[LB400 LB426 LB451 LB550 LB577 LB675]

The Committee on Health and Human Services met at 1:30 p.m. on Wednesday, February 7, 2007, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB400, LB426, LB451, LB500, LB577, and LB675. Senators present: Joel Johnson, Chairperson; Tim Gay, Vice Chairperson; Philip Erdman; Tom Hansen; Gwen Howard; Dave Pankonin; and Arnie Stuthman. Senators absent: None. []

SENATOR JOHNSON: (Recorder malfunction)...hearing, Health and Human Services Committee for the Nebraska Legislature. Let me first introduce those that are on the committee and again, many of you know that senators do come and go as they may need to be at other places as well. First, on my right, Senator Dave Pankonin from Louisville; next will be Senator Phil Erdman from Bayard; next is the Vice Chair, Senator Tim Gay, from Papillion; Jeff Santema, our legal counsel, just to my right. And then to my far left is Senator Gwen Howard from Omaha; Senator Tom Hansen from North Platte; the late Arnie Stuthman (laughter) from Platte Center; and Erin Mack, our committee clerk just to my left. Let me remind you that the proceedings are recorded and transcribed. If you have a cell phone on you, please shut it off now. It's somewhat disturbing to all of us but particularly to the transcriber. When you rush out of the room with that ringing and what disturbs the rest of the committee, is when we hear the shot in the distance (laughter). First of all, the committee proponent testimony, then opponent, and then neutral. We have, I think, six bills today. Please be brief. We don't have a light system, but the longer we go, it's not fair to bills at the end of the day, not only for the people testifying, but I can tell you this, is that the attention span of the committee dissolves late in the day as well. There is a testifier sheet available. Fill it out completely and when you do testify, publicly, give us your full name and spell it please. If you have things that you want passed out, we need 12 copies. If you don't have 12, give it to the pages and they'll take care of that. Other than that, I can't think of anything other than to tell you that I forgot to introduce one person and that I am Senator Joel Johnson from Kearney. With that, let's proceed, and we are going to have a little bit different order than what you may have seen a few minutes ago, and we are going to start with Senator Lathrop. Let's begin the hearing on LB675. Welcome. [LB675]

SENATOR LATHROP: Thank you, Chairman Johnson, I'm Senator Steve Lathrop from the 12th District, L-a-t-h-r-o-p. This is my first appearance in front of the Health and Human Services Committee. I'm here today to introduce LB675. The purpose of LB675 is simply to gather information on marketing practices of pharmaceutical companies. It would require pharmaceutical company representatives to disclose any gifts they've given to doctors or hospitals above a $25 value. In the industry, they call the people who do this gift-giving, detailers, and the pharmaceutical companies employ more than 90,000 of them nationwide. These men and women have a job that many of us in the room would be very familiar with. Essentially they lobby doctors to prescribe more of

their companies' drugs. However, unlike lobbyists, the behavior of the pharmaceutical detailers is unregulated. They are able to obtain very detailed information of exactly which drugs the doctor is prescribing and they are free to give gifts in any amount. These gifts can and do include such items as all-expense paid trips to a resort if the doctor agrees to attend a lecture. The overall costs of these gifts is substantial. A New York Times article estimated the industry spends between $6,000 and $11,000 per year per doctor on direct promotion. Figures from Vermont show individual doctors who have received gifts amounting to more than $50,000 in a single year. And we'll hear some testimony about these numbers in some testimony that will follow. There is a great deal of research which shows that detailing is very effective as a method of altering which drugs doctors are prescribing and the polls suggest that doctors are largely unaware that their habits are being affected. LB675 is designed to provide information so that we can review the practices of the pharmaceutical companies to determine whether or not further regulation is necessary. You will be surprised, I think, to hear some of the testimony that will follow with respect to the experience of some of the states which have already adopted similar statutes. And with that I would be happy to answer questions about LB675. [LB675]

SENATOR JOHNSON: Thank you. Any questions of Senator Lathrop? Senator Pankonin. [LB675]

SENATOR PANKONIN: Thanks, Senator Johnson. Senator Lathrop, just curious as far as any group or why you brought this bill or introduced this bill? Was it something in particular that...the reason behind it, or just have people come to you, or... [LB675]

SENATOR LATHROP: There are studies...AARP asked me to introduce this bill... [LB675]

