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Banking, Commerce and Insurance Committee
January 23, 2007

[LB117 LB119 LB121 LB191]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on January 23, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB117, LB119, LB121, and LB191. Senators present: Rich Pahls, Chairperson; Chris Langemeier, Vice Chairperson; Tom Carlson; Mark Christensen; Tim Gay; Tom Hansen; Dave Pankonin; and Pete Pirsch. Senators absent: None. []

SENATOR PAHLS: Good afternoon. Welcome to the Banking, Commerce and Insurance Committee meeting hearing. My name is Rich Pahls. I am from Omaha, the Millard of Omaha, I should say, and I represent District 31. I'm honored to serve as the Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. To better facilitate today's proceedings, I ask that you abide by some of the following procedures, and you can see that we do have a board of some of the major ones. We are asking you again to turn your cell phone off. There is an on-deck chair when you are to be the next testifier. We are asking that you complete the testifier's sheet and put it in the box up here on the testifier table. And when appropriate, there will be a separate sign-in sheet passed around for people who are present and wish to express their support or opposition but do not wish to testify. Typically the introducing senator will make the initial statements. Today you are going to find out through past tradition when we have a Banking, Commerce and Insurance Committee (bill), we start off with the director instead. Following the introduction of the bill, we will hear testimony from proponents, opponents and neutral testifiers. We will strive to give equal time to both sides, and, again, typically the senator would make the closing statement. We are asking before you testify by spelling your first and last names for the record. Now here is something I do want to reinforce because yesterday we noticed that there was a little difference to some of our procedures. Written material may be distributed to committee members as exhibits only while testimony is being offered, hand it to the page for distribution to the committee and staff, and we need ten copies. Now, if you do not have ten copies right now, you wave your hand, I will send a page to you and we will get those before you come up if you do need some. I see no hand waving. Okay. If you are following other testifiers, please listen to their comments and try not to be too repetitive. To introduce some of our staff members, the gentleman who just left this chair, Bill Marienau, many of you know the man. He is our committee counsel. To my left is committee clerk, Jan Foster. I am going to ask the senators to introduce themselves starting... []

SENATOR CARLSON: Tom Carlson, District 38. []

SENATOR PIRSCH: I am Pete Pirsch, District 4 in Omaha. []

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

SENATOR LANGEMEIER: Chris Langemeier, District 23. []

SENATOR PANKONIN: Dave Pankonin, District 2. []

SENATOR GAY: Tim Gay, District 14. []

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial. []

SENATOR HANSEN: Tom Hansen, District 42, Lincoln County. []

SENATOR PAHLS: Thank you. Now our pages today, one is Kristine Kubik, from Page...Prog (phonetic)? []

KRISTINE KUBIK: Prague. []

SENATOR PAHLS: Prague. Some of my world history comes out between Prague and Prog (phonetic), so I apologize for that. And Cora Micek from Hastings, Nebraska. Thank you. The order of bills that will take place today will be LB117, which is a Banking, Commerce and Insurance Committee bill; LB119, which is a Banking, Commerce and Insurance Committee bill; LB121, which is a Banking, Commerce and Insurance Committee bill; and LB191 is Senator Mines' bill. I think we are ready, Director Wagner, to begin with LB117. Thank you. [LB117]

TIM WAGNER: Thank you. Chairman Pahls and members of the Banking, Commerce and Insurance Committee, my name is Tim Wagner, T-i-m W-a-g-n-e-r. I am the Nebraska Director of Insurance and I am here to testify in support of LB117, commonly known in our offices as the department bill. There includes a number of topics. The first among them is a request that would modify the filing fees that the Secretary of State receives for insurers filing articles of incorporation or documents relating to a domestication, and this is from a flat fee to a percentage of the amount plus a percentage of the amount of capital, in this case \$300. What we found as we were attracting insurers to redomicile to Nebraska and provide our citizens with jobs was the fact that the minute they showed up at the Secretary of State's office, we handed them a very significant bill. Insurers, the cost of these have ranged up to \$60,000, and the reason for that was that in Nebraska we charge, based on a rate, for authorized and authorized but unissued stock. And these large corporations have a significant amount of unissued stock and they need that because they need access to the capital markets. So what we found was that we were out of step with the rest of the country in this fee process. We are asking you to amend that statute or that fee to a flat \$300 per corporation for the filing. The second thing we would like to do is allow for a provision. The department is responsible for companies we hold deposits or we are responsible for the administration of deposits, which are direct security to Nebraska policy holders in the event of a failure. And we have had banks that hold these, we allow the deposit to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

be held by a bank and report to us. And what we have found is although the banks were charging the insurers' fees, they are not filing the reports as required under state law. And since we have a duty to monitor the amount of these deposits and the security that is being used as the deposit, this has created some faulty reporting which increases the burden that we have in the administration of those statutes. And since we certainly can't find the...or the forfeiture cannot be applied to the financial institution over which we have no jurisdiction, it can be applied to an insurer and this will encourage them to place funds on deposit with banks that provide the service that they are supposed to provide. The next item that we have is workers' compensation, and we have a unique plan in Nebraska wherein we bid out periodically the residual plan, for what we would call an assigned risk plan, for workers' comp. And we bid it out, and so the insurer that gets the bid takes all of the residual workers' compensation risks, those firms that can't buy insurance in the usual market. And we have been fortunate that we have always been able to find a bidder or two bidders. When I first came, we got one bidder. The last time we got two bidders, but we are very concerned that in the event we got no bidders, what would happen? And as a result of that, what this proposal would do would be to allow us to establish regulations by which we could implement an assigned risk plan in the event the plan that we are using, which we like and which we want to prevail or persevere, would fail, and it would fail because we don't have a bidder for the business. So that is the next item. The next item in the department bill relates to the definition of industrial insureds. Due to...we have treated this a little different than most states in that we have not taxed a premium tax on industrial insureds. And they may be located in other jurisdictions, and they are used to paying premium taxes, and we get the premium tax and we don't really have a provision to accept it. And this is simply a technical amendment that clarifies that we can accept the premium tax from industrial insureds. The last two items relate to agent licensing and viatical settlement licenses. In the Viatical Settlement(s) Act, the procedure is a little different than with the rest of the administrative actions that we take regarding agent licenses. And it is this: we will deny a license, an application for a license, and allow an individual then to have a hearing on that question. Under the viatical settlement law that we enacted, we have to have the hearing and then make a decision to deny the license. And oftentimes it is just a cumbersome process. We would like some uniformity of process, and that is what this would do. It is not a big issue in that we don't have that many denials of viatical settlement license applications for, but it is just something that we believe should be consistent. The next item that we have deals with the approval of forms. It is kind of a cleanup issue, because we don't really approve forms in the PNC area. They're automatically filed and we have the right to disapprove them, and so we review them as if we were disapproving rather than putting our stamp of approval on it, and we missed a few of those. The last item that I would like to talk about is continuing education regarding long-term care insurance. Last year the Legislature passed, and this is in conjunction with anticipation of some federal government support on tax issues relating to long-term care insurance, making it more attractive and desirable for individuals to purchase it, and that is something that we as a state have encouraged simply because

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

of the financing associated with those that don't, that drop through the safety net and end up with Medicare is extremely expensive. And what this will do is, we are required under the federal mandates and under that Nebraska health and human services department has as well, that we make assurance that agents are schooled in the long-term care insurance. And so this does not add a burden to the agents in terms of the number of hours of education that they must have, but it does indicate to them that they must have so many hours that apply to long-term care insurance. And the process by which we do that is a little different in the NAIC model, and this is an NAIC model. In this instance, all certifications for agent licensing and continuing education go into the Department of Insurance and we monitor that. But under this bill, under the NAIC model, the certification runs to the insurer that in turn is responsible for that enforcement. And while we could certainly do it within the department in the process that we have, we learned in yesterday's hearing that when we depart almost in any way from an NAIC model where the administration of that model is national in scope, that it creates some concerns on the part of the industry and additional burdens for them to understand, while Nebraska is different than the rest of the 49 states and the territories. So this would be a small departure from that. And with these comments, I would ask that you advance the bill to General File, and I would be happy to answer any questions that you may have. Yes. [LB117]

SENATOR PAHLS: Senator Langemeier. [LB117]

SENATOR LANGEMEIER: Director Wagner, thank you for your testimony. In section 10 you talk about no additional burden on selling a long-term care insurance. However, you require that they may not sell solicitor negotiate long-term care insurance in individual licensed to sell insurance for health and sickness and accidents, but also must complete a one-time training course. Is a one-time eight-hour training course enough education to sell long-term nursing home insurance? [LB117]

TIM WAGNER: Long-term care? I suppose. Senator, I believe that it is adequate. That has been vetted by all of the insurance commissioners, not that we all have the same opinions, but that is as a result of a I know vigorous debate and vetting. I know it is complex. Long-term care is...I would hope that insurers and agents would get more than the mandatory, but I think from a statutory standpoint that is...I'm rambling. [LB117]

SENATOR LANGEMEIER: Okay. One more question. What license do you currently have to have to sell long-term care if we are adding it under the health, sickness and accident? [LB117]

