[LB853 LB854 LB855]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 29, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB853, LB854, LB855 and a gubernatorial appointment. 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. It appears we are in the process of getting ready. I said process. I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls. I'm from Omaha and represent the 31st District. I have the pleasure of serving 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 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 the following procedures--and I think you can see them on the card over there. I'll just review them just a little bit. We're asking you to turn off your cell phone; move to the front two rows if you plan to testify, and it appears that we have a number of people testifying today so I'm going to ask you to do that; and to move to the on-deck chair when you are ready to testify. Accordingly, this is the procedure we follow: the introducer, proponents, opponents, neutral, and closing. You do need to sign in and ask you to drop that in the little box up here on the table. Spell your name for the record before you testify; that makes life easier for those listening to us. Again, today, looking at the crowd, I'm going to ask you to be concise. And if you are going to distribute information, we'd like to have at least ten copies. If you do not have ten copies, wave your hand and Ryan will make the copies for us. To my immediate right is Committee Counsel Bill Marienau; to my immediate left is Committee Clerk Jan Foster. And we will start with the senators introducing themselves. []

SENATOR CARLSON: Tom Carlson, District 38 from Holdrege, home of the Dusters and home of the Nebraska Prairie Museum, best kept secret in Nebraska (laughter). []

SENATOR PIRSCH: I'm Pete Pirsch. I represent Legislative District 4, home of Omaha Burke High School, which is the current reigning state champion of the Nebraska Academic Decathlon (laughter). []

SENATOR CHRISTENSEN: (Laugh) Okay, Langemeier, the pressure is on. []

SENATOR LANGEMEIER: Senator Chris Langemeier from Schuyler and I don't know where to start. I'll save that for one glorious day. []

SENATOR PAHLS: Appreciate that. []

SENATOR PANKONIN: Senator Dave Pankonin, District 2. []

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

SENATOR HANSEN: Tom Hansen from District 42, North Platte, Lincoln County, and hometown of Ann Frohman. (Laughter). []

SENATOR PAHLS: And you cannot say that we don't have fun at times. Economic development is what we're looking for. Okay, just to state the procedure, we will start with our gubernatorial appointment, then we will hit LB853, LB854, and LB855 and if you have trouble, those bills are in sequence. So before we begin, I'm going to read a letter that's in one of my files. It says: contingent upon your approval, the following individual is being appointed as the director of insurance for the state of Nebraska. That person is Ann Frohman. She lives on 5522 Northwest Tudor Lane, Lincoln, Nebraska. The aforementioned appointee is respectfully submitted for your consideration. And then we do have copies of some information about Ann and we'd like to have you come forth and tell us a little bit about yourself. []

ANN FROHMAN: (Exhibit 1) Thank you, Senator Pahls and members of the Banking, Commerce and Insurance Committee. My name is Ann Frohman and for the record, that's spelled A-n-n F-r-o-h-m-a-n. I appreciate the opportunity to be here with you this afternoon and discuss my appointment and confirmation as director of insurance. Before getting into a description of where I think insurance regulation needs to go this next year, I would like to take the opportunity and state for the record how glad I am that Governor Heineman has given me this opportunity by nominating me as director. After a career focused in insurance regulation over these last 10-15 years, the Governor, by giving me this opportunity to serve, is one that's a huge honor for me and it's one that I'm really looking forward to. So with a little bit of background that I would like to provide, in addition to growing up in North Platte, Nebraska, home of the Bulldogs and I don't know the last time they won anything, honestly, (laugh) but it wasn't when I was there. I graduated from Kearney State College and also the University of Nebraska College of Law. I am married and have two daughters that are teenagers and I think that, you know, says a lot without saying much. I clerked for Judge Grant of the Nebraska Supreme Court following graduation from law school and thereafter pursued a career with the insurance department commencing at about the end of 1990. I left the department a couple of times, once to be the state risk manager for the state of Nebraska, and when Director Wagner asked me to return as general counsel, I did so in 2000, later serving as a deputy director of the department. I can say that serving under Tim Wagner for eight years was probably the seminal point of my insurance career. I'm grateful for it. Tim's example in how to lead the agency and how to serve the state is one that I'm really looking forward to continuing. The department exists to serve the people of the state and much of what we do revolves around the promise that insurance companies make that unlike in a society where we have instant gratification, it is one where you pay for something now and hope, in many instances, that you never have use it. And if you do, that you have an insurance company there willing and able to help you out when you need it. The key function here is that we have to really enforce the standards that you all enact, and I think it's an important partnership. I think what you do here in setting the standards is critical to the function of the insurance department and what we do. We do many things from licensing professionals, preventing insurance fraud, administering insurance plans for people who can't get insurance on the admitted market, we collect taxes, we are a revenue source, resolve disputes between insureds and insurance companies. But I would have to say of all the things we do that the one thing that I view the most important and tantamount is the monitoring of the solvency of insurance companies. And it's probably the one thing you hear the least about because it isn't, you know, a common occurrence where individuals call their senators' offices about, you know, a company that's gone broke. We hope it doesn't happen often. We come a long way, both the industry and the regulatory environment, to put monitors in to detect problems early and I think it's a pretty good success. Insurance regulation in a financial solvency monitoring area is one that is probably, I think, a Hallmark of what we do. We tend to use a national system of regulation and you'll hear much from the insurance department about the National Association of Insurance Commissioners because we do have a national system where Nebraska regulates the domestics in this state on the solvency side, and although they do business nationwide, the other states rely on us. We rely on other state insurance regulators to regulate the domestics in their states. So with that said, the NAIC has come to be a kind of a pivotal focus in how we get to these national standards, what we bring to you all. And they also provide kind of an oversight in the sense of encouraging that states continue to meet these high standards through an accreditation process. And the accreditation process, and I don't know how many of you are familiar with it, but it's not and empty honor to go through this accreditation process. Each state is reviewed annually by essentially our peers, and periodically there's a very intensive review of what we do, of our staff, of our resources, of the standards that you all enact, and if we meet all of those standards, then we become accredited. If we don't, it's significant to all of you and to the state of Nebraska because the insurance industry can't rely on the examinations any longer of our financial exam teams. So they would really be subject to review and scrutiny by all the other states and that is not a situation we would want our insurance industry in. It's not a good situation economically. So accreditation, the NAIC, you hear from us over and over again, that it is something that's pretty critical to what we do at the department and I think it's one where I'm going to continue to focus in this next year. I can say we did receive accreditation just recently in December and so we look forward to continuing to updating our standards and doing what we need to do. Enough about where we've been. I want to talk a little bit about where I want to see the department go in the next year, and I've thought long and hard about this, and think that encouraging the responsible growth of the insurance industry is probably one of the most important and exciting things we should be doing. But to achieve that, I need the help of this committee, I need the help of the Legislature body as a whole. We have a great environment in Nebraska to do business. We have a great favorable tax rate, a great business climate, a talented group of insurance regulators over in the terminal building, and I think especially with the good leadership of the Legislature and from Governor Heineman, that with you all understanding the importance of economic growth that this is something that is worthy to take on. But saying that, I also think that we have to be careful in how we grow, that we do measured growth, responsible growth, and we do it in a way that we continue to recognize challenges, such as the talent pool that we have. Nebraska is interesting because we hear complaints that there aren't enough good jobs and we have the good jobs, there aren't enough people to do the good jobs. So we have to recognize that we need to maybe, you know, look at recruiting in different ways and different approaches. And that's one area where I think we can spend a little bit of time and I's like to see us go there, but do it in a manner that assures that the talented pool is there for all of the industry to utilize. With all that said, I thank you for giving me the opportunity to be here today and if you have any questions of me, I'd be happy to attempt to answer them. [CONFIRMATION]

SENATOR PAHLS: Okay. I can say by listening to you, it's not get ready, set, go. It sounds like it's a go from what you've already prepared. Do we have any questions of Ann? Senator Langemeier. [CONFIRMATION]

SENATOR LANGEMEIER: Senator Pahls, Chairman. Thank you. Ann, very good, very good testimony. We hear a lot on this committee about the NAIC models out there. What involvement does Nebraska have with formulating those models or what's your involvement with that versus just following that? [CONFIRMATION]

ANN FROHMAN: We are the NAIC. We are heavily engaged in the enactment of those models. We attend the meetings, the hearings, the countless conference calls on almost a daily basis on working with our colleagues in other states to put the models together, listening to the communities, whether it's specific sector of the insurance industry, whether it's a specific association over here or a consumer group. So we are working on those. We take what we learn in the departments and work with all of the expertise that we have to come together. But it is definitely a culmination of the efforts of, not just the insurance departments, it's of the industry and of the, you know, the public sector as a whole. So there's a lot of time spent on NAIC work at the department. In fact, we were recognized in December with an award called the Esprit de Corps Award, where the NAIC acknowledged, in essence, the good work of the late Tim Wagner, but also the staff of the department in assisting the NAIC on so many tracts. [CONFIRMATION]

SENATOR LANGEMEIER: Okay. Thank you. [CONFIRMATION]

SENATOR PAHLS: Senator Pirsch. [CONFIRMATION]

SENATOR PIRSCH: Thank you very much for your testimony, with respect to your background and where we're headed. I was just wondering if you could just comment very briefly on the idea of where we're at with the idea of federal preemption or where that may be headed in the immediate year or two from now. [CONFIRMATION]

ANN FROHMAN: It's an interesting issue that's taking on, I think, more interest in Washington simply because of some of the globalization issues that we're seeing in how the United States as a country and a leader internationally, economically, is transitioning into a global economy where we're one of many strong economies. You know, there are hearings on Capitol Hill that have been transpiring over the last year and I think they will continue. I can't tell you whether I really...I think it's to be taken seriously and there are some issues that the states need to work on. I'm a proponent of state regulation because I believe in the incubation of ideas can happen, you know, in 50 states better than in one. But I do recognize that we have some challenges in working towards uniformity in a lot of areas. I think the sense that we can't be a spokesman for the industry is one challenge that we have to work with on whether or not we can do that. I think we can. But you know, 50 jurisdictions...there are times when it makes sense, there are probably times when, you know, more uniformity makes sense and we really need you guys all to help us work through that because it's not easy to figure out, well, one day, you know, uniformity makes sense, the other day we need to recognize our differences. [CONFIRMATION]

SENATOR PIRSCH: Thank you. I appreciate it. [CONFIRMATION]

SENATOR PAHLS: Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Senator Pahls. Ann, I appreciate your testimony. First of all, that you're a native Nebraskan, your heart is still in Nebraska, appreciate your comments about realizing the importance of having an insurance department that has things in good order for the well-being and safety of the industry, and continuing to be that way. And then with that said, I'm encourage to see a concern about growth and development of the insurance industry and you say you need our help. What do you see as some possibilities for growth in the future and are you prepared to indicate how we might be of help? [CONFIRMATION]

ANN FROHMAN: I do see possibilities for growth in the area of insurance in Nebraska and when I say growth, you know, there's two ways. There's growth and responsibility from the oversight of the industry, which is the baggage that it carries, you know, in the sector versus, you know, a retail or something like that. But I think that we do have a favorable business climate that can attract insurance companies from all sectors. So I don't see it limited to any one particular. There are some that I'd maybe like to target because it's simply easier. But I'm also sensitive that we're a regulator and that's our primary role, and what we have to do as regulators, I think, is simply be open, be reasonable, be fair, be tough, but be consistent with our positions. And as a regulator I think the best thing I can do is be sensitive to the roles of the other business units in state government, the role of the economic development office, the role of the labor department, and work with those agencies to kind of let them know how we operate and that we need to have respect for the boundaries of what we do at the insurance department. And I think with that pulling them in, we'll be able to maybe do a few more things. With your assistance in one bill proposal today, there's some things we can do legislatively that I think maybe help our domestic industry a little bit, and if we can help our industry move forward, then maybe the hope is that that can translate into job growth. And so there is an item in here that, you know, we've kind of eyed and I think we'll continue to do that from the department's perspective, looking at ways legislatively that we can maybe open up some things. [CONFIRMATION]

SENATOR CARLSON: Thank you. [CONFIRMATION]

SENATOR PAHLS: Seeing no more questions, thank you, Ann. Appreciate your time. Do we have any proponents that would like to come forward? Okay. If not, thank you. Pardon? [CONFIRMATION]

SENATOR LANGEMEIER: Opponents? [CONFIRMATION]

SENATOR PAHLS: I got to ask. I thought I'd sneak that through (laughter). Okay, opponents? Neutral? Okay. That closes this section of this hearing on this appointment. Thank you, again. The next bill up is LB853. LB853 was introduced by the Banking, Commerce and Insurance Committee at the request of the director of Department of Insurance. I'm just going to go over some of the components of this bill that would make changes regarding...and there's a list of them, so this should tell you that this bill has some depth: deal with the Community Development Assistance Act; policy forms, the TMJ mandate, viatical settlements, protection of armed forces members from dishonest and predatory insurance sales practice, insurance producer prelicensing education, continuing education and license fee, long-term care, insurance producer training, risk-based capital, property and casualty insurance forms, and financial conglomerate supervision. It's my pleasure to have Director Ann Frohman come up and give us some detail on this bill. Ann, please. And just by show of hands, how many proponents do we have? Do we have any opponents? Okay, thank you. You may begin, Ann. [CONFIRMATION]