SENATOR PANKONIN: Okay. [LB675]

SENATOR LATHROP: ...so to give you a group, it's the good people at the AARP that are interested in this, but they are not the only people, and the bill is a response to studies which show a couple of things. First of all, that an awful lot of money is being spent on physicians to influence which drugs they prescribe. Influencing the physicians, sometimes they don't even know they are being influenced. When you ask them, have you been influenced by that trip to Florida, Key West, where you attended the seminar on our drug, and they'll say, no, I'll keep doing what I'm supposed to be doing. But the research shows that it influences these people whether its consciously influencing them or unconsciously influencing them. The amount of money they're spending, and you'll hear what the findings are from Vermont, is staggering. And the statistic is that for every dollar they spend detailing, they get a $22 return on their investment. And that means that the manner in which medication is being prescribed in this country is, in a large part, influenced by the activities of those who lobby the doctors. And we regulate the

lobbyists that approach us, and we don't regulate or even try to slow down the efforts of those who lobby the doctors for the prescription drug companies that they represent. [LB675]

SENATOR PANKONIN: Just a follow-up question real quickly, would this bill also, for example, staff people in a doctor's office? Would those folks be subject to this as well? [LB675]

SENATOR LATHROP: I think they would. The bill, as it's written right now, says physicians, nursing homes, hospitals--I don't think it says physicians--staff, I don't know that they're...there's an exemption for $25 or less. So when they bring a calendar in, when they bring...and you go into my doctor's office, every clock in the place, everything other than the table you sit on, has a name on it from a pharmaceutical company. Those things are exempt. So I think it's only the big ticket items that we're trying to unearth and be able to shine the light on. [LB675]

SENATOR PANKONIN: Okay, thank you. [LB675]

SENATOR JOHNSON: Senator Gay. [LB675]

SENATOR GAY: Yeah, Senator Lathrop, are there any federal activities going on, if it's a problem? Is there a federal regulatory groups that oversees this or... [LB675]

SENATOR LATHROP: No, I don't think that we are stepping into an area with this bill that is preempted or already regulated by federal government. Whether they have a study in Washington, D.C., which I think is tantamount to killing something or not, I don't know. But what I can tell you is we don't know what's happening in Nebraska. We don't know what they're spending on the physicians, what kind of trips they're taking, or what other inducements they have to prescribe medication. [LB675]

SENATOR GAY: A follow-up question. So does the industry have any self-regulatory mechanisms going on though? [LB675]

SENATOR LATHROP: There is no regulation in this industry to my knowledge. They are free to do as they please. And I don't mean this in the bad sense, but they're free to behave as businessmen behave. And they are free to try to sell their product, which is fine, except that the state of Nebraska is spending an awful lot of money on it. That people that we represent are spending a lot on prescription drug medication, and we'd like to be able to examine the process, examine how that choice is made when a prescription is written. [LB675]

SENATOR GAY: Thank you. [LB675]

SENATOR JOHNSON: Senator Howard. [LB675]

SENATOR HOWARD: Thank you, Sir. Just a point of clarification. The reporting is done by the pharmaceutical companies? [LB675]

SENATOR LATHROP: That's true. [LB675]

SENATOR HOWARD: They report the information. The burden isn't on the doctor to keep track or have an accountant? [LB675]

SENATOR LATHROP: No, the burden is not on the doctor. The reporting is done by the pharmaceutical manufacturers and it comes in a very simple form. It's not going to be a lengthy process. The fiscal note said they were going to hire two people to take care of this and I'd be surprised if it would take one person, a halftime position, to follow up on the reports that have been submitted by the pharmaceutical manufacturers. [LB675]

SENATOR HOWARD: Okay. Thank you. [LB675]

SENATOR JOHNSON: Senator Stuthman. [LB675]

SENATOR STUTHMAN: Thank you, Senator Johnson. Senator Lathrop, do you think this is a common occurrence today of the gifts and trips and stuff like that from companies? [LB675]

SENATOR LATHROP: You'll hear from Mark Intermill, who will testify after me, and he can talk to you about what's happening in Vermont. Vermont had, I believe they have a similar disclosure and you will learn what the average is, and I don't want to steal his thunder but I do have that here somewhere. You will learn what the average is. It's astounding what they are spending. And I think the first place to start with a proper regulation by the state of these practices is to know what they're doing, know what they're spending, and then we can say it's a problem or it's not a problem. We don't even need to keep track of it any longer, but I think we ought to take a year's worth of experience, find out what they're spending, and then we can have some information to make a decision. But to have people say we shouldn't have this information, really is making it very difficult for us to do the regulation that I think we should. [LB675]

