platforms itself, kids can be exposed to content that can lead to depression, risky behaviors, or sexual exploitation from an online offender. Within the last 2 years, the Nebraska State Patrol-- excuse me, the Nebraska Internet Crimes Against Children Task Force has seen a sharp increase in the amount of sexually explicit images and videos produced by minors with, with some as young as 7 years old. The main platform for this activity has been Snapchat. In 2024, Nebraska received 1,854 Snapchat cyber tips sent from the National Center for Missing and Exploited Children. And the overwhelming share of these tips included self-production of sexually explicit images and videos of kids under the age of 18. These increases correlate with unfettered access to the Internet as it exposes kids to adult content, which only leads to questions, curiosity, and further engagement in risky behaviors. These risky

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behaviors are often normalized within online peer groups where there is no filter or accountability for what is said or done. Constant use of social media can also lead to sextortion. This form of online victimization involves coercion or blackmail to obtain sexually explicit images, money, or even away as a child-- or even gives these offenders an opportunity to encourage kids to harm or to even kill themselves. Reports of sextortion to the National Center for Missing and Exploited Children have increased exponentially since they were first tracked in 2013. A common pattern in these incidents involve the offender using the child social networking site to gather information from the child and develop a relation-- relationship with them. The offender will then lure the child to a known or unknown messaging application or live stream video chat, obtain sexually explicit images of the child, and threaten to share the images unless the child meets their demands. This bill is a step in the right direction and ensuring that online platforms are taking substantive measures to reduce harmful content or offenders kids may encounter. At this point, I would be happy to answer any questions that you have.

**JACOBSON:** Questions from committee? Senator Hardin.

**HARDIN:** Thanks for being here, Lieutenant Lovelace.

**MONTY LOVELACE:** Thank you, Senator.

**HARDIN:** What role do parents need to play that we as parents are not currently playing in all this from your perspective?

**MONTY LOVELACE:** Thank you, Senator. I appreciate the question. And this is a, a question that I get asked all over the state, and, and that is, what can parents do that they're not currently doing? And that is to be an active participant. We-- you know, someone mentioned earlier that, you know, we've got all these regulations in the state of Nebraska. Well, look at it from a training standpoint. We provide training to kids to drive. We provide training for kids to carry a firearm in the state of Nebraska to go hunting. But for a birthday gift or a Christmas gift we throw them a phone with, with no training and sometimes no communication from the family. And, quite frankly, the effects from misuse of the Internet can lead to catastrophic consequences just as bad as a car accident or a gun accident. So it's important for parents to take a proactive approach in knowing what the social platform does. This bill goes-- this bill helps with that, but it doesn't take away the responsibility that as parents we have to establish open line of communication with our kids and establish what those expectations are of proper use and then hold them accountable.

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I've got kids myself, and I, I would say that at times they don't like being a cop's kid because being a cop's kid they have to adhere to the rules and then I have to hold them accountable. To be respectful of everyone's time and to be respectful of the question, because obviously this is a presentation in and of itself, I would say the main thing that we have to continue to do as parents is to communicate, stay active with what our kids are doing, because, quite frankly, ignorance of these social media platforms and what they can do is no excuse to, you know, the long-term consequences that could, could come about with, with improper management.

**HARDIN:** Thank you.

**JACOBSON:** Further questions from committee? All right, seeing none, thank you for your testimony.

**MONTY LOVELACE:** All right. Thank you very much.

**JACOBSON:** Further proponents?

**KYLE LANGVARDT:** Good afternoon. My name is Kyle Langvardt. I-- let me spell that. It's K-y-l-e L-a-n-g-v-a-r-d-t. I'm an associate professor at the University of Nebraska College of Law and currently one of our two Schmid Professors for Excellence in Research. And for years I have published extensively on tech regulation and how to do it successfully within the confines of the First Amendment. I have particular expertise in the regulation of habit-forming technology. I'm speaking on my own personal capacity as an expert on this topic, and I'm not representing the University of Nebraska System or the University of Nebraska-Lincoln. Now, look, the First Amendment protects online expression, obviously, but we can't make the mistake of assuming that there's some kind of general immunity from regulation that applies to all technology or all data or anything that touches a computer or software. Instead, there's a fundamental and long-standing distinction in First Amendment law between laws that discriminate on the basis of content and laws that discriminate on the basis or that do not discriminate on the basis of content. Content based laws are subject to very close scrutiny. Content-neutral laws receive a relatively lenient standard of review and LB504 is a thoroughly content-neutral law. It does not single out any topic for discussion or any message or any viewpoint for special treatment. Instead, this is a law that deals overwhelmingly with product design, it regulates functional elements like infinite scroll, autoplay, streaks, late-night push notifications. This is the equivalent of regulating the volume knob, regulating the size or the brightness of the TV. It's the equivalent

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of an old time place or manner regulation against, you know, the high volume of noise in a residential area at, at night. First Amendment isn't completely irrelevant to these laws, but these laws tend to be upheld. Other parts of the law regulate the data business. And-- but these provisions don't discriminate either on the basis of any kind of message. I'd note the one exception here would be a rule against targeting ads for age-restricted products like tobacco or alcohol or narcotics to minors. But that's not protected speech anyway. If a law is content neutral, then it's going to be upheld so long as it upheld a significant interest, which this does, if it leaves ample alternative channels for communication, which this does, and if it does not put an excessive burden on expression. Now, you may hear that there will be this, this big burden on the tech companies. But let's be very clear that a media company is not immune from regulation just because their operating costs or their compliance costs might go up or because their ad-based revenue model might become less efficient. And it's not even clear the burden here would be all that significant. So this is a well drawn law that's fully compatible with the First Amendment, both in terms of doctrine and in terms of the spirit. And I urge the committee to advance the bill.

**JACOBSON:** Thank you. Appreciate you being here, particularly bringing the expertise that you have.

**KYLE LANGVARDT:** Certainly.

**JACOBSON:** Great testimony. Questions from the committee? Senator Dungan.

**DUNGAN:** Thank you, Chair Jacobson. Thank you for being here. You're obviously an expert on this much more than I am or I guessing many of the people in here. Just to speak to the part you just spoke about with regards to the, the-- let me ask this as a broader question. Let's pretend this is incredibly burdensome and every social media app decides we're no longer doing business in Nebraska. So they all pull out. Does that then change your analysis as to whether or not there's still another avenue for that speech, even if it's content neutral?

**KYLE LANGVARDT:** Not necessarily. I mean-- and, and I'd, I'd point to the recent TikTok decision. Right? So the, the Supreme Court, and this is a different context, but the Supreme Court looked at a bill that would force TikTok either to divest or undergo, you know, almost like the equivalent of the death penalty in the United States, and said this is a content-neutral law, the government has latitude to, to regulate. The government doesn't necessarily have to come up with the

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regulatory approach that would be the least burdensome approach, and they upheld the law. Now, of course, I'm sure you'll hear from the opposition that that was national security. And, you know, there are case-by-case distinctions to make. But when you're talking about children's health, you know, that's a regulatory interest that has quite a bit of prestige in First Amendment law. So, yeah, the, the burden could be significant. And I don't know that that would automatically be invalidating.

**DUNGAN:** And have you had a chance to actually look through the definitions' portion of this particular piece of legislation?

**KYLE LANGVARDT:** Which definitions?

**DUNGAN:** I guess, broadly have you had a chance to review? Before I ask you a question about it, I want to make sure you've had a chance to review it.

**KYLE LANGVARDT:** Yeah, I've, I've, I've, I've, I've read through it. Yeah.

**DUNGAN:** My very cursory glance at this seems like this would apply to every single app. Does this, does this-- the definitions in here of what is a covered design feature and what is the actual entities covered seems so broad that this applies to any app that, for example, would have a notification or a push alert because that list of cover design feature is, is an or. This, this, this or this meaning even just one of those is a cover design feature. One of those is a notification. Every app at least has the opportunity for a notification. Does that mean that every single app, so long as they meet the other requirements with regards to the amount of money that they have to make or they're a large enough company, would they fall under this regulation then, or would it just be social media?

**KYLE LANGVARDT:** Well, no, with-- without it in front of me, I hesitate to say that it would be every app, but I don't think breadth is a problem here. And, and, in fact, you may have heard Senator Bosn refer to some earlier legislation that this one refers on-- improves on. California had one law that dealt with some mandatory reporting for addictive, addictive design issues, and it ran into some trouble in, in court. And I think the court might get reversed on this. But what the court pointed out was that the law was too narrow, that it seemed to single out certain types of sites without affecting sites like, for example, ESPN might send, you know, notifications that are very disruptive. So I think really that to the extent that, that this

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covers a broad range of platforms, that's the kind of thing that's usually viewed as a virtue in First Amendment law. It's, it's a kind of even handedness.

**DUNGAN:** Do you-- that makes sense. Thank you. And I guess, finally, do you see any concern with the-- from a First Amendment perspective, do you see any concern with regards to the limitations based on age? Does age present a class of individuals then that are being singled out by this legislation that you think could be constitutionally suspect?

**KYLE LANGVARDT:** If anything, age is helpful. And, and it's, it's, I guess, just a question of how helpful it, it would be. But, but, of course, there are, there are other areas of, of the law, for example, law of, of pornography, where the state has more latitude to regulate because you're dealing with minors rather than adults. So I think it will tend to be a helpful distinction. And it's just a question of how far it goes. That being said, you know, even if this law wasn't limited to minors, you'd still be looking at a content-neutral piece of, piece of legislation. So, yeah, it's certainly not a problem that it's limited to minors.

**DUNGAN:** Thank you. I appreciate that.

**KYLE LANGVARDT:** Yeah.

**JACOBSON:** Further questions from the committee? All right, seeing none, thank you for your testimony.

**KYLE LANGVARDT:** Thank you.

**JACOBSON:** Further proponents of LB504? Welcome.

**JILL EDMUNDSON:** I'll start my, start my timer here. Hi, my name is Jill Edmundson, J-i-l-l E-d-m-u-n-d-s-o-n, and I'm probably the hybrid testifier today. I've spent 25 years working in software development for some really, really big and profitable companies, including CSG International, which is a spinoff of FDR, and Mutual of Omaha. And so I'm here to advocate for the smart use and design for software. But I'm also here because absent commonsense legislation, we are all living on borrowed time and our children are the ones who are going to pay the price. So 5 years ago, many of us had no idea how dangerous social media could be for our children. I worked in technology for 25 years. I'm a bona fide nerd, total tech nerd. And because of that, I believe I had an advantage. I was like the cyber mom who knew how to lock stuff down and buy the cameras and, you know, turn off the Wi-Fi at a certain point in the night. I, I, I really prided myself. I even

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led-- I was the Girl Scout chair at my kid's grade school and we led this big thing for 400 Girl Scouts and it was called "Wait Until 8th." And it got all the parents aligned for all of us to collectively wait until eighth grade until we buy our kid a cell phone because it's like you go to one slumber party and the kid has the cell phone and now you know the dam has been breached. So we all made that pledge and we knew if we formed an alliance and we stood together we'd collectively, maybe, be able to counter the, you know, the begging of our kiddos. And our community made that commitment. And we succeeded for a while. And then COVID. When schools shut down and adopted online learning, all bets were off. My husband is a captain for the Omaha Fire Department and I'm a nerd and we both thought we were keeping our kids safe. That's what we all do for a living. And even we, within 2 weeks of the pandemic, we ordered four Chromebooks, one for each of our young students. I had a 13-year-old at the time, an 11-year-old, and identical twin 9-year-olds. And I did everything I could to ensure that they were only going to be able to look at Google Classroom like a lot of others. I even posted it on Facebook. I'm like, I got this. We bought desks. I was going to run my own home-learning place. However, within 3 months of the pandemic, our active, energetic kids had become entranced by the blue light that was beckoning their attention day and night. Algorithms found them, enticed them, and ultimately addicted them. And for my littlest girl, her name is Sophie [PHONETIC], and she was 9 years old, what started off as just innocent searches where she wanted to keep up with cheer and how to keep her tumbling skills, fed the algorithm into body shaming and pro-anorexia content, pro-anorexia influencers. Within 6 months, our picture-perfect family was shattered. Our youngest child, Sophie, now 10, was fighting one of the most insidious diseases you could ever imagined. She was admitted to Children's Hospital as one of the youngest pediatric patients ever diagnosed for anorexia nervosa, pediatric eating disorder. There were only two hospitals in the entire United States that took 12- to 18-year-olds. And I had a 9-year-old who didn't know why she didn't want to eat anymore. She just felt terrible and she didn't want to live inside that-- her body. So as doctors, nurses, therapists, and miracle workers worked around the clock to save her life, her identical twin sister, who just a few months earlier, they both clocked in at 71 pounds. And 12 weeks later, Sophie was broken and her twin was scared and navigating life as a fifth-grade student all by herself, while her 52-pound twin sister was admitted for full hospitalization. My story is not unique. I'd be happy to take any questions from you, but I would love to let you know that engagement is another word for addiction and we can fix this. It's fixable. Thank you.

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**JACOBSON:** Senator Bostar.

**von GILLERN:** Or von Gillern.

**JACOBSON:** Excuse me, von Gillern. Let's go von Gillern. One more over.

**von GILLERN:** Yeah. Since you have a little bit more to share in this story, would you, would you take a minute and finish it, please?