ANN FROHMAN: (Exhibits 1, 2 and 3) Thank you. Again, good afternoon. My name is Ann Frohman, spelling hasn't changed, F-r-o-h-m-a-n. I'm the Director of Insurance and here to testify in support of LB853 as introduced by the committee. The bill in front of you includes a good number of insurance-related topics, as Senator Pahls has just indicated. A number of them are in the nature of housekeeping amendments and are not real substantial in terms of substance. But in terms of substance, one of the first items we're asking you to review today is to revisit the subject of viatical settlements, sometimes an awkward term. We use the term "life settlements" because it's really evolved into a life settlement market and we are attempting here to target a specific problem that's often called investor-owned or stranger-owned life insurance products. The term STOLI might come to mind because it's been in the press. We have provided a handout from an article that is just one of many that's been in the press and that is simply the area that we're trying to target here today with the amendments. Unfortunately, those amendments resulted in, I think, at least 70 pages of the bill that's before you because it's amending a pretty comprehensive act. The changes to the act increase the amount of time before viaticating or, in more simpler terms, selling your policy from what was previously codified as two years to now a five-year term. But with that there are numerous exceptions so that an individual who might need to sell their insurance policy, let's say if they're terminally ill, if they're going through a divorce, if they're retired, lost a job, or there is a catchall provision that if the Director of Insurance deems that essentially it's not a STOLI type of transaction, then a sale of the life insurance policy is permitted. There are some important consumer disclosures also contained in these amendments to the viatical act that apply to the brokers and providers, and there is a provision that will change the dates that are allowed for the opportunity to rescind one of these settlement transactions. Originally, it was 15 days, but now we are giving the sellers up to 60 days or...the earlier of 60 days or 30 days from the date of payment to give them more time to rethink the transaction. The providers would be submitting advertising to the Department of Insurance, and the focus here is really to deter the situation where there's advertising that, you know, essentially your insurance policy is free if you turn around and sell it to us. So that is why there are numerous provisions in there on advertising. Moving off of viaticals, we're also asking for a grant of authority to promulgate some regulations that deal with military personnel sales on military bases, and this came about when Congress had discovered that the insurance departments do not have jurisdictions on bases. That's exclusively resided with the Department of Defense. And Congress instructed Department of Defense to with the NAIC and the states to craft a procedure whereby the state insurance departments could assist personnel with this abuse of sale practices. So we're seeking enabling legislation for that. The bill includes a request to conform the prelicensing and continuing education standards to uniform resident licensing standards, and would adopt statutory changes necessary for the department to streamline and simplify fees charged to insurance producers. We're trying to clean some things up there. For the prelicensing area, the education requirements will essentially be to provide for 20 hours for the six major lines of authority, except for the variable products for which there's no prelicensing requirement. The department also proposes to add some additional designations, professional designations to the list that's already in there. On the continuing ed side, the hours would be reduced from 24 to 21. Again, that's a uniformity requirement. Licensees would also be given explicit permission to take or retake a course so long it's not within this given two-year licensing period. Under the current law, we collect a long list of fees and we're looking to do some cleanup of the fee area.

We're repealing some fees on exam filings and $5-$10 items, and streamlining the resident and nonresident agent licenses, looking for authority up to, I think it is, $100. But essentially we don't intend to go that high now. We...I think it will bump it, be $10 maybe on a resident, but we're actually repealing some fees over here. So when it's all said and done, I'm assured it's revenue neutral. We're not out to craft any situation where we're attempting to raise funds here. We're just attempting to clean up some administrative processes in our licensing division. In the area of solvency regulation, the bill would amend the risk-based capital act. (Insurers and Health Organizations Risk-Based Capital Act). It will apply the...what's the RBC analysis, or trend analysis, to property and casualty insurance companies. We've been doing it for years with the life industry and this will be one of those accreditation standards that I referenced earlier about accreditation. There's something unique in the bill dealing with challenges insurance companies have in dealing in international commerce, and it's an area that I have spent a little bit of time analyzing. And the bill would grant the director rule-making authority to adopt rules and regulations that would allow Nebraska domestic insurers to submit to regulation on a group supervision basis. It's complementary to a European model of what's called supplemental group supervision of conglomerates. Insurers who do business in Europe are currently subject to what's called a dual regulation environment, and its insurers are regulated at the entity level, but they're also regulated upstream at the groupwide level, and that is not something you see in the United States. In the U.S., the insurance regulators tend to follow the capital flow and the transactions in and out of the insurance company, but we're seeing globally that there's a lot of countries that do this dual regulation. And so under the proposal, the department would adopt standards to allow Nebraska to be the sole regulator for conglomerates that are operating under this conglomerate and seeking to do business in Europe or elsewhere, where we can provide some of the oversight assistance in lieu of the other country. We don't know how many insurance companies would be interested in this, but we do know that the costs that would be incurred in developing this program would be one borne by the entities that would be subject to our regulation, much consistent with how we regulate insurance companies generally. There are a number of cleanup items that I can run through briefly here to keep you, let's see, in the loop on some of these other minor proposals. We're asking that a change be made for dealing with insurers that when they receive questions from the department under the rate and format and they fail to respond to the department, it establishes a specific date for discontinuing the filing so that we can move on. We're asking that rule adoption by the director under the Community Development Assistance Act is discretionary rather than mandatory. We're also asking that there be a small fix to the long-term care producer training requirements, and that there are a couple of administrative penalty provisions that have been separate and longstanding, I think since 1929, and we're simply trying to pull those into the unfair trade practice scheme, where they belong. And then we're looking to ask you to repeal an outdated requirement that insurance companies provide the corporate form on their front...on the face of their policies: stock, mutual, or fraternal. We are currently proposing to retain the assessment provision because an assessment company can, in fact, hit the pocketbook of one of their members. There's another provision in there on the temporomandibular joint mandate that needed some cleanup in terms of the breath that it may have went beyond the scope of simply a mandate dealing with the jaw joint; that maybe it went too far into putting limits on other types of medical treatment for the head and neck, I believe is what it was. There was one change the department needs to request to the bill, the portion of the bill dealing with prelicensure education. That's a matter that was dropped from the bill; it was dropped inadvertently. So the property and casualty agents would be required to complete 14 hours of personal lines property and casualty education for credit. I have as a handout, I think you've all received a copy of the draft amendment that we put together to address this. And I would ask that you advance the bill to General File and would be happy to answer any questions you have on such an exciting topic. [LB853]

SENATOR PAHLS: There are parts that, to me, are really exciting, which we'll get into another time. Do we have any questions? Senator Pirsch. [LB853]

SENATOR PIRSCH: Just in terms of scope, magnitude of how many Nebraska domesticated insurers may be affected by this, the European situation where now requiring dual regulation, do we have any kind of understanding as far as what the scope or magnitude of that type of a regulation? [LB853]

ANN FROHMAN: I don't. First of all, it depends on where, you know, the business plan for the insurance company. I believe National Indemnity has provided a letter to you all on their activities in Europe and this was brought to their attention in the U.K. And I can tell you this, that we do have a number of domestics that do engage in business outside the United States and, to the extent that this might be...you know, they might do it through a separate company, they might do it through a division of their Nebraska domestic...you know, some of them do it on a reinsurance basis which is somewhat different, but I think having this mechanism will at least allow them to look and consider whether it opens a door in terms of reducing one barrier for them to enter another market. [LB853]

SENATOR PIRSCH: Okay. Thanks. [LB853]

SENATOR PAHLS: Seeing no more questions, thank you. [LB853]

ANN FROHMAN: Thanks. [LB853]

SENATOR PAHLS: Proponents? [LB853]

JIM HALL: (Exhibit 4) Mr. Chairman, members of the committee, my name is Jim Hall. I'm a regional vice president with the American Council of Life Insurers. They are a trade association representing the life insurance industry. They are 300...we have 353 member companies and those 353 member companies hold 93 percent of the life insurance in force and 94 percent of the annuities in force in the United States today. We are very happy to appear, once again, in front of the committee, and we are here in support of LB853. We congratulate Director Frohman and the insurance department for putting LB853 together and we are here, in particular, in support of the provision within LB853 that offers the most recent amendments to the viatical settlement model act, (Viatical Settlements Act), which Nebraska has in effect, at the moment, the 2000 version of it, and these amendments would amend that version to address a specific type of practice which the National Association of Insurance Commissioners and the Department of Insurance here in Nebraska has deemed to be one that needs addressing. I'm happy to give just a brief background for those that may not have been around when they enacted the 2000 act in 2001 on viatical settlements, generally. They originated in the 1980s as a result of the HIV and AIDS situation, wherein folks found themselves in the 1980s suddenly contracted with a disease that was, at that time, universally fatal and quickly so, and they found themselves in...many times in need of cash, either because they had bills to pay, they might have lost their job, their medical insurance might not cover the type of treatment that was being offered at the time, or the bills exceeded the limits for the treatment. In any event, the viatical settlement industry came into being then and they offered money to folks that had life insurance policies and they...the folks could sell their life insurance policy through a viatical settlement and get cash money, and more money than the insurance company could have given them for...at the time so they could have cash then rather than have to have their policy expire or have them die and have the benefits go to someone else. It was an effective industry and one that the insurance industry took note of and began offering the same type of benefits in the new contracts that they offered into the early 1990s. The NAIC began to take note of these activities and in 1992 they drew up the first viatical settlement model act. By the way, I've been asked before what does "viatical" mean, and for those that didn't take Latin class, a viaticum is the Christian Eucharist given to someone in anticipation of death. Also the secondary definition is supplies given to someone who's about to take a journey. So just trivia there, that's what a viatical is. In 1992, they drew up the first viatical settlement model act. As time went by and HIV treatments became more successful, the use of viaticals expanded to persons that had contracted terminal or chronic diseases; persons who, for example, had gotten Alzheimer's disease and needed cash, once again cash from their insurance policy. Then it began to expand to even situations where, say, a person has purchased a life insurance policy when they were, say, 35 years old and the purpose of the policy was to pay the mortgage, pay for the kids to get through college, and leave the spouse without having to have any financial debts. And then the person found themselves to be 65-70 years old, the house was paid for, the kids were through college and the spouse may have already died or a divorce may have taken place, and again here was a person that said, what am I going to do with this life insurance policy? And again the life settlement industry was there to step in and provide these people with cash. So the life settlement industry or the secondary market, as it's sometimes called, was there to provide and continues to provide, a valued benefit to life insurance policies, and it indeed makes the life insurance industry's product more valuable because people who buy it will have that available to them. The insurance industry, I think, is taking a look at that because they see that it's of value to their customers and some companies, as I understand it, are getting into that very industry as well. So the secondary market is something that is present and the purpose of the amendments to the bill is not in any way to damage the secondary market. As I said, the first Viatical Settlement(s) Act was done in 1992. They revised it in 1996. It was revised again in 2000. And then it was revised...I'm sorry, it was revised in 2000 and Nebraska enacted theirs in 2001 using the 2000 model. Many states have that model now. The purpose of the current amendments which were drawn up just last year is to stop a recently discovered practice known as stranger-originated life insurance, or STOLI. You heard Director Frohman mention that. And these amendments are designed to offer the division of insurance a stronger tool to protect Nebraska's consumers and to ensure effective regulation of the viatical settlements marketplace. Now it's a fundamentally important principle of insurance, and in particular life insurance, that the person have an insurable interest in the thing or person being insured. Black's Law Dictionary, the Sixth Edition, defines life insurable interest as a reasonable expectation of pecuniary benefit from the continued life of another; also, a reasonable ground founded upon the relation of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. The insurance interest law that has been on the books for literally a couple of hundred years, although here in the states it hasn't been that long, it basically says that in order to own life insurance on someone, you have to have an insurable interest in them. Parents have an insurance interest in their children. Spouses have it in each other, grandparents, grandchildren, sisters, brothers, etcetera; generally, an affinity. Over the years, there's also been adjustments made for things like corporations having an insurable interest in their key employees, charities have an insurable interest in their contributors, etcetera. And so in general, the types of insurable interests have been set forth. But again, the idea is that in order to own the life insurance policy on someone you have to have an insurable interest in them. Unfortunately, Mr. Chairman, the insurable interest doctrine is today being turned on its head by third-party investors who procure the issuance of life insurance policies on elderly people in whom the investors have no insurable interest for the sole purpose of acquiring these policies and profiting from them at a later date. These types of schemes are what came to light before the National Association of Insurance Commissioners. They took extensive testimony from a variety of parties on this, consumer groups, the life insurance industry, the life settlement industry, and the amendments that you have before you today are the result. These amendments are intended to be consumer-protective because, although the senior who gets approached and engages in this activity may initially be attracted to it because of its potential profitability, they also may face unexpected tax consequences, fees, the loss of their insurance capacity and a loss of their privacy. In addition, the promoters of these games may induce seniors to mislead insurers in the application process. Now typically...and there are a variety of ways that STOLI is conducted, there's no one way. The proponents of this... and again this is not the entire life settlement industry, this is not the entire secondary market. These are some people that have learned how to take advantage of the circumstances in that market. But one basic example of how it would be transacted, if you will, is that an investor or life settlement company or their agent approaches a consumer and convinces that consumer to purchase a life insurance policy on themselves with the promise of free insurance and money to be made. The insured is often paid a fee up front in order to participate in the transaction. The insured may also be promised that his or her beneficiaries may receive a small portion of the proceeds. The elderly consumer obtains a nonrecourse loan secured only by the policy and that is arranged by the life settlement company. The loan carries an exorbitant interest rate, in some cases I'm told, as high as 14 percent, and is usually scheduled to mature very soon after the current law's two-year life settlement moratorium in the state's viatical settlement law, and that's what you have in your law today is the two years. The amendments being proposed by the insurance department would raise that to five years. The life settlement company then assists the individual in selling the policy to the financial investors, who repay the loan in exchange for ownership of the policy. Thus, the investors have now gotten around the insurable interest law. They now own a life insurance policy on someone that they could not have bought themselves. And unlike that person's original beneficiaries, who probably had an affinity toward the person, these people will profit from the person's death. My wife has a life insurance policy. I am not interested in collecting on that policy. I don't want to profit from her death. I would rather have her alive. And that's the entire basis of the insurable interest law. This is an old concept. As we mentioned in the testimony here in the 1911 case of Grigsby v. Russell, Justice Holmes said, "A contract of insurance upon life in which an insured has no interest is a pure wager that gives the insured a sinister counter interest in having the life come to an end." The opinion went on to say, "And cases in which a person having an interest lends himself to one without any, as a cloak to what is, in its inception, a wager, have no similarity to those where an honest contract is sold in good faith." The ACLI agrees with Justice Holmes. I'm sure the insurance department does as well or they wouldn't have introduced these amendments. Now one of the most important provisions of LB853 is the proposed addition of a strictly limited five-year moratorium on these life settlements and the bill targets these transactions without adversely impacting the consumer's ability to sell policies that were purchased for legitimate financial protection purposes, but which are no longer wanted or needed. For example, and you heard Director Frohman list off the possible exceptions, because there are, as I mentioned at the beginning, perfectly legitimate reasons why you'd want to sell your life insurance policy. The industry recognizes that. The regulators recognize that. That's why they put the exceptions in here. The viator, that's the person who's selling their insurance policy, is terminally ill or chronically ill. The viator's spouse dies; the viator divorces his or her spouse; the viator retires from full-time employment, becomes physically or mentally disabled and a physician determines that disability prevents them from maintaining full-time employment; or a final order or judgment entered involving a bankruptcy where liquidation of assets is required--all of these are the typical reasons why or when you would want to sell your life insurance policy and those need to be preserved and protected because people need to be able to take advantage of those situations to be able to market their life insurance policy on the secondary market. There's nothing wrong with that. That's why the exceptions are there. In addition, you can...and you can market it at any time then. The five years doesn't even apply to you if you have those circumstances arise. The two-year is still in effect, the two-year moratorium, is if you have your policy funded exclusively with unencumbered assets--in other words, if you paid for it with your own money; and that there's no agreement or understanding with any other person to guarantee any such liability or purchase--in other words, you haven't prearranged to sell it; and finally, that the insured nor the policy has been evaluated for settlement. That's part and parcel of doing one of these sales, is the person and the policy are evaluated for the likelihood of how long the person might live and how much the policy is worth. The question often arises: Why five years; why have you done it this way? And as a former prosecutor, I have to say that I'm used to dealing with concrete rules in law that just say we're describing something that you can't do, stop doing it, and there's no way around it; it's simply that's the way it is. And you would think that the insurance interest law is pretty clear-cut. You have to have an insurable interest in order to be able to own a life insurance policy on someone. But, like the maginal line in France that was impregnable, but able to be gone around when the Second World War started, the insurable interest laws appear impregnable but they are able to be gone around. Now again, the persons who perpetrate these types of transactions operate from the standpoint of that which is not expressly prohibited is allowed, and so every time you try to expressly prohibit something there's going to be a way to get around that. So the response by the regulators at the NAIC, and supported by the life insurance industry, has been we will take the opposite view--that which is not expressly allowed is prohibited. So there's a blanket five years in there, but it's still allowed with the exceptions, the idea being that we want to preserve the legitimate transactions and only prevent the ones that aren't. I want to thank you for this opportunity to testify today and express our appreciation to Director Frohman and the division of Insurance for their leadership on this issue, because by enacting these anti-STOLI provisions in LB853, Nebraska will be protecting their consumers from abusive STOLI transactions and will provide for effective regulation of the viatical and life settlement marketplace. I'll, of course, be happy to answer any questions that the committee might have. [LB853]