SENATOR STUTHMAN: Okay, thank you. [LB675]

SENATOR JOHNSON: Any other questions? Senator Lathrop, I don't see any. Will you be able to stay for closure? [LB675]

SENATOR LATHROP: I think I'll stick around and... [LB675]

SENATOR JOHNSON: Okay. [LB675]

SENATOR LATHROP: Okay? [LB675]

SENATOR JOHNSON: And if you need to leave, why let us know. [LB675]

SENATOR LATHROP: All right, I will, thank you. [LB675]

SENATOR JOHNSON: Thank you. Let's proceed with proponents. How many proponents do we have? One. Opponents? One, two, not very many, okay. Go ahead, sir. [LB675]

MARK INTERMILL: (Exhibit 1) Thank you, Senator Johnson, my name is Mark Intermill, that's M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today representing AARP. AARP supports LB675. We believe that this bill is an important step that Nebraska can take to provide consumers with a more complete understanding of how the prescription drug marketplace works. The prescription drug market is unique in that the end user of a product does not make the decision as to which product is used. The use of prescription drugs is authorized by a physician or other practitioner who is licensed to prescribe drugs for use by the patient. While drug manufacturers engage in advertising campaigns to consumers that attempt to influence prescribing practices, there is also a substantial marketing effort directed towards prescribers. As is the case with direct-to-consumer advertising, prescriber marketing focuses on increasing the market share of products that are more expensive. Whenever a physician-oriented promotion is successful, consumers, insurers and government programs pay a higher price for the medications. A recent study in Pennsylvania and reported in the Boston Herald in April of 2004, found that 40 percent of patients in a state assistance program were given hypertension medicines different than those recommended by medical guidelines. If doctors had prescribed according to those guidelines, the state could have saved $11.6 million or nearly 24 percent of the money it spent on hypertension medication. The study suggested that pharmaceutical promotion was partly at fault for the variance between the medicines that were recommended versus those that were prescribed. The Pharmaceutical Research and Manufacturing Association adopted a new code of conduct in July of 2002 and the preamble to the code openly acknowledges the industry's desire to limit the negative public reaction to gift-giving. The code advises the gifts only be offered occasionally, that they primarily entail a benefit to the patient, and that no single gift exceed $100 in value. It further states that cash and gifts intended for the personal use of a physician should no longer be offered. But based on information from Vermont, which I have summarized in an attachment to my testimony, the voluntary guidelines have not had a significant impact. The FY '05 Vermont report indicated the top 100 recipients of drug company detailing expenditures, received meals, trips, and other incentives valued at over $1.4 million and this is a state approximately half the size of Nebraska. I have attached the summary for 2003 and

2004 and 2005 of the Vermont experiences. Total drug detailing expenditures have not changed appreciably in the three years for which the spending reports are available. In all three years, drug company detailing expenses have totaled approximately $2 million with FY '05, the last year reported, being the highest at almost $2.2 million. Replacement of lower-cost products with higher-cost products contribute significantly to the increase in prescription drug costs which has been growing at more than twice the rate of inflation. Passage of LB675 will be a step towards gaining a greater understanding of the prescriber marketing practices in Nebraska. It follows actions taken by four other states--Maine, Nevada, Mexico, and Vermont--to require reporting of prescriber marketing expenditures, and it provides a piece of information that could assist Nebraska in addressing the impact of this component of drug cost increases. Mr. Chairman, I'd be happy to try to respond to any questions. [LB675]

SENATOR JOHNSON: Senator Gay. [LB675]

SENATOR GAY: Mark, I have a question. As disclosure is becoming more of an issue in the health industry, as we have health savings accounts, those things that they hear advertising for some of the hospitals saying, click online, find out how much it's going to cost you. But don't you think the marketplace, or why wouldn't the marketplace correct this if we are going to full disclosure? And if I'm paying for the drug I asked for...generics, I hear that...I want a generic. Why won't the consumer take care of this long-term? [LB675]