**JILL EDMUNDSON:** I would be honored to. Thank you.

**von GILLERN:** Thank you.

**JILL EDMUNDSON:** I winged it a little bit there, and I appreciate you all connecting with me after a long, busy day of Banking. And I kind of questioned, like, why Banking? And now I know, like, you're here to protect our most valuable possessions, right? Food, privacy, and kiddos. So Paige [PHONETIC] started going to school by herself. That was awful. She didn't know how to answer questions. Where's Sophie? Where's Sophie? And I kept thinking, oh, my gosh, is he going to be labeled for life? At the same time, our sixth-grade son and our eighth-grade daughter were struggling to understand why mom and dad were spinning out of control. And my husband and I, for the first time in 25 years, I never took leave after I had all my babies. I kept traveling. I saw Tip O'Neill here. I was a big-- I helped build out Xfinity and Charter Spectrum. Like, I was really invested in the scale and success of telecommunications. But for the first time ever, I took FMLA to save my daughter's life. And let me tell you, this is bigger than adults. This is bigger than me. This is bigger than parents. Millions of parents are doing everything that they can, but they are up against billion-dollar companies that exploit kids for profit. And I'm a capitalist. I'm a software developer. I'm all about monetizing what makes sense, but not at the expense of this generation. If we invented a car absent brakes, how long would we wait until we put brakes in before we put our kids in? We're not trying to abolish the car industry. We're not trying to abolish anything. We're just putting reasonable safeguards because a parent can't throttle a car absent brakes any more than they can throttle their kids' social media usage. They can't. Go to school right now, all your kids, there, there's probably really sophisticated VPN networks in all your kids' schools, and all of our kids know how to get around it. And that will, ultimately, make us really incredibly successful as a country and differentiated in really positive ways. But we need the safeguards. So I'm here today to support my new friend, my new best friend, Senator Bosn's legislation age-appropriate design code. What it's going to do

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is just help us make commonsense code restrictions. And let me tell you, if I can understand code, we can all understand code. I've spent 25 years demystifying it. It's code. It's an algorithm just like it was built, it can be modified and it can be done in a way that is not at the detriment of innovation or businesses being able to scale, or Nebraska being a profitable technology center, which is what I want. That's why I've invested my entire career here. But we cannot limit the infinite scroll. I mean, when I was a kid, they used to play the Pledge of Allegiance, like at 10:30 or 11:00 at night, and it was, like, lights out, go to bed. I mean, we could do something like that. We could regulate in-game purchases that use manipulative sales tactics. And the thing that got my kid was how she felt about herself. And so, you know, just making sure that they know that they're, they're bigger than their followers and they're bigger than the filters, and just really be mindful of how these apps-- a 4-year-old shouldn't have to put a filter on her that gives her beautiful eyelashes and luscious lips. Maybe a 4-year-old should learn some ABCs. And that is the call to action that I'm asking for today. When I said I took a "Wait Until 8th" pledge, I've turned that waiting now into action and I've pledged to turn our pain into our purpose. And I will do everything in my power, both professionally, personally, and as a parent and as a proud Nebraska technology leader to protect our children from the exploitation.

**JACOBSON:** Thank you.

**von GILLERN:** Thank you for sharing that. May, may I ask one additional question?

**JILL EDMUNDSON:** Yes, sir.

**von GILLERN:** You can choose to answer it or not. How is Sophie doing today?

**JILL EDMUNDSON:** Sophie is 5 years into her recovery. We call eating disorder Ed, Ed is going to be part of our life forever. He's a really, really bad friend. But I'm convinced that it came knocking at our door because we're ornery and we can help take our story and turn it into something that's going to change lives. To that end, we helped establish the Nebraska Freedom to Love your Body Eating Disorder non-for-profit. We do walks every September to raise money for children who cannot afford. We talk about it a lot. Your secrets keep you safe. So you come and you walk through a hall. I haven't been here since sixth grade. And you do stuff like this. We talk about it and, and we do everything we can to make sure that no one else succumbs to

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this. It started with me not wanting her twin sister to get it. And now I want all parents to have those safeguards.

**VON GILLERN:** Thank you for sharing.

**JILL EDMUNDSON:** Thank you so much.

**JACOBSON:** I really appreciate you coming today.

**JILL EDMUNDSON:** Thank you so much.

**JACOBSON:** Hang on once, let's see if there's any other questions from the committee.

**HALLSTROM:** I just want to thank you for your strength and commitment. Thank you.

**JILL EDMUNDSON:** Thank you so much.

**JACOBSON:** Other questions from committee? Yes, Senator Hardin.

**HARDIN:** A moment ago you stated rather de facto that the-- I don't want to frame it incorrectly. It was a sense of powerlessness that we can't stop our kids from participating in social media. It's an embedded part of the culture. What do we need to do to help you as a parent? Granted, this bill would be a part of it. But what do we need to do to hit this button right here, takes just a few seconds, and then eventually it shuts it off. What do we need to do as lawmakers to help encourage you to shut this thing off for your kids?

**JILL EDMUNDSON:** It's beautiful. In software development, there's a philosophy called CICD, continuous improvement, continuous design, right, continuous development. So for me to take a litmus test today and say, hey, here specifically, I would say infinite scroll. That would be a good place to start. Let's give them eight scrolls and then cut. I don't know, like an allowance. Or you can earn more scrolls if you depart from your thing and your iPad, your iWatch, determines that you've gone out and elevated your heart rate. You know, we, we could have-- we have the data to understand if our kids are being active and we could create an incentive in a reward system. These are all things that are absolutely possible within the data that they're already gathering. But the most important thing, Senator Hardin, is to just make a commitment to one another that we're not going to let this generation of kids be test labs.

**HARDIN:** Thank you.

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**JACOBSON:** Other questions? Yes, Senator Dungan.

**DUNGAN:** Thank you, Chair Jacobson. And thank you, again, for being here. I would echo the sentiment, I think, from the entire committee, the appreciation of your bravery and your family's story. So I appreciate that.

**JILL EDMUNDSON:** Thank you.

**DUNGAN:** I want to ask a question of you in the more tech side of things, given that you have a software development background. And I want to start by being very clear, I think it's incredibly important that we support our kids, and I absolutely support that notion. From a practical perspective, what it sounds like this bill is seeking to do is say these massive tech companies, right, these major international corporations, Snapchat, you know, Facebook, what have you, all of these different social media apps have to change the way that their entire app is formatted. Not only that they provide these sort of tools, but there's the subset there that says that all of the covered online services have to establish default settings applicable to all the things required here. So not only do they have to abide by a set of rules, but they have to automatically have their apps start at that point. Do you think, and I'm curious from your background in software development, that it's realistic to expect companies to change the entire structure of their app to adhere to a Nebraska state law or do you think it's more likely they'll simply just go dark in this jurisdiction?

**JILL EDMUNDSON:** Great question.

**DUNGAN:** And if it does, that might be the goal. I'm just curious.

**JILL EDMUNDSON:** Great question. I would say even just listening to how emotive and, like, they, they being the big companies, they want us to feel like they are infallible, like they are so big and this is such an imposition. It's not. It's not. It's a line of code. If every time my kid got a Snapchat, they lost a dollar, they would, they would mitigate that overnight.

**DUNGAN:** Yeah, and that's--

**JILL EDMUNDSON:** Because the incentive structure would be aligned. Right now, though, they send these things, it increases engagement, i.e. addiction, and they sell more product. And so is it feasible for them to do it at a Nebraska level? Yes. And I say that as a telecommunications. My kid-- my parents worked in the

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telecommunications industry and we can tax down to the specific side of the block that you're on from a geo-taxing perspective. Right? When you make a phone call, telecommunications companies had to implement processes to have targeted controls just by virtue. And we can do that. We absolute-- they can do that and we can find ways that are mutually advantageous. There can be for-profit models where if parents could just spend \$10 a month, I'll send Facebook and Meta ten bucks a month, if I know in return I'm going to get some thresholds. Just like when you take your kids to a bounce park and you sign the waiver. I'm like-- I'm going to presume they put reasonable thresholds here and there's not sharks underneath this, you know, trampoline. And, and that's what we're doing right now. We're sending our kids there with the sharks. I'm like, we can do this.

**DUNGAN:** No, and that makes sense. I guess, I was just curious from the digital sort of like the way these are formatted perspective. If I go on the Apple App Store and I hit download Snapchat, when I hit download, can that Snapchat that I download be a different version of Snapchat geofence to Nebraska to abide by these laws or would it require Snapchat, for example, to change the entire structure of their app? That's, I guess, what I'm trying to get at.

**JILL EDMUNDSON:** It's, it's definitely not the latter.

**DUNGAN:** OK.

**JILL EDMUNDSON:** There are embedded user configuration settings and my friend here would probably be able to tell me definitively from a code, from a continuity of code. I mean, he wants code that can scale. They can't create independent units of code for every single consumer, that doesn't work for their business model. But, yes, they absolutely can. Just like I could get five gig of, you know, bandwidth delivered to my house and you could have-- you could just be on dial up, right? Now, eventually they're going to sunset that dial up because that doesn't make good sense. But they can do it.

**DUNGAN:** Right.

**JILL EDMUNDSON:** They should do it. And we can find ways that create incentives for all parties, whether you're on the software side or the consumer side.

**DUNGAN:** Thank you. I appreciate that.

**JILL EDMUNDSON:** Thank you so much for all the questions.

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**JACOBSON:** Further committee questions? You started your testimony by saying you were a little bit conflicted as what your position is on. I think you're pretty clearly a proponent [INAUDIBLE].

**JILL EDMUNDSON:** Thank you so much. I appreciate--

**JACOBSON:** Thank you for your testimony.

**JILL EDMUNDSON:** --you all. Thank you.

**JACOBSON:** Further proponents? Welcome.

**ADAM WIBLISHOUSER:** Hi. My name is Adam Wiblishouser, A-d-a-m W-i-b-l-i-s-h-o-u-s-e-r. The reason I'm here as a proponent is because my 16-year-old son had Snapchat, used to have Snapchat, and then he got in trouble with it. Somebody, an adult, that he found on Snapchat sold him some marijuana. I found it. He got in trouble. And guess what? I found that he used Snapchat to get it. So Snapchat was no longer allowed in our house. In fact, I took measures to block Snapchat. So anytime one of my kids tries to download an app, now I get an alert and I have to either approve it or deny it, and any type of act like that is pretty much a given it's going to be denied. The rest of my kids don't even try anymore. My son later, when he was 16, went to Walmart and purchased a phone without my knowledge or consent. He used that phone to download Snapchat. Once again, he encountered a drug dealer where he thought he was buying some Percocet pills. They weren't Percocet pills. They were Fentanyl. He took one of them, 20 minutes later, he was dead. Two, three hours later, when I woke up, and I went downstairs to check on him, I found him in my home. Snapchat has known this has been going on for quite some time. The handout that I passed out is an excerpt, an excerpt from the lawsuit that I have against Snapchat. I've learned quite a bit about Snapchat, and I happened to write some code on my own, certainly not to these guys' level, but I, I know enough about it to know what I'm talking about. They know this is happening. And if we-- you or I were to download Snapchat right now, we're going to see a pretty mediocre content with what we see in our content. These kids are seeing something completely different. Since his death, and I started kind of learning about this stuff, I've asked teenagers, hey, can I see your Snapchat? I had one 16-year-old girl, not only show me the stuff that was coming up in her feed, which was completely inappropriate, she was able to pull up a map and show me where probably at least 10 other teenage girls' precise locations. That's dangerous, because if she could do it, what's to stop me from doing it? Even if, even if there's, like, some sort of restriction on minors, what's to stop me

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from logging into Snapchat and saying, yep, I'm 14 and I want to know the location of all these girls? Snapchat, the code is easy. If they can write code that can track down each kid and they can see what you're looking at so that your feed comes up to, to the stuff that interests you like drugs, and that's all you're seeing in your feed, they can come up with an algorithm that can detect if you're a minor or not. I mean, they have facial recognition now that can tell your age. So we're not restricting anybody's First Amendment rights, but had I had the parental control I should have had, he might still be alive. And, yeah, I definitely take-- social media deserves a large part of the blame in his death.

**JACOBSON:** Thank you for your testimony. Questions from committee?  
Senator Hardin.

**ADAM WIBLISHOUSER:** Yes, sir.

**HARDIN:** If I have the right history on Snapchat, can I get any drug that I want delivered to me anywhere?

**ADAM WIBLISHOUSER:** Most likely, yes.

**HARDIN:** Can I find a prostitute anywhere?

**ADAM WIBLISHOUSER:** Yes.

**HARDIN:** Can I hire a hitman anywhere?

**ADAM WIBLISHOUSER:** Potentially.

**HARDIN:** So the things I just described, 8 years ago, it required the dark web and Tumblr and Tor to find those things which are now on a regular web.

**ADAM WIBLISHOUSER:** Yeah, that's correct. And--

**HARDIN:** It's not just experts, so to speak, who do it. It's algorithms.

**ADAM WIBLISHOUSER:** It's the algorithms. Yep, it's the algorithms. Snapchat itself boasts that they have 75% of all children worldwide as their customers, so they know what they're doing. My son, A.J., this wasn't the first one for this to happen to, and I guarantee you it's not the last. It's still happening now. So, yes. And I feel very, very strongly that there should be protections in place to protect our children against these algorithms.

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**HARDIN:** Such as?

**ADAM WIBLISHOUSER:** Such as, like I said previously, like facial recognition. You can kind of determine the age of somebody, possibly ask for ID, maybe a parental notification. There's, there's tons of ways, creative ideas that these guys can come up with to regulate that. And Snapchat can tell that people are selling drugs on their platform. Why do they allow that and why should that be allowed?

**HARDIN:** I'm sorry for your loss.

**ADAM WIBLISHOUSER:** Thank you.

**JACOBSON:** Other committee questions? I would echo Senator Hardin's comments. I'm really sorry for your loss and thank you for being willing to come and testify with this committee today.