SENATOR PAHLS: Do I see any questions for Mr. Hall? Senator Pirsch. [LB853]

SENATOR PIRSCH: Well, thank you very much for your testimony here today, Mr. Hall. I also was a prosecutor before I came here and I appreciate your comments about loopholes. And that's true, if you know, no sooner do you pass a new law then the loophole comes. I guess with respect to this bill, that's probably my understanding where the focus of...the concentration is going to be here, the testimony is going to here today, is with respect to the STOLI provision here, if you will. And in looking at that, the amendment takes a, as you mention, a five-year moratorium approach on that, and I apologize. I've been somewhat active in NCOIL and whatnot and just enough to be...know just enough about this issue to be dangerous, and so I'd like to just kind of explore that. Are there other approaches in other states with respect to addressing this potential? I think everyone pretty much agrees that that harm is out there and substantive, the harm that comes with STOLI. I guess is the cure then or the remedy for such a harm, has that, as it's been applied in other jurisdictions, has that generally taken this form, the five-year moratorium? [LB853]

JIM HALL: There are some states that are going with the NAIC model that contains the five year. There are a couple of states, as I understand it, that are going with the NCOIL model, which does not contain the five year and, instead, goes with a more descriptive type of prohibition that says this is what we don't like, this is what you can't do, this is what you can't do. There are, as I understand it, a couple of states, and my own experience is only with Kansas, they are taking what they believe are the best parts of the NCOIL model and incorporating those into the NAIC model. They're going with the NAIC five years, but they're also importing from the NCOIL model the prohibitions found therein and sort of creating a belt-and-suspenders-type bill. [LB853]

SENATOR PIRSCH: I see. And I apologize. I wish I was more familiar with the NCOIL model at this time to know exactly, but I won't ask that of you to explain that here today. But I do appreciate your kind of background description of where, you know, how this came about. And with that, I'll turn it back over. [LB853]

SENATOR PAHLS: Senator Langemeier. [LB853]

SENATOR LANGEMEIER: Thank you, Chairman Pahls, and thank you, Mr. Hall, for your testimony. [LB853]

JIM HALL: Thank you. [LB853]

SENATOR LANGEMEIER: I have a number of questions. I'm going to use our fine Chairman here as an example. If Senator Pahls comes to you to get a life insurance policy, you put it through actuarial tables, you look at his age and you do a number of things to determine risk and what that premium should be for the amount on the policy. How would that differ if I were to buy the policy on Senator Pahls? [LB853]

JIM HALL: Well,... [LB853]

SENATOR LANGEMEIER: How would that change your analysis other than the fact you don't like me doing that? [LB853]

JIM HALL: Well, I would be analyzing to see how long he was going to live. You would be analyzing to see how soon he would die. [LB853]

SENATOR LANGEMEIER: And the end result is different? [LB853]

JIM HALL: Well, life insurers, as the phrase goes, life insurers make their money by you living as long as possible, so they're looking for someone who's healthy, they're looking for someone who's going to live a long time. If my investment in the transaction is going to be returned to me upon the death of the individual, if I'm making my money from their death, I'm not interested in having them live a long time. So what I'm looking for in the medical evaluation is different, and the goal of the evaluation, if you will. So, in other words, a life insurance company is presented with an individual who's healthy. They're probably going to want to write a policy for that person. On the other hand, if somebody has a terminal disease already and walks in the door, the life insurer is probably going to be more reluctant to write that policy. On the other hand, you flip the situation around, again, if it's an entity that makes their money from the person's death, they'll be only too happy to help you out if you already own a policy and you have a terminal disease. [LB853]

SENATOR LANGEMEIER: So as I, an independent person, wanted to buy that policy, is there more risk that I may do something to aid in Senator Pahls' (laughter) life being shortened? Is that a fear? Or is it your... [LB853]

JIM HALL: Well,... [LB853]

SENATOR LANGEMEIER: I guess I get this feeling that you think that if Senator Pahls was going to buy a policy for himself, if he was in a healthy condition more likely he's going to do that. Though if I were to get myself involved, you're in a position that I'm going to go to people that are more sickly, per se, and encourage them. Does that not limit everybody's right to buy health insurance? [LB853]

JIM HALL: To buy health insurance? [LB853]

SENATOR LANGEMEIER: Or life insurance, excuse me. If you're looking for the healthier people because you want them to live... [LB853]

JIM HALL: Right. [LB853]

SENATOR LANGEMEIER: ...and you've indicated that I would want those that are not going to live longer,... [LB853]

JIM HALL: Right. [LB853]

SENATOR LANGEMEIER: ...would that not be a limiting factor in who can buy health insurance...or life insurance? I keep saying health. I mean life. [LB853]

JIM HALL: Mean, who can purchase? Would it be a limiting factor in who can purchase the Chairman's policy? [LB853]

SENATOR LANGEMEIER: Uh-huh. [LB853]

JIM HALL: Yes. The ability to sell your policy, if you will, if you own a policy, is limited by your own age and your own health status. [LB853]

SENATOR LANGEMEIER: Uh-huh. [LB853]

JIM HALL: I'm 53 years old and in reasonably good health, the last time I had a physical. I'm not going to be an attractive candidate for anyone to buy my life insurance policy, according to the statistical actuarial tables. Barring a car wreck or a lightning bolt or me forgetting our anniversary, I'm probably going to live for another 20 years, so I'm not a good candidate. And again, I don't have any...but if I were to develop any of these exceptions that are provided for in the bill--terminal disease, my spouse dies, you know, etcetera, etcetera--then I...they recognize that I would be able to sell it if I bought it after these...if these go into effect, I would have reason to be able to sell it. But again, a lot of this depends on the person who is doing the selling of their policy, how old they are and what their health is, as to whether they're even considered a viable candidate. [LB853]

SENATOR LANGEMEIER: Okay. I'm not quite sure I'm explaining myself but we'll get there. My other question is you've kind of showed some dislike to the exorbitant interest rate at that 14 percent for the two years. It's kind of that loophole that's out there. Would not the five years just aspirate that to a higher level and...? [LB853]

JIM HALL: Well, the idea behind the transaction is to approach the senior, say if you buy life insurance on yourself we'll provide you with some money for going through the transaction and we'll pay the premiums for you for two years; we'll consider it a loan. If at the end of two years you want to keep the policy and continue paying on it yourself, you're welcome to do so, but of course you'll have to pay back the loan that we've given you. And if you're buying a million dollar policy with $100,000 a year premium, at 14 percent, that's going to be a lot of money to pay back. But on the other hand, if you want to just take the two years worth of free insurance and then sign the policy over to us, we'll forget about that two years worth of premium and that 14 percent, and you've had two years worth of free insurance and you've gotten paid for your trouble. It's a situation that some people find attractive and, like I said, if you've got that high interest rate waiting for you to have to pay back, then that's going to give you pause as to whether or not you want to keep the policy and keep paying for it yourself if you're going to also pay back the loan. [LB853]

SENATOR LANGEMEIER: But would not the five years of higher interest rates just compound the inability to pay that back... [LB853]

JIM HALL: Probably so. [LB853]

SENATOR LANGEMEIER: ...and then further make it desirable to sell that policy? [LB853]

JIM HALL: Probably so, but the investors don't want to wait five years. [LB853]

SENATOR LANGEMEIER: Fourteen percent is pretty good money in today's market. [LB853]

JIM HALL: Well, that's another thing, so people probably, unless they have one of these exceptions, they're not going to want to engage in these transactions. This is only meant to get the manufacture transaction. This isn't going to affect people with legitimate life settlement situations. That's the whole point here. It's only aimed at those one types of manufacture transactions. Like I said, there's no one...the life settlement market is a good market. It provides value to the life insurance policy owner. That's why these exceptions are in here. Nobody is trying to say you can't do life settlements. Indeed, from the very beginning, when they enacted the first law in 1992, it wasn't...the idea wasn't to stop life settlements. The idea was to regulate them and make sure that consumers were protected. [LB853]

SENATOR LANGEMEIER: Thank you. [LB853]

SENATOR PAHLS: Senator Pirsch. [LB853]

SENATOR PIRSCH: And I hate to do this, but in situations such as...I'm trying to discern what percentage of the time that these...the group that you're describing who are basically just taking out this type of insurance not for the usual reason, which is to insure their life, but more as an investment vehicle, and I guess improperly in terms of what its traditional use has been, the insurance. Is there a correlation between these types of individuals and individuals taking out loans and having these policies encumbered then therefore? [LB853]

JIM HALL: I don't know the answer to that question. [LB853]

SENATOR PIRSCH: Okay. [LB853]

JIM HALL: The insurance departments around the country have discussed, because they've told us they've discussed, trying to get information from the life settlement companies about the makeup of how you do this, how many of these arrive at this result, how many of these arrive at that result, that type of thing, much in the same way that insurance departments ask for what they call a data call from an insurance company--give us data on whatever it is the transaction might be. [LB853]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony, Mr. Hall. [LB853]

JIM HALL: Thank you, Mr. Chairman. [LB853]

SENATOR PAHLS: Good afternoon. [LB853]

JANIS McKENZIE: (Exhibits 5 and 6) Good afternoon. Good afternoon, Senator Pahls and members of the Banking, Commerce and Insurance Committee. For the record, my name is Jan McKenzie, spelled M-c-K-e-n-z-i-e. I am executive director and registered lobbyist for the Nebraska Insurance Federation here in support of LB853. I'm going to ask the page to hand out a letter that I'm submitting to you from Pacific Life, who would have liked to been here but every time they come it snows at least six to eight inches, so I think we should be happy that they just sent a letter and we only got a dusting. Along with that, I'm having a membership directory handed out for your benefit because, as I sit up here and talk to you about who these companies are, and these are our Nebraska domestic companies, I thought you might like to see exactly who they are and where they're located. And, oh, I should also mention that I've actually added another member just last Friday in Omaha, Central States Indemnity. So we continue to grow as our industry and our department, and I think the state in general, looks to insurance as a good economic development industry for the state. I want to talk in particular about a couple of things and address a question in particular that Senator Pirsch asked about the difference between the NAIC model and the NCOIL model relative to the viatical settlement section of the bill. The Nebraska Insurance Federation has testified before you many times before about the importance of uniformity. These companies, as you look at your brochure you will see that many of these companies do business all over the United States and several of them the world. And our biggest concern is uniformity. If you're doing business in 50 states, you want 50 states with 50 similar sets of regulations. So while one state may do an NAIC version or that plus a couple piece of NCOIL, and another state might do NCOIL, in Nebraska we, as an industry who works well with our regulatory branch, we would like as much as possible to adopt law in Nebraska that allows for uniformity across the states. That's why we almost always support the NAIC version of model law. We are also in support of the other provisions of the bill, but I know you will hear a lot about the viatical section and I wanted to make sure I made that point with you today. I would answer any other questions you might have, but I know there are a number of other people so I'll stop at that point and answer any questions you might have. We'd support your advancement of the bill in its form. [LB853]