TIM WAGNER: I believe that is where it is included in the definition of health and accident insurance. [LB117]

SENATOR LANGEMEIER: Okay. Thank you. [LB117]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

SENATOR PAHLS: Senator Carlson. [LB117]

SENATOR CARLSON: Thank you, Senator Pahls. Director Wagner, on this portion that pertains to long-term care, the people it would be that this would affect are those that are already certified to sell long-term care, but this adds eight hours of instruction by a year from August. [LB117]

TIM WAGNER: Senator, I am not sure that I...I don't have the bill, but is it...yeah. [LB117]

SENATOR CARLSON: Well, it is August 1, 2008, and during this time on normal licensing we have to have 18 hours of continuing ed of which 3 are ethics, so that leaves 15. Now eight of those will go to long-term care. Has there been any concern about its cutting back what can be focused on life and other forms of health insurance and annuities? And then going forward beyond August 2008, the requirement is four hours every two years. So we will have required that 22 percent on an ongoing basis be in the area of long-term care. Is there a sunset on that provision or that would just remain there? [LB117]

TIM WAGNER: The eight hours? [LB117]

SENATOR CARLSON: No, not the eight. We got the 8 hours in the next 6 or 18 months, but then beyond that we have got 4 hours, the next 2-year period. [LB117]

TIM WAGNER: I don't believe that is sunset, Senator. [LB117]

SENATOR CARLSON: Okay. [LB117]

SENATOR PAHLS: Senator Pirsch. [LB117]

SENATOR PIRSCH: Oh, I am sorry. My question just deals with the first item. You had mentioned that with respect to the charges that you had experienced in the past up to \$60,000 for the fees and now we want to change that to a flat, is that correct? [LB117]

TIM WAGNER: That is correct. [LB117]

SENATOR PIRSCH: To be competitive along the lines of \$300 in all cases. Is that going to cause a substantial reduction in types of revenue or was the \$60,000 really a rare occurrence? [LB117]

TIM WAGNER: That was the largest occurrence, Senator. But unfortunately we don't get as many redomestications as we would like in the first place. And basically we want

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

to promote employment, and if we don't get another redomestication, it will be absolutely no decrease in the revenue, if we do, what "coulda, shoulda" might apply. But I don't know whether decisions companies necessarily base. This is not a earth shattering fee, I mean, by that it is just out of the norm and we would like to just see that we get somewhere where the other states are. [LB117]

SENATOR PIRSCH: Okay. Thank you. Appreciate it. [LB117]

TIM WAGNER: Yeah. [LB117]

SENATOR PAHLS: Senator Gay. [LB117]

SENATOR GAY: So again, on the fees, so that would be an insurance industry is one of the targeted industries in economic development? So you are saying it would make it easier to go through the process? So are you just tweaking your application process? [LB117]

TIM WAGNER: Well, yeah, less expensive. And I really wasn't aware of this. As you go out and try to sell Nebraska, and it was kind of one of those things that was kind of like a gotcha. I believe that in good faith if I were to negotiate working with another carrier in the future, I would have to disclose the fact that we really do have this real healthy expense in the process before they made their decision. So in that vein, I guess I just feel fees are really supposed to be a reimbursement for the expenses associated with a service provided. And so if you are getting a \$60,000 fee to simply put a piece of paper and have somebody put a stamp on it, you don't have to review it, is that really what a fee is or is that a tax? I don't mean to get into that. [LB117]

SENATOR GAY: Yeah. [LB117]

TIM WAGNER: But we do all the work, the department does all the work associated with them, and the filing of our documents is \$500 for an annual statement. It just seems like we are taking advantage of people. [LB117]

SENATOR PAHLS: Senator Pankonin. [LB117]

SENATOR PANKONIN: Thanks, Senator Pahls. Director Wagner, I would like to have you explain to me a little more about the workers' compensation. If the assigned risk system isn't going to work, I'm just reading this, is the state of Nebraska then that carrier, so to speak, for that assigned risk pool or do you work with a company? Tell me how that would work. [LB117]

TIM WAGNER: Sure. I will do my best, Senator. Right now I believe it is every three years, it may be every year, we set out a bid or specs, and we send it to the companies

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

that are licensed to write workers' compensation in Nebraska, saying here is the loss experience from inception to date and we are looking for a carrier that has this kind of a financial position, the stability and the size, to administer this pool of business and take the risk associated with it. There are absolutely, aside from our cost of oversight, no state funds, nor state liabilities associated with this process. But they, in fact, then must accept all of the applications in their agreement. They must accept all of the applications from those firms in Nebraska that can't buy insurance through the normal marketplace. And they do it at a rate that is the bid. We bid a rate, actually, and it is called a loss cost multiplier, but I don't want to get too technical here. What we are very concerned about is if the markets got tight, and they did get tight, our assigned risk pool for workers' compensation five, six years ago was very small, very small. And then as the market tightened up and the ebb and flow of the marketplace we ended up with almost \$40 million of premium in that assigned risk plan. Now that amount of money is going down again as the cycle goes. But we just sit there and wonder what if, and what if we didn't get a bid? How much time would we have and what could we do to put a plan together and we don't have a statutory framework or authority to do that, other than the plan that we have? And we are just saying, should that happen, and hopefully it will never happen, that we have a mechanism in place to require insurers to participate in some kind of a risk sharing mechanism. [LB117]

SENATOR PANKONIN: And a follow up question would be then, the reason I am curious about this because if that situation happened I think a consequence that the state...are state funds at risk? Would they have to be the backup to this if private insurers don't step forward? [LB117]

TIM WAGNER: No. [LB117]

SENATOR PANKONIN: You would actually be able to, by this, require companies to participate? [LB117]

TIM WAGNER: Yes. [LB117]

SENATOR PANKONIN: Okay. [LB117]

SENATOR PAHLS: Senator Gay. [LB117]

SENATOR GAY: Thank you. Questions regarding these viatical settlements. [LB117]

TIM WAGNER: Yes. [LB117]

SENATOR GAY: How many people right now, how many companies are providing that service in Nebraska? [LB117]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

TIM WAGNER: I am sorry, Senator. I'll have to get back to you on that. I don't know how many companies are licensed, nor do I know the number of agents that are servicing that business. [LB117]

SENATOR GAY: Okay. Then another question, I guess, is this to prevent...I can see in the future this growing, these kind of situations and is the purpose of this just to kind of nip it in the bud before? If you have a company that is not doing things in an appropriate manner that you can quick stop it right then. Is that what the intent is? [LB117]

TIM WAGNER: Well, actually this is associated with the granting of the license. [LB117]

SENATOR GAY: Okay. [LB117]

TIM WAGNER: Not with the activity afterward, as I understand it. [LB117]

SENATOR GAY: Well, this says or to renew a license. [LB117]

TIM WAGNER: No. [LB117]

SENATOR GAY: So it is to renew as well. [LB117]

TIM WAGNER: If it were to renew...I guess on that one, I thought it applied only to new, because a process that we had...maybe in the viatical act it requires a hearing before. But I can't disapprove anybody that has a license. I can't delicense somebody without a hearing. [LB117]

SENATOR GAY: Okay. [LB117]

TIM WAGNER: So it wouldn't change that process, but it would change the granting of the license where we would deny the license, and then the individual typically would request a hearing if they didn't agree with that rather than we want to reverse that. Oftentimes I suspect they wouldn't ask for a hearing. [LB117]

SENATOR GAY: Okay. Then in your opinion, in the future, do you expect this type of viatical settlements to increase in the future? And can you explain why that would be just for... [LB117]

TIM WAGNER: Yes, we passed an act several years ago dealing with viatical settlements. Viatical settlement was initially envisioned individuals buying policies of people that were ill and needed access to cash. In the nonforfeiture values, should they turn their policy into their life insurer, oftentimes didn't reflect what would be the intrinsic value or the market value of that policy. So an industry was created that would buy policies of individuals that were ill, and that morphed into another scenario in which

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

people were encouraged to buy policies and then market those policies to a bank, to any firm that was involved in lending money to purchase life insurance policies. It is an issue that is before the NAIC right now with a new model. What drives this whole process of lenders wanting to get into this business are really, in my opinion, two things. For the longstanding policy, the differential between what we call the cash values of the policy and the market values. And the second thing is taxation. The taxation of the internal buildup of money that is in a life policy is not taxed for income taxes. It is allowed to accumulate, and by holding this policy, these investors, or sometimes they will lend money and then they become investors' pool of money, that tax benefit inures to them. So it is a business that is financially attractive selling one's insurability to an investor. I could ramble for a long time on that. Am I getting to what you wanted, Senator? [LB117]

SENATOR GAY: Yeah. Well, the point is this, I commend you for looking into this early, because in my own opinion I think this could result in...they are very complex products. I am not that familiar with them, but I am glad to see you dealing with it early. Sooner rather than later, because the complexity of these things, I think, is people more and more don't have the assets that they probably needed are going to become desperate and look at some of these things, and good or bad, I don't know enough about them. But I just wanted to tell you I am pleased to see that you are dealing with it and I would encourage you to continue to deal...be on top of these things before they become problems afterwards and then we have to address them six years or eight years from now. [LB117]