**ADAM WIBLISHOUSER:** Thank you for hearing me out.

**JACOBSON:** Further proponents? Welcome.

**NATE GRASZ:** Thank you. Good afternoon, Chairman Jacobson and members of the committee. My name is Nate Grasz, N-a-t-e G-r-a-s-z. I'm the executive director for Nebraska Family Alliance. This is the 10th legislative session I've been a part of, and I think this is the first time I've testified before the Banking Committee. But we're here today in support of LB504 on behalf of the thousands of parents and families we represent, because children and teenagers are dying from social media. And this is not an exaggeration. Families are facing historically unique challenges due to the rapid rise and lack of control over social media. Suicide is now the second leading cause of death among 15- to 19-year-olds. Between 2007 and 2021, youth suicide increased 62%. And for the first time in 15 years, the mortality rate for zero to 19-year-olds increased for consecutive years. Teenagers and children are more depressed and anxious than ever before. And we now live in a country where 11-year-old girls are committing suicide. In 2021, the Wall Street Journal reported that nearly 3 in 5 teenage girls felt persistent sadness. And 1 in 3 girls seriously considered attempting suicide. Many of these problems trace back to the same thing. The root design of social media platforms. We have to understand that social media is not a traditional public forum. This is a predatory industry similar to casinos and big tobacco that preys on human vulnerabilities, especially those of children in order to maximize profits by extracting as much time, attention, and data as possible. They're not looking out for a, for a user's well-being.

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Their products are designed to be maximally addictive. And as a result, our kids' brains are literally being rewired by social media. There are not only ample mental health concerns, but also safety concerns. Studies have found that 32% of teens online have been contacted by a complete stranger, 30% have gone to meet a stranger in real life, 20% have received unwanted sexual solicitation, and only 25% are willing to tell their parents about it. Parents are begging for help. We are failing a generation of kids and states have a compelling interest to protect, to protect our children and to empower parents to do the same. LB504 provides commonsense standards that can help restore child safety and family health by giving parents real tools to monitor their child's safety online and require design features that prevent compulsive use of social media. Doing nothing isn't working. It's time that we find ways to better protect our kids in Nebraska, and we respectfully urge the committee to advance LB504. Thank you.

**JACOBSON:** Thank you for your testimony. Questions from the committee? All right, seeing none, thank-- Senator Hardin.

**HARDIN:** Just one of your stats, did you say 3 in 10 kids actually go meet somebody?

**NATE GRASZ:** Yes, of-- 32% of teenagers have been contacted by a stranger online and 30% have gone to meet a stranger in real life.

**HARDIN:** OK. Thank you.

**JACOBSON:** Other questions? Senator Dungan.

**DUNGAN:** Thank you, Chair Jacobson. Thank you for being here today. I apologize that I feel like I'm pushing back on some people. I, I don't mean to, but I just have some concerns.

**NATE GRASZ:** Sure.

**DUNGAN:** I understand the issues that we have with social media and that these can sometimes present negative situations. I hear that. Is it also fair to say that social media can provide an outlet and a sense of community for individuals who find themselves in marginalized populations who don't have a safe place to go?

**NATE GRASZ:** Yeah, so, again-- thank you for the, the question, Senator. I appreciate the question. I think what we're saying and what Senator Bosn and proponents are saying is that we can do better than, than the current environment and that states have an interest in

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providing better regulation and oversight and essentially what has been the Wild West online. And so if, if there are, you know, benefits of, of social media or online apps, they're being dramatically, dramatically outweighed by the, the negative impacts. And so there are things that we can do as such as in LB504. We believe it's past time to implement some of those standards and safeguards to better protect kids.

**DUNGAN:** And that all makes sense. I guess, I just continue to remain concerned that this could ultimately lead to certain social medias going dark and the social-- here in Nebraska, and some of the social medias provide important, vital lines of communication for people who don't always have that support in their everyday life. And so I just want to make sure we're not throw the baby out with the bathwater. But I agree that we can always come up with guardrails. And I just want to make sure we're, we're clear that there are those important things that happen on social media as well. So thank you for that. I appreciate it.

**NATE GRASZ:** Yeah. Sure. Yeah, Senator.

**JACOBSON:** Further questions from committee?

**HALLSTROM:** Would you envision a system and a process in which those benefits could be provided as set forth in LB504 and still provide benefit to the marginalized classes that Senator Dungan refers to?

**NATE GRASZ:** Well, I, I, I think so. And I think those, you know, those things exist. And, again, you know, LB504 is not preventing anyone from, from accessing social media. And as was talked about earlier, it's, it's completely content neutral. It's about putting really what are commonsense safeguards and protections in place that, quite frankly, parents are desperately asking for. They feel helpless and powerless a lot of times because right now the burden is all on them. And it's very difficult in a constantly changing and advancing online world to be able to fully track and know exactly what, what your own kids are encountering and having to deal with online. And so I think what Senator Bosn is doing with, with this bill, LB504, is really important because I don't think it's overreaching. It's simply saying there, there are some simple, commonsense things that we can do to better protect our kids because, quite frankly, we've, we've seen enough.

**HALLSTROM:** Thank you.

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**JACOBSON:** Other questions from committee? Seeing none, thank you for your testimony.

**NATE GRASZ:** Thank you.

**JACOBSON:** Further proponents? Welcome.

**MARION MINER:** Thank you. Good afternoon, Chairman Jacobson and members of the Banking, Commerce and Insurance Committee. Excuse me. My name is Marion Miner, M-a-r-i-o-n M-i-n-e-r, and I'm associate director for pro-life and Family policy at the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the gospel of life through engaging, educating and empowering public officials, Catholic laity, and the general public. The Conference supports LB504, which would require that any entity providing an online service reasonably likely to be accessed by minors must exercise reasonable care and enact measures to protect those minors from harm. The human person is fundamentally social and relational. Each of us is born into a world thick with relational ties that we need in order to fully develop. These relational ties, familial, cultural, social, and otherwise protect, guide, and influence us over our whole lives, but especially when we are young. They help us make sense of ourselves, of others, and of the world. The people with whom we have these ties teach us over time who we are and how to navigate the dangers, opportunities, and relationships of life with skill and attention. The online world is a largely unregulated environment, artificially free of familiar social ties and guidance, but it is full of other actors. Some of these actors intend to cause harm. Others have jobs that consist of pulling people into traps of addiction and emotional dependency on their products. These products are, in many cases, built on the mirage of curated identity creation that is only possible in an online world, but has consequences for a person's image of self and others that carry over into real life. Nearly all of us, younger people especially, spend a great deal of time online. It is formative. It forms us, for better or worse. Some of the time and the experiences of a child or adolescent can gain online are tremendously helpful. But this environment also carries with it a very high risk of serious harm in the development of a person's sense of self and in relationship with others. LB504 is an important step toward limiting these influence on-- influences on children and returning control to their parents who are best equipped to help them navigate it. For that reason, we ask your support for LB504. Thank you.

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**JACOBSON:** Thank you. Questions from the committee? All right, seeing none, thank you for your testimony.

**MARION MINER:** Thank you.

**JACOBSON:** Further proponents? Anyone else want-- would like to speak as a proponent? All right, if not, opponents?

**KOURI MARSHALL:** Good afternoon.

**JACOBSON:** Good afternoon. Evening, actually, it's close.

**KOURI MARSHALL:** Evening now. Good afternoon, Chairman and distinguished members of the committee. I'm Kouri Marshall, director of state and local public policy for the Central Region at-- excuse me, let me spell my name, K-o-u-r-i, Marshall, M-a-r-s-h-a-l-l like Thurgood Marshall. I am Kouri Marshall, director of state and local public policy for the Central Region at the Chamber of Progress. We are a tech industry coalition promoting technology's progressive future. And today I'm here to, to urge you to respectfully oppose LB504, which would-- which will degrade online services for all ages, compromise online privacy, and disproportionately harm at-risk youth in Nebraska. Let me also say that as a father to an 11-year-old son, my heart truly goes out to you and to the gentleman, the distinguished gentleman who lost his son. I could not imagine that pain. And as you all levy your decision on this bill, I heard someone say to you today, if you go in the direction that they didn't agree with, that you'd be evil. Whichever way that you decide, I think you're doing the best job that you can for Nebraskans. We recognize that the efforts of LB504 to address harm to minors. And we remain committed to advocating for policies that prioritize online safety for young people. However, we must also emphasize the importance of safeguarding fundamental rights such as freedom of speech and privacy. And we are concerned about the potential harm that this bill will cause to youth in Nebraska. And especially, as you pointed out, Senator Dungan, to marginalize youth to young people that look like me across this great state. As written, LB504 requires covered online services to verify the identity and ages of all users, a tremendous encroachment of individual privacy. And, finally, I know that we don't have much time here, I'd like to point out the concerns raised by a California federal judge, Beth Freeman, regarding this law. She pointed out and, quote, It's always interesting when I read the legislative history and see legislators saying we took this from the United Kingdom. But here's the key difference. The UK does not have the First Amendment. And in America, we do. And that is a fundamental right worth protecting. This law has

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been challenged in a number of states: Florida, Utah, California, as I just noted. And, recently, I heard someone testify that the same law has been moved forward in Maryland. However, that law recently is facing legal challenges as well. And I'd urge you to take that into consideration as you decide how to move forward with this law. And for all these reasons, we urge you to oppose LB504. I'm happy to answer any questions.

**JACOBSON:** Questions from the committee? Senator Hardin.

**HARDIN:** Legal challenges are not the same as decisions, are they? They're not the same as verdicts.

**KOURI MARSHALL:** There are, there are some verdicts that have reversed this law in other states.

**HARDIN:** OK. Where has that happened?

**KOURI MARSHALL:** California.

**HARDIN:** California? OK. It's good to be like California. Tell me this. What does your industry intend to do about the track record for kids' safety?

**KOURI MARSHALL:** You know, as, as a dad, as I just mentioned, and as I think that there are a number of things that can be done and a lot of these companies have already taken steps to protect the well-being of young people. I think there are, there are bills like the ones we see out of Florida and some that we've seen in Virginia that are bringing parents into the process of being involved with the everyday life of young people on social media so that they're more protected.

**HARDIN:** OK. I, I can appreciate that state governments are taking those steps. I'm curious, is the industry taking any responsibility for it apart from the states requiring it through laws?

**KOURI MARSHALL:** Yes. There, there have been a number of steps taken by Instagram, for example. They just rolled out a new policy to protect folks that are under 17 years old. And I'm happy to share an additional, additional list of resources on what industry has done to protect minors online.

**HARDIN:** I would like to see that.

**KOURI MARSHALL:** Yes, sir.

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**HARDIN:** Thank you.

**JACOBSON:** Further questions from the committee? Yes, Senator Hallstrom.

**HALLSTROM:** Could you just clarify briefly, I, I understood that California passed a law. It was challenged, and then they came back and changed the law to address some of the content-based constitutional concerns. Is, is that where we sit now in, in the face of a second law being passed, that it's being challenged again or can you clarify that?

**KOURI MARSHALL:** Yes, the California law, you know, that, that judges are concerned about the First Amendment, as I just indicated, and Judge Freeman's response that you may all know that this law was adopted from principles outlined in the United Kingdom, and that is a country, as I just noted, that does not have the First Amendment. And in America, we do. And I think the questions we, we have to ask ourselves, you know, when my son right now, he doesn't really have much freedom of speech because he doesn't have many words. But, you know, because a young person, we consider them to be minors, do they have, do they have, do they have the rights to freedom of speech? And the Supreme Court has consistently said that just because someone is a minor does not mean that we can withdraw their freedom of speech. They, in fact, do support minors having their freedom of expression.

**HALLSTROM:** My question was, were those criticisms to the first law passed in California or the second law?

**KOURI MARSHALL:** The-- every law that California has passed has criticisms applied to. And I'm happy to share additional resources with you, with you as well, Senator.

**HALLSTROM:** And I, and I would note that the children of these two witnesses don't have any freedom of speech anymore.

**KOURI MARSHALL:** And as I said at the onset of this hearing, my heart truly goes out to them. As a father of an 11-year-old who had to recently take to the hospital for a Norovirus and to see his young body rocking with sickness,--

**HALLSTROM:** Thank you.

**KOURI MARSHALL:** --my heart goes out to those families.

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**JACOBSON:** Further committee questions? All right, seeing none, thank you for your testimony.

**KOURI MARSHALL:** Thank you, all. And I'll follow up with your offices.

**HALLSTROM:** Thank you.

**KOURI MARSHALL:** Thank you.

**JACOBSON:** Further opponents? I think you're good.

**AMY BOS:** Good afternoon, members of the committee. My name is Amy Bos. I'm the director of state and federal affairs at NetChoice, a trade association dedicated towards free expression and free enterprise online. We share the goal of protecting kids. Nebraska has an opportunity here to avoid the pitfalls that we have seen.

**JACOBSON:** Did you spell your name?

**AMY BOS:** I did not. Amy Bos, B-o-s. Nebraska has the opportunity to avoid the pitfalls, the constitutional pitfalls we have seen in other states. As we say, an unconstitutional law protects no one. Let me say that again. An unconstitutional law protects no one. Time and time again, states have headed down this path only for the bill to be enjoined and never taking effect. LB504 is similar to California's speech code, speech code, which federal courts have enjoined due to serious First Amendment violations. We are concerned with the definitions as, as was previously, previously mentioned. By covering any service reasonably likely to be accessed by minors, this bill would regulate most of the Internet. The Supreme Court has repeatedly rejected such sweeping attempts to restrict online speech. Yet, this legislation would force websites to limit speech for all users based on potential minor access. The bill's standards around preventing severe psychological harm and emotional distress provide no real guidance to businesses, while granting regulators' discretion to target speech they dislike. With penalties of \$50,000 per violation, services will inevi-- inevitably over restrict legal speech to avoid liability. The Ninth Circuit held that near identical provisions in California's speech code unconstitutionally deputized covered businesses into serving censors for the state. This followed similar decisions nationwide, where courts have recognized these laws violate bedrock First Amendment principles. The bill's content moderation reports and restrictions on recommendation systems directly conflict, conflict with Supreme Court precedent, protecting websites rights to display and curate content. In NetChoice v. Moody, the court

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explicitly protected these editorial functions as core First Amendment rights. I'm not here to say we can't do anything. Better solutions exist. Parents deserve and need to have access to robust controls through device settings, browsers, and ISPs. Just like we don't hand the keys and say, here, go drive, we shouldn't give free rein to the Internet. We need digital literacy and education. We need to guide young people on how to safely use the Internet. There's also federal law which provides targeted protections through COPPA. These tools achieve the state's goal without restricting speech. Again, these speech codes, speech codes are likely to fail families as they will likely be held unconstitutional. We do want to work with committee members to address areas where we can improve online safety. It's a conversation we're having around the country. We thank you for your time. I thank the sponsor's willingness to work with industry to find solutions. Thank you for the opportunity to testify and I'm happy to answer any questions.