SENATOR PAHLS: Thank you, Jan. Any questions? Seeing none, we thank you. [LB853]

JANIS McKENZIE: Okay. Thank you. [LB853]

SENATOR PAHLS: Good afternoon. [LB853]

TERRY HEADLEY: (Exhibit 7) Good afternoon, Chairman Pahls and members of the Banking, Commerce and Insurance Committee. My name is Terry Headley, that's T-e-r-r-y, last name Headley, H-e-a-d-l-e-y. I am the president of Headley Financial Services in Omaha and also serve on the National Association of Insurance and Financial Advisors board of trustees as a national trustee. I am here today to represent the 1,200 members of the NAIFA-Nebraska association, who are compromised of professional insurance and financial advisors, and we are here in support of LB853, including the amendments to the NAIC viatical and life settlements model act which does propose the five-year ban on the stranger originated life insurance type transactions. We do believe the proposed amendments will serve to minimize and curb the more abusive and egregious behaviors in the marketplace, and provide a deterrent in order to discourage the economic incentives of such transactions. I will not be redundant with what Mr. Hall provided in his testimony, but I can hopefully boil this down to its primary essence, and that is what we are opposed to is the manufacture transaction, and the manufacture transaction is when you couple nonrecourse premium financing with the intent to sell the life insurance policy from inception. And many of the insurance carriers have already started to add questions to the life insurance application so that an applicant or proposed insured would have to indicate their intent as to what they plan to do with the policy. In other words, is there an intent to secure nonrecourse premium financing from the inception of the policy, and additionally, is there an intent to sell the policy to a third-party investor. And we certainly have no opposition to the legitimate life settlement marketplace and again, the challenge before us is how to separate the legitimate from the illegitimate. The life settlement and viatical marketplace is an emerging market. It is, I think, a viable market from the secondary marketplace standpoint, but again, there is this insinuous (phonetic) abuse that has cropped up that we are anxious to curb and we believe the five-year ban with the noted of exceptions that Mr. Hall mentioned are appropriate and again, would serve the purpose of providing a deterrent to the economic incentives built into the transaction. I would submit to you that Wall Street is now getting into the act on this and has become the marketplace for securitizing these hybrid securities. In fact, there's a new index out on the market called QxX, which actually is an index fund that deals in mortality risk and the packaging of pools of life settled policies. And many third-party investors, including hedge funds, pension funds, and insurance companies, do like those because they have a rate of return somewhere in between a bond and an equity, and they're a negatively correlated asset class, meaning they do not move the same as the bond and the stock markets.

So again, we are anxious to see the abusive and egregious behaviors put behind us because they will only serve to, number one, commoditize the life insurance product; number two, will invite hostile or adverse taxation of the life insurance product; and, of course, do an end run or circumvent the insurable interest laws that are on all of our state statutes. So with that, Mr. Chairman, I would be more than happy to address any questions or concerns the committee might have. [LB853]

SENATOR PAHLS: Senator Carlson. [LB853]

SENATOR CARLSON: Senator Pahls. Terry, would you touch on the danger to the insurance industry and possibly to the public if these uses aren't properly regulated? [LB853]

TERRY HEADLEY: Well, again, Senator Carlson, the adverse taxation could severely undermine the long-term tax treatment of the life insurance product. As you know, the inside buildup or the cash value accumulation of life insurance is tax deferred, and life insurance death benefits enjoy tax preferential treatment under section 101(a) of the Internal Revenue Code. And by pushing the envelope on these STOLI-type transactions, I think that very tax treatment that's been in place since 1913, when the Internal Revenue Code was enacted, are in great jeopardy. In addition, life insurance companies have not priced life insurance products to the point where they expect 100 percent maturity of these policies in a death benefit. There is a certain lapse assumption built into the pricing of life insurance. When you calculate a rate per thousand given a certain risk classification age that there's a certain lapse assumption that so many policies at any given age are going to terminate before they actually mature in a death benefit. But the STOLI-type transaction, since those policies would be guaranteed to be held till maturity, i.e., death, would not have that similar lapse assumption built into them. So it will affect for all insurance consumers, long term, the pricing of life insurance, and it will only increase as a result of that. [LB853]

SENATOR CARLSON: Okay. Thank you. And another question: What about the potential tax-free proceeds of the policy? Is that at risk? [LB853]

TERRY HEADLEY: That would be at risk, in my opinion, that as long as this type of engagement continues in terms of the STOLI-type transaction. Congress is already looking at this. We have a vastly underinsured marketplace out there, particularly the middle income market and the lower income market. As long as we're going to push these schemes and arrangements known as STOLI and everything, I think that jeopardizes the very tax treatment of the core product of life insurance. [LB853]

SENATOR CARLSON: Thank you. [LB853]

TERRY HEADLEY: Uh-huh. [LB853]

SENATOR PAHLS: Senator Pirsch. [LB853]

SENATOR PIRSCH: As a percentage right now, how many of...what percentage of these policies end up being resold now, whether for legitimate or, you know, illegitimate, STOLI type of (inaudible)? [LB853]

TERRY HEADLEY: Senator Pirsch, my understanding is only about one out of seven policies that's evaluated as for life settlement actually ends up being accepted for a settlement offer and everything. So it is not a huge percentage. But again, when you create this manufacture transaction from the beginning, where you couple nonrecourse financing, meaning the insured or the owner has no skin in the game, they're not putting up any of their own premium dollars, or their own collateral, or anything else to secure the policy, and you couple that with the intent to sell the policy from inception, that's the dangerous transaction which the five-year ban gets at. But it's about one out of seven. [LB853]

SENATOR PIRSCH: Sure. And I agree with you. Any time you're looking at it as an investment vehicle and you commoditize it and Wall Street gets involved in selling it as an investment vehicle, you run that. I think, and I don't know that anybody disagrees, that there's a harm there. I guess the question that the committee is focused on is the best cure or remedy, most specifically tailored remedy for that problem. You had stated that...you I think indicated...well, I guess my question: How long has this originated? These type of...the viatical industry is a pretty recent phenomenon, started in the eighties with the AIDS thing. [LB853]

TERRY HEADLEY: Late seventies, early eighties, that's correct, with the AIDS epidemic. [LB853]

SENATOR PIRSCH: And I would assume then these kind of loophole creators then emerged sometime in the nineties and widespread. Is that correct? [LB853]

TERRY HEADLEY: Well, this is the STOLI and IOLI, which is the investor originated version which was using charitable organizations as kind of the vehicle to create these types of free insurance or zero premium life insurance and everything, really didn't come on to the scene until the early 2000s. So it's kind of morphed into this as you've gone along and so what we've seen is very creative people within the industry that are targeting. In fact, there was a major campaign here in the state with the Nebraska Alumni Association which many...some of you may have seen which was an entity that had come in trying to use this. In fact, they marketed it as do not die with your most valuable asset, which is your underutilized insurability capacity. So if I was a higher net worth individual in my seventies or older and I had an insurability capacity of maybe $3 million and I only had $1 million of life insurance, that differential could be capitalized through not dying with my most underutilized asset, which is my additional insurability capacity,... [LB853]

SENATOR PIRSCH: Yeah. [LB853]

TERRY HEADLEY: ...and again bringing that to fruition through nonrecourse financing, again the policies being immediately sold from inception... [LB853]

SENATOR PIRSCH: Uh-huh. [LB853]

TERRY HEADLEY: ...to third-party investors. The Alumni Association would get a fall out of some $10,000 on average, but the policies were being sold within 30 days. [LB853]

SENATOR PIRSCH: Uh-huh. And again with the time frame of the bill...or recognition of the problem you said in the 2000s, has this five-year NAIC proposal, has this been in place in other jurisdictions and had favorable results then? [LB853]

TERRY HEADLEY: Well, it is just being adopted in most of the states so it is, you know, the NAIC, it's the amendments to the NAIC model act for viatical and life settlements, so it is just being adopted in sessions this year. There might have been a few of the states, I think, that were previously indicated that had already adopted it. But the five-year ban seems to be the right formula with the noted exceptions. And again keep in mind anybody after two years could still viaticate or life settle a policy as long as they had their own money or funds at stake, some skin in the game. [LB853]

SENATOR PIRSCH: Sure. Thank you. [LB853]

SENATOR PAHLS: Senator Langemeier. [LB853]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. And, Mr. Headley, thank you for your testimony. The statement you just made there, you think the exemptions that are in here are enough to cover the...what should happen? [LB853]

TERRY HEADLEY: I believe that they are. I think they're sufficient. I mean, granted, there may be more exceptions that have not been properly vetted or anticipated, but I do think they are sufficient. Again, after two years, somebody could still life settle or viaticate a policy if they have used their own funds and everything. So again, it gets right...it's very targeted towards the egregious, abusive transaction, which is the nonrecourse financing and the intent to sell from inception when the life insurance policy is secured. [LB853]

SENATOR LANGEMEIER: Okay. And then your next comment was NAIC and NCOIL have some several versions of this, and this is all... [LB853]

TERRY HEADLEY: Right. [LB853]

SENATOR LANGEMEIER: ...kind of a new thing to go to five. What do you base...do you think five is right? Why not 10, 15? You said you thought that there was...you said there was proof that five would be adequate. What? What's the proof? [LB853]

TERRY HEADLEY: Yeah, Senator Langemeier, the five-year ban basically, according to people that have looked at the costs of the transaction and everything, believe that it takes the economic incentives out at the five-year market. Anything under that, the economic incentives are still there to perhaps encourage this kind of behavior in the marketplace. Five years seems to be the right time frame for that to minimize the...or serve as a deterrent on the economic incentives. [LB853]

SENATOR LANGEMEIER: Okay. Thank you. In that comparison to determine five years is that economic break, what is your alternative? What is...this group of people that's out doing this, what's the alternative investment that you compare that to, to say five years is...do you know what NAIC or NCOIL has done? [LB853]

TERRY HEADLEY: Well, again, I know what Wall Street, Senator Langemeier, is looking at, and they're looking at a return somewhere around 8 percent to maturity on these types of...as an internal rate of return on these types of securitized vehicles and everything when they package these together and sell them to third-party investors. They're looking somewhere between a bond at 6 percent and an equity at 10 percent. And the reason that they're very attractive is because, again, they do not move in the same direction as bonds or stock, so they're what we call a negatively correlated asset class. [LB853]

SENATOR LANGEMEIER: Very good. That answered my question. [LB853]

TERRY HEADLEY: Okay. [LB853]

SENATOR LANGEMEIER: Thank you. [LB853]

TERRY HEADLEY: Thank you. [LB853]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB853]

TERRY HEADLEY: Okay. Thank you, Mr. Chairman. [LB853]

ROBERT WOOLEY: (Exhibit 8) Mr. Chairman, members of the committee, my name is Robert Wooley, spelled W-o-o-l-e-y, and I represent the company called Coventry, which is not the Coventry Health Care folks, but we are the largest life settlement company in the country, having about 50 percent of the business. Before I went back into lobbying, I was the elected Insurance Commissioner in the state of Louisiana. [LB853]

SENATOR PAHLS: I'm going to...I just have to hold it just a second. You are an opponent... [LB853]

ROBERT WOOLEY: Yes, sir. [LB853]

SENATOR PAHLS: ...or a proponent? I just have to double-check. Are all the...have all the proponents--that's fine, no, just stay--have all the proponents had an opportunity to speak? Okay. I just saw some movement, I just thought, by chance. I apologize for that. [LB853]

ROBERT WOOLEY: (Laugh) I'm sorry. I... [LB853]

SENATOR PAHLS: Not an issue. You may begin. [LB853]