TIM WAGNER: Well, thank you, Senator. [LB117]

SENATOR PAHLS: I see no more questions. Thank you, Director Wagner. Next proponent? [LB117]

JAN MCKENZIE: Senator Pahls, members of the Banking, Commerce and Insurance Committee, we will have to reorganize that the day of our insurance committee bills, our insurance department bills. For the record, my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e. I am executive director and registered lobbyist for the Nebraska Insurance Federation, here in front of you again today in support of LB117. The Nebraska Insurance Federation legislative committee met this morning and it was a unanimous approval to support the department bills, and let me inform the committee for just a minute about why that is. Unlike many other states, as the domestic insurers that are regulated by this Department of Insurance in Nebraska, we have a good working relationship. In some states that is not the case. The department begins to work with us and ask our companies questions and concerns that they might have that they would like addressed legislatively early in the fall before we get to this session. We are in communication with them and have meetings so that when we get to this point with an introduced bill, all the competing industry members have worked out differences and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

are able to come to an agreement on what ends up in a department bill. And we appreciate that because we get our issues addressed in ways that allow us to run ideas by all the other companies that are doing business in Nebraska, and it allows us to come to compromise before all of us end up trying to carve out our own little piece of the pie. Our department is also very good about maintaining its good regulatory standing nationally, one of the reasons why we have been able to attract such high level companies to Nebraska. And so with that, we are in strong support of LB117 and ask you to advance it to General File. Thank you. [LB117]

SENATOR PAHLS: Any questions? I did hear an awful lot of compliments about our Department of Insurance. [LB117]

JAN MCKENZIE: Yes. Truly. [LB117]

SENATOR PAHLS: Thank you. [LB117]

COLEEN NIELSEN: Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the Nebraska Insurance Information Service. The members of the Nebraska Insurance Information Service have had a chance to review LB117 and have voted to support LB117 and ask that you advance it to General File. I would be happy to answer any questions. [LB117]

SENATOR PAHLS: Seeing none, thank you, Coleen. [LB117]

COLEEN NIELSEN: Thank you. [LB117]

SENATOR PAHLS: Any more proponents? [LB117]

JOE ELLIOTT: Mr. Chairman, I don't have any testimony. We are just supporting the bill. [LB117]

SENATOR PAHLS: Okay. [LB117]

JOE ELLIOTT: Professional Insurance Agents. [LB117]

SENATOR PAHLS: Could we just have you sit down, just state name, so we can just have a talk, in case we may have a question. [LB117]

JOE ELLIOTT: Okay. My name is Joe Elliott, J-o-e Elliott, E-l-l-i-o-t-t. I represent the Professional Insurance Agents Association. We have been exposed to this bill for some time, and our committee supports it strongly. I serve on the workmen's comp pool that we work with, and there is always the trepidation that something might come amiss or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

something because it is a very controversial thing. The rates are high and so we want to make sure we have a standby program, which I think is well drafted. And we certainly support that. [LB117]

SENATOR PAHLS: Do we have any questions? One thing that I appreciate the comments that you made because we did have a question about work comp and you indicated that you saw this as a positive move. [LB117]

JOE ELLIOTT: Yeah, I serve on that committee, and it is controversial. We have had employers of Wausa had it for several years. We can go back, and then before that we had the companies, that we would assign the risk to six different companies, and then they would take that. And at the end of the year if they were short \$1 million, then they would assess all the companies for that \$1 million, and nobody liked that because when you are an insurance executive, you can't plan ahead for that kind of an expense. And I know Warren Buffett, that is one of the big complaints he has because he has workmen's comp in a lot of states, and he gets some of these assessments out of the clear blue sky. And despite what they do, they still have to pay those assessments. In our state, we aren't paying them. Travelers has got excellent experience, it is in the 65-70 percent. The only concern I had is the rate might be too high. And that is something our committee and the department should be, I think, looking into, because the cattle feeders in this state are paying a high rate, something like \$35, which is considerably high in the compensation area. But I think that is something that should be another issue at another time. [LB117]

SENATOR PAHLS: Okay. Seeing no questions, I thank you for your testimony, appreciate it. This is the kind of information we need. Any other proponents? [LB117]

JIM CAVANAUGH: Senator Pahls, members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh. I am an attorney and registered lobbyist for the Independent Insurance Agents of Nebraska. We appear here today in support of LB117. I think that you have heard sufficient background on the contents of the bill, and we would generally endorse the remarks made by the director and would echo the remarks you heard earlier about the excellent working relationship between the department and insurance industries in Nebraska. It is really one of, I think, our better departments and has historically been so making Nebraska a friendly place for insurance, both from the sellers' point of view and from the consumers' point of view. We think that the provisions contained in LB117 would facilitate that excellent reputation and the regulation of insurance on a statewide basis. Be happy to answer any questions that you might have. [LB117]

SENATOR PAHLS: Yes, Senator Gay. [LB117]

SENATOR GAY: I guess I could ask this to any of the preceding people that testified,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

but Senator Carlson had a question about the long-term care, of the credit hours. Was there any discussion when you look at these things of agents or people saying, hey, too much, too little? What was some of the input into that, or did they just say it is great, go pass the bill? I mean, was there no discussion on the training? I think it is great, quite honestly for myself, but was there any discussion that you could share with us? [LB117]

JIM CAVANAUGH: Well, the continuing education aspect? [LB117]

SENATOR GAY: Yeah, and the long-term care. [LB117]

JIM CAVANAUGH: It has kind of developed over the last decade or two to improve the quality, particularly, of the agents selling insurance in terms of their knowledge of the product lines, and their ability to inform the consumer in an intelligent fashion as to the choices. We work closely with the department on developing those courses and getting approval for various offerings, and we found that it really benefits everybody. It is a benefit to the consumer, because the people that they are dealing with are more knowledgeable. It is a benefit to the agents because their exposure on what they call errors in omission, which is agent equivalent of like malpractice, is limited to a certain degree because they have more knowledge. And it is good for the insurers as well because they want people out there who understand their product lines and particularly the people selling them that are able to fully inform the consumers as to their choices. So the provisions in here which just kind of beef that up a little bit are only for the good. And a lot of other professions, you will see the medical profession, legal profession in Nebraska and other states have similar requirements, and so it just adds to the professionalism of the entire transaction in insurance matters. And this is one that everyone is getting involved in because it is...with the aging baby boomers, I am sure you all have heard a little bit about that, they are more of this. [LB117]

SENATOR GAY: Yeah. Well, yeah. I would say eight hours to me is such a complex sale anyway, and the products are changing all the time. I don't think it is a burden at all. I am glad to see it being done. I just wanted some kind of input of what you hear from different agents out there. But it sounds like that's very good. [LB117]

JIM CAVANAUGH: Right. Yeah, I haven't heard a lot of complaints. [LB117]

SENATOR GAY: And I think most people in your organization would want to do this. [LB117]

JIM CAVANAUGH: Correct. We see it as in our own best interests. [LB117]

SENATOR GAY: Can I ask one more question? [LB117]

SENATOR PAHLS: Go ahead. [LB117]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

SENATOR GAY: A little unrelated, but on the viatical settlements, would that be the same thing? Should there be down the road? [LB117]

JIM CAVANAUGH: I really couldn't speak to that. We are primarily property, casualty agents. [LB117]

SENATOR GAY: We will save it for another day, but a training on those too, if anyone is going to sell it. [LB117]

JIM CAVANAUGH: Probably. They say a little knowledge is a dangerous thing. [LB117]

SENATOR GAY: Yeah. Thank you. [LB117]

SENATOR PAHLS: Any more questions? Thank you. [LB117]

JIM CAVANAUGH: Thank you. [LB117]

SENATOR PAHLS: Appreciate your testimony. Any opponents? Seeing none, any neutral? We will close the hearing on LB117. We are ready for LB119. Director Wagner, familiar face, but still need to have you spell your name. Thank you. [LB119]