**JACOBSON:** Thank you. Questions from the committee? All right, seeing none, thank you.

**AMY BOS:** Thank you.

**JACOBSON:** Further opponents?

**ANTON van SEVENTER:** Thank you, Chair Jacobson and members of the committee. My name is Anton van Seventer, A-n-t-o-n v-a-n S-e-v-e-n-t-e-r. And thank you for the opportunity to testify today in opposition to LB504. I'm counsel for privacy and data policy with Software and Information Industry Association or SIIA. And by way of background, our more than 380 members are committed to fostering the free flow of information to enhance not only business opportunities, but also consumer experiences. So I want to be clear up front about this. We are not only in, in favor of generic sense for improved online protections, but have actively advocated for them in the past. Unfortunately, LB504's specific provisions, we do not believe they effectively accomplish this. They do, unfortunately, create unnecessary constitutional infirmities. As many have said, threaten a degree of free speech and Nebraska-based innovation, and they risk also hamstringing local businesses while potentially silencing Nebraska residents and even parents. So, first, we do believe the bill-- the provisions in LB504 restrict, restrict kids' access to online speech run demonstrably afoul in the First Amendment. And this isn't just because of a general concern about content moderation, but because the bill includes vague harms, some of which are compulsive usage, severe psychological harm, and emotional distress. And what

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these do, because they are so incredibly vague, is they will enable bureaucrats to censor or otherwise target speech with which they disagree. This is not the only concern from a constitutional perspective either. We are also concerned about the impingement on editorial decisions. As, as has been said, there is a concern given the outcome of the NetChoice v. Moody decision, that, that is a further infringement on First Amendment protected speech. And it's unnecessary, counterproductive, but most of all, impractical to protect kids this way by restricting them from receiving online speech in a way that serves only to complicate the positive elements of LB504's implementation by opening the door to inevitable and, in this case, likely successful court challenges. Second, there's the policy side. The bill imposing stringent-- imposes stringent content moderation and data restrictions, which is likely to censor legitimate content, chilling Nebraska-based businesses free expression online. And the part that hasn't been discussed is, frankly, also kids' access to valuable educational and networking materials. The requirements to AI interaction, whole cloth, restrict profiling, even to curate age-appropriate experiences by these tech companies and prohibit personalization would severely hinder a company's ability to provide appropriately tailored content and services. It would disproportionately harm small businesses and also likely silence key voices of Nebraska residents opening the door even further to a different problem we've seen online, which is viewpoint discrimination. But on the other hand, we don't believe there's no solution to protecting kids online, especially regarding AI, SIIA supports requiring tech companies to implement procedures that incorporate transparency in responsible disclosures to families and schools regarding their AI systems. And there's more to better address the risk of minors interactions with themselves with the AI tools, we support requirements guaranteeing the ethical development of use of purpose-driven AI. This includes requirements like bias testing, review boards, and other mechanisms like requiring a human in the loop. We've actually developed alongside industry a detailed set of guidance about measures that would help to empower parents and keep kids safer online without raising First Amendment concerns, which I'm happy to share with any offices that are interested. So protecting minors on the Internet is truly nothing if not a noble objective, as we've heard. We simply believe that LB504 goes about it in ways that would harm Nebraska's economy, often infringe on kids' personal privacy and the receipt of information and throw unintended barriers to innovation. Thank you for your time and I welcome any comments you may have.

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**JACOBSON:** Questions from the committee? Senator Hardin.

**HARDIN:** You mentioned a couple of things towards the end of what you presented. Thank you for being here. How do you suggest parents go about the business right now of curbing what it is their kid-- their kids are exposed to? How do, how do parents do that?

**ANTON van SEVENTER:** I would say the three most powerful ways that parents can do that right now, there's been some discussion about how kids can get around ISPs in schools and, and certainly appreciate that. But there are also device settings, browser settings, and application tools and various applications that would permit that. And certainly we support continued development of those tools on behalf of the applications and providing that parents and also custodians of, of kids outside of parents like schools who would be responsible for that type of thing.

**HARDIN:** How does a parent go about coming up with those solutions, particularly if they are not savvy in the software world?

**ANTON van SEVENTER:** So we think that that's why disclosure was such a big part of what we came up with in terms of our, our principles and guidance here. Because disclosure of what parents and schools are capable of doing is if, if you don't understand what you can do and how you can protect your kids, then the, the tools are useless to you. OK. So that's, that's why requiring tech companies to disclose not only what they're doing with AI, but how those can be, how those can be protected is so critical to this conversation.

**HARDIN:** And so-- may I?

**JACOBSON:** Yes, go ahead.

**HARDIN:** So do-- are children expected to go to their parents each time they see a disclosure and explain it to them or how are these disclosures worded, are they worded so that an 11-year-old or 9-year-old understands the potential pitfalls, what might be on the other side?

**ANTON van SEVENTER:** So the, the disclosure should be made to the, to the whole family and, and the schools, not just the kids. That-- yeah, that would not be necessarily reasonable for a 9 or an 11-year-old to understand that kind of, that kind of thing.

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**HARDIN:** So you would advocate for parents to be heavily involved as well in surfing, whether it's here or whatever screen is in front of them?

**ANTON van SEVENTER:** Yes, we, we do, and we have.

**HARDIN:** I see. Thank you.

**JACOBSON:** Further questions? Senator Hallstrom.

**HALLSTROM:** In any of the states that have tried to address this issue or this problem, have you come forward with any suggestions on how to address the constitutional infirmities?

**ANTON van SEVENTER:** So, so the constitutional infirmities primarily stem from-- there, there's sort of three prongs that, that, that, that, that come up in bills such as this. So there's the problem of requiring assessments of content, especially when those assessments are vague, right? And so that, that creates the problem of the bureaucrats being able to use their own interpretations. And that is the opposite of content neutral, right? That's a content assessment of whether it creates compulsive usage or severe psychological harm or emotional distress. There's also the problem of a compelling speech about editorial decisions as well as content moderation practices. That's the general content moderation concern. But also, you know, algorithms, content moderation, editorial decisions, from a legal perspective, these are often one in the same because algorithms are simply used to make editorial decisions. So the NetChoice v. Moody decision guaranteed that, that algorithms were protected speech because prior decisions had guaranteed that editorial decisions were protected speech. And, lastly, the dissemination of speech based on its perceived impact on users, which obviously intersects with the first concern as well. But those are the, those are the concerns that we have from the perspective of kids receiving online speech. And the solution to avoid the infirmities would then be to write a bill, much of which in LB504 doesn't do this. So there would be certainly elements of LB504 that could be in a, a constitutional bill from our perspective, but that would not prevent kids from receiving protected online speech because this has just, just been such well established.

**HALLSTROM:** Have you made any suggestions as, as to how to address the assessment vagaries?

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**ANTON van SEVENTER:** We've worked a bit in California with, with folks in California. Can, certainly-- I'll follow up on some of the specific language that we might propose if that would be helpful.

**HALLSTROM:** Thank you.

**ANTON van SEVENTER:** Yeah.

**JACOBSON:** Other questions from the committee? Yes.

**WORDEKEMPER:** Thank you for being here. And I've, I've sat here and listened to a lot of testimony and we talked about the First Amendment, freedom of speech. And, I guess, my parents were probably guilty of restraining my free speech. And I was-- also for my kids when they said, if you don't have anything nice to say, don't say anything at all. And, and I think that probably was more geared to my safety of not having a black eye, a bloody nose, or whatever. So I think this is the same thing that what we're trying to restrict here isn't necessarily the freedom of speech, but to protect our kids. So if you can comment, that's fine. If not, that's just a statement.

**ANTON van SEVENTER:** Sure. And I'd, I'd just say that, you know, you're, you're certainly as a parent and your parents were restricting. Restricting your speech is, is very different from the government preventing someone from giving a receiving speech, we would argue, under, under the First Amendment. So that's, that's the only thing I'd say to that.

**JACOBSON:** Other questions? Yes, Senator Bostar.

**BOSTAR:** Thank you, Chair. Thank you, sir, for being here. How confident are you that this bill is unconstitutional?

**ANTON van SEVENTER:** We're quite confident that the bill is unconstitutional simply because we've seen materially similar provisions in California being struck down in the Ninth Circuit and also not-- and also beyond those provisions that are kind of the more generally understood infirmities of this bill. There are other decisions in past Supreme Court jurisprudence that takes issue with other parts of the bill, like the editorial disclosures and the compelling speech, for example. So there's several angles that I think could be problematic here.

**BOSTAR:** So very confident. Well, so-- well, thank you. I guess then, my, my question is did you have to travel to come here?

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**ANTON van SEVENTER:** I did.

**BOSTAR:** Where did-- do you mind sharing where you came from generally?

**ANTON van SEVENTER:** I came out from Washington, D.C.

**BOSTAR:** OK. So I, I guess what I'm trying to figure out is if we're on the verge of considering passage of something that is-- that you have a high degree of confidence is unconstitutional, why make the trip?

**ANTON van SEVENTER:** Oh, because part of, part of our concern is that we, we actually do want to see these bills be successful. And there are elements of LB504 that we earnestly believe could be implemented without these constitutional infirmities. But there will be challenges if passed in its current form, and they will likely be successful. And then it's back to the drawing board all over again.

**BOSTAR:** Understood. I just-- it just seems easier to just file a lawsuit from D.C. after the bill passes if that was the case. I mean, I think this is-- the unconstitutional arguments-- I mean, at this moment-- has, has any court in our circuit determined that these provisions are unconstitutional?

**ANTON van SEVENTER:** I don't believe, I'd have to check on this, so not 100% sure, but I, I don't believe there is any court in this circuit that's actually taken up this particular set of issues.

**BOSTAR:** Maybe worth the test, then.

**ANTON van SEVENTER:** Well, it's-- some of these are also Supreme Court decisions. So there's that, that issue as well.

**BOSTAR:** Well, I just-- I, I just think-- well, look, here's the thing. I appreciate you and the others coming in to help us out. It seems like if it's obviously unconstitutional-- like I said, I mean, it kind of feels like maybe a little bit of a wasted trip, right, but. So that's, that's what I'm trying to balance here is the, the, the arguments seem to be based in the fact that we cannot do this. And so, obviously, if that's true, then there's, there's very little risk in us proceeding. The risk, of course, would be that if we proceed and are successful and the courts ultimately find that this, this legislation is acceptable. But you're confident that won't happen. Has your-- so the-- so as I try to, to wrap my head around this, this, this issue, right, you, you and others making-- taking a great deal of effort to come here and be here today to let us know that this bill is unconstitutional. So it would get struck down if we passed it. So,

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again, no risk to the industry then. The explanation being that you want to see better legislation happen, have you or your organization asked any other member of legislature to introduce legislation that is, is more in line with what you wanted?

**ANTON van SEVENTER:** So, so that would, that would be the sort of edits to the existing bill, such as in the California AADC, where the, where the edits were made to, to that bill. And I think that's, that's still an ongoing, ongoing issue and by no means has, has been, you know, sufficiently resolved. But I, I think our concern if I-- you know, I don't, I don't necessarily see it as it's, it's a better thing to go through protracted litigation and have, you know, years potentially of, of extra time where there's no, there's no protections because there's been an injunction handed down from a court as this is litigated and, and yet another circuit when it's already been decided either at the Supreme Court level or [INAUDIBLE].

**BOSTAR:** But there's no protections now.

**ANTON van SEVENTER:** Right. But if, if things were rethought then perhaps--

**BOSTAR:** But, but there was-- I'm also not seeing anything proactive coming from the industry to say this is the legislation, but there's no other bill that anyone's pointing to and saying this is the legislation we'd like to see. Just when prompted by legislation you don't like, you would like it changed. So it's-- I, I-- it's-- so then it's hard for me to imagine that the motivation is, is stemming from a desire to see Nebraska actively protected. Because I think if that was the case, then you would be sitting here as a proponent for some other bill that you helped draft and worked with, with introducer on and brought to us. But that doesn't seem like that's the case. So I'm just-- well, I thank you for, for being here to look out for us and ensuring that our legislation is in full accordance with constitutional provisions. That's generous. Thank you.

**JACOBSON:** Other committee questions? I would just say this is a follow-up to Senator Bostar's comments. I, I find it interesting that testifiers come in from out of state to tell us that this bill is unconstitutional, but yet do not bring any specific things in, in an amendment form to say here's how you can fix this bill to make it constitutional. Yet, we have a, a, a constitutional associate professor from the university here telling us we're good. I'm hearing someone with great experience in programming from Google saying we can make these changes. So, again, in the absence of a clear alternative,

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I don't think there's any two bills or laws that get passed that are going to be identical. They may have some attributes, but I'm a little bit with Senator Bostar, with the lack of some clear alternative, I think we're tired of waiting. OK. We're tired of waiting for the industry to self-correct, to take it upon themselves, they are all going to say we're taking steps, but they seem to be baby steps while we're losing kids. And I think that's where-- I think that's, as legislators, why we're frustrated because we're not seeing any tangible alternatives. So in fairness, I don't know whether you have a response to that or not, but that's my frustration.