ROBERT WOOLEY: I was trying to abide by the rules. I was the elected Insurance Commissioner in the state of Louisiana and two hurricanes, Katrina and Rita, pretty much retired me from public service. And before I get started, I would really like to publicly thank you as elected officials and the people of the state of Nebraska, because we received a lot of support from around this country, both through the use of first responders from different states, as well as the insurance departments sent people to help us deal with 1.2 million insurance claims that all occurred on a single day. It was a daunting task to deal with. But because of state base regulation, and I want to talk about that because I know you all were interested in that earlier when you were talking to the director, who I've known for some time. It's a great system, and one reason it's a great system is because you do have assets that you can call on. You can get people to come from other states and help you. And we had a network set up. We had people evacuated to 26 different states in this country, but all I had to do was call the National Association of Insurance Commissioners and we could reach those people through the Department of Insurance in each state where they would go out to the different shelters and work with people. So I wanted to thank you for that before I got started. We are here in opposition to the (LB)853, and most importantly, I guess, the viatical settlement portions of this bill, and the reason why is that we feel it is a poorly drafted bill. We think that it takes away property rights from the citizens of Nebraska that they have today and that they should be able to utilize in the future, when there is another solution to the problem. That has been talked about somewhat and that is the NCOIL model. There are some things that we have been proposing as we have moved around the country talking about this bill that would combine some of the best parts of the NAIC model bill and some portions of the NCOIL model bill that we think will help to solve the problem. But we think that the bill, as drafted, would impose a broad prohibition on the consumer's lawful use of the life insurance policy as property by unjustifiably restricting the assignment of the policy for a five-year period. The five-year ban would apply the instant a policy is evaluated for settlement prior to the fifth anniversary of the policy, or on any individual who has either sold a policy previously or who has had any policy ever evaluated for settlement. So if you tried to take part in the...take advantage of the secondary market, you would be prohibited in the future, at least for a period of five years, the way we read the statute. It would also completely destroy the property rights in life insurance whenever a policy is used as collateral, even partially, in a loan to pay premiums. The bill prohibits any compensation or death benefits to be paid if the policy, that was a subject of any form of premium financing, was ever sold. So we think that it is overly restricted in that regard when it comes to premium financing. Also, it would impose unjustified, anticompetitive restrictions on the business of life settlements. The effect of these provisions, including burdensome and expensive licensing requirements, unprecedented disclosure of settlement provider's business plans to insurers, and other unjustified impositions on the settlement transaction will drive the settlement market from states that pass this bill and make the insurance a less valuable asset to businesses and consumers. Nebraska has long recognized the right to assign a life insurance policy. I know that they, the proponents, did discuss the Grigsby case, which was a 1911 case before the United States Supreme Court that did recognize the right to sell a policy for consideration, and considered that right to be a protected property right. Prior to that, in 1901, there was a case by the Nebraska Supreme Court, and it's Chamberlain v. Butler, 61 Neb. 730, decided in 1901, that determined that an insurer may sell his policy on the free market for the best deal he can find. The Supreme Court of Nebraska is quite clear that this basic right cannot be impaired without offending property rights and without lessening the value of the policy and the premiums the owner has paid which have given it market value. We believe that STOLI, as defined in the life settlements model act of the National Conference of Insurance Legislators, involves a scheme to initiate new life insurance by an investor who, at the time the policy is initiated, lacks insurable interest in the insured. This definition of STOLI is consistent with Nebraska's insurance code which expressly establishes that, once lawfully initiated, a policyholder shall not be prohibited to make an immediate transfer or assignment of a life insurance policy or annuity contract so issued. This statute does not address STOLI where it occurs, and that's at the time of initiation of a new life insurance policy. Instead, it only imposes restrictions on the assignment of the life insurance policy. Also, we think that the nonrecourse premium financing statements in the legislation are also restrictive on policy rights that if you do any type of premium financing, as I said, then you would be prohibited for the five-year period. And we just think that that goes too far in restricting this marketplace. We think that the use of disclosures to notify the consumer that they will be reducing their insurance capacity to let them know that if they've been offered some type of inducement for this that it would violate the laws, and then be able to ask questions on the application that would give the company notice that this is an investor initiated life insurance policy and, therefore, they would not want to issue such a policy. So I think that that would be...the NCOIL provisions would be better in dealing with this problem and would be less restrictive on consumers rights. And with that, I'll be glad to try to answer any questions. [LB853]

SENATOR PAHLS: Senator Pirsch. [LB853]

SENATOR PIRSCH: So the NCOIL then proposal is...you said, doesn't attempt to regulate the policy at the time of assigning it, but focuses more on the time that the policy is originally taken. Is that correct? [LB853]

ROBERT WOOLEY: That's correct. [LB853]

SENATOR PIRSCH: And it does this in a couple of...at least a couple ways. I think you said, you have to sign a...the issuing...that issuing a new life policy would have to disclose to that individual taking out such a policy, that by taking out such policy they'd be reducing their insurance capacity. Is that correct? [LB853]

ROBERT WOOLEY: Right. [LB853]

SENATOR PIRSCH: And then I think you mentioned that there was yet another, I guess, requirement indicating that this would not be utilized in an investment capacity or that... [LB853]

ROBERT WOOLEY: Well, they would have to answer questions on the application about whether they have been offered any inducement to enter into this and have they, in fact, entered into a sale of the policy. [LB853]

SENATOR PIRSCH: Is inducement defined such that the typical individual who's filling it out understands that that was... [LB853]

ROBERT WOOLEY: I think so in the NCOIL. I'm not real familiar with a lot of the NCOIL provisions because it was only introduced, I think finally passed in November. And I haven't studied them all probably as well as I should have at this point. But from what I understand, it is through a series of disclosures and a series of questions that can be asked by the companies that would help screen for these investor initiated life insurance because it's not good for our industry. I mean we, as a life settlement company, do not buy terminally ill policies. We try to enter into the marketplace...we never bought any viatical policies. We were never in that business. We started business after that business had pretty much gone away. And we are in the business of trying to buy policies from individuals who either no longer need the insurance or, you know, need the money for some other purpose to give to their children to start their own business or whatever. So we're more in that business, and we would like to see an end to...so we have the same goal as the Department of Insurance and the ACLI. It's just we differ on how we all want to get there. [LB853]

SENATOR PIRSCH: I see. And aside from the two, I think, things that I mentioned, there are additional facets of the NCOIL model, but they all, again, are included within the category of those things that occur at the time of the taking of the original policy. [LB853]

ROBERT WOOLEY: Yes, that's correct. That's the difference. [LB853]

SENATOR PIRSCH: Okay. Thank you. [LB853]

SENATOR PAHLS: Senator Langemeier. [LB853]

SENATOR LANGEMEIER: Chairman Pahls, thank you. Mr. Wooley, welcome to Nebraska and hopefully we don't snow you in here. How do you market your product? How do you find potential insurers? [LB853]

ROBERT WOOLEY: We receive referrals from agents is where we get ours. I don't think we do any direct advertising as a company. [LB853]

SENATOR LANGEMEIER: Okay. In your stuff you just handed out--I was reading through it--you have pros and cons. And one of your cons on this bill would be to impose numerous unjustified anticompetitive restrictions. Explain to me the anticompetitive. [LB853]

ROBERT WOOLEY: Well, just... [LB853]

SENATOR LANGEMEIER: Competitive with who or competitive with what? [LB853]

ROBERT WOOLEY: Well, it would be that today you have a choice where you would be able to go to your agent and your agent can either go to the company and find out what the cash value is or they can go into the marketplace, the secondary market, and obtain bids on what different companies would offer to buy this insurance policy. And so that's what we're talking about as competition with the insurance companies that they're going to offer you a cash value, but it's not going to be as much as you would get if you have open access to the secondary market. We think that the five-year would be anticompetitive because today it's a two-year in the state of Nebraska, and Kansas, and Louisiana, and other states that adopted the original Viatical Settlements Act, and that coincides with the "contestability" period for life insurance so it makes a lot of sense. And we think five years is just an arbitrary ban on the sale for five years, and we think the better solution is to look at the inception of the policy and judge it at that time, and leave the competitive marketplace open. [LB853]

SENATOR LANGEMEIER: Okay. What's the incentive for the agents to do these referrals? [LB853]

ROBERT WOOLEY: Well, they'll make a commission. And also when you talk about the taxes, this is a taxable transaction on both ends. You pay taxes today for everything you receive above the cash value when you sell your policy, and it is a taxable transaction to the company when they collect proceeds above what they have invested in the policy. So those are both taxable transactions today. And the true problem that Congress is looking at with regard to taxation of life insurance is taxation of COLI and BOLI policies, which are company-owned life insurance and bank-owned life insurance, and those have been discussed for years and years and years. So that's not a new phenomenon that happened because of investor-initiated life insurance. That's been looked at by Congress because it's been an investment tool that's been used by Wal-Mart, K-Mart, lots of big companies. They buy life insurance on their employees, and they collect benefits if that employee is separated from service, but the cash buildup is not taxable. And so it's been something that's been discussed around Congress because of that, not because of investor-initiated life insurance. [LB853]

SENATOR LANGEMEIER: Thank you. [LB853]

SENATOR PAHLS: Senator Carlson. [LB853]

SENATOR CARLSON: Senator Pahls. Mr. Wooley... [LB853]

ROBERT WOOLEY: Yes, sir. [LB853]

SENATOR CARLSON: ...under current law if I take out a policy on myself, and I then contract a terminal illness or death of my spouse, or divorce, or retirement, or physical or mental disability, or bankruptcy, these are all occasions that I have no limitations on trying to sell my policy. Correct? [LB853]

ROBERT WOOLEY: Well, you would still have the two-year thing, but I don't think you'd have the five. [LB853]

SENATOR CARLSON: No. [LB853]

SENATOR LANGEMEIER: It would be exempted. [LB853]

SENATOR CARLSON: That...I think that is exempt. But of the things that I just went over and assuming that's me, give me again--I think you alluded to it a little bit--give me another case where I might want to sell my policy that's not approved, not an approved reason. [LB853]

ROBERT WOOLEY: Well, I think if you did any type of premium financing on your policy and you relied on using the policy as collateral and a nonrecourse financing, then I think you'd be prohibited from even with the circumstances that you described. [LB853]

SENATOR CARLSON: No, what I'm getting at is what I just went through, these are legitimate accepted reasons for me to sell my policy. You mention I think one or two others that you feel are legitimate reasons that I should be able to sell my policy. What are some of those? [LB853]

ROBERT WOOLEY: If you were in some type of business. A lot of businesses nowadays when they start take out policies on the owners or the founders of the business and they would get into a cash crunch and may need to sell the policy to use the money to plow into their business at some point. They no longer really feel like they need the insurance, but it would be good to go maximize that asset or even borrow against that asset. That's the other thing that the secondary market would do is offer to that business owner another avenue to go and maximize their asset. Instead of just having to be bound by the cash value, they could go to the bank and say, well, on the secondary market it's got a value of three times the cash value so we'd like to borrow that amount of money to plow into our business. [LB853]

SENATOR CARLSON: But today I can do that after two years anyway. [LB853]

ROBERT WOOLEY: As long as you didn't do any premium financing and that's part of the problem. [LB853]

SENATOR CARLSON: Well, but I don't think you're. [LB853]

ROBERT WOOLEY: Because especially a company is going to do premium financing. [LB853]

SENATOR CARLSON: I don't think you're, excuse me, I don't think you're arguing with the two-year waiting period. [LB853]

ROBERT WOOLEY: No, sir. No, sir. [LB853]

SENATOR CARLSON: So I can do that after two years now anyway. And the business using policy on me or me borrowing out of that policy because I'm in business trouble, I got limitations on the first two years what I can do out of there anyway I believe. It's the one step short of bankruptcy. So you're saying that would be a legitimate reason, another legitimate reason to be able to market my policy. Are there any others? [LB853]

ROBERT WOOLEY: I mean I haven't really spent a lot of time trying to think about how many others there may be, but I'm sure there are going to be others. [LB853]

SENATOR CARLSON: Okay. And you've detected I'm really hesitant about this whole thing. [LB853]

ROBERT WOOLEY: Yes, sir. [LB853]

SENATOR CARLSON: And I don't see too many other reasons. And I think that the potential risks of the proper use of life insurance would make us want to be very careful about encouraging the sale of life insurance policies. But I appreciate your testimony and understand that you've got a concern here. To follow up a little bit of what Senator Langemeier asked, because I don't know this, obviously there has to be an incentive to do this and you mentioned commission. Is the commission based on what the policy is then sold for or is it based on cash value? What's the commission based on? [LB853]

ROBERT WOOLEY: I'm not positive what the commission of the agent selling the policy is based on. I really don't know and I would hate to venture a guess on that. [LB853]

SENATOR CARLSON: Well, there has to be an incentive to do it to make it profitable. It's got to be profitable for the company that handles it. It's got to be profitable for the agent that sells it. And this is America, that's okay, but there's a pretty good amount of money I think involved in there, and I have a concern about that. But thank you. [LB853]

ROBERT WOOLEY: Sure. I understand that and we do too. We have a concern, and I think we have the same concern the Department of Insurance has and that the ACLI has. I don't think we have a difference of concern of the problem or scope of the problem. I think we have a different point of view on how to resolve the problem, whether you resolve it by having a five-year ban with exceptions and exemptions, or whether you resolve it by having a different definition and looking at the initiation of the policy and dealing with it at that point. So that's what I think the problem is. And we're working with ACLI in some other states right now on a joint compromise solution. So we're not here to say that we're just going to be a problem and stir up a bunch of trouble and leave town. We're here to work with everyone and try to resolve this problem where we can preserve the secondary market and also get rid of the investor-initiated life insurance because we do see it as a threat. [LB853]

SENATOR CARLSON: Thank you. [LB853]

SENATOR PAHLS: Seeing no more questions, thank you, Robert. [LB853]

ROBERT WOOLEY: Thank you, sir. [LB853]

SENATOR PAHLS: Additional opponents. [LB853]

BURTON SHEPARD: Senator Pahls and members of the committee, thank you very much for our opportunity to visit with you today. My name is Burton Shepard, B-u-r-t-o-n S-h-e-p-a-r-d. I'm vice president and mid central agency manager for Chicago Title Insurance Company. We are the newest domestic insurance insurer in the state of Nebraska, being part of the Fidelity National Financial family of underwriters. I'm here today representing the Nebraska Land Title Association, and I want to make it clear that we're not here in general opposition to LB853, just a couple of provisions that we have some concerns about that we wanted to bring to your attention and talk about today. Nebraska Land Title Association, as you may know, is the statewide trade association of independent agents and title insurers in the state who every day are insuring and protecting the ownership interests and the title interests of Nebraska consumers. Specifically, we are concerned about some language in section 44-7508 which has to do with the form filing requirements which we have a concern about. Heretofore, if an insurer were requested to provide additional information with regard to form filings and could not provide the department with the necessary information that was requested, typically this is actuarial information and in our view, typically this is actuarial information that really deals more with the casualty line or the life lines as opposed to title insurance. And the change in the language here now says or as proposed would, rather than a filing being withdrawn after a certain period of time, the language now says it would be disapproved. We have some concern over this in that we would be concerned that a disapproval in the state of Nebraska might have an effect in other states because that would have to be reported as disapproved in Nebraska. The forms that we are talking about are promulgated, well, not promulgated, but they are proposed by the American Land Title Association as uniform title insurance forms that are used throughout the country, obviously subject to local laws where they're available. And it's through the American Land Title Association Forms Committee that these form filings are fully vetted of all the necessary and appropriate parties in real estate transactions and they become the standard for use in the industry. Our concern would be on disapproval, as I mentioned, that is potentially possible that other states might look at a disapproval in Nebraska and that would create great concern. We have a somewhat deeper concern in that it has been very difficult for us to get what we believe are timely approval on some of these forms and, again, these are nationally available forms to us because, as I mentioned, the...our difficulty in providing actuarial information that's simply not collected from the title insurance line, as we might expect from some of the other lines of insurance. And I did some checking today. Our filings are done by our national office, and I did some checking today. We have right now we have pending six to eight filings, different filings, for our various entities. We have five underwriting entities, and some of those are as old as May of 2007. We've had some difficulty, and I'm not going to try to sit here and tell you that we...I simply don't know what kind of follow-up we've done with the department. However, this is a concern of ours and we wanted to bring it to your attention. And we would rather keep the law the way it is now, that if a filing can't be made or if we cannot provide the information, that it simply should be withdrawn rather than disapproved. Our second concern has to do with section