TIM WAGNER: Okay. Good afternoon. I am Tim Wagner. I am with the Department of Insurance and I am here to testify in support of LB119. And this bill is a bill that is a compilation of changes to our investment code that were precipitated by the department's request of the insurance industry to make sure that our insurance code stayed modern. With the new investment vehicles that are being devised, with the fact that we are in an international economy, and the observation that as insurers had redomiciled to this state, we had to on an ad hoc basis tweak our investment code to conform with the investment laws that they had secured their portfolios under in other states. That we ought to take a look to see that Nebraska stays abreast, both nationally and internationally, in being able for insurers to utilize investments without decreasing in any substantial amount the risk associated with those investments. And while the bill is really the work of the insurance industry, it was one that the insurance department encouraged, and we were in lockstep with them in the discussions, they are rather technical. The department supports each and every one of these amendments and I will attempt to get into some of them. There will be, Galen Ullstrom of Mutual of Omaha will follow me and is far more learned on some of these issues than I. They are very technical. But what we want to do, LB119 would define obligation for purposes of the Insurance (sic: Insurers) Investment Act to include within the definition of conformance to the NAIC model, participations and certificates, and remove the specific limitation on participating, that is in the investment code, relying on the general requirements. And what a participation is, it is a pool of insurers getting together and creating an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

investment trust. We have tried to address it through participation limitations, but really what we want to do is address it by the underlying investments that those participations have, and that is the purpose of that. The bill would set a statutory valuation of an investment as the lower of the actual cost of the investment or the admitted value. And this is trying to be conservative, but this issue came up with respect to how you value viatical settlements when you are the acquirer. We would like to adopt the language of the NAIC model allowing consideration liquidity needs of the transaction and security lending of securities. But the lending of securities is now a \$5 trillion business of which the insurance industry participates to the amount of about \$200 billion. In these lending of securities it is done to enhance the ability of the brokerage market to fulfill the balance, if you will, the sell orders with the buy orders, and sometimes the securities aren't available. The insurance industry can lend those securities and make some money doing that, but in doing so we require them to post cash collateral in the amount of 102 percent of the value of those securities. What we would do here by this legislative proposal is to repeal what is called an aggregate threshold, so we would go on a per transaction type basis in determination of that. It is a very, very technical issue. It is one that we are not lowering the standard. The threshold that we had was more conservative than the NAIC model, and we are just trying to get back to something that this is an operational issue for the insurers. It is very complicated. We are going to try to give the insurers more latitude in foreign investments allowing them to invest up to 3 percent in foreign securities. LB119 would allow us to adopt standards more closely to the NAIC model. Right now, we have a limitation where an insurer cannot invest more than 10 percent of its assets in preferred stock. We would like to increase that to 25 percent, and we did that after a review, and this isn't an NAIC model. Every state has been allowed to dabble in these areas. Some states are up to 40 percent. We are just kind of basically puts us in the mainstream. But we will retain that 10 percent limitation for securities that are not rated P1 or P2 or above by the securities valuation office. That is an evaluation office that the NAIC runs, and so we value every...that office values every security that the insurance industry holds. We put a value on that security. So this really just brings us kind of where the SVO, where the rest of the industry is. We are asking that you amend the investment limitations applicable to medium and lower grade securities to the value of these investments at the time they were purchased, rather than at a subsequent time. And what we are doing there is if an insurance company buys a security in, let's say, 2000 and the value is x, for purposes of applying limitation standards, like you can only have so much in common stock, so much in certain preferred stock, that those limitations when we establish it were based on the value when they were acquired, because sometimes the value goes down, sometimes it goes up and it becomes, from a tracking standpoint it becomes very difficult. So that is a very technical point but it is one for the insurance industry that has been cumbersome for us. We would also, lastly, clarify the relationship between the subsections of the wastebasket provision regarding the investment code authority for life insurers. And these limitations are really difficult to construe, and this whole argument why this change is there is whether deals with four words not withstanding, does it mean in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

addition to? And we have had this debate, it is a very technical debate and it is just basically clarifying that it is in addition. And that concludes my testimony and I ask that you advance the bill to General File. I would entertain any questions, but I will assure you that on some I will defer to Mr. Ullstrom. [LB119]

SENATOR PAHLS: Senator Langemeier. [LB119]

SENATOR LANGEMEIER: Thank you, Chairman Pahls, and thank you, Director Wagner. I have one and it is more a curiosity question. You exclude the investment into the securities evaluation rating system of a P1 or a P2. How wide does that range go? Does it go to like P10 or... [LB119]

TIM WAGNER: I cannot answer that. [LB119]

SENATOR LANGEMEIER: Okay. [LB119]

TIM WAGNER: I would imagine it goes to P5. [LB119]

SENATOR LANGEMEIER: Okay. I was just curious. Obviously P1 and P2 must be the bottom of that scale and it goes up to be a higher level. [LB119]

TIM WAGNER: I mean those are the best, the P1s and the P2s are the best. [LB119]

SENATOR LANGEMEIER: But you want to exclude them from the best. [LB119]

TIM WAGNER: No...yeah, okay. [LB119]

SENATOR LANGEMEIER: Or they have to be at least. [LB119]

TIM WAGNER: Yeah, at least. [LB119]

SENATOR LANGEMEIER: It is a little confusing, the wording. Okay. [LB119]

TIM WAGNER: I am sorry. My testimony is worded differently than the bill. I am sorry. [LB119]

SENATOR LANGEMEIER: Okay. It is a little confusing, the section that are not rated, so they would have to be at least P1 or P2, so that is the top of the scale? [LB119]

TIM WAGNER: Yes. [LB119]

SENATOR LANGEMEIER: Okay. It is a little confusing. Thank you. [LB119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

TIM WAGNER: Thank you. [LB119]

SENATOR PAHLS: Director, I see no more questions. Thank you. Proponents? If we have any other proponents, could they move to the front so we can get a feel of how many we have speaking. [LB119]

GALEN ULLSTROM: Thank you, Senator Pahls, members of the Banking, Commerce and Insurance Committee, for the record, my name is Galen Ullstrom, that is G-a-l-e-n, last name is U-l-l-s-t-r-o-m. I am senior vice president of Mutual of Omaha Insurance Company and registered lobbyist for them. Maybe the director gave me more accolades about my knowledge of investments than he should have, but we did serve as the coordinator for trying to bring companies together to work on a revised investment code. We did this, performed the same function, I think, back in the late eighties when the code was totally rewritten. At that time we put in a lot of limitations that over time did not remain competitive with other states and what the National Association of Insurance Commissioners has done. And so over the years we have come back in to try and modernize our code to provide that Nebraska insurers are at least treated equally with companies domiciled in other states so we are not at a competitive disadvantage. And this is basically just a look at, again, at a period in time of going back and looking at the statutes that may have needed to be updated to increase the flexibility for Nebraska companies to stay competitive. So that, basically, is what this document does. And, again, we have worked very closely with the insurance department and other members of the Nebraska domestic insurance industry to get this end result. I would be glad to... [LB119]

SENATOR PAHLS: Any questions? Galen, as I take it, basically this is a bunch of you got together and made this work because you want to be more competitive? [LB119]

GALEN ULLSTROM: Yeah, exactly. The department asked us, over the years, there are different things that come in. He mentioned the fact that when we have had other companies redomesticate to Nebraska, Pacific Life, being an example, and AFLAC, there have been things that they have had, for example, Pacific Life in the state of California that they were investing in, that might not have appeared in Nebraska law or the limitation, it might have kicked them out and they would exceeded the limitation. So what we have tried to do is work with these companies in order to be attractive as a forum, frankly, to be able to get companies like that into the state. We have had to do some tweaking. And some of this involves some further modifications and we will probably in years to come be back to you with other things that come up. But it is basically a group of companies, it is a group decision. [LB119]

SENATOR PAHLS: Okay. Do you have a question? [LB119]

SENATOR GAY: Yes. [LB119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

SENATOR PAHLS: Senator Gay. [LB119]

SENATOR GAY: Thank you. Could you explain and give us an example when you are talking about how the liquidity needs of the transaction, how that benefits... [LB119]

GALEN ULLSTROM: Under what, Senator, do you have a specific... [LB119]

SENATOR GAY: Well, I was looking at the statement of intent. It adopts language that the commissioners model act allowing consideration of the liquidity needs of the transaction in securities. How does that help make us more competitive? Are you sitting with excess funds that you have to keep, that maybe you could invest elsewhere? How does that in the real world... [LB119]

GALEN ULLSTROM: I am not an expert in security lending at all, Senator. I am not, but I think that it involves how...yeah, it basically involves the nature of the transaction, the nature of whether or not cash is needed, how liquid it has to be. So it is kind of like if life insurance companies, for example, invest in longer term investments because they don't need the cash flow, where property and casualty and health companies are very limited in what they are doing in long-term investments, it is mainly short-term investments and cash, because they have to make claim payments on a daily basis. And so, I think, the securities lending is, you know, in order to engage in securities lending you have to make sure that what you are doing supports your business model, which is whether you can make it work or not. So there are some companies that do it and some companies don't. I mean that is the... [LB119]

SENATOR GAY: So it increases your flexibility on what business you take on? Does this increase your flexibility over the years? [LB119]

GALEN ULLSTROM: No, it is just basically that one of the things involved if you are going to do securities lending, you have to make sure it fits within your cash needs. So I think, that is the primary reason for it. [LB119]

SENATOR GAY: Yeah, and I am not sure we can cover it all today. I will find out some more information later from...thank you. [LB119]

GALEN ULLSTROM: Sure, we can touch base on it later. It would be great. [LB119]

SENATOR PAHLS: Seeing no more questions, thank you, Galen. [LB119]

GALEN ULLSTROM: Thank you. [LB119]

SENATOR PAHLS: Appreciate it. [LB119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