**ANTON van SEVENTER:** Yeah. And I, I definitely hear you, the frustration and also the fact that not-- that you're never going to have two bills that are exactly the same. And that's part of why we didn't draft a model bill. And we did draft the principles and the ideas and the concepts behind what I, what I laid out. And, again, would be happy to share as far as what we worked with industry to implement as far as more robust principles on these types of things. So that, that would-- to clarify, that would be our, our proposal. And then would work on the details on any individual given piece of legislation to render it constitutional and all the other issues like that.

**JACOBSON:** Well, we, we don't plan to exec on the bill today, but it's possible that we will tomorrow. So if there's something specific that's tangible that the bill should be amended to fix, please get it to us.

**ANTON van SEVENTER:** Appreciate that.

**JACOBSON:** Thank you.

**ANTON van SEVENTER:** Thank you.

**JACOBSON:** All right. Further proponent-- or opponents? Welcome.

**DYLAN SEVERINO:** Thank you. Good afternoon, Chairman Jacobson and the Banking, Commerce and Insurance Committee. My name is Dylan Severino, D-y-l-a-n S-e-v-e-r-i-n-o, and I am policy counsel at the ACLU of Nebraska here in opposition to LB504. Child safety on the Internet is undoubtedly a huge issue and a noble goal. To start, we support the overall goal of LB504 protecting children from predatory practices, data harvesting, and dark patterns that are especially effective and especially loathsome when targeted at children. However, certain ways to tackle this problem are prohibited by the First Amendment. Section

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4 of this bill requires platforms to determine and censor content that may harm people. This is impermissible under the First Amendment, which does not allow the government to abridge the freedom of speech, nor does it allow the government to deputize private entities to abridge free speech on their behalf. This amendment is the bedrock of democracy and highly protected. Again, while the goal of Section 4 is admirable, it's the specific avenue of regulating content that's off limits. While regulating any content is usually off limits, even things that almost anybody would agree is harmful to people, LB504 puts regulations and enforcement in the hands of Nebraska Attorney General, a partisan office. Consider the ramifications of this, one Attorney General may decide that information on gender identity is harmful to people, while another may say that information on guns is harmful to people. With the threat of a lawsuit from the Attorney General, what's the platform going to do? They're going to hedge their bets and over censor and using AI to censor for them will only make it worse. No amount of censoring is typically allowed, but Section 4 will lead to a significant amount of censorship. Mental health resources, reporting about school shootings, war, climate change, suicide, guns, abortion, gender identity, politics, in general, and more could be considered harmful as the definition in Section 4 puts it, you know, anxiety inducing. The fact that LB504 allows all these topics to be uncensored when manually searched for them, doesn't matter when it comes to the First Amendment, any amount of censorship is still subjected to strict scrutiny. And for another thing, some people, whether advisable or not, get their news from social media. And if it's censored in the first place, they won't know what to manually search for to, to get their information. Additionally, while we appreciate the very broad definition of actual knowledge in this bill, we still worry that in order to cover their bases and avoiding a lawsuit, platforms will require age verification in the form of a driver's license or facial recognition to access their sites. This is a big issue when it comes to the First Amendment. It creates a barrier for people of all ages to access public forums meant for people of all ages. Again, the goal of this bill is good. The bill was written carefully. I can see that whoever drafted it has looked into the case law to try to make it a compliant with the First Amendment. And, in fact, if anything, this bill has made it more clear that legislating content to protect minors is simply impossible in practice. The time and effort would be much better spent into education and outreach so that families can protect themselves. Because Section 4 is prohibited by the First Amendment, we oppose LB504. However, we appreciate the goal of the bill and the effort to make it compliant.

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**JACOBSON:** Thank you.

**DYLAN SEVERINO:** I welcome any questions.

**JACOBSON:** Questions from the committee? Yes, Senator Bostar.

**BOSTAR:** Thank you, Chair. Thank you, sir, for being here.

**DYLAN SEVERINO:** Of course.

**BOSTAR:** So-- I mean, it's, it's similar testimony that the legislation is, is unconstitutional, although I will say you had further-- you had-- you didn't have as far to travel to come here.

**DYLAN SEVERINO:** A few blocks.

**BOSTAR:** So it's, it's, it's less peculiar, right, that, that you would come and deliver that message to us rather than people flying from all across the country just to come and tell us that the bill we want to pass won't do anything because it's unconstitutional. So I appreciate that. But also since you're-- I guess-- I, I, I thank you for saying that the goal is something that's supported. If you don't mind sharing and, and it's OK if, if you don't, but in your conversations with the introducer, were you, were you able to in-- I'm-- because there are specific provisions that are, are seen as in violation of, of existing case law, what did your conversations with the introducer look like, as I'm assuming, since you support the goal to try to rectify those or, or, or have different language that would accomplish this?

**DYLAN SEVERINO:** Yeah, that's a great question. Unfortunately, and I know it's a, a faux pas, I didn't have the chance to speak to the introducer on this matter beforehand. I apologize, but we would welcome if the introducer would like to speak with the ACLU of Nebraska and, and discuss this. We, we would welcome it either to me directly or any of us directly or, or reach out indirectly through Spike or something. We would welcome that conversation. I apologize we didn't do it beforehand.

**BOSTAR:** Got it. Well, thank you very much.

**JACOBSON:** Yes, Senator Hardin.

**HARDIN:** Thanks for being here.

**DYLAN SEVERINO:** Of course.

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**HARDIN:** You say while protecting children from online predatory practices is undoubtedly an important goal and you continue. Why is that an important goal?

**DYLAN SEVERINO:** Oh, because they're at the most risk of it. It's, it's-- I mean, tech companies will data harvest them for any bump to the bottom line or engagement that could be, you know, detrimental to their mental health. I mean, absolutely, we support child online safety.

**HARDIN:** OK.

**DYLAN SEVERINO:** It's just the-- this particular--

**HARDIN:** How, how exactly would the ACLU support child online safety in this context?

**DYLAN SEVERINO:** Yeah, a lot of the avenues that we work with are-- I mean, we, we do everything, policy, litigation, but also education and outreach. We'd love to see more education and outreach on how both children can educate themselves on the dangers of, of what's going on, on these websites or apps, but also how parents can help regulate and monitor some of this that isn't the government regulating and monitoring it for them, but rather what they can do with router settings, browser settings, app settings through phone providers who can block certain websites on any phone or essentially like turn off certain apps during certain hours. These would be, I think, the ideal way to do it. There were some suggestions of other things in the Ninth Circuit's opinion in the, in the California case. And I'm quoting here: The state could have easily employed less restrictive means to accomplish its protective goals, such as by incentivizing companies to offer voluntary content filters or application blockers, educating children and parents on the importance of using such tools and relying on existing criminal laws that prohibit related unlawful contact. I think for us, as the ACLU, we fit squarely in that second one for education and outreach.

**HARDIN:** And how have you been able to measure effectiveness in those endeavors?

**DYLAN SEVERINO:** We haven't-- we don't have, we don't have any data on it. And it's not typically our-- something that we practice regularly as a part of the ACLU, but we'd love to start if the introducer would like to reach out to us. We'd be happy to work on this bill.

**HARDIN:** Thanks for your time.

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**DYLAN SEVERINO:** Of course. Thank you.

**JACOBSON:** Further questions from committee? All right, seeing none, thank you.

**DYLAN SEVERINO:** Thank you very much.

**JACOBSON:** Further opponent testimony? Anyone else wishing to speak in the opposition? If not, any neutral testifiers? Neutral testifiers? OK, seeing none, I'm going to-- I would mention that there were 38 proponent letters, 4 opponent letters, 1 neutral testifier. And we did not receive any written ADA testimony regarding this. With that, Senator Bosn, you're welcome to close.

**BOSN:** Thank you, Chairman Jacobson and members of the committee. And I recognize that for you guys, this is a long day. In Judiciary, we're just getting started usually on our second bill. So forgive me.

**von GILLERN:** Wow.

**BOSN:** I will--

**JACOBSON:** We're sufficiently guilty.

**BOSN:** No, no, you're a well-run committee. I'm going to go over a few things and then answer any questions because I'm hoping that you give me lots of questions to go over with you. You heard from a number of individuals today, each and every one of the proponents before you came on their own free will, came in here and told you stories from a variety of different perspectives. This legislation was presented to me over a year ago when I was at the NCSL conference in Indianapolis. I went to a-- one of the lessons was on technology and social media and its impact on kids, and it was profound. I made a connection there with an individual named Elizabeth Galicia, and I have been in constant contact with her ever since. We have worked on this when it was the original bill that was in California. I thought it was great. I'll be honest. It was struck down as unconstitutional for those First Amendment issues that we've talked about ad nauseam today. They fixed those issues. And I can tell you that those issues are fixed in the language that you're looking at today. We took out the concerns for First Amendment free speech issues. And, specifically, I will ask everyone to look at Section 4, which we heard a lot about how that's going to be content moderation. Subsection (3) specifically, "Nothing in this section shall be construed to require a covered online service to prevent or preclude any user from deliberately and independently searching for or specifically requesting content." I don't know how

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much more we can protect the content by fixing the design, but that's what this bill does. It's in the title, it's throughout the language. But if they have those suggestions, this will be the first I've heard of it. I will submit to you that they haven't proposed those suggestions or those solutions to me or you or any of the other 48 senators in the Legislature because they don't want a solution. Full stop. We haven't seen them yet and we aren't going to. A couple of the testifiers that I would like to address, specifically the Supreme case-- Court case that was cited by Amy Bos was regarding the right to curate a news feed. That's not what we're dealing with here. So we're dealing with the design of these social media programs and how they are designed. Not the right to do feeds or, or your right to view them. Nothing in this prevents you from being able to do this. We didn't hear from any of these opponents, which I believe was intentional. They declined to address the engagement-based algorithms, which I think was because they know that that's what this bill addresses and that there aren't those constitutional amendment issues with that portion of it. Then I would go through-- Senator Dungan, I, I actually appreciated your questions as it relates to some of the marginalized communities and kids who have positive experiences as a result of online services, because that is something that was specifically addressed in all of the conversations that I've had with Reset Tech over the last year. This bill, as one of the testifiers spoke of, did pass in the United Kingdom. They don't have First Amendment protections, but they still have social media programs there. So it didn't shut any of them down. Kids are still able to use them appropriately there. And they weren't such a burden that those companies couldn't make a financial profit while still accommodating legislation similar to this. I do think there are some positive impacts from social media and I'd be lying to you all if I said there wasn't. But having those positive experiences for kids doesn't mean that we can't also put in some guardrails to make sure that we're protecting our kids as much as is possible. I also want to thank the parents who came in and told their personal stories because I think that's really hard to do. And so I'm grateful for that. Yeah. So I, I guess I kind of talked about that. Just for-- to follow up on my point about the United Kingdom, they've had that law, this law in the United Kingdom since 2021, and they still have several social media programs there. Then we-- specifically, with some of the impact comments that were made on-- there was a comment made about small businesses and the impact that this legislation would have on those small businesses. And my response to that. This doesn't impose any responsibility on small pop-- mom-and-pop shops or small businesses because they are not in the business of extracting, buying, or selling data for their

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programs. So this, you know, I call it fearmongering, sort of make you scared that you're going to shut down all these businesses in Nebraska as a result of this. I, I don't think that that's actually true. I think that's, quite frankly, misleading. I also-- there was a quote about hurting the user's online experience. I, I'm a little baffled by that, quite frankly. And, overall, I just-- I would ask you-- there was also a number of-- and I know I talked about this in my opening, online comments that were submitted that I think are really quite profound. There are a number of individuals from a broad spectrum. We had someone from, you know, John Skretta from LPS wrote a great letter outlining why they're supportive of this. I can tell you I've spoken with pediatric psychiatrists, one of whom is my brother who works at Boys Town in the inpatient unit at Boys Town. And he has expressed to me time and time again something needs to happen. These kids are facing these problems every single day. My own pediatrician, oh, this is a great bill. This is a great idea. Somebody has to do this while still protecting First Amendment rights. That's what this bill is designed to do. There is no content moderation in this bill. I don't know how else to say that. So I'll close on that and be glad to answer any questions.

**JACOBSON:** Thank you. I, I guess I've got one question. You've mentioned several times that the-- that you, you feel like this is a quality bill coming out. We've had a number of negative testifiers who have come in here and raised various issues. How many of those reached out to you since the bill was introduced to discuss with you ways to fix it?

**BOSN:** Well, prior to today?

**JACOBSON:** Yes.

**BOSN:** I can think of two that had things they wanted to discuss with us. But if I'm mistaken on that, I'm, I'm-- it's inadvertent. But other than that, it was today. Hey, we've got this concern.

**JACOBSON:** So you wouldn't see this as another, gee, we'd like to fix it, but, unfortunately, we don't have any solutions for you today. Bring it back next year and we'll be back next year at the same, same time.

**BOSN:** Almost certainly.

**JACOBSON:** All right. Thank you. Other questions from committee? Let's start with Senator Dungan.

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**DUNGAN:** Thank you, Chair Jacobson. And thank you, Senator Bosn. I appreciate you answering some of the questions that I had. You've actually answered all of the questions I had, so I appreciate that. I just want to make sure that we are clear as a committee, because I think Senator Hallstrom got to this earlier and I didn't have a clear answer from the testifiers about the current status of the California law.