44-4064, and notwithstanding the language not to exceed, we're talking about small business people here for the most part in Nebraska, independent title agents in small communities. And what the department is asking is for the ability to increase the licensing fee by 250 percent. Notwithstanding their explanation that, you know, they don't intend to do that and we understand that and we appreciate that. This is of concern to us and our members because we're in a state in our current rate filing scheme where we do not have an effective way to pass along additional costs to consumers. We have no way to cover incidental expenses...there's no good way to cover incidental expenses at this point. We think this is an awful lot of authority in one gulp, essentially. So these really are our two concerns. I'm happy to answer any questions that any of you may have. I'll open up for questions. [LB853]

SENATOR PAHLS: Burton, I have a question. You said the forms had, since May the 7th, they've... [LB853]

BURTON SHEPARD: May 2007. [LB853]

SENATOR PAHLS: May 2007. Where have they been sitting? [LB853]

BURTON SHEPARD: In the Department of Insurance. I have a list. I was unable to print it. These are standard ALT forms. In some cases, these are endorsement forms and typically in title insurance an endorsement actually adds coverage as opposed to eliminating coverage. None of these filings have called for any kind of rate increase, and in some cases, they are new forms. We have a new 2008 form of policy, there are various policy forms. And, Senator, I'd be happy to provide you and, obviously, we will follow up with the department. I was unaware what follow-up methods had been taken yet, but we'll certainly be in touch with them to see if we can't get these things done. But... [LB853]

SENATOR PAHLS: And how does this affect your business? [LB853]

BURTON SHEPARD: Well, it affects our business in our inability to provide Nebraska consumers with the most recent products that are available to consumers in Nebraska, and that would be our chief concern is that our business is changing more than one might think in respect to the kind of coverages that we are willing to give and the kind of products that are available. We have a number of different products. We have a standard form of owners and loan policy. You may all know that we have two kinds of policies essentially. We have a policy that goes to the homeowner or the property owner. We also have one that goes to the lender that protects their priority of the lien. And so I mean the damage to the consumer is, or the potential damage is, that there are products that they simply do not have available because they're not approved for use in Nebraska. [LB853]

SENATOR PAHLS: Okay. [LB853]

BILL MARIENAU: Where in the bill is your second concern? [LB853]

BURTON SHEPARD: I beg your pardon. It's in section 44-4064. It's on page 84 of the bill I believe. [LB853]

SENATOR PAHLS: Dealing with the fees, is that it, $250? [LB853]

BURTON SHEPARD: Yes, this has to do with the licensing fee, license or appointment fee and it's in the renewal language. Heretofore, a resident insurance producer license fee was not to exceed $40. Now it's not to exceed $100, that proposed change. [LB853]

SENATOR PAHLS: Yeah. I think earlier I heard the director saying that it wasn't necessarily going to be $100...up to, okay. [LB853]

BURTON SHEPARD: Right, right. No, I understand that. [LB853]

SENATOR PAHLS: Okay, I understand. [LB853]

BURTON SHEPARD: No, no, and I appreciate that distinction, yes, sir. [LB853]

SENATOR PAHLS: Yeah, yeah. Senator Langemeier. [LB853]

SENATOR LANGEMEIER: Chairman Pahls, thank you. And thank you for your testimony and I think welcome to Nebraska I think is appropriate there as well. You talked about the forms getting approved and not services offered to the state of Nebraska that may be offered to other states. What does that do to our mortgage lending market on a global basis? I mean is there some concerns that we aren't getting the same consistent product in Nebraska as other states? I mean does that have some effect or not? [LB853]

BURTON SHEPARD: Yes, I would say certainly it does. We can only issue what is approved for use. Actually, I think in my experience that really affects more so on the endorsement side rather than the actual policy forms themselves, although changes are made. You may be familiar with the fact we do have some plain language type and some expanded coverage type policies that lenders typically request. And the American Land Title Association Forms Committee works on these constantly and it takes years, literally, to get these forms fully vetted through the various interested groups. So I would say, yes, in my experience lenders would be adversely affected by their inability to get coverages that they're used to getting in other states. [LB853]

SENATOR LANGEMEIER: Thank you. [LB853]

SENATOR PAHLS: Any other questions? Seeing none, thank you, Burton. [LB853]

BURTON SHEPARD: Thank you. [LB853]

SENATOR PAHLS: Good afternoon. Did you travel far from out of state? [LB853]

TIP O'NEILL: (Exhibit 9) All the way from the Education Committee, Senator. Senator Pahls, members of the banking committee, I'm Tip O'Neill. I'm president of the Association of Independent Colleges and Universities of Nebraska. We are a consortium of 14 nonprofit colleges and universities located in the state. This is the second time I've actually testified on a viatical settlements bill, which since I didn't know the definition of viatical before 2001, I guess makes me unique. In 2001 I did testify at the hearing on what was then LB52, the bill that created the act, and the committee adopted an amendment, at that time, that exempted charitable gift annuities from the provisions of the Viatical Settlement(s) Act, and that exemption is contained in section 59-1803. Now when the bill was introduced back then and as the bill passed, it had an exemption provision that exempted charities that owned life insurance policies from the holding requirements of the two-year requirement that existed in the original bill. What this bill does, it takes out that...first of all, it increases that holding requirement to a five-year period and also takes out the charity exemption. So I have worked with your legal counsel on this issue and just was able to get some language back from the bill drafters right before the hearing started that would reinstate that exemption, and I would ask the committee to adopt the amendment. That's really...I don't usually get in fights between big insurance and Wall Street and I'd just as soon keep it that way. [LB853]

SENATOR PAHLS: Senator Langemeier. [LB853]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. And I'm glad to see you made it out of Education Committee in one piece. [LB853]

TIP O'NEILL: I'd never been there in January before, Senator. [LB853]

SENATOR LANGEMEIER: There you go. Mr. O'Neill, with your amendment, do you still stay in opposition? [LB853]

TIP O'NEILL: No, I would be neutral, absolutely. [LB853]

SENATOR LANGEMEIER: You'd go to neutral if we adopt your amendment I assume that you're going to distribute. [LB853]

TIP O'NEILL: Absolutely. [LB853]

SENATOR LANGEMEIER: Thank you. [LB853]

TIP O'NEILL: I wasn't able to get copies because I just got it from the bill drafting office, but I'd provide a copy if the page would like to get it and make copies available to the committee. I'd appreciate it. Thank you. [LB853]

SENATOR PAHLS: Okay. Seeing no more questions, thank you, Tip. [LB853]

TIP O'NEILL: Thank you, Senator. [LB853]

SENATOR PAHLS: Any more opponents? People in neutral? I see one coming up. [LB853]

LARRY RUTH: (Exhibit 10) Senator Pahls and members of the committee, my name is Larry Ruth, R-u-t-h, and I am here today representing the Nebraska Dental Association. We have a very limited interest in the bill. I believe it's section 4, a little bit of background. Late in the 1990s the Nebraska Dental Association gave attention to insurance coverage for something that the commissioner called temporomandibular joint disorder. That's this joint right up here and it's a question of whether or not this is a dental problem or this is a nondental problem when you talk about this joint. And we discussed that at the time of the hearing. There was a bill that was passed, this is ten years ago now in 1998, LB1182, and that is the bill that adopted then section...what is now section 44-789. We worked with Senator Crosby and Senator Landis and the members of the insurance industry, at the time, to get that section passed. And what it does, it mandates certain offering of insurance, but it does not mandate coverage. There's a distinction. It's a mandated offering section, not a mandated coverage. The commissioner has come forward this afternoon and talked about some minor changes in the section. I think they're probably good changes. They clarify the bill, make it more understandable, and avoid some of the confusion that we might have had with the bill. She also stated that the bill repeals some outdated material, and that's what I want to suggest with that section of law that we also update it. Section 4 of the bill and that particular section of existing law, sets forth a $2,500 minimum for the mandated offering of coverage that would cover this kind of a jaw disorder. And we're suggesting that with the increase in medical costs over the last ten years that that minimum amount of $2,500 would be more appropriately about twice that much, maybe in the area of $4,500. I have distributed this to some other folks. I haven't gotten the response back from the folks that do this kind of coverage, but I'm sure that if they have problems with that, they'll let you know about it. The amendment is here and I'll just ask the page to distribute it. It would increase the amount from $2,500 mandated offering to $4,500 mandated offering. Thank you. [LB853]

SENATOR PAHLS: Any questions for...Senator Langemeier. [LB853]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. Larry, is this something you've introduced in a bill to change this? [LB853]

LARRY RUTH: No. [LB853]

SENATOR LANGEMEIER: Or did you just see an opportunity here to try and tag on? [LB853]

LARRY RUTH: Saw an opportunity, Senator. Yeah. As the commissioner said, this is an attempt to repeal some outdated material, and this is an attempt to update some outdated material. [LB853]

SENATOR LANGEMEIER: Thank you. [LB853]

LARRY RUTH: Thank you. [LB853]

SENATOR PAHLS: (Exhibit 11) Any other questions? Thank you, Larry. Any more people in the neutral? Earlier Ann had made a comment that she had given us a letter I think from Berkshire Hathaway Group and I'm just going to read a couple of sentences out of it because it deals with this bill. We believe that this legislative bill will be one of the most important tools that the director and her staff can use to track top-notch international insurance operations to Nebraska and make Nebraska an even better place for those of us who are already there. That's just one of the sentences out of this. Because of this bill, there are at least ten different sections to it, not just the viatical. And the part that I'm intrigued by is the potential that this section dealing with financial conglomerates so your supervision of them if this passes for potential for that. Well, it looks like we have nobody else out there to speak on this so that closes LB853, the session on that. I think before we begin the next one, should we take just a minor break? [LB853]

BREAK: []

SENATOR PAHLS: Good afternoon. We are ready to start with LB854. Thank you. LB854 was introduced by the Banking, Commerce and Insurance Committee at the request of the director of the Department of Insurance. This bill would propose regulations on businesses as we call discount medical plan organizations. Director Ann Frohman is here to give us a explanation on this bill. [LB854]

ANN FROHMAN: (Exhibit 1) Good afternoon, again. My name is Ann Frohman, F-r-o-h-m-a-n. I'm the director of insurance here to testify in support of LB854. The bill in front of you represents a National Association of Insurance Commissioners piece of work again. But also it should be clarified that we have supplemented that with some provisions that the Department of Insurance are suggesting may be noteworthy additions. Discount medical plans are on the rise. It's essentially due to the increased uninsured population. We have a large population that's required to pay full price for insurance...medical services, I should say, because they don't have the ability to purchase insurance and use the insurance mechanisms to negotiate their pricing forum. So we have what has evolved is this discount medical plan I guess, niche market you could say, and it's a valuable market. It serves an important stopgap for consumers that can't afford health insurance and other services. So we do think there's a need and we don't see any reason to prohibit them. However, the Department of Insurance, as well as the Attorney General's Office, has received over the last, I don't know, several years complaints about how these programs operate in the state. And we have essentially not taken jurisdiction over the complaints because discount medical plans are not insurance products. It does create confusion in the marketplace and that's why we're here. We want to clean some of this up and we think that this proposal before you is a way to do that. The bill would adopt an NAIC model discount plan organizational act or I should say specific provisions of that act. It would give the department essentially the authority to register these plans so that when consumers call, we can in fact follow up with the discount plans and try to assist the Nebraskans that are having difficulty or need assistance. We also, in addition to investigating, will be able to track the legitimate plans and work with the plans as needed. The model essentially requires that the purchasers of these discount networks receive the benefit of the bargain. That is they get the network that's promised to them and we also, in addition to requiring that they register, have a requirement in the proposal that will require that these plans disclose to purchases the products is not insurance and that they follow some regulation of advertising. We need to have some standards in there to clarify the confusion in the marketplace as to what this product is and does. These entities are not risk-bearing entities. So indeed they're not insurance but we do want to make sure that we focus on what the issue is here. The NAIC model had a provision dealing with financial oversight or minimum capitalization requirements. We don't see the need there. We think that was a detour from the real issue, which would probably dealing with adequacy and networks. And so that's kind of where we're focusing. We think the issue of how the department would determine that purchasers are getting the benefit of the bargain is where the focus should be, and that is why we've added this network adequacy provision to the proposal. It is a high standard to meet. We recognize that. If you're paying for this discount card, we would want to make sure that the Nebraskans know that they're getting something for their card; they're getting a network, there's something of value for them. The NAIC model requires a web site and a toll-free number. We think that's good business, combined with the right to rescind, and we think this is good information for the consumer. We believe that consumers should know beforehand, at the time of purchase, who is in their network so that they can make an informed decision. Let's say they're sitting out in western Nebraska and there isn't a provider in their network, does it make sense for them to purchase this product. We don't want a situation where, you know, they purchase the product, have their discount card, and just find that it has no value to them. I ask that you advance the bill to General File and I would be happy to answer any questions you have on it. [LB854]