TOM MAYS: Mr. Chairman, members of the committee, my name is Tom Mays. I am vice president of Pacific Life Insurance Company, and as Mr. Ullstrom said, we were involved with the Department of Insurance and several other companies here in Nebraska, in trying to update the insurance code with the NAIC model. As some of you know, a little over a year ago we redomiciled here to Nebraska. We have about almost \$100 billion in assets and a lot of that has to be invested all over the world. And so with the way the statute is in California, it is a little bit more flexible and so our portfolios the way they are now are getting very close to the restrictions here in Nebraska and so we are requesting that the statutes be updated to the NAIC model. And that it helps, also, as you update the statutes, and we will be coming back, I am sure, as we work with the statutes here in Nebraska with more clarifications in other areas. But it also as you update these statutes, it really helps other companies who are thinking about redomesticating to look at this in a positive way. Because when we first started looking at Nebraska, there was a huge amount of work to be done in the statutes, and it took about two years to get those worked out. So as you go through the years and update the statutes, and we will be looking at that as a life insurance company and trying to do that, and that should help a lot in bringing companies here to Nebraska. But we are in full support of this legislation and be happy to answer any questions. [LB119]

SENATOR PAHLS: Would you spell your last name? [LB119]

TOM MAYS: M-a-y-s. [LB119]

SENATOR PAHLS: Okay. Any questions? We have a question. [LB119]

SENATOR PANKONIN: Just curious on these changes and from your experience, did you move from California yourself, Mr. Mays, or were you here? [LB119]

TOM MAYS: No, we have our headquarters is in California, southern California. [LB119]

SENATOR PANKONIN: But your office here has how many employees? [LB119]

TOM MAYS: We started out with none and we have almost 300 now in Omaha, and that is continuing to grow. [LB119]

SENATOR PANKONIN: Great. And you are happy to be in the state then? [LB119]

TOM MAYS: Very happy, in fact our HR department is so happy with the employees, they are pretty ecstatic. The work ethics and so forth that we are finding in employees that we have is really tremendous. The help we have gotten from the Department of Insurance and the Governor's office has been incredible. When we need something in Omaha, the mayor's office has been very helpful. They helped us get our facility online

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

in record time, which would have never have happened in California. So we are pretty happy with the situation here. [LB119]

SENATOR PANKONIN: Good. [LB119]

SENATOR PAHLS: It seems we changed some of those statutes in the past to attract your company here. [LB119]

TOM MAYS: Exactly. We had, oh gosh, probably about 120 pages worth of statutes that needed to be clarified or revised that we worked with the Department of Insurance and the Governor's office on for about a year and a half. [LB119]

SENATOR PAHLS: Okay. Just goes to show you if everybody works together things can happen. I see a question over here. Tom. [LB119]

SENATOR CARLSON: Senator Pahls. (sic: Vice) President Mays, we are happy that you made this move to Nebraska. And we are all concerned about economic development and good business in Nebraska. Can you give a nutshell, why did you come? [LB119]

TOM MAYS: Well, I am actually a former member of the legislature in California, so I can kind of, you know, we deal with a lot of really restrictive statutes and so forth in California. The cost of doing business in California is very high, and one of the reasons that we started to come east to the Midwest is the fact that I think you have a better work ethic here, the employees are educated, easy to work with, you have a good business climate, and it is just really easy to work with everybody from the Governor on down. And we were looking for a branch office anyway in the Midwest to service our clients, and it just all came together at the same time, worked out really well. And we are transferring more and more of our divisions out here. It is going to take a little time. [LB119]

SENATOR CARLSON: Thank you. [LB119]

SENATOR PAHLS: I see no more questions. Thank you, Tom, appreciate your comments. [LB119]

TOM MAYS: Okay, thanks. [LB119]

SENATOR PAHLS: Good afternoon. [LB119]

CURT BROMM: Good afternoon. Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Curt Bromm, C-u-r-t B-r-o-m-m, and I am an attorney and a registered lobbyist for AFLAC, Inc., which is another company like

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

Pacific Life which redomesticated and redomiciled to Nebraska a few years ago. They came here a little bit before Pacific Life, and I couldn't help but recall when Mr. Mays was testifying that the prospect of Pacific Life locating in Nebraska came up kind of almost during the session, and so there was substantial amount of work done by the Governor and Legislature and others to facilitate that happening. And I think that kind of thing is always very helpful to the state, to our economy and the opportunities here. My purpose in testifying, no one from AFLAC was able to be here today from Georgia, but they wanted me to express to you that they certainly do appreciate the business climate in Nebraska. They hope to do a great deal more business here. They are very much an international company, and they have a great deal of business in Japan. And updating the investment statutes with respect to their state of domicile is very, very helpful to them in doing business internationally as well as throughout the entire country. They do business in all 50 states as well as some foreign countries. So we encourage the committee to look favorably on the legislation. We very much appreciate the work that was done by many in the insurance industry and by the department in crafting this update, because it is very, very badly needed as I understand it. So if you have questions, please make them pretty simple. [LB119]

SENATOR PAHLS: Do we have any simple questions? Go ahead. [LB119]

SENATOR PANKONIN: I have got one simple question for Senator Bromm. I asked the previous gentleman about their presence in the state. Can you tell us a little bit about AFLAC and their status in Nebraska and what their plans are? [LB119]

CURT BROMM: Sure. Their office where they have a claims center is in Omaha. And I shouldn't say for sure how many employees they have because I'm not...I remember when they came and they started off with something like 100 and some, but I am not sure how many there are now. I do know that they have talked of some other opportunities here. Nothing that has come to fruition yet, but I think they are very pleased with what we have here. I think the reason they still have a great presence in Georgia is that the two people who started the company were born and raised and grew up in Georgia and that is how they came to be there to begin with, so they are not ever going to leave there entirely. But they do appreciate Nebraska. [LB119]

SENATOR PAHLS: And we do have additional room in case they...just let them know that. [LB119]

CURT BROMM: That is right. We will keep reminding them of that, Mr. Chairman. [LB119]

SENATOR PAHLS: Okay. Thank you. [LB119]

CURT BROMM: Thank you very much. [LB119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

SENATOR PAHLS: Okay. Appreciate your words. [LB119]

JAN MCKENZIE: Senator Pahls and members of the committee, for the record, my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e, representing the Nebraska Insurance Federation and testifying in support of LB119. You have had the privilege this afternoon of hearing from three of my member companies who happen to be probably the most recognizable of many of the companies. But I am here testifying on behalf of a number of other companies who also support this legislation and are members of the federation but were not here today, including Ameritas and a number of others. But I would entertain any complicated questions with simple answers. [LB119]

SENATOR PAHLS: Senator Carlson. [LB119]

SENATOR CARLSON: No. [LB119]

SENATOR PAHLS: Okay. Though I tell you when that hand goes, I am ready to jump. [LB119]

JAN MCKENZIE: Thank you. [LB119]

SENATOR PAHLS: Thank you, Jan, appreciate it. Any other proponents? The reason why I keep emphasizing the proponents, opponents, and neutral is because we do have so many new people it is nice to know where everybody stands on these issues. Any opponents? Anybody in the neutral? That will close on LB119. Are you ready? We are now ready to open on LB121. Director, good seeing you again. [LB119]

TIM WAGNER: (Exhibit 1) Thank you. I will refrain from spelling or perhaps even identifying myself. But for the record, I am Tim Wagner. I am the Director of Insurance for the state of Nebraska and here in support of LB121. And what LB121 would do would be to create a regulatory framework in which we could encourage businesses that are Nebraska-based businesses to form captive insurers in the state. And a captive insurer is an insurer that doesn't sell insurance to the public. Its purpose is to meet the needs of its parent, manufacturing company, a bank and they do not sell so you don't have even third-party liability. This is to meet the needs of a corporation, and why do they want to form a captive? A couple reasons for that, one is it is a device for risk management. But the most important reason is the fact that a corporation cannot...having an insurance company provides a tax shelter, that the premiums paid to the insurance company are, in fact, a business expense. So many, if not most, major corporations in the country own captive insurance companies that just meet their needs, insure their property, insure their liability. So they are a unique animal. About 25, about half of the states in the country have provisions to authorize captive insurers. They are not regulated the same way that an insurance company is regulated that has access to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

the insurance marketplace. In fact, there is very little regulation at all. But what I have noticed over time is that as other states developed these captive vehicles, many of our Nebraska-based businesses, since we had no vehicle in the state, were having to go to states such as Vermont, South Carolina, Arizona, and the District of Columbia, Nevada, Arizona, Hawaii to form these corporations. And the question is, if we are going to be business friendly and we are going to have a business climate, shouldn't we create a facility to meet the risk management needs of our local industry? And that is really what this bill entails. There is a small amount of revenue that would be generated, and I have an amendment here regarding the generation of that revenue, and that is that in the bill that you have before you, there is a premium tax associated with the moneys that the parent pays to the captive of premiums of one percent. And, quite frankly, it was a misprint. We have an amendment that would impose a premium tax of .25 percent, or a quarter of one percent, of the premiums that are paid into these facilities. Currently we receive none, because these facilities are paying this tax to other states. The tax is on the low side. There are states that have one percent, but they don't have any captives because they all go to the state with the lowest premium rate and the lowest premium tax rate and the lowest fees. So it is a revenue generator, but that really wasn't the purpose. The purpose was to serve in plain, vanilla fashion our local industry. There are states that have allowed captives formed, what are called association captives that are more complex. There are states that have formed RRGs under captive statutes. We are not doing any of that. This is simply a plain, vanilla captive law to serve the businesses that are located in Nebraska. And it is so encouraging that if a company from Iowa wants to form a captive in Nebraska, there is probably some constitutional issue that would prohibit me from declining that opportunity. But I can assure you this is really the thrust of this is economic development for Nebraska, trying to make Nebraska a better place for businesses, not simply insurance companies. But in the process of discussing this with Mutual of Omaha, I became aware that they were in the process of forming a captive in another jurisdiction. And as a result of that and the unique needs associated with that captive, I believe that Galen Ullstrom will be here and will be introducing an amendment which the department has reviewed and is certainly amenable to. And what it is, it is actually a vehicle to transfer the reserves that will allow them access to the capital market to finance and maintain reserves that are, unfortunately or fortunately, redundant reserves. They are reserves that actuaries would tell you that they need not hold, but they do hold. But we would support that amendment as well. And with that, I certainly would entertain any questions. Yes. [LB121]