**BOSN:** Yep. Thank you.

**DUNGAN:** So we're not California, obviously, and I know it's not necessarily binding on us, but my understanding is a California law was put in place. It was-- a lawsuit was filed. The court found it unconstitutional. A new law, which I think doing some cursory research here is Senate Bill 979-- 976 that makes small changes, then was passed. Another lawsuit was filed. They requested an injunction, meaning they wanted it to not go into effect starting here January 1 of this year. The court denied that injunction on some parts and it granted it on others, meaning some of the law went into effect. Most of it went into effect. Some of it did not go into effect. But all of that is just pending further litigation. They have not made a final decision about the constitutionality of the new statute. Is that correct?

**BOSN:** Yes. But I will tell you that the language in my bill is an improvement upon the language that is-- well, it's definitely not the language that was struck down initially.

**DUNGAN:** Right.

**BOSN:** The parts that were-- went into effect are in this. The parts that they said no are not in this. Does that answer your question?

**DUNGAN:** Absolutely. I just want to be clear. The language in our bill that we're addressing here today seeks to answer some of the questions raised by the unconstitutional finding of that first California statute. But there has not been a final decision about whether that new law is, in fact, constitutional or not. And the court, I think, goes out of their way in their conclusion, saying they made this decision on an abbreviated schedule, further arguments are going to have to happen. So I just want to be clear that there is not a final decision about whether or not the new language, even in California, is entirely constitutional or not. Is that correct?

**BOSN:** True.

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**DUNGAN:** OK. I just wanted to make sure, because I think we all were kind of wondering where the status of that case was.

**BOSN:** Right. And if I misstated that, my apologies.

**DUNGAN:** You did not at all. I think--

**BOSN:** OK.

**DUNGAN:** --there's just a lot of testimony about the California law, and I think that just gets a little bit conflated when there's multiple things floating around. But thank you, that does clear that up. I appreciate it.

**JACOBSON:** Senator Hardin.

**HARDIN:** I'm not a lawyer, but I stayed in a Holiday Express last night. Two-part question.

**BOSN:** Oh, good.

**HARDIN:** How is the involvement with these algorithms on the part of the online process of these platforms not exploitation of some of the most vulnerable in society? Hold that thought. In other words, how is this not sabotaging kids for profit?

**BOSN:** OK, so that's your first question?

**HARDIN:** That was the two of them.

**BOSN:** OK.

**HARDIN:** It was a twofer.

**BOSN:** Sorry. No, no, you're good. I would-- so one of the testifiers who I brought here today before we came in here said algorithms themselves are censorship because they're deciding what you get to see next and what you don't get to see next. And I've never had anyone explain it to me that way. But it is, I believe, true. So I have no basis for saying that other than my own personal experience, they decide that I get to see the next video.

**HARDIN:** And they've made billions of dollars doing it.

**BOSN:** Yeah, they're always happy to do that, so. But they-- to say they are exploiting children would say that they're always intending to do that. And I don't, I don't actually think that's true. I mean,

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there are some experiences that you can have on social media and on Facebook and YouTube where you're watching, I think of Army Fail, right, where the, the-- you know, the kids are doing kind of slapstick funny things. And you watch the next one and they are funny and it doesn't take you down that rabbit hole. But to some of our testifiers' point, when my daughter looks up a video on how to make a healthy smoothie and four videos later, she's learning skills on how to be a fantastic, secretive bulimic. We have a problem. And that's what this bill is addressing, is fixing that problem. And so to that end, I, I think they are occasionally exploitative.

**HARDIN:** And hence my choice of the word "sabotage."

**BOSN:** I guess, I don't remember in what context, but maybe.

**HARDIN:** We intentionally break something.

**BOSN:** Yeah. Yeah.

**HARDIN:** Thanks for bringing the bill.

**BOSN:** You bet.

**JACOBSON:** Senator Riepe.

**RIEPE:** Thank you, Chairman. And thank you for being here. I know we've had some discussion today about California. I believe that's the Eighth Circuit. Very liberal. And Nebraska's not in the Eighth Circuit. We're in the, I believe, what is it, the Fourth? And our road to the Supreme Court would be a much easier path than trying to go through California. The other question or comment, I guess, that I have is the governor has signed on this as a big and important piece of action for him. My question to you would be, have you considered an emergency clause to bring this into force on his signature?

**BOSN:** I have not, but I am certainly open to that as an excellent amendment. But just for clarification, California is the Ninth Circuit Court of Appeals.

**RIEPE:** I was close.

**BOSN:** And I will tell you, when this passed, not once, but twice in the California House and Senate, it was with resounding bipartisan support. Same for Maryland. I also have a list of all the other states that are considering this legislation here this exact session. So, I mean, the states include Vermont, Illinois, South Carolina, Michigan,

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Minnesota, not necessarily known for their conservative backgrounds, but states that are saying enough is enough. And I'd like to be one of them.

**RIEPE:** Amen.

**JACOBSON:** Other committee questions?

**von GILLERN:** Real quick.

**JACOBSON:** Oh, yes.

**von GILLERN:** Sorry.

**JACOBSON:** Senator von Gillern.

**von GILLERN:** Didn't want to get left out. To your point about the other states and, and being bipartisan, so on. You said the body of the bill came from NCSL. How would you describe NCSL?

**BOSN:** Well, an excellent organization.

**von GILLERN:** Would you describe them as leaning in one political direction or another?

**BOSN:** They, they-- I have heard such things. Yes. Yes.

**von GILLERN:** Would you feel that anything that they brought you would, would certainly have bipartisan support?

**BOSN:** Yeah, and-- yes, to answer that. But this is also been vetted by a number of individuals from both sides of the aisle, including First Amendment scholars. And so I, I think some of the concerns are--

**von GILLERN:** You wouldn't, you wouldn't describe NCSL as a radical right-wing conservative group, likely?

**BOSN:** I have never considered it that, no.

**von GILLERN:** Thank you. Appreciate it.

**JACOBSON:** Any other questions? Yes, Senator Hallstrom.

**HALLSTROM:** Would it be safe to assume that you don't want to be slow walked on this issue and you'd like the committee to take action?

**BOSN:** Yes.

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**HALLSTROM:** Thank you.

**JACOBSON:** Anyone else? If not, that concludes our hearing on LB504 and my bill is the next up. I'm going to turn the chairmanship over to Senator Hallstrom or Vice Chair Hallstrom.

**HALLSTROM:** OK, while we're clearing the room, the next bill is Senator Jacobson's bill--

**JACOBSON:** When I got up, the room cleared?

**HALLSTROM:** --LB525. I would remind you of your admonishment for me that being too long in my opening statement and--

**RIEPE:** You remembered.

**HALLSTROM:** --you may, you may begin, Senator Jacobson.

**JACOBSON:** All right. Well, thank you, Vice Chair Hallstrom and members of the committee. Thank you for staying here this evening. My name is Mike Jacobson, M-i-k-e J-a-c-o-b-s-o-n, and I represent District 42. Today, I'm here to introduce LB525. LB525 is a bill that I've been working on with the governor's office. And as you have seen, he found the issue so important that he asked if I'd introduce it on his behalf. The evolution of precision agriculture and collection of agricultural data is providing farmers and ranchers with wonderful tools to increase productivity and profitability. But with that collection of, of that data, there has been some confusion as to who owns it. To be clear, I believe that farmers and ranchers should own information originated from their ag operations. Furthermore, there should be restrictions on how that data is used by, by providers. Farmers and ranchers should have a say in their data. Here are just a few things that farmers and ranchers should be able to do with their data: the data should be protected with reasonable security safeguards against risks such as loss or unauthorized access, destruction, use, modification, or disclosure. Farmers and ranchers should be able to terminate services or halt the collection of ag data at any time. The procedures for termination of services should be clearly defined in a contract. The data should be made anonymous and aggregate-- aggregated to avoid the identification of a single farmer user. Farmers and ranchers should have the right to delete the ag data that a provider has collected. If a contract terminates or the farmer ceases using the platform, the contract should, should explain what obligations a producer has to retain the, the farmer's ag data. And, most importantly, the ag data shouldn't be used for unlawful or any

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competitiveness of activities such as using ag data to speculate on commodity markets. Now, to be fully transparent, I understand this bill still needs a lot of work. And to the disappointment of those who, who showed up here today to speak in opposition, I want you to know that I do not intend to move the bill this session. I found that as we tried to work as fast as we could before we introduced the bill, that there's a lot of work that still needs to be done on the bill. So I would encourage any testimony from those here in opposition to provide some information on how we can make the bill better. I do plan to introduce an interim study and spend next summer really working on trying to improve this bill to the extent that we've got a bill that would be ready for primetime this next session. So with that, I would conclude my opening in record time and ask for any questions.

**HALLSTROM:** Any questions of the committee for Senator Jacobson? Seeing none, you are dismissed. Will you be staying for close?

**JACOBSON:** I will be staying for closing.

**von GILLERN:** Ask him if he has an E clause?

**HALLSTROM:** We'll take any proponents, supporters of the bill.

**SHERRY VINTON:** Good evening, Senator Hallstrom and members of the committee. My name is Sherry Vinton, S-h-e-r-r-y V-i-n-t-o-n, and I am director of the Nebraska Department of Agriculture. I'm here today to testify in support of LB525, and would like to thank Senator Jacobson for introducing this legislation at the request of the governor. LB525 lays the groundwork for protecting agricultural data in Nebraska. This is a first in the nation draft for ensuring that our ag producers have the right to own their data created on their farms. Nebraska has always been a pioneer in adopting agricultural technology. And now is the time to lead the way in legal protections for our farmers and ranchers. Think of any industry or business and consider the vast ways in which technology has changed the way we operate today compared to 20 or 30 years ago, or I might add, even 5. Agriculture is no different. If you've not been to a farm or a ranch recently, I would welcome you to visit one. Tractors are equipped with GPS auto-steer units, which are connected to computers, monitoring variable seeding rates or fertilizer application rates. Pivot irrigation systems can be turned on and customized from a smartphone. Combines can track real-time yield data as it harvests a field. All of this technology results in a pile of data that is increasingly valuable. Our goal with LB525 is to ensure that producers retain the value of their data on their farms. Farmers and ranchers should be able to capture the value

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they have created from their seed stock, meaning not only row crop, but livestock. They should own the information originating from their agricultural operation. Transfer of that data should require permission. Data provides a revenue stream that is another byproduct of value to the producer. Whoever sets the standards will make the market. LB525 will not be the final product we hope to pass into law, but it is a good starting point to focus the discussion and dive into the complex technicalities that exist with agricultural data privacy. The governor's hope is that Nebraska leads this conversation to find the best protections for our farmers and ranchers. And my hope is that you join us in that ongoing discussion. I would be happy to answer any questions the committee might have.

**HALLSTROM:** Any questions of the committee? Seeing none, thank you, Director Vinton.

**SHERRY VINTON:** Thank you, all.

**HALLSTROM:** Next proponent. Welcome, Mr. Hansen.

**JOHN HANSEN:** Thank you, Mr. Vice Chairman. Good afternoon or good evening, I think, is more appropriate. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. We thank Senator Jacobson and also thank the governor for thinking about this issue and giving us a good running start. And we think this bill is a good running start. And we did get input from some members and some ideas about things we could do to make it perhaps a bit better. Some of the questions were around where we might house some of the data and some of the control if there's-- if that's needed. And so far, at least, the input we've got from our members would indicate that the Nebraska Department of Ag would be a good starting place for that. We also had concerns about making sure that, that in terms of kind of it's the implied consent kind of issue where in some cases folks get, get emails wanting-- whether it's your credit card or whatever it is-- wanting to know whether or not you pretty much have read a lot of fine print. And most folks are just wanting to keep the service or whatever it is that they have. And so they say, they say, yes, thinking that they have just signed off on a continuation of the credit card or the program or the service or whatever it is. And, yet, they have made a pretty substantial decision about who owns the data and where it goes and who can do what with it. And so we want to make sure that this is an important enough issue that we're clear about what, what-- where the sideboards are and kind of where things go and what the rules of the road are. And having had a fair amount of experience in at least some of this arena relative to

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right to repair, we've also found out that, believe it or not, that not all equipment manufacturers tell the truth 100% of the time, and that we've had public disagreements where we've prevailed over what was, in fact, the law and when, in fact, was the case. And we suspect that probably the folks that we're in conflict with knew that from the get-go. They have good lawyers there, too. And so this is an area where what are you going to do with the data, who's going to do what with it, really does need sideboards. And we should not just rely on, on good faith, hope things are going the right direction. Gosh, they sure wouldn't do that kind of an approach because the data is too important. And it should be-- remain in the hands and the control of, of farmers and ranchers. And so we thank Senator Jacobson for bringing the bill and we'd be glad to participate in the interim process to the extent that we can be useful.

**HALLSTROM:** Any questions for Mr. Hansen? Seeing none, thank you.

**JOHN HANSEN:** Thank you very much.

**HALLSTROM:** Any other proponents? Going once.

**KEVIN KENNEY:** Are you on neutral? Oh.

**HALLSTROM:** Oh, are you neutral?

**KEVIN KENNEY:** No.

**HALLSTROM:** OK. Come on up, then.

**KEVIN KENNEY:** Far from neutral. I have some handouts I was told to bring, but it looks like I'm supposed to read what I, I have, so.