SENATOR PAHLS: Senator Pirsch. [LB854]

SENATOR PIRSCH: Just briefly, with respect to the language requiring revelation of who's in or out of network. How would that come about? How would I inform you as a possible customer of mine and meet the requirements of this that, you know, that there's only one person in my network or 100 people in the network, so to speak? [LB854]

ANN FROHMAN: In terms of listing? I understand what they intend to do with their web site is try to update that on a monthly basis so that you can check the web site for that. [LB854]

SENATOR PIRSCH: So there's not de minimis trigger level where you must have this many? It's just whether you have 1 or 100, you must reveal it? [LB854]

ANN FROHMAN: Right, because in fact, you know, there's simply are situations, especially in the western part of our state, where there might not be a provider available. [LB854]

SENATOR PIRSCH: Thank you. [LB854]

SENATOR PAHLS: Senator Carlson. [LB854]

SENATOR CARLSON: Senator Pahls. Director Frohman, do you know, are these plans marketed as medical plans? [LB854]

ANN FROHMAN: I think you have bad actors in this business and you have good actors in this business, and I think it depends on who's doing the marketing. With this proposal, we think it will get rid of the bad actors that do that sort of thing. And even if they don't market it as...you know, we don't want them marketing it as insurance, as medical plans. But we do know we receive about a call a day on these things, and it's more of a...is it a problem where they've been wronged? I can't say that's the case necessarily: sometimes, sometimes not. But what it consistently is is confusion as to what these cards are. Are they a medical plan? No. [LB854]

SENATOR CARLSON: I see potential difficulty here in regulating a plan, needs to have insurance attached to it maybe, but it's really not an insurance plan. It's a discounted purchase plan, isn't it? [LB854]

ANN FROHMAN: Absolutely. It's not insurance. It's one of those that's sitting out there that we don't have jurisdiction over. But when the, you know, public calls us and says, can you assist, right now there isn't much we can do. [LB854]

SENATOR CARLSON: Thank you. [LB854]

SENATOR PAHLS: Senator Gay. [LB854]

SENATOR GAY: If you get a call a day on these things, who's taking those calls and what's your enforcement mechanism for this? [LB854]

ANN FROHMAN: Well, we've had discussions with the Attorney General's Office and since we currently lack jurisdiction, we've been referring them over to their office, which you know, in a sense is a struggle because they have to kind of figure out what this stuff is as well. So we think this is the workable solution is to give us the jurisdiction over them. [LB854]

SENATOR GAY: Does this go their fraud division or where does it...? [LB854]

ANN FROHMAN: I think they're consumers. [LB854]

SENATOR GAY: Consumer fraud division? [LB854]

ANN FROHMAN: Yeah. [LB854]

SENATOR GAY: Which is staffed by, do you know how many people? [LB854]

ANN FROHMAN: Not many. [LB854]

SENATOR GAY: Follow-up question. Class IV felony, what is that? What's a Class IV felony? It says: this could be insurance tax is a Class IV felony. [LB854]

ANN FROHMAN: I'll defer to the prosecutor. [LB854]

SENATOR PIRSCH: I think it's up to five years in jail. It's one of the least, I think, the least penalized...or in terms of the hierarchy, it's I think Class IV and Class IIIA are up to five years in jail. And so that's the least I think in terms of felonies. [LB854]

SENATOR GAY: Thank you. [LB854]

SENATOR PAHLS: Any other questions for the Director? Seeing none, thank you. [LB854]

ANN FROHMAN: Thank you. [LB854]

SENATOR PAHLS: Proponents? Good afternoon. [LB854]

BRUCE RIEKER: (Exhibit 2) Good afternoon, Chairman Pahls, members of the committee. My name is Bruce Rieker, that's R-i-e-k-e-r, vice president of advocacy for the Nebraska Hospital Association, and on behalf of the 85 hospitals we represent and the 39,000 people that they employ, we do support LB854. We believe that LB854 protects the consumer. As its already been discussed, medical discount plans are not health insurance and it must be clear to all prospective participants in such plans that that is the case. Many companies across the country are selling discount medical plans. They offer money saving benefits to people, usually without insurance or they're underinsured. These consumers may think that they are buying insurance, but in reality they are still responsible for their medical bills. These plans simply offer lower prices for health care services. Entering into a discount medical plan may have dire consequences. Consumers may give up their existing health coverage, believing they found a better deal. Advertised discounts with health care providers in treatments covered may not exist or they may be exaggerated. Imagine the feeling, and we get this every once in a while in our hospitals, that when you arrive at the doctor's office or at the hospital only to find out that you have no health insurance or the treatment that you expected to be covered is not covered and that you have to pay your medical bills out of your pocket. The Federal Trade Commission has also recognized this as a significant issue. The FTC is our nation's consumer protection agency, and it has issued a consumer alert warning individuals to be very cautious before entering into a discount medical plan. Although the FTC has found that there are some legitimate discount medical plan providers across the country, many of them take the consumer's money and offer very little in return. According to the FTC, and I quote their alert, "some medical discount plans claim to provide big discounts from hundreds of providers for a wide range of services, from doctor visits and dental exams to hospital stays and prescription drugs. But many plans fail to make good on those claims." We thank you for your attention to this matter and we do believe that consumer protection is paramount and regulation as proposed in this legislation is absolutely necessary. We urge you to support and advance LB854. [LB854]

SENATOR PAHLS: Any questions? Senator Langemeier. [LB854]

SENATOR LANGEMEIER: Chairman Pahls, thank you, and thank you for your testimony. Bruce, do you see any of these plans actually living up to what they're headlines are saying or are any of your hospitals actually cutting deals to be part of these plans, I guess, is my question? [LB854]

BRUCE RIEKER: Well, as far as I know none of our hospitals have entered into any of these deals. There may be a case where there may be something of a negotiated medical rate, but I'm not aware of any of our members entering into these contracts. [LB854]

SENATOR LANGEMEIER: That's interesting. Then my second question is, this is going to be something you probably don't know anything about, maybe something you've heard about secondhand, what kind of discounts are they advertising? I mean, 50 percent of the cost, 10 percent of the cost, I mean, do you have any idea? [LB854]

BRUCE RIEKER: Yes, and some participants in these programs have presented themselves to our hospitals thinking that they had insurance. Maybe that's a footnote to your earlier question. But how do they present themselves? Sometimes they present themselves as: preexisting conditions, no problem, we'll take care of that; discounts up to 60 percent, well, depending on how you would look at that. Many of them--not all, I don't want to make this an absolute statement--but many of them advertise things that are probably exaggerated to a great degree. And we have unwary consumers that are buying this thinking that it may be insurance or that there is going to be some great discount. But the basis for which these companies are advertising is very exaggerated. [LB854]

SENATOR LANGEMEIER: Okay. Thank you. [LB854]

SENATOR PAHLS: Senator Pirsch. [LB854]

SENATOR PIRSCH: You said that your hospitals don't have any, as far as you know, any participation in these type of plans. Are you aware if any hospitals...you represent 85 hospitals... [LB854]

BRUCE RIEKER: Right, 84 nonprofits and 1 for-profit. [LB854]

SENATOR PIRSCH: Yeah. Are there other hospitals that you're aware do engage participating with this? [LB854]

BRUCE RIEKER: I don't have knowledge to those that wouldn't be part of our membership. [LB854]

SENATOR PIRSCH: Okay. Okay. Thank you. [LB854]

SENATOR PAHLS: Just a second, are you waving over there? Are you swatting flies? [LB854]

SENATOR LANGEMEIER: Of your 83 and 1 membership, what percent of the hospitals in Nebraska does that cover? I'm curious now. Is there 100 and you have 84 of them or is there... [LB854]

BRUCE RIEKER: Okay. We have 85; there's 84 nonprofits and 1 for-profit. That covers all of the nonprofit hospitals. [LB854]

SENATOR LANGEMEIER: Okay. That's what I wanted. [LB854]

BRUCE RIEKER: And Creighton University Medical Center is the for-profits owned by a Tenet. We do not represent the ambulatory surgical centers or the specialty hospitals. [LB854]

SENATOR LANGEMEIER: Okay. Thank you. [LB854]

SENATOR PAHLS: Seeing no more questions, thank you, Bruce. [LB854]

BRUCE RIEKER: You're welcome. [LB854]

SENATOR PAHLS: Anymore proponents? Opponents? How many opponents do I see? One, okay. Thank you. Please come forward. Thank you. Good afternoon. [LB854]

ALLEN ERENBAUM: (Exhibits 3 and 4) Good afternoon, Senator Pahls and members of the committee. My name is Allen Erenbaum, that's A-l-l-e-n, the last name is E-r-e-n-b-a-u-m. I'm here today on behalf of the Consumer Health Alliance, which is the national trade association of discount healthcare programs. As has been described, discount healthcare programs are not insurance programs that offer consumers access to healthcare services and products at discounted rates. They are offered not just by discount companies, but by major insurance companies, banks and financial institutions, nonprofit organizations, and employers. They're very simple programs to understand. They offer potential for great value for consumers and that's why they have been of increasing popularity. In fact, CHA companies represent or have over 28 million members nationwide, including about 150,000 here in Nebraska currently. These programs began operating about 20 years ago, primarily to offer access to discounted ancillary services that weren't covered by traditional insurance. And in fact, a typical discount plan, so you can get a sense, would be something that would charge in the neighborhood of $20 a month. And for that, you would get discounts on a package of benefits; dental, prescription drugs, vision, chiropractic, audiology, is a typical grouping of benefits. In recent years, the cost of healthcare going up has increased, obviously, the uninsured population and created more instability in the health insurance market. And that, again as has been said, has created some opportunities for bad actors to advertise either discount plans, which don't really exist or to try to sell discount plans disguised as insurance sometimes at high fees, which misleads people into understanding what they're buying. The leading legitimate companies became concerned that it was these bad actors who were going to define the industry in the face of regulators and so in late 2001, the Consumer Health Alliance was formed. We have been working with state legislators, and insurance departments, and Attorney's General offices around the country as regulation has come into place. These programs were virtually unregulated by any state only a handful of years ago. But in the last 3 or 4 years, about 20 to 25 states have enacted legislation and we welcome the opportunity to...we are an industry that says, fine, regulate us, we're happy to be regulated. We just want the regulation to be targeted at the problem, to be practical, and to be uniform. So we've worked with all those states. We also worked heavily with the NAIC on the development of their model, which by the way, the department was very involved in as well, and that model was completed in the fall of 2006 and, as the Director said, is the basis for this legislation. So with this legislation, which is a comprehensive regulatory proposal, we're going from no regulation in the state currently to something that really is quite comprehensive. And frankly, most of it we are fine with, most of it we agree with. We agree that it provides a lot of important consumer protections, the disclosures that are in there, the cancellation requirements, the need to insure the providers are under contract to actually give the discount, to have customer service and the like. We do have some issues though with the bill that we think are needed to make it live up to what we're looking for in terms of being targeted, practical and uniform. And actually most of those are deviations from the NAIC model. I do have some amendments that I would submit for your consideration and would just like to briefly outline the issues that are in there. Our goal is to maintain the consumer protections in the bill while insuring that legitimate discount companies can continue to offer Nebraskans access to more affordable healthcare products and services. So the first issue is the registration fee that's in the bill. It's proposed at $1,500, which is significantly above the registration fee in any other state. The annual renewal fee is $100, which is in fact less than it is in some other states. So it's our proposal to decrease the initial registration fee to $500 and to increase the renewal fee to $300, which in the long run will generate more revenue for the department than the bill as introduced. The second issue is the one of network adequacy. Our concern is that network adequacy is more of an insurance concept that is difficult to apply in the discount context. It's very common that people will enroll in discount programs, even though they might get access to a half dozen different benefits. They may be enrolling for one. They may have prescription drugs that they get on a monthly basis that costs them a couple of hundred dollars, and they might be able to save $40 a month with our programs and for them it's well worth the $20 monthly fee in order to get that savings. They may not care whether there's a chiropractor anywhere near them or somebody else might join to get discounts on braces for their kids or any number of other purposes. So our answer to issues of network adequacy is, as the Director suggested, to give the consumer as much information as possible before they enroll by doing some things that the bill actually requires, which is to include on all advertisements for the program a web site where somebody can go and put in their zip code and get a list of the providers near them. They can also search by specialty or by benefit to find the provider that's closest to them. Of course if they're traveling to another part of the state or even out of state, they can use it for that as well. Also, there's a toll-free number that's required to be on the advertisements, which can be used for the same purpose. If somebody doesn't have Internet access, they can call the 800 number and get their local providers and in fact, even if they want a written list of those providers, if they call they can have that sent to them. So our goal is for people to know what they're getting before they sign up so that they'll be satisfied customers after they sign up. Of course, there is also a provision in the bill that allows people to cancel within 30 days and get their membership fee refunded if they join and then find out. If they don't check beforehand and then join and then find out that, you know, that the particular types of providers that they were looking for aren't as close as maybe they would like. The third issue is a language in the bill, which requires the fee that's charged for the program to bear a reasonable relationship to what benefits the consumer is getting. And again, that's another concept that's difficult to apply in the discount context because the benefits that people get depend largely on how much they use the program. The more they use it, the more benefit they'll get. But you know, like me and my gym membership that I don't use, I don't get very much benefit out of it. But the potential for savings for everybody is great. The next issue is one that would require our companies to provide 24-hour customer service. Currently I think our companies as a standard have customer service available 12-hours-a-day, which is generally business hours across the country, and it would be quite expensive to expand that to 24 hours. We don't have...our companies are not large companies because, as has been said, they're not risk-bearing companies, they're not paying claims, they're not involved in the transaction between the member and the provider. They simply give the member the list and get out of the way and don't track utilization or we don't know how often people use the cards. We hope they use them all the time. It's fine with us if they use them every day. But we're small companies and the customer service we do provide is highly specialized. Some of our companies operate on a wholesale basis, which means that you may have...one of our companies operates a program that, for example, is offered by Aetna, it's offered by Citibank, it's offered by the Texas Farm Bureau. And all of these programs are different, but this one company handles the customer service for all of these programs and there are several hundred of them. And they need to be able, when somebody calls, to identify what the program is, what the benefits that are there associated with that program and be able to respond to inquiries, and it would be difficult to outsource that customer service somewhere else. The next issue is a requirement that we put contact information for the department on our materials. This is an issue with uniformity for us. We worked hard in the NAIC model to get it to not require state-specific information. The NAIC model requires that consumers be told that if they have complaints, they can go to their state Department of Insurance and we would argue that that is adequate. Finally, the last issue is one that would require us to accept cancellations and complaints by e-mail. That, for some of our companies, has been a problem where they've opened e-mail addresses and they're quickly filled by spam and it becomes hard to distinguish between the legitimate complaint and cancellation and the spam. So we would instead suggest that adding that people can use a toll-free number in order to file complaints and make cancellations. We do want to be able to support the bill and we look forward to working with the committee and with the department to achieving that. Thank you. [LB854]