SENATOR PIRSCH: Thanks a lot for your testimony. With the amendment as you related from Mutual of Omaha, would that still fall in the category of being kind of a vanilla captive law? [LB121]

TIM WAGNER: Yes. It deals with the structure of the reserve giving them access to the capital market. They are not out in the marketplace selling insurance through this captive to anyone, nor to another company. [LB121]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

SENATOR PIRSCH: Do you think that it is perhaps time for us to, granted this is step by step, but do you think it warrants investigation to go look past that and look into more cutting edge type of, captive type of laws at this point in time? [LB121]

TIM WAGNER: Well, Senator, it could well be that we should certainly keep it on our radar screen. And I would tell you that the reason that I didn't introduce this eight years ago was a concern about allowing captives to basically compete with...we are an exporter of insurance, and we have insurance companies that are selling insurance. And I was fearful that there would be some resistance on the part of the industry to facilitating these type of transactions. I found out I was absolutely wrong. So the insurance industry will have the property and casualty industry that is mainly affected by these risk management techniques will have no...they certainly don't object to these. As a regulator, I have some concern and I have been concerned on this on a national basis, and have chaired what is called a risk retention group task force, trying to create some financial standards. Because as we create alternate risk transfer mechanisms, we have to be assured that whatever that mechanism is that the public is protected from failure, in other words, if we give them access to our marketplace. And we experienced about three years ago a significant failure of one of these captive organizations that affected our people or our population, and it was a firm called National Warranty. You may have read about it. And it was formed under command laws relating to captives. And what we get here in captive law is an abbreviated form of financial requirements. And what I have been doing at the national level is trying to create...I don't believe in risk retention groups, and I don't know how many of you know what those are. They are groups where people can get together and insure themselves and members, and this was created by an act by Congress in 1982, I believe, it might have been '84, but to share risk. And what happened was I think Congress really believed that they would be regulated like insurance companies. But a couple of innovative states decided to regulate them as captives, and so there were no surplus requirements. There might have been a \$50,000 letter of credit that was really the capital of the company. And so I guess I would want to be very cautious in moving into that next paradigm because I really do want to make sure that we maintain our reputation as being a sound and solid financial regulator. [LB121]

SENATOR PIRSCH: Thank you. [LB121]

SENATOR PAHLS: Senator Hansen. [LB121]

SENATOR HANSEN: Thank you, Chairman Pahls. In section 2, it is actually line 7 of the green copy of the bill, it states that promoting the development in Nebraska companies, Nebraska businesses. When we state that, we are talking about 2007. By 2010 will you be back here wanting to expand this to national businesses and take the word Nebraska out and have it just insurance industry? Should we do that now instead

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

of waiting a few years? Do you want to protect just the Nebraska businesses in 2007?
[LB121]

TIM WAGNER: That is an excellent question, Senator. Quite frankly, even though we say it is for Nebraska, I don't believe that legally I could enforce that. But I think that I would not be adverse to that. But I do not want to become a haven for...as long as it is a pure captive, I would not have an objection to doing that. There is some regulatory oversight involved, but I think we could handle it. These are not heavily regulated, but I believe we could do that. Something, certainly, to think about. If we did I would say, I think I would want to take a closer look at the premium tax. [LB121]

SENATOR HANSEN: Thank you. [LB121]

SENATOR PAHLS: Senator Carlson. [LB121]

SENATOR CARLSON: Thank you, Senator Pahls. Director Wagner, you get a little embarrassed when we throw a plaudit your way. I have observed you back there, but I will throw another one because I know that our Department of Insurance is respected and it is efficient and it is run well, and I appreciate the attitude of being insurance friendly for economic development purposes, and want to encourage that, and thank you for what you do. [LB121]

TIM WAGNER: Thank you, Senator, thank you. [LB121]

SENATOR PAHLS: Senator Langemeier. [LB121]

SENATOR LANGEMEIER: Thank you, Chairman Pahls and Director Wagner. We have been given, by our great committee staff here, an amendment. I am sure you have been apprised of that. [LB121]

TIM WAGNER: Yes. [LB121]

SENATOR LANGEMEIER: That potential amendment, and you are accepting to that amendment? [LB121]

TIM WAGNER: Yes. Very much so. [LB121]

SENATOR LANGEMEIER: Okay. Thank you. [LB121]

SENATOR PAHLS: Seeing no more questions, thank you, Director. [LB121]

TIM WAGNER: Thank you. [LB121]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

SENATOR PAHLS: Proponents? [LB121]

GALEN ULLSTROM: (Exhibits 2 & 3) Chairman Pahls, members of the Banking, Commerce and Insurance Committee, again, for the record, my name is Galen Ullstrom. I am senior vice president of Mutual of Omaha Insurance Company appearing today in support of LB121, but primarily to offer the amendment that Director Wagner mentioned, which is more of a special purpose financial captive amendment. As Director Wagner explained, the captive insurance company is basically an insurance organization which insures risks of its parent. While there are many variations of it, the Nebraska Captive Act would permit formation of domestic insurance companies that would provide insurance or reinsurance only to the parent or affiliated company. The purpose of the amendment would really serve an even more limited purpose, and it would authorize the Director of Insurance to issue a certificate of authority to a special purpose financial captive that could be established only to accept life insurance risks from its parent or an affiliated company which must be an insurer domiciled in Nebraska. Changing and reserving methods, rising reinsurance rates, and reinsurance capacity have led the life insurance companies in the country to search for alternative methods of funding their growth. In response to that, insurers have developed structures that access capital markets through securitizations. An essential element of securitization structure is the availability of a special purpose financial captive which allows the segregation of certain assets and related liabilities. The proposed amendment that I have offered you authorizes the formation of this entity and establishes the framework for regulating the business of a special purpose financial captive. Special purpose financial captives can currently be formed in a number of states and foreign countries. However, these jurisdictions typically require the maintenance of a presence in that state or country as a condition of doing business. The proposed amendment would allow Nebraska domiciled insurance companies to employ effective funding techniques without incurring the costs that would be required to establish a captive in another state. In compromise, I think, when we began, we had already begun discussions with the state of South Carolina, which has become probably the biggest state as far as special purpose financial captives. We did not know the department was interested in forming a captive statute here, and when we became aware of that, for a number of reasons it made sense to try to discuss with them the ability to form this operation here. From our perspective, it is more cost effective to do business here, and I think, from the department's perspective it allows them to have regulatory control, not only of Mutual of Omaha which they have anyway, but of the subsidiary that we would otherwise have formed in South Carolina, which would have been subject to the South Carolina Department of Insurance jurisdiction. So it makes sense. As Senator Wagner mentioned, the only interest that we have in forming this special purpose financial captive is to provide some reserve relief. When we accept premiums and issue products, we are required by law to establish reserves for that product to make sure that we can come through and deliver on our promises down the line. There are certain products that have higher reserves than others. The specific product that I will mention is level term product. Level term products

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Banking, Commerce and Insurance Committee
January 23, 2007

now, because of concerns of some regulators, if they have a premium guarantee or the level of the premium is level for more than five years, you have to establish a significant reserve in order to make sure that you can maintain that level premium. Right now it is done on a formula basis. It is called formulaic reserves. We have to comply with it even though our actuaries would say that the reserve we have to establish is significantly higher than what we need to keep our promises, basically. There is a move in the National Association of Insurance Commissioners to move away from formulaic reserves to what we call principal based reserves, which are more the actuary certifying that you have appropriate reserves. But that is a process that is in the future and potentially might not provide relief for products that we have on the books, and a significant amount of what we consider redundant or excess reserves. So the purpose of this financial corporation would be to isolate, for example, those products that we think are significantly over reserved, reinsure them with the single purpose financial subsidiary, and then potentially access the additional capital markets, such as a bank, other lending institutions that would be willing to say, advance us money to fund these reserves and take, as their stream of capital or collateral, the business that we have secured, the profits on that business. And so we know because other companies have gone through this in other states that there is that market, and companies have had to go to the states that allow this type of entity. So this law was patterned after, in a number of ways, the South Carolina law, but is much more restrictive in its purpose, and we are very comfortable in working with the department that we have got a vehicle here that provides the safeguards, but also allows Nebraska companies to engage in this without leaving the state to do it. So that is basically the purpose of it and we certainly support the department's efforts in saying to us, you know, we don't want you to go to South Carolina to form this subsidiary if we can work something out here. [LB121]