**HALLSTROM:** We can make copies afterwards, if you would prefer.

**KEVIN KENNEY:** Yeah.

**HALLSTROM:** Thank you.

**KEVIN KENNEY:** My name is Kevin Kenney, K-e-n-n-e-y. I'm here to testify on LB525 submitted by Senator Jacobson at the request of the governor. I'm from Phillips, Nebraska, and my testimony today is crucial for everyone handling and using precision ag data. In the past decade, labor savings and yield improvements have been enjoyed as technologies since precision ag has been adopted. They're all data driven. However, farmers need help fighting data theft enabled by predatory equipment, deployment and data policies of ag manufacturers

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that are currently monopolizing this industry. These benefits have come at the cost of farmers losing their privacy and ownership rights, as pointed out as concerns by Secretary [SIC] Vinton and the opening statements by Senator Jacobson. The ATPs, agriculture technology providers, are the processors defined in LB525. This loss is unacknowledged, but future generations will likely estimate its value as substantial. The trade secrets of our farmers and farms are at stake with the robotic artificial intelligence technologies dependent on data modeling using agriculture to replace farmers. Just like tractor replaced the mule, we will have robots replacing the farmer. The question is, who's going to own the robots? It won't be a fair fight. This is really important and this issue deserves a lot of attention by your committee on how it's handled and administered if it becomes law. If the committee members wonder why the ATPs, ag technology providers, harvest and export this data, it's simple. It's modernization. They're selling the data. Look at what Vizio did, they sold half a billion dollars worth of televisions. They sold \$2 billion worth of data. Stole it from consumers who had no idea what was going on. We're talking about the trade secret of the farm and the farmers. This is ongoing. Personal data send-- if you send it to outside jurisdictions, they just resell it. These, these farmers unknowingly consent to the custom application model by current cooperators and fertilizer dealers. These-- they follow a custom application model that includes seeding, fertility, and pesticide applications, all on the backbone directly for the John Deere operation center like the rural co-op or through APIs which use ground control as the logistic program by the CVA co-op and the CPI co-op. So I just addressed 90% of cooperative retail sales business logistics that happen in agriculture. And all this data and transaction financial data is leaked in real time, as Secretary Vinton pointed out, as combines collect data in real time to the cloud. This data is used to pit against farmers on the markets. That's exactly what Senator Jacobson said he's worried about. So these things need to be discussed. You need to find subject-matter experts that can weigh in on the logistics of what's going on. And I'm not a lawyer, I didn't even stay at a Holiday Inn last night, but I wrote at least 5,000 recommendations for seeding prescriptions, fertility prescriptions to individual farmers. Tens of thousands of invoices. OK? I've got at least 30,000 hours of equipment operation. And I'm telling you right now, none of this was foreseeable by our forefathers. The John Deere operation center took over control of logistics and agriculture 5 to 7 years ago. And it happened in an overnight sensation. It's unregulated, the money goes out of state, and there's no end in sight. In Senator Jacobson's own words, he doesn't trust industry to self-correct. Well, that'd be the

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last company I would trust to self-correct is John Deere. They've had plenty of times-- Phil Erdman with the Iowa Equipment Manufacture Association [SIC] is here today. He chaired LB1072 when I was here 10 years ago trying to get "right to repair" passed. We had three bills come and go. We lost all three of them. Now Phil works for the equipment industry. He's a good guy. He's doing a good job for everybody. Right?

**HALLSTROM:** Mr. Kenney, if you can wrap up.

**KEVIN KENNEY:** We still have no right-to-repair legislation, but we do have an FTC lawsuit that showed up. And hopefully we can put the two together and give farmers a better deal. Thank you for your time.

**HALLSTROM:** Thank you for your comments. Any questions of the committee? If not, thank you, sir.

**KEVIN KENNEY:** You bet. Thank you, sir.

**HALLSTROM:** Next proponent. Seeing no more proponents, are there any opponents? Anyone in a neutral capacity? Welcome, Mr. Edson.

**DEAN EDSON:** Good evening. My name is Dean Edson, D-e-a-n E-d-s-o-n. I'm the executive director of the Nebraska Association of Resources Districts presenting in neutral testimony today on LB525 with the record amendment-- recommended amendment to clarify the bill. I've had conversations with Senator Jacobson and the governor's staff about an amendment to clarify that NRD data and information for water quality and quantity management purposes is not subject to LB525. If it is not exempt, our NRD boards will not have enough data to make sound decisions on local water management. We understand the goal of the bill, and we do not want to be in the way to accomplish those goals. However, we want to work with the committee and the parties involved to make sure NRDs have appropriate data to make these management, management decisions on water quality and quantity. Right now, our data collection programs exceed 99% from mandatory repetering-- mandatory reporting on metering and fertilizer applications in the areas of concern. If this becomes voluntary with a producer's agreement to supply such data, our collection rates will greatly diminish. We want to make sure that management decisions are made by the local NRDs based upon as much relevant information as possible. I have attached a, a couple of aggregate data PowerPoint slides on data collected from the Lower Niobrara NRD. This information is fed back to the producers for educational and informational purposes. The data points are an individual's, but they are not identified. The producers

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know where they're at in the charts and helps them make better management decisions. I want to point out that using this aggregate data reports back to producers, the number of producers that exceed the recommended fertilizer rates has dropped from 91% in 2015 to about 62% in 2023. We're gaining ground, but we still got a ways to go. We would also suggest including some guardrails that we're not going to sell the data and the individual data would not be subject to public records request. We are willing to share the aggregate data. We want to make it clear we're not going to release any individual data. So here are some suggested language to consider: in Section 3 under definitions for both controller and processor, that shall not include a natural resources district or its employees or agents acting in performance of their statutory duties. In Section 6, no political subdivision shall sell any of the data identified in this act. And then in Section 84-712.05 under public records, all data identified in the Agricultural Data Privacy Act unless written consent has been obtained from the person who has been obtained shall not be subject to public records request. Something else that came up on a text message when we got here, it was the data we do share with DEE and UNL that goes in a database. We want to make sure that that can continue. So with that, I see my lights on, answer any questions you may have.

**HALLSTROM:** Any questions for Mr. Edson? Senator Wordekemper.

**WORDEKEMPER:** On your one chart, I just want to clarify. I think it's the corn yield versus nitrogen applied. The bottom is pounds of nitrogen applied, is that also per acre?

**DEAN EDSON:** Yes.

**WORDEKEMPER:** OK.

**DEAN EDSON:** That's all done per acre.

**WORDEKEMPER:** OK. Thank you.

**DEAN EDSON:** And so what you see there, that red line going up and down, that's UNL recommended rates.

**WORDEKEMPER:** OK. Thank you.

**DEAN EDSON:** So you-- this is where the producers are gaining some valuable information because they're finding out that they can get these same yields, high yields, by applying less fertilizer, which saves them money and then addresses our water quality problem.

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**WORDEKEMPER:** Thank you.

**HALLSTROM:** Any other questions? Seeing none, thank you. Welcome, Mr. Erdman.

**PHIL ERDMAN:** Senator Hallstrom, members of the Banking, Commerce and Insurance Committee, I, like one of your earlier testifiers, don't think I've been in this seat in a long, long time. So thanks for your attention today. My name is Phil Erdman. Last name is spelled E-r-d-m-a-n. I'm here representing the members of the Iowa Nebraska Equipment Dealers Association. We have 150 locations across Nebraska that we represent specifically. We're here in a neutral capacity and have appreciated the conversations that we've had with staff as well as with Senator Jacobson and the governor's office about the intent of the bill. Having sat on your side of the, of the table, there's a number of bills that we have passed as a state that would be impacted potentially by the bill as it is drafted. And so we simply offer our, our availability to be a part of these conversations. We do represent the dealers and it's not lost on us that our dealers do have a contractual agreement with manufacturers. And so we would be more than willing to bring those manufacturers in. But just a couple points of, of clarification, so if it appears that we're trying to prevent trading space-- Trading Places, the movie from happening and cornering the frozen orange juice market, then I think that's, that's a laudable goal. But I will point out that in regards to the way the data is currently managed or handled, the ag data transparency agreement from 2014 covers all major manufacturers in the ag space. They've entered into that agreement and there's a number of other provisions that, that safeguard customers and specifically as our dealers work with customers in supporting their equipment and the tools that are available to them. For example, you have to affirmatively grant access for one of our customers or one of our dealer members to be able to access and to support your equipment on your farm or ranch or whatever you might be using that equipment for, even on a construction site. So there are safeguards in place. And we're more than willing to be a part of conversations to make sure that those safeguards meet the needs and expectations of the customers that, that are out there. Last thing I'll say before I take any questions is I, and lightheartedly, I did get permission to testify in neutral capacity. For those of you that may remember, my father was a member of this fine organization and greatly displeased people that testified in neutral. I did get his permission today to be here. And out of respect for Senator Jacobson, we are neutral because we sincerely believe this is an important conversation. We want to be a part of it. And instead of discussing the bill before us to be a part of a longer conversation that gets us

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an outcome that, that folks can support and protects the interests of both the farmers and those that are supporting them.

**HALLSTROM:** Thank you. You are your father's son. Any questions?

**PHIL ERDMAN:** On, on bad days. On good days, I'm my mother's, so. And that's in the record so he'll be able to hear that.

**HALLSTROM:** Seeing none, thank you.

**PHIL ERDMAN:** Thank you.

**HALLSTROM:** Mr. Weber.

**ROCKY WEBER:** Good evening, Senator Hallstrom and members of the committee. I've never said good evening in almost 30 years of coming to committee hearings. So it's a first for me to be this late. We, we appreciate Senator Jacobson and the governor's office bringing this bill. We think that-- well, I'm Rocky Weber, R-o-c-k-y W-e-b-e-r. I am president and general counsel of the Nebraska Cooperative Council, representing Nebraska's farmer-owned agricultural cooperatives. We appreciate Senator Jacobson bringing this bill and the governor's office bringing this bill. I'm kind of unique amongst my fellow ag lobbyists in that I don't just represent farmers or I don't just represent agricultural interests or commercial interests. Being farmer-owned cooperatives, I have both of those people in my boardroom and both of those people on my legislative committee, farmers and managers of the cooperatives. And so when we got to this bill during our legislative committee last week, it was a very good discussion amongst farmer interests and commercial interests and what needs to happen. In our view, this bill will touch every aspect of agriculture from the farm to the table. And in doing so, it raised a lot of questions for us. Number one, I want it to be very clear that it is our position that farmers own their data. They should own their data and they should control their data. That's the easy part, because that doesn't exist in a vacuum. And farmers today, a lot of their data is in the public domain. A lot of farmers yearly sign up for government programs through the United States Department of Agriculture and, quite frankly, through straight programs to get incentive grants and other things where they're sharing data that is readily available. Equipment dealers, seed dealers, and other wholesalers in the agriculture space are collecting data. Data does not exist on the farm alone or originate on the farm alone, but when we send applicators out to do their work or agronomists to assess what farmers need or feed specialists to assess what livestock farmers need, there is a sharing

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of data and not all the data comes from the farm, some comes from the industry and together data is collected. So I guess as we move forward, we very much want to be part of the discussion. We think this is an important issue and Nebraska should be the first in the nation to protect its agricultural economy. But we, but we think that, you know, public policy has got to recognize that data originates from a number of different places. How much data is private? How do we get-- establish when it's private, when it already isn't private? Should privacy rights be different for personal and farm data as opposed to data collected through artificial means or from autonomous means? And should the Agricultural Data Privacy Act protect or impair contractual or intellectual property rights? We're going to have some conflicts in that area, so we're ready to be part of the discussion. We're ready to help. And those are some things we quickly identified. And I thank you for your time and I'll take any questions.

**HALLSTROM:** Thank you. Any questions of the committee? Seeing none, thank you, Mr. Weber.

**ROCKY WEBER:** Thank you.

**HALLSTROM:** Next neutral testifier. Mr. Rieker.

**BRUCE RIEKER:** Ready?

**HALLSTROM:** I am ready.

**BRUCE RIEKER:** OK, you are ready. We are ready. Good evening, my name is Bruce Rieker. I'm the senior director of state legislative affairs for Farm Bureau here on behalf of Farm Bureau and eight other ag organizations. Some of you are familiar with the Ag Leaders Working Group, but that includes the Nebraska Cattlemen, Corn Growers, Pork Producers, Sorghum Producers, Soybean Association, State Dairy Association, Wheat Growers Association, Renewable Fuels. This is a big issue. Definitely appreciate-- did I spell my name? Bruce Rieker, R-i-e-k-e-r. Sorry. Truly appreciate Senator Jacobson for bringing this. I'm not going to say it's long overdue, but it is incredibly important. 5 or 6 years ago, I would have never thought that we would be as involved in cyber threats to agriculture as there are now. And this is more than just a matter of privacy. It's a matter of national security. And here's why we say this, is because a country that cannot defend itself or feed itself is vulnerable. Nebraska is the third largest ag complex in the country. The data that's being collected is on 22 million acres of crop ground and about 20 million acres of pastureland or grazing ground that has livestock on it. Each one of

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those areas, yeah, there are people, businesses that are collecting hundreds of lines of data on those particular pieces of information. I find it interesting and there's no way I'm going to be able to touch on many of the things that we'll have to address in this as we go forward with it, but it is definitely a, a journey that we need to take. It's interesting when we talk about owners, we're talking about who owns the data. What happens a lot in our arena, and I'm sure it's not just in agriculture, but take, for instance, a company called Syngenta owned by China. Their end-user agreement says you can not use those products, which are many of our inputs unless we sign the end-user agreement that says you own the data, but we have the right to use it however we want. And those are some of the things that we need to clarify through, through all this. So we're going to be stepping into contract law. You know, there isn't one size that fits all. Opting in, opting out must be flexible to make sure that we're competitive and other testifiers have touched on this. I also definitely don't want to be the, the one that shows up like the, the last bill that was heard and say, well, we don't like it, but when we don't have a solution. Over the course of the last 5 or 6 years, we have been able to meet and work with some tremendously gifted people in this area and Nebraska has a lot of them right here. We work with the Department of Defense, the FBI, Homeland Security. They will have a lot of advice to help us as we talk about how we should structure things as to who owns the data, how we control these things. Truly, because we have StratCom here and some other things, we have some of the best resources that can help you and us help you go down this intellectual journey. But so we're ready to help. It's very important and we appreciate your interest in it.

