

**ONE HUNDREDTH LEGISLATURE - SECOND SESSION -  
2008**

**COMMITTEE STATEMENT**

**LB853**

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**Hearing Date:** January 29, 2008

**Committee On:** Banking, Commerce and Insurance

**Introducer(s):** (Banking, Commerce and Insurance Committee)

**Title:** Change provisions relating to insurance

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**Roll Call Vote - Final Committee Action:**

Placed on General File with Amendments

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**Vote Results:**

8 Yes                      Senators Carlson, Christensen, Gay, Hansen,  
Langemeier, Pahls, Pankonin, Pirsch

0 No

0 Absent

0 Present, not voting

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**Proponents:**

Senator Rich Pahls  
Ann Frohman

**Representing:**

Introducer  
NE Department of Insurance

Jim Hall  
Janis McKenzie  
Terry Headley

American Council of Life Insurers  
NE Insurance Federation  
National Assn of Insurance and Financial  
AdvisorsNE  
American Council of Life Insurers

Jim Hall

**Opponents:**  
Robert Wooley  
Burton Shepard  
Tip O'Neil

**Representing:**  
Coventry  
NE Land Title Assn  
Assn of Independent Colleges and  
Universities of NE

**Neutral:**  
Larry Ruth

**Representing:**  
NE Dental Assn

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## Summary of purpose and/or change:

LB 853  
Section-by-Section Synopsis

### COMMUNITY DEVELOPMENT ASSISTANCE ACT RULEMAKING

Section 1 would amend section 13-206 to specify that rulemaking by the Director of Insurance under the Community Development Assistance Act is discretionary rather than mandatory.

### DESCRIPTION OF INSURANCE POLICES

Section 2 would amend section 44-349 to limit the requirement that insurance policies contain a description of the structure of the insurer writing the policy to policies written by assessment insurers.

### ADMINISTRATIVE PENALTIES

Section 3 would amend section 44-356 to increase the penalties imposed for violation of Neb. Rev. Stat. § 44-354 and § 44-355 by making them Unfair Trade Practices, thereby standardizing those penalties and procedures. Section 3 would change the fine for violations of Neb. Rev. Stat. § 44-353 from a minimum of twenty dollars and a maximum of one hundred dollars to a fine not to exceed one hundred dollars.

### TEMPOROMANDIBULAR JOINT DISORDER COVERAGE

Section 4 would amend section 44-789 to clarify that the mandate for temporomandibular joint disorder, Neb. Rev. Stat. §44-789 only applies to temporomandibular joint disorder. A literal reading of the current statute could allow coverage for other related coverages to be limited to \$2500.

### VIATICAL SETTLEMENTS ACT

Section 5 would amend section 44-1101 to specify that new sections 13 and 16 would be included in the Viatical Settlements Act.

Section 6 would amend section 44-1102 of the Viatical Settlements Act to define “life insurance producer”.

Section 6 would clarify the definitions of “advertising”, “business of viatical settlements”, “policy”, and “viatical settlement purchaser”.

Section 6 would amend the definition of “fraudulent viatical settlement act” to include facilitating the change of state of ownership of a policy or the state of residency to a state that does not have a similar law to the Act.

Section 6 would extend the definition of “special purpose entity” to transactions in which the securities are acquired by the viator or by a qualified institutional buyer or when the securities pay a fixed rate of return.

Section 6 would amend the definition of “viatical settlement broker” to add a life insurance producer as a person to be considered a viatical settlement broker.

Section 6 would expand the definition of “viatical settlement contract” to include premium finance loans made for a life insurance policy if the viator receives a guarantee of a future viatical settlement value or the viator agrees to sell the policy following policy issuance. The amendment would exclude from the definition of “viatical settlement contract” (a) a loan the proceeds of which are used solely to pay: (i) premiums for the policy, and (ii) the costs of the loan, (b) a loan made by licensed financial institution in which the lender takes an interest in a life insurance policy to secure repayment of the loan, or (c) an agreement where all of the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties.

Section 6 would amend the definition of “viatical settlement provider” to clarify that a viatical provider is a person that enters into a viatical settlement contract with a viator that is a resident in this state. The amendment would grant authority to the Director of Insurance to exclude other persons from the definition.

Section 6 would amend the definition of “viator” to clarify that, if there is more than one viator and the viators are residents of different states, the transaction will be governed by the law of the state in which the viator having the largest percentage of ownership resides.