SENATOR PAHLS: Allen, I have a question. By listening to you testimony it appears that you are in agreement with the Director on most of the issues we're talking about, am I wrong? [LB854]

ALLEN ERENBAUM: No, we are in agreement with the structure of the bill and with most of the provisions in it. In fact, we're living with most of those provisions today because they come from the NAIC model and versions of that are in effect today and we are complying with those. [LB854]

SENATOR PAHLS: Okay. Senator Pirsch. [LB854]

SENATOR PIRSCH: I just was wondering if you could, and you may not, be able to comment on the existence, prevalence of these types of your member organizations in the state of Nebraska right now. You know, the previous testifier wasn't aware that any of the NHA hospitals had an association. Are they active in Nebraska currently? [LB854]

ALLEN ERENBAUM: The programs generally? [LB854]

SENATOR PIRSCH: Yeah. [LB854]

ALLEN ERENBAUM: Well, yeah. As I mentioned, our board member companies, which I polled before coming here, gave me a data which suggests that there are about 150,000 Nebraskans currently enrolled in these programs. Now, one key distinction is that the overwhelming majority, between 90 and 95 percent, of those programs do not include physician and hospital. They're the standard traditional discount program, which is ancillary benefits, which are not typically covered by insurance. [LB854]

SENATOR PIRSCH: So more likely, and I think you touched upon some of them, chiropractor perhaps and what were three or four... [LB854]

ALLEN ERENBAUM: Dental, vision, prescription drugs, chiropractor, audiology, and podiatry are the major ancillary benefits. [LB854]

SENATOR PIRSCH: Thank you. [LB854]

SENATOR PAHLS: Senator Carlson. [LB854]

SENATOR CARLSON: Senator Pahls. Allen, out of the Consumer Health Alliance, about how many of your members operate in Nebraska or do business in Nebraska? [LB854]

ALLEN ERENBAUM: They all do, sir. [LB854]

SENATOR CARLSON: They all do. [LB854]

ALLEN ERENBAUM: Yes. [LB854]

SENATOR CARLSON: And that's how many? [LB854]

ALLEN ERENBAUM: Well, we have about 10 members and with the recent joining of United Healthcare, which has probably the largest single discount program in the country, I suspect we represent, you know, between 80 and 90 percent of the memberships nationwide, our companies. [LB854]

SENATOR PAHLS: Senator Pankonin. [LB854]

SENATOR PANKONIN: Thank you, Chairman Pahls. Allen, is another person who made a sacrifice. He came from L.A. today to testify. [LB854]

ALLEN ERENBAUM: Apparently I should have been here yesterday. [LB854]

SENATOR PANKONIN: Right, there you go. But we appreciate your coming, appreciate your testimony. Just curious since you agree with many of the facets of the bill, have you had interaction with the Nebraska Department of Insurance before this trip? Did you have input on some of that or did you try to? [LB854]

ALLEN ERENBAUM: No. We met with the department this morning, had a very, I think, good discussion of the issues and, you know, I'd hope we would continue to work with them. [LB854]

SENATOR PANKONIN: Okay. Thank you. [LB854]

SENATOR PAHLS: Senator Langemeier. [LB854]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. I got that look like keep it short (laugh). Discount healthcare programs, I find that name extremely misleading and deceptive and I think we should change it. Where do you get that name and...I think this is a diner club card issue. I don't think this is healthcare. I don't think it's...technically with the examples you gave us you're not giving us any individuals that are emergency care-type providers, you're not giving us any long-term healthcare providers. You're giving us kind of those fringe providers that are...to call it healthcare, I find that quite troublesome. Is that discount healthcare, is that a keynote phrase used out there in industry or what happens if we change the name? Let's go that route. [LB854]

ALLEN ERENBAUM: Okay. Well, Senator, first of all, the name is changed in the bill. I believe is calling us discount medical plans. [LB854]

SENATOR LANGEMEIER: Okay. I don't like that either. [LB854]

ALLEN ERENBAUM: I somehow thought that might be the case. (Laughter). [LB854]

SENATOR LANGEMEIER: You're perceptive. I like that. [LB854]

ALLEN ERENBAUM: I mean, we as a industry have struggled with this as well. Our concern with medical is that medical sounds like physician, which again is not the...we do do physician and I want to make sure that that's clear. [LB854]

SENATOR LANGEMEIER: I understand that. [LB854]

ALLEN ERENBAUM: We do physician, and we do hospital, and long-term care, and virtually every other aspect of healthcare that you can think of. But you know, our concern was that medical...the name in the bill, discount medical plan, comes from the NAIC model. We argued against that. We thought it was misleading to consumers. But it has become the kind of standard among regulators and the industry has, you know, somewhat reluctantly adopted it. In our view also, just the word "plan" can sound more like insurance and that's why we use the word "program" because it differentiates from what's considered a health plan, which most people would consider to be insurance. But we'd be open to any other names you might suggest. [LB854]

SENATOR LANGEMEIER: Had you offered suggestions at the NAIC model? [LB854]

ALLEN ERENBAUM: Well, we did. We offered, of course, the one you don't like at all, discount healthcare program or discount health program, were I think the two that we suggested to the NAIC. [LB854]

SENATOR LANGEMEIER: Well, I appreciate that. [LB854]

ALLEN ERENBAUM: Sure. [LB854]

SENATOR PAHLS: Seeing no more questions, thank you, Allen. Appreciate it. [LB854]

ALLEN ERENBAUM: Thank you. [LB854]

SENATOR PAHLS: Anymore opponents? Anybody in the neutral? Seeing none, that concludes this hearing on LB854. We will now open the hearing on LB855, which was introduced by the Banking, Commerce and Insurance Committee at the request of the director of the Department of Insurance. This bill would make changes in our laws regarding group life insurance. Director Ann Frohman is here to explain this in more detail. Director, just for point of information, not every Tuesday we're going to allow you just to come in front of us four times in a row, okay? (Laugh). [LB854 LB855]

ANN FROHMAN: (Exhibit 1) I'm wearing out my welcome, am I? Well, in any event, thank you. My name is Ann Frohman. I'm the director of insurance and here to testify in support of LB855. It is the intent of the department with this bill to essentially bring the Nebraska group life insurance provisions in line with the standards that have been longstanding established by the NAIC. It would replace the existing group life insurance provisions that have been untouched for some time in the insurance code, with the NAIC provisions. We came to you in 2006 for amendments that dealt with allowing individual employees to fully fund their insurance through their group plans, and we are back again this year, originally thinking of adding another piecemeal provision. But stopped and reassessed it and decided that it made a whole lot more sense to move forward with adopting the NAIC model, rather than approach you periodically with piecemeal changes. And we do have a strong life insurance industry and it simply made sense that, you know, we kind of clean our closets and do what we need to do to get them up to date. Group life insurance has been a national focus and the insurance regulators insures seeking to bring all states on board nationally with, you know, a lot of group life standards. We do have, of course, an interstate compacts that's busy. But they are right now focused on individual products, not group life products. That will be a couple of years down the road, I believe, and we need this simply anyway because we will have carriers that will not take advantage of the interstate compact process. So I ask that you advance this bill to General File and would be happy to answer any questions on it. [LB855]

SENATOR PAHLS: Do we have any questions for the Director? Senator Gay. [LB855]

SENATOR GAY: Yeah. I have a question. If we just adopt the NAIC model completely, how many other states are doing that then? You said all 50 would like to. So we'd just do everything in that model instead of tweaking ours here. Is that the way I'm understanding what you're doing? [LB855]

ANN FROHMAN: With this group... [LB855]

SENATOR GAY: With this group portion of it. [LB855]

ANN FROHMAN: Yeah, this model has been around quite a while, and I believe a majority of the states have most of it. I don't know the number right off hand. But I would think it would be a majority would be there. [LB855]

SENATOR GAY: Okay. So this is...well, when you say a majority... [LB855]

ANN FROHMAN: I can find out and let you know how many states have the NAIC model on group. I don't know the answer to that right off hand. [LB855]

SENATOR GAY: Okay. And I guess what your theory is the way you're describing this is...and I agree with this, instead of coming back on this, that, and the other thing, let's just do it all at once and be done with it. Is that what you're saying? [LB855]

ANN FROHMAN: That's what I'm saying, especially when I look through it and it's such well subtle law. I mean, it isn't a matter of, well, is this controversial? I had to look over my shoulder on that one. (Laughter). [LB855]

SENATOR GAY: Right. So you're just comfortable then saying let's just do it all at once is what I'm getting at. [LB855]

ANN FROHMAN: Absolutely. [LB855]

SENATOR GAY: All right. Thank you. [LB855]

SENATOR PAHLS: Seeing no more questions, thank you, Director. [LB855]

ANN FROHMAN: Thank you. [LB854]

SENATOR PAHLS: Proponents. [LB854]

JAMES HALL: Thank you, Mr. Chairman. Once again for the record, I am Jim Hall. I'm a regional vice president with the American Council of Life Insurers, which is the National Trade Association representing the life insurance industry. And you will be relieved to hear that on this bill I will not give the history of group life insurance (laugh). Instead we are simply here to commend Director Frohman and the department for moving forward to modernize the group life insurance law and we wholeheartedly support Legislative Bill 855 and would ask the committee to do the same. [LB855]

SENATOR PAHLS: Any questions for Jim? Seeing none, thank you. [LB855]

JAMES HALL: Thank you, Mr. Chairman. [LB855]

SENATOR PAHLS: More proponents? [LB855]

JANIS McKENZIE: Senator Pahls, members of the committee, for the record, my name is Jan McKenzie, spelled M-c-K-e-n-z-i-e, executive director of the Nebraska Insurance Federation here in support of LB855. I just want to reiterate for your information that unlike many other states where relative to insurance federations, Nebraska is unique in the fact that we are the only state that has one association that includes all life, health, and property casualty companies in the state who choose to become members. That makes us unique and probably the other thing that makes us unique is that we, in fact, work very closely with our regulator, starting clear back in the fall before session of introduction for the next year with the department personnel and the director of insurance to work through and get all the issues that might come forward as a department package. And what's nice about that is companies have a chance to really take a look at what the department is proposing, what the NAIC models are looking like that they're including, and a chance to say, yes, we support this or no, there's a problem or we don't agree internally. And when it finally comes to you as a bill, it's nice to be able to sit down here in support. And so with that, I will stop because it's been a long afternoon or answer any questions if you still have one. [LB855]

SENATOR PAHLS: Senator Langemeier. [LB855]

JANIS McKENZIE: Oh, doggone it (laughter). I thought I was going to make it the whole day, Senator. [LB855]

SENATOR LANGEMEIER: I'm going to ask you a real easy one. You just commented on how they all joined together and that's really nice. What percent of those available members in the state are members? [LB855]

JANIS McKENZIE: You know that's a really good question because I've done this for eight years and when I first came in, I kind of had to scrounge through a couple of files and find who the members were because the federation had not been very active. And so the member I mentioned earlier that we just had join on Friday is a company who's been here as a domestic for a long time. But I didn't know they were out there and they didn't know what we were doing as a group representing the industry and the jobs in the state. And so every now and then, somebody pops up that we find out was actually a domestic that didn't know about us or that I didn't know about and have a chance to offer them membership. [LB855]

SENATOR LANGEMEIER: So you think it's a high percentage. [LB855]

JANIS McKENZIE: I hope not. [LB855]

SENATOR LANGEMEIER: No, that are members. [LB855]

JANIS McKENZIE: Oh, that are members. I believe so. And there are some companies who quite honestly...I know there are several property and casualty or very specific small companies who don't feel that it's necessarily worth their while. We rarely see legislative issues, for one, that don't join. But I think we have a pretty good percentage. And just to clarify, they don't always agree and when we don't agree, we don't take a position on a bill. So there are times when the industry doesn't all feel the same way about an issue or a piece of legislation. [LB855]

SENATOR LANGEMEIER: Thank you. [LB855]

JANIS McKENZIE: Then you don't get to see me. Thank you. [LB855]

SENATOR PAHLS: I see not more questions. [LB855]

JANIS McKENZIE: Okay. Thank you. [LB855]

SENATOR PAHLS: Opponents? Neutral? That closes the hearing on LB855. I want to thank the Director for starting the day out with some information about herself and her vision for the insurance industry. Appreciate that and also for the three bills you brought forth. Again, thank you. Have a good day. [LB855]

Disposition of Bills:

LB853 - Advanced to General File, as amended.
LB854 - Advanced to General File, as amended.
LB855 - Advanced to General File, as amended.

Chairperson

Committee Clerk