**HALLSTROM:** Thank you. Any questions from the committee? Seeing none, thank you, Mr. Rieker.

**BRUCE RIEKER:** You bet.

**HALLSTROM:** Anyone else in a neutral capacity? Senator Jacobson to close. Before you close on LB525, we have three proponents, no opponents, two neutral letters, and did not receive any ADA testimony regarding the bill.

**JACOBSON:** Well, thank you. And since we're going to plan to move this on to an interim study, I'll be fairly brief. But I just wanted to, first of all, thank the testifiers who came in and, and added some additional color to what we're dealing with. This is a very large-- it's, it's an important issue, but it's got so many moving parts and it's going to be critically important that we be able to avoid the

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unintended consequences. And I think certainly what Senator-- or Mr. Rieker said regarding Syngenta owned by China and any embedded agreements that are there. I would tell you as a banker, I can't imagine someone coming in and talking to my lending staff and handing their financial statement and their tax returns and any information we need to make a loan decision. And we told them, oh, by the way, we intend to be able to have this information. We can resell it. That just doesn't happen. OK? If that were happening, they would not be coming in to talk to us. OK? And so I think part of this, we got to rely upon capitalism once we pass a bill that makes sense, that does, does Syngenta want to pull out of the state of Nebraska. I doubt that they do. It's a big part of the Corn Belt. However, with that said, there are so many pieces here. And one of the things I just think about is with the AI developments and how much that will likely develop over the next few years. Think about a combine running through a corn field or a soybean field, and it's getting in real time today is collecting yield data, moisture content, and so on in real time and sending it up to the cloud. OK? Now, you also have stored-- a history of that same field in every part of that field. So every year pro farmer goes out and does a pro farmer tour in the fall and they scout in, generally, August. They go out and look at what the yields look like in, in, in sample fields across the Corn Belt. And they extrapolate that to come out what they think the yield is going to be this year and the total production for the, the Corn Belt in that coming year, which makes the commodity markets move. The USDA, on the other hand, they come in after harvest and they go back and survey the same grain elevators and grain facilities every year, take a sample and try to determine what was the actual harvest. If you could take AI and take this data on the combines themselves across a broad section of the Corn Belt, who do you think's going to have the more accurate data and who could come in and either game the board of trade themselves or sell that data to somebody who might want to do that? Same thing with livestock, electronic ear tags, all that information is up in the cloud. You got cattle in the feed yard, I can figure out what their gain is. I can figure out when they're coming to market. You can-- you've got all this information, and when you couple that with AI, it can become very impactful. So I think getting on the front end of the ownership of the data is going to be pretty, pretty important. And so that's what we intend to do. And so there'll be an interim study introduced later. Thank you and I'd stand for any questions.

**HALLSTROM:** Any questions? Like Senator Dover before you, I appreciate you waiving your closing.

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**JACOBSON:** I'll, I'll waive my close.

**HALLSTROM:** That, that will close the hearing and I'll turn it back to Chairman Jacobson for the final bill of the day.

**ROLF KLOCH:** I am not Senator Juarez, in case you couldn't tell. I know it's easy to get us mixed up.

**JACOBSON:** OK, so we closed out the public hearing for LB525. We'll open now the public hearing for LB602. And since Senator Juarez is, is not available, we're going to have to have her LA introduce the bill. So welcome to the committee and--

**ROLF KLOCH:** Thank you. All right. Good evening, Chairman Jacobson and members of the Banking, Commerce and Insurance Committee. My name is Rolf Kloch, R-o-l-f K-l-o-c-h, and I'm Senator Juarez's legislative aide. Today, I'm excited to introduce LB602, which adopts the Data Elimination and Limiting Extensive Tracking and Exchange Act or DELETE for short. This bill was developed with a variety of policy experts that advised Texas, California, and Vermont on their respective versions of this bill, all of which passed with bipartisan support. I passed out their collective letter of support along with AM70, which just fixes a few things. There are a lot of Drafter's notes and also gives the Secretary of State a better chance to access-- charge an access fee. Data brokers are businesses that operate in a largely unregulated world of collecting and selling personal data. While mainstream tech companies like Google and Microsoft use our online activity to collect data, data brokers use every means available to collect and analyze information to an unsettlingly precise degree. A list with titles like Economically Anxious Elders or Heavy Purchasers of Pregnancy Tests are available for anyone to purchase-- for purchase to anyone willing to pay for it. Unsurprisingly, this type of shadowy data usage is ripe for fraud and abuse. Even as far back as 2007, Iowa's Attorney General found that the data broker [INAUDIBLE] U.S.A. sold a list of 19,000 elderly sweepstakes players to multiple companies that have since been prosecuted for running lottery scams. Now more than 15 years later, data brokers have only grown more sophisticated while regulation and enforcement have lagged behind. Last year was a step in the right direction when the Legislature passed Senator Bostar's Data Privacy Act, a badly needed personal privacy measure that, among other things, gives consumers the right to know who has their personal data, what data they have, and the right to request the deletion of that data. LB602 enhances and optimizes these measures by doing three things. One, it requires data brokers to register with the Secretary of State and stay on the registry. Two, it

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imposes additional security measures on data brokers designed to protect against data breaches and the sale of that data to illegitimate buyers or for illicit purposes. And, three, it establishes an accessible mechanism to allow consumers to easily request the deletion of their data from all registered data brokers, simultaneously. Sending requests for information or deletion to each data broker is individual-- individually, is time consuming and unreasonable. Under this bill, citizens can instead view a list of all data brokers operating in Nebraska and request the deletion of their personal data from all brokers within a single website. In addition, LB602 strengthens security around the information bought and sold by data brokers in Sections 6 and 7 of the bill, which create an innovative framework for a robust cyber security program that would prevent data brokers from selling sensitive data to bad actors and keep hackers away. I want to stress that these provisions are not estimated to have any fiscal impact to the state. To further address the fiscal note, a large majority of the estimated costs come from the deletion mechanism in Section 10 because it requires far more digital infrastructure than a simple registry, largely because you're basically building your own opt-out service, just like the FTC has. Without the deletion option, the registry would function no differently than those currently used by DHHS and the Liquor Control Commission for licensees under their respective jurisdictions, cosmetologists, you name it. And the costs associated with those registries are minimal. To answer some questions you may have, since you likely won't be asking me any, this bill is designed to ease the fiscal burden on taxpayers by requiring data brokers to pay a \$300 fee to register with the Secretary of State and by giving the Secretary of State the power to charge an access fee to a data broker that would cover any costs incurred by the deletion mechanism. Two, it provides a 3-year grace period to allow the state to implement any of the measures contained in this bill. Three, the bill allows-- only applies to companies that buy and sell third-party data for data from a consumer that does not have a direct relationship with the entity that collected the data. So, for example, a company like Google would not be subject to this bill because they only collect information from consumers that use their search engine or any of their services. If you've ever seen sites like freepeoplefinder.com or if you're a phone owner when you're trying to look someone up online, those are the data brokers that this bill is targeting. LB602 is designed to complement the data privacy law passed last year. The data collection exemptions, enforcement mechanisms, and business protections are all the same. Like your bill, Attorney, Attorney Generals-- the Attorney General, sorry, has exclusive authority to enforce the bill. And, lastly, the

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amendment, AM70, like I said earlier, just corrects a couple of drafting errors. This was the last day of introduction so that's one thing. And then it gives the Secretary of State the ability to cover a more costly access fee, which is the establishing, maintaining addition. The data broker industry has grown unsecured and unchecked for too long and this bill is a proactive effort to further strengthen protections for consumer privacy while empowering Nebraskans to take back control of their own data. We need to seriously consider the dangers posed by unregulated data brokers and find ways to stop the fraud and abuse associated with them. I understand the fiscal concerns relating to the accessible deletion mechanism, but I strongly believe that the rest of the provisions in LB602 provide a low-cost, high-security opportunity to strengthen Nebraska's data protection laws. With that, I would be happy to answer any questions you may have. I don't know about that last part, but.

**JACOBSON:** I think we can strike that last comment. With that, he will not also-- he won't also be, be doing a close. So we'll just go ahead and move on to proponents. So thank you for--

**ROLF KLOCH:** Thank you.

**JACOBSON:** --the introduction. Proponents for LB602? Proponents? All right. Anyone wish-- wishing to speak as a-- as an opponent? Welcome.

**KEN SCHILZ:** Welcome. Thank you, Senators.

**JACOBSON:** I'm glad you're the one testifying today.

**KEN SCHILZ:** Chairman Jacobson. Good evening, members of the Banking, Insurance and Commerce Committee [SIC]. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm here today as a registered lobbyist for the Consumer Data Industry Association or CDIA. I've also been authorized to include the Nebraska Retail Federation and the Nebraska Grocery Industry Association in my testimony as well. I want to first thank Senator Juarez for her efforts to align LB602 with Nebraska's Data Privacy Act, which was introduced last year by Senator Bostar, and it's passed the Legislature as part of one of this committee's priority packages. In particular, the exclusion of certain types of consumer data through reference to Section 87-1104 provides critical alignment with a wide variety of federal laws regulating consumer data for credit reports, background checks, and other types of reports that are critical for consumers' interaction with business. Unfortunately, a number of other concerns and questions remain regarding this bill. Economies are becoming increasingly data driven and it's

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understandable that consumers want more control over how their data is collected and used. As policymakers, you are asked to strike a balance between workable privacy laws and access to data necessary for businesses to grow and function in the modern economy. California is the only state to have enacted this type of law and deletion requests under the California law will not begin until August of 2026. So there is no test case that we can use to see if predictions regarding unintended consequences will come true or if the processes will actually function as envisioned. When California proposed the DELETE Act, proponents claimed the law was meant to close a loophole in California's data privacy law that only allowed consumers to request their data be deleted if they had a direct relationship with the business. The DELETE Act allows individuals to request their data be deleted from any regulated business, regardless of the business's relationship to the consumer. However, Nebraska's privacy law already allows consumers to delete their data upon request from any regulated business, not just a business that they have a direct relationship with. We would argue that the deletion provisions in the, in the existing law are sufficient and no additional provisions are required. Data broker provides services to many other businesses in support of legitimate purposes that protect or benefit consumers, including anti-money laundering, cybersecurity, and underwriting activities. Businesses use the services to detect order fraud and update customer databases. Information from data brokers is also often used by small businesses to reach potential customers with data-driven advertising and by nonprofits to new donors and volunteers. Law enforcement agencies may use the services to serve subpoenas or to identify and locate witnesses and suspects. Welfare agencies can use the data broker services to find parents evading child support awards. We believe LB602 risks undermining the consumer fraud and protections, hurting small businesses' ability to compete while solidifying the big platforms' data dominance. It also empowers third parties to request to delete consumers' data with no guardrails. And with that, we would ask you-- the community not to advance LB602. Thank you for the time here today, and I'm happy to try and answer any questions you might have.

**JACOBSON:** Questions for the testifier? All right. Seeing none, thank you.

**KEN SCHILZ:** Thank you for staying around.

**JACOBSON:** Oh, sure. Further opponents? Anyone else like to speak as an opponent? Any neutral testifiers? Welcome.

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**DAVID WILSON:** Good evening, Chair Jacobson, members of the committee. My name is David Wilson, D-a-v-i-d W-i-l-s-o-n. I'm an associate general counsel at the Secretary of State's Office here to testify in the neutral capacity about just some of the, the thoughts we had when we got this bill upon introduction. We don't oppose the subject matter. Our concerns are mainly with the implementation of the bill. And a lot of this is, is present in the fiscal note, but I'll just go over what those were and, and we'll have time for discussion later on about addressing those, so. As you know, this bill would assign significant duties to the Secretary of State's Office. These duties are unlike-- some of these duties are unlike anything we currently have or any subject matter we currently regulate. Data brokers will be new to us, but we would have to develop a registration and a deletion mechanism and develop the subject-matter expertise to make sure that we do that effectively, as well as provide a public website and the rules and regulations for all of the relevant parties to follow. Upon learning of this bill on introduction, we didn't have a lot of time to get up to speed on it. However, California has a very similar bill that had passed and reviewing their legislative notes, their fiscal impact statements and the like, we were able to surmise what it might cost for us. The costs that we see would include hiring three full-time employees to implement and manage the program. We don't in our office currently have anyone with the subject-matter expertise to handle this. We would likely have to go outside to find someone who could do that, to even begin the implementation process. And we'd also have to develop a new program to manage the registry and the website and the data elimination functionality that would be required by this bill. And we would, on top of that, need to-- well, excuse me, let me back up. So that's-- those are the concerns there. We would have to develop all of that, which would be where the fiscal impact comes from. We also have some concerns that we wouldn't be able to effectively implement even the registration part of this on January 2026, which is the, the initial start, start date for the registration only. That comes up a lot quicker than you would think when you're trying to develop a registration for any, any industry like that. The other concern that we had was just that the fees for the data deletion process would not cover the actual costs of the process without being extraordinarily high. I, I believe we saw an instance of the California estimate of being over \$2,000 per industry user, which is, is quite high, but I, I see that my time is up. So those are just some of our concerns. Like I said, we don't have a problem with the subject matter. It's just we want to be able to effectively implement this if, if we're going to be the agency that's in charge. And those are just the concerns that we have, so.

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**JACOBSON:** Thank you. Questions from the committee? All right. Seeing none, are there other-- thank you.

**DAVID WILSON:** Thank you.

**JACOBSON:** Are there other neutral testifiers? All right. Seeing none, I want to mention that there were six proponent letters, no opponent letters, one neutral letter. We did not receive any written ADA testimony regarding this bill. With that, this concludes our public hearing for LB602. For the committee-- and, and so we would be adjourned for the day-- for the committee--