Section 7 would amend section 44-1103 of the Viatical Settlements Act to permit a life insurance producer to operate as a viatical settlement broker. Section 7 would permit a person licensed as an attorney, certified public accountant, or financial planner representing the viator to negotiate on behalf of a viator without a viatical settlement broker’s license. Section 7 would require a viatical settlement provider or broker to demonstrate evidence of financial responsibility of \$250,000. Section 7 would require a viatical settlement broker to complete 15 hours of training every other year, except that a life insurance producer who is operating as a viatical settlement broker would not be subject to this requirement.

Section 8 would amend section 44-1104 of the Viatical Settlements Act to grant the Director of Insurance authority to suspend, revoke, or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as viatical settlement broker if such person has engaged in bad faith conduct with one or more viators.

Section 9 would amend section 44-1105 of the Viatical Settlements Act to add cross-references to other sections in the act regarding the disapproval of a viatical settlement contract form or disclosure statement form.

Section 10 would amend section 44-1106 of the Viatical Settlements Act to specify what information a viatical settlement provider is to include in his or her annual statement to the Director of Insurance.

Section 11 would amend section 44-1107 of the Viatical Settlements Act to specify factors that the Director of Insurance is to consider when trying to determine whether it is appropriate to make an examination of a licensee under the Act.

Section 12 would amend section 44-1108 of the Viatical Settlements Act to require additional disclosures for viatical settlement providers and brokers. Section 12 would require viatical settlement providers and viatical settlement brokers to disclose to viators that a viatical settlement broker represents exclusively the viator, not the insurer or viatical settlement provider, and owes a fiduciary duty to the viator. Section 12 would require viatical settlement providers to disclose to viators any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser. Section 12 would require viatical settlement brokers to disclose to viators any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts. Section 12 would require viatical settlement brokers to disclose to viators the amount and method of calculating the viatical settlement broker's compensation.

Section 13 would adopt a new section of the Viatical Settlements Act to require a viatical settlement broker or provider to disclose to an insurer a transaction to which the viatical settlement broker or provider is a party, to originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at anytime prior to, or during the first five years after, issuance of the policy.

Section 14 would amend section 44-1109 of the Viatical Settlements Act to require an insurer to accept a request for verification of coverage made using an NAIC form. Section 14 would require all viatical settlement contracts to give the viator the absolute right to rescind a contract. Section 14 would extend the time within which a viator has the right to rescind a viatical settlement contract from fifteen calendar days to the earlier of sixty calendar days after the contract was executed, or thirty days after the viatical settlement proceeds have been sent to the viator.

Section 15 would amend section 44-1110 of the Viatical Settlements Act to increase the period in which a life insurance policy may not be sold from two years after the date of issuance to five years after the date of issuance unless the viator can meet one of the enumerated exceptions in the section. Section 15 would adopt a new exception to the five-year period when the viator enters into a viatical settlement contract more than two years after the date of issuance if the policy premiums have been funded exclusively with unencumbered assets, there is no agreement or understanding with any other person to guarantee any such liability or to purchase the policy, and neither the insured nor the policy has been evaluated for settlement. Section 15 would repeal exceptions to the five year period for charitable organizations, viators that are not natural persons, viators who are the insured's employers, and viators experiencing a significant decrease in income. Section 15 would require insurers to respond to completed requests for change in ownership of a policy within thirty days.

Section 16 would adopt a new section of the Viatical Settlements Act to prohibit a viatical settlement broker from knowingly soliciting an offer from, effectuating a viatical settlement with, or making a sale to any viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker. Any violation of these provisions would be deemed a fraudulent viatical settlement act. Section 16 would prohibit a viatical settlement provider from entering into a viatical settlement contract unless the viatical settlement advertising materials have been filed with the Director of Insurance. Section 16 would provide that marketing materials may not expressly reference that the insurance is "free" for any period of time and would restrict the term "free" in connection with the sale or financing of a life insurance

Section 17 would amend section 44-1111 of the Viatical Settlements Act to require that if an individual making a testimonial has a financial interest such interest in the party making use of the testimonial, that fact shall be disclosed that in the advertising material.

Section 18 would amend section 44-1112 of the Viatical Settlements Act to specify that an award of attorney's fees and costs in a civil action under the section does not apply to a person reporting his or her own fraudulent viatical settlement acts.

Section 19 would amend section 44-1113 of the Viatical Settlements Act to clarify that, except for a fraudulent viatical settlement act committed by the viator, the enforcement provisions and penalties of this section to do not apply to a viator.