SENATOR PAHLS: Senator Langemeier, question. [LB121]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. And Mr. Ullstrom, I thank you for bringing this forward. It looks to be more extensive than a typical amendment, maybe more so than any bills we have had before us, and granted we will have to read it. Is there a time of the essence of this or should this not have been introduced as a bill in its entirety on its own? [LB121]

GALEN ULLSTROM: Well, that is a good question. Again, we would not have brought it here if it was not for the department's coming forth with the captive statute to enable a captive at all. This is a subset of a captive statute, so it would probably have been an amendment if the captive law was passed and in existence in Nebraska. This would have also been an amendment to it, because it refers and it ties back, while it has some specific sections, we would be subject to all the other requirements of the captive law, of LB121. So it really ties into it as an amendment even though it looks like it is as long or longer than the bill itself, but it really ties in with the original bill. So it would have been offered as an amendment even if we brought it next year, for example. [LB121]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

SENATOR LANGEMEIER: Thank you. [LB121]

SENATOR PAHLS: Senator Carlson. [LB121]

SENATOR CARLSON: Senator Pahls. And President Ullstrom, just to help me out, would you oversimplify the advantage of a captive insurance company. I know it is an advantage to Mutual of Omaha, but then what kind of an advantage is that to your policyholders or what kind of advantage is that to the citizens of Nebraska? [LB121]

GALEN ULLSTROM: Okay. Well, what we think it does is provide us some relief or financial infusion of capital, for example. When we set up reserves, we are not able to use those reserves to promote anything else, to do anything else, to acquire business, to effectively enhance products that we currently sell or we want to sell, because they are committed. And what this would do is allow us to reduce or at least fund these reserves through an outside mechanism, which would allow us to use our existing capital and some existing capital we have to do other things, to benefit from our own products, to come up with new products, to look at different business opportunities if we have acquisitions, for example, in mind. So it is really freeing up capital we otherwise can't use to be used and, yet, not provide any disservice to the policyholder because we truly believe, and, I think, most people even on the regulatory community would agree now that some of these formulas we have had to set up reserves by require effectually be redundant, as Director Wagner said, redundant reserves, excess reserves. So it allows us to free up capital to use for other business purposes. [LB121]

SENATOR PAHLS: Seeing no more questions, thank you, Galen. [LB121]

GALEN ULLSTROM: Thank you very much. [LB121]

SENATOR PAHLS: Appreciate your information you have given us. Good afternoon. [LB121]

JAN MCKENZIE: You are going to have to get a bigger chair for me, or a higher chair for me. Senator Pahls, members of the committee, for the record, my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e, representing the Nebraska Insurance Federation in support of LB121. That is a real short, me too. [LB121]

SENATOR PAHLS: Any questions? We thank you, oh, I am sorry. Senator Hansen. [LB121]

SENATOR HANSEN: Excuse me, Senator Pahls. I am sorry. I was a little slow. Would you accept the amendment? [LB121]

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Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

JAN McKENZIE: Yes, yes. In fact Galen worked with a number of the other member companies of the federation who also have interests in captives and in the special purpose financial captives. So everyone has had a chance to look at the amendment. [LB121]

SENATOR HANSEN: Okay. Thank you. [LB121]

JAN McKENZIE: You bet. [LB121]

SENATOR PAHLS: So you are saying this has many sides to it then, it is not just from one company? [LB121]

JAN McKENZIE: Well, sometimes people don't understand that these companies, even though they are my member companies in the same association or federation, are in competition with each other. They all sell many of the same products, and they are all bidding on the same contracts or the same groups, whether it is property and casualty, or life or health products. We work together for the benefit of the industry and for the jobs it brings to the state, but when it comes right down to the market and the bottom line, they are competitors. [LB121]

SENATOR PAHLS: Seeing no more questions, thank you. [LB121]

JAN McKENZIE: You bet. [LB121]

TOM MAYS: Mr. Chairman, members, I am Tom Mays with Pacific Life Insurance, and I am in support of the bill for Pacific Life Insurance. As Director Wagner had indicated, a lot of companies have gone to other states. And we have already started a process in Vermont for a captive because we didn't have this process in place here in Nebraska. And I have actually asked our general counsel to go back and take a second look at it because it could save us a lot of money if we were to put together a captive here instead. But our biggest product, universal life secondary guarantees, requires a huge amount of reserves and it is very difficult to get reinsurance nowadays, and this is pretty critical for the domestic companies. [LB121]

SENATOR PAHLS: Tom, I am going to have you spell your last name, just for the transcribers. [LB121]

TOM MAYS: M-a-y-s. [LB121]

SENATOR PAHLS: Thank you. Appreciate it. Any more proponents? Opponents? Neutral? Come on up, Joe. [LB121]

JOE ELLIOTT: My name is Joe Elliott, E-l-l-i-o-t-t, with the Professional Insurance

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

Agents of Nebraska. It appears to me that this is more a beneficial bill to the life side than it is to our property casualty agents. We have agents, 300-some, all over the state, and I can't imagine anybody but the larger brokers in Omaha and/or Lincoln really grabbing hold of this because of the diversity of the state and the distances involved. And say that you have the funeral directors, well something like that might work that they get them all tied in and get them a lower rate because of it. And I think the brokers probably take a little lower commission on it overall, but I think that say you have lumberyards, implement dealers, I just wrote down a few, but I think that the local agent is missing from the equation in this captive program. I have seen it 30, 40 years ago, and the risk retention group was kind of the same way. If you have a claim on your policy in a community of North Platte, you don't have a local agent really there working for you. You have to deal with a broker in Lincoln or Omaha, and the same way throughout the whole state. And this claim and loss control, they do have some excellent loss control programs, I must say that, whereas the local agent might not do as good a job in that particular area. But you also don't have the guarantee fund, and that can be a big thing. It certainly was when the risk retention group National Warranty went down in Lincoln, Nebraska. Also, you might have one of these three people that are setting up this captive might not be able to continue to get insurance because they do underwrite within these groups. And if you have terrible experience, have a couple million dollar workmen's comp losses, you are going to be probably asked to stay out of the group. And then I don't know if that is going to impair the...obviously it might, impair if he is a big contributor to this \$100,000, which seems to me sounds awful low, but the director has the authority to ask for more than that. So he certainly can stabilize it and make sure that it is adequately funded and so forth. And also, the group does exclude directors and officers, and auto liability, and then they would have to go to their local agent in North Platte and buy that coverage separately, which might not be a problem, it might be. You don't know. But I think overall if it is going to bring more business into the state, I certainly am going to say certainly it is something worth while. But I wanted to point out these things from the property and casualty side, whereas in the life and group perhaps it would be a better program because I haven't heard too many agents talk about captive companies for years in Nebraska. Any questions? [LB121]

SENATOR PAHLS: Yes. Any questions from anyone? Thank you, Joe, for that information, appreciate that. Seeing no more, we will close on LB121. We will now open on LB191. Senator Mines, it is good to see you. [LB121 LB191]

SENATOR MINES: Thank you, Mr. Chairman. It is good to be here. It is nice to see that the room is still unregulated as far as the heat is concerned (laughter). It is always warm in this room. Thank you, Mr. Chairman, members of the committee, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District, and I am the principal introducer of LB191. This bill would add a provision to Nebraska law to allow a member of the board of directors of a Nebraska corporation, in considering the best interests of that corporation, to also consider among other things the effects of any action coming

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

before the board on employees, supplies, creditors, customers of the corporation, and the communities in which their offices are located. LB191 also clarifies that a member of the board of directors of an insurance corporation shall discharge his or her duties as a director in accordance with section 21-2095 of the Nebraska Business Corporation Act. What this bill does is it amends section 21-2095 and it would reinstate language that actually has previously existed in Nebraska law. That language was originally enacted in the 1980s and was repealed in the mid 1990s, and it was done so when Nebraska substituted the most recent model Business Corporation Act. There is no specific discussion of that section when it was repealed. This provision is also known as a nonshareholder contingency statute and similar language currently exists in 29 other states. It further allows a member of the board of directors to consider the impact of transactions on other entities in addition to only looking to the impact of the transaction on the shareholders. So it broadens the view of the board of directors. These laws were enacted during the mid eighties, again, in response to many hostile takeover actions that eliminated a significant number of jobs in various states, and therefore this legislation would have a positive economic development impact. There are others following me that can explain the details of the bill. And with that, I would close and encourage your support of LB191. Thank you. [LB191]

SENATOR PAHLS: Any questions? Thank you, Senator Mines. [LB191]

SENATOR MINES: Thank you. [LB191]

SENATOR PAHLS: Proponents, if we could get you to come to the front, please. [LB191]