Section 20 would amend section 44-1114 of the Viatical Settlements Act to grant rulemaking authority to the Director of Insurance to establish standards for evaluating the reasonableness of discount rates used to determine the amount paid in exchange for a policy insuring the life of a person who is chronically ill or terminally ill.

Section 21 would amend section 44-1114 of the Viatical Settlements Act to clarify that a violation of the act, including the commission of a fraudulent viatical settlement act, is an unfair trade practice.

#### INSURANCE TRADE PRACTICES ACT

Section 22 would amend section 44-1521 of the Unfair Insurance Trade Practices Act to specify that new section 23 would be included in the Unfair Insurance Trade Practices Act.

Section 23 would adopt a new section granting the director of insurance rulemaking authority to establish standards under the Unfair Insurance Trade Practices Act to protect members of the United States Armed Forces from dishonest and predatory insurance sales practices.

#### INSURANCE PRODUCER LICENSING

Section 24 would amend section 44-32,106 of the Health Maintenance Organization Act to specify that “health maintenance organization producer” means a person licensed as insurance producer qualified under the accident and health or sickness line of authority.

Section 25 would amend section 44-3901 of the continuing education for insurance producer standards to change references from insurance “agents” and insurance “brokers” to insurance “producers.”

Section 26 would amend section 44-3902 of the continuing education for insurance producer standards to change references in the definition of “licensee” from insurance “agent” and insurance “broker” to “insurance producer.”

Section 27 would amend section 44-3904 of the continuing education for insurance producer standards to specify that licensees shall complete twenty-one hours of approved continuing education in each two-year period after January 1, 2010. Section 27 would allow an insurance producer to repeat a continuing education activity unless the repetition is within the same two-year licensing period. Section 27 would repeal a fee for providing certificates of completion for continuing education.

Section 28 would amend section 44-3909 of the prelicensing education for insurance producer standards to specify that individuals seeking qualification under the life, accident and health or sickness, property, casualty, and personal lines property and casualty lines of authority shall complete fourteen hours of prelicensing education.

Section 29 would amend section 44-3910 of the prelicensing education for insurance producer standards to set forth designations which would allow applicants for licensure to be exempted from prelicensure education. Section 29 would exempt from prelicensure education requirements those individuals who have a college degree with a concentration in insurance.

Section 30 would amend section 44-3911 of the prelicensing education for insurance producer standards to repeal a fee for filing certificates of completion for prelicensing education.

Section 31 would amend section 44-4064 of the Insurance Producers Licensing Act to authorize the Director of Insurance to charge for a resident or nonresident insurance produce license a fee in an

amount not to exceed \$100. Section 31 would prohibit the director from pro-rating such fees or refunding fees in the event of a license denial, and would permit the director to issue refunds if fees are paid in error.

#### LONG-TERM CARE

Section 32 would amend section 44-4521 of the Long-Term Care Insurance Act to revise the requirement for long-term care insurance producer licensing to specify that selling, soliciting, or negotiating long-term care insurance is not permitted after August 1, 2008, unless the insurance producer has completed the required training, rather than requiring that such training occur before August 1, 2008.

#### RISK-BASED CAPITAL

Section 33 would amend section 44-6009 of the Insurers and Health Organizations Risk-Based Capital Act to specify that the standard for the trend test is the standard set out in the life risk-based capital instructions.

Section 34 would amend section 44-6016 of the Insurers and Health Organizations Risk-Based Capital Act to adopt a trend test for the Director of Insurance to apply to the risk-based capital levels for property and casualty insurers.

#### PROPERTY AND CASUALTY INSURANCE RATE AND FORM ACT

Section 35 would amend section 44-7508.02 of the Property and Casualty Insurance Rate and Form Act to specify that the Director of Insurance may disapprove an insurer's filing if the insurer fails to provide requested information.

#### FINANCIAL CONGLOMERATES

Section 36 would grant the Director of Insurance authority to adopt rules and regulations allowing insurers to submit to the jurisdiction of the director for the purpose of financial conglomerate supervision, and adopts standards for rulemaking by the director.

#### MISCELLANEOUS

Section 37 would specify that Sections 4 and 38 would become operative January 1, 2009.

Section 38 would provide repealers.

#### **Explanation of amendments, if any:**

The committee amendments would strike sections 1 to 4 and 22 to 38 from the bill and thereby leave in the bill only those sections which propose amendments to the Viatical Settlements Act.

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Senator Rich Pahls, Chairperson