GALEN ULLSTROM: Senator Pahls, members of the Banking, Commerce and Insurance Committee, again, for the record, my name is Galen Ullstrom. I am senior vice president of Mutual of Omaha Insurance Company also appearing today on behalf of the Nebraska Insurance Federation. And I was also asked by the Lincoln Chamber of Commerce if I would express their support for this bill also. As Senator Mines described, it is a very short bill, and it is one that we began looking at a couple three years ago when we got more outside directors from other states, and their basic question to the corporate secretary was what are my obligations under Nebraska law, who do I represent? And in researching that, we determined that Nebraska had in making the changes and adopting the full model Business Corporation Act had repealed this exact same language without thinking about it. So our reading is, and our advice back to the directors out of our corporation was that the only obligation we think a director has in Nebraska is to the shareholder, that potentially the director cannot consider the interests of the employees in a transaction, can't consider the interest of what the transaction might do to the community, or other things, that it is only the shareholder. And to give you an example of that, if, in fact, a company was for sale in Nebraska, and somebody came in and made a tender offer of \$10 a share but the understanding was that they

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

were going to relocate or redomesticate that company to Canada, for example. Another company came in and said, well, take the Warren Buffett philosophy that we are going to buy you, but we are going to leave you freestanding and leave you here and leave your management in place, but we are only going to offer \$9.75 a share. That it is very possible in our reading that the director would only be able to consider the \$10 per share amount, even though it could mean the elimination of a number of jobs, and frankly, very devastating to the community. So it is our feeling that this type of law, and again, it continues to exist in 29 other states, we think it is important that it be retained in Nebraska. We spent a lot of money through previously LB775 and LB312 now in attracting businesses here. We think it is just one more thing that a director should be able to consider, and again, it is strictly permissive. It is not binding. It just says the director may, but need not consider the interests of these other constituencies. And, again, as Senator Mines pointed out, that it was a wide swept enactment of these type of laws in the mid eighties right after there were a number of hostile takeovers, and corporate raiders came in and tried to buy companies and then just effectively sell them for their parts, and that is when Nebraska enacted it. And I think, in discussing, went back to the corporate history of it, there was no indication that this was intended to be deleted. It was frankly just repealed along with all the other corporate laws at that time when they put in the new act. So we weren't that aware of it that it had even been done. I don't think other corporations or other entities were either, and until we kind of went through and started looking at it. But there are other entities throughout the state. It is not an insurance issue. It is not directly related to our situation at all, but it is something that we think is important for Nebraska businesses. [LB191]

SENATOR PAHLS: Thank you, Galen. Any questions? Senator Pankonin. [LB191]

SENATOR PANKONIN: Senator Pahls, thank you. Sir, I am just curious on this, would it give legal cover? Using the example that you used, if a business was to sell, if the board of directors sold for a lesser price, would this give those folks protection? [LB191]

GALEN ULLSTROM: We think so. We think it would give them the ability to take, for example, a lower price per share offer because of some of the concerns of what it would do, and prevent the director, frankly, from being sued by the shareholders for not taking the higher price. We think without this, the director might not have any cover, so to be honest with you. [LB191]

SENATOR PANKONIN: Yeah. I am not so sure that they would. [LB191]

GALEN ULLSTROM: I think it would help. It is used in other states. There is not a whole lot of case law on it, to be very honest with you, but it gives them something that they can hang their hat on. Without this type of statute, we are very concerned there is not anything. [LB191]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

SENATOR PANKONIN: Have none. [LB191]

GALEN ULLSTROM: Yeah. Exactly. [LB191]

SENATOR PAHLS: Senator Pirsch. [LB191]

SENATOR PIRSCH: I guess typically or exclusively would this come into play, the function of this bill, within the context of a takeover only or might it... [LB191]

GALEN ULLSTROM: Well, I think that is probably the primary thing. It could be not only an actual takeover, it could be a merger, where the succeeding corporation is located someplace else and wants to relocate the company or plans to relocate. So it could be any transaction. I mean, it could be something other than that, but that was the impetus for the statute back in the mid eighties and it was the impetus, I think, in the legislative history of when Nebraska enacted it the first time around. That was pretty much the reason, to protect Nebraska companies from outside takeovers. [LB191]

SENATOR PIRSCH: Okay. And you may have alluded to it, and I am sorry I didn't catch it, is this particular language that you are suggesting utilized in any other state? And do we know ballpark how many? [LB191]

GALEN ULLSTROM: There are variations of this language in other 29 states. They are not all exactly the same. Frankly, what we did is just look at it and suggested the same language that existed in Nebraska. So this is verbatim with the language that was repealed. There are variations in other states, I know, and we have got a synopsis of that, but we just felt this protects the interests as we see it, and because Nebraska already had it, it wasn't we weren't reinventing the wheel. [LB191]

SENATOR PIRSCH: And in using this language, I guess it is pretty clear-cut the actions currently that a director would be held to that currently, as you mentioned, it is the share price. If in mentioning these other or by adding these other type of factors, is there a clear line or is there a limitation now for directors to be able to have to justify their decisions, or is the factors now that have been mentioned sufficiently broad and interpreted that really it is beyond really review to question the judgment of directors? [LB191]

GALEN ULLSTROM: I think it is broad in some extent, because it talks about ordinary prudent person, it talks about some general guidelines, and so I don't think it is real specific. But, again, if you come down to their only obligation is to the shareholder, without the ability to consider these other constituency interests, we think it could come to a result that would not be beneficial for the state and corporations in the state, and communities in the state, frankly. [LB191]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

SENATOR PIRSCH: Very good. Thank you very much. [LB191]

SENATOR PAHLS: Seeing no more questions, thank you, Galen, appreciate it. [LB191]

GALEN ULLSTROM: Thank you very much. [LB191]

RON SEDLACEK: Chairman Pahls, members of the Banking, Commerce and Insurance Committee, for the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I am here today on behalf of the Nebraska Chamber of Commerce and have also been authorized to submit testimony on behalf of the Omaha Chamber of Commerce in support of LB191. Corporate governance which, of course, is the subject matter we are dealing with here today is the set of processes, it could be customs or institutions, policies, laws, regulations, and so forth that affect the way in which the corporation is directed or it is administered or controlled. And it also includes the relationships among many players that are involved, for example, the stakeholders, and the goals for which the corporation is governed. The principal players are the shareholders, management, and the board of directors. And other stakeholders would include: employers or employees, suppliers, customers, the community at large. It is a multifaceted subject, and an important theme of corporate governance deals with the issues of accountability and fiduciary duties, essentially advocating the implementation of guidelines and mechanisms to ensure good behavior in protecting the shareholders. Another key focus is the economic efficiency view through which the corporate governance system should aim to optimize economic results with a strong emphasis on shareholders' welfare. And there are other sides to corporate governance, such as the stakeholders' view, which calls for more attention and accountability to players other than the shareholders. Directors have, under the Nebraska Business Corporation Act, a duty to act in good faith in the best interest of the corporation, similar to every law in the United States, and in turn that has been interpreted to be the shareholders of that corporation. LB191 is an amendment to widen the law, generally, so that stakeholders may be the subject of consideration by directors. The issue presented by LB191 is whether the Nebraska Business Corporation Act should be revised to clarify the extent to which directors may take into account the interests of specific classes of shareholders or the broader community when making corporate decisions. LB191 broadens the definition of corporate interest to require that corporate directors consider long as well as short-term best interests of the corporation, it's shareholders, employees, customers, suppliers, and the public interest but limits liability, essentially, if directors act in good faith on these interests. It would incorporate into Nebraska law the ability of the director to exercise community and stakeholder based rules by allowing the ability of directors to act as proper corporate fiduciaries when they consider the impact of corporate decisions on their employees, suppliers, creditors, and customers of the corporation and communities in which the corporation has a presence. In fact, as Mr. Ullstrom stated, this language could protect against hostile takeovers. Senator Pankonin, I noted in your question that you had asked that in regard to this particular bill as to its parameters. And

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Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

I believe on a de facto basis, the addition of this language would allow for a corporation, either in its charter bylaws or procedures, directions to directors then to give that authority, to delegate that as an additional consideration when making decisions. So it does have that impact. For this reason, we would support the bill. [LB191]

SENATOR PANKONIN: Thank you. [LB191]

SENATOR PAHLS: Any questions? Thank you, Ron. Let you off easy today. [LB191]

RON SEDLACEK: Thank you, Senator. [LB191]

TOM MAYS: Tom Mays with Pacific Life Insurance. I am glad he went before I did because I don't have to testify. But we are in support of the bill, and, again, this is another area that we recently focused on with the help of Mutual of Omaha, and something I think that needs to be done to help the domestic companies here. [LB191]

SENATOR PAHLS: Any questions for Tom? Thank you. Appreciate it. Any opponents? Any in the neutral? Senator Mines waives closing. That completes LB191. Thank you. [LB191]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 23, 2007

Disposition of Bills:

LB117 - Advanced to General File, as amended.
LB119 - Advanced to General File.
LB121 - Advanced to General File, as amended.
LB191 - Advanced to General File.

Chairperson

Committee Clerk