MARK INTERMILL: The consumer is also being a target of advertising for prescription drugs that make a particular name-brand drug look very attractive. So that's one issue. And we don't have any desire to try to...I don't think we can address direct-to-consumer advertising. The prescription drug marketplace is unique also in that the consumer can...they don't make the final decision as to which product they use, you know? They can have some interaction with the physician, but the physician is the one who prescribes the medication. So it's not exactly a true marketplace like we see in many other industries. [LB675]

SENATOR GAY: Thank you. [LB675]

SENATOR JOHNSON: Senator Hansen. [LB675]

SENATOR HANSEN: Thank you, Senator Johnson. Mr. Intermill, you said that Vermont is a small state, but it doesn't really matter, but what's the population of Vermont compared to Nebraska? It's probably not a small state. [LB675]

MARK INTERMILL: It's around 600,000-700,000, something in that range. [LB675]

SENATOR HANSEN: In Vermont? [LB675]

MARK INTERMILL: Yeah. [LB675]

SENATOR HANSEN: Oh, really? Okay. It is a small state. [LB675]

MARK INTERMILL: It is. [LB675]

SENATOR HANSEN: What do you see Vermont, or what do the people in Vermont tell you that should be done with this? That, I mean, that's all that Senator Lathrop's bill is asking, to accumulate some data. So they've accumulated the data and it looks fairly thorough, what do you suppose that they will do with this? [LB675]

MARK INTERMILL: I think one of the things...that's the key question is how does this control prescription drug costs? One other thing that Vermont has not taken a step but the state of Pennsylvania has, is to provide academic detailing for prescribers to provide them with objective information about the effectiveness of different types of drugs, and also the costs of those drugs. And also, Vermont has taken a step of requiring that consumers have information about the price of prescription drugs. To try, after they've seen that there is this issue of marketing to prescribers, they took the step of providing consumer information. Pennsylvania's approach was to try to provide the objective information about different drug products to physicians--the information that it's been done at academic institutions to look at effectiveness, and also compare that with price to make sure prescribers know which drugs are cost-effective. So there's a couple of things: one would be to provide better information to consumers about the price of drugs, the other would be to look at academic detailing. [LB675]

SENATOR HANSEN: We certainly ought to know the price of drugs. I agree with that. But what keeps the doctor from saying to the patients, this drug is more effective than that drug? That's what we rely on the doctor for. [LB675]

MARK INTERMILL: I'm going to be before you on another bill today where I'm going to have some information about a publication that AARP has developed to try to bridge that gap of providing consumers with information about effectiveness of drugs. Most of the information about drugs within classes of drugs find that there's not much difference in terms of effectiveness, or there's no indication that one drug is more effective than another in the academic research. So then it becomes an issue of a question of price. There are some individuals who may be sensitive to some drugs as opposed to others, but in terms of overall effectiveness, they haven't been able to identify a great deal of difference in terms of effectiveness of drugs. [LB675]

SENATOR HANSEN: One last question. Are samples that are given out by physicians considered gifts from the pharmaceutical company? [LB675]

MARK INTERMILL: I believe the bill would exclude the samples from what would be reported. So those would not be included. [LB675]

SENATOR HANSEN: Okay, thank you. [LB675]

SENATOR HOWARD: Oh, thank you. Thank you, sir. [LB675]

SENATOR JOHNSON: Yeah. Go ahead, Senator Howard. [LB675]

SENATOR HOWARD: I'm wondering, do you see the same problem with the generic drug companies? It just crossed my mind because when I would go to the doctor's office and he would offer me a sample, it was never a generic. [LB675]

MARK INTERMILL: And that's a good point, and that's an issue I think is...the generic drug companies aren't engaged in marketing to the degree that the brand name companies are. The brand name companies have more of an incentive to market because they're trying to recoup their research costs and other costs by carving out a market share for their product. It's also one of the interesting things with some of the discount programs that the drug companies offer. The discounts don't necessarily reach as low as the price of the generics for the same type of drug in a class. So we don't see the same type of issues with generic drugs as we do with name brands. [LB675]

SENATOR HOWARD: Thank you. [LB675]

SENATOR JOHNSON: Just one little follow-up on one, and actually Senator Hansen touched on it a little bit. And let's go back to the Pennsylvania experience. Why don't we pursue that more widely than what we do? I guess what I'm asking is that a better solution to the problem, and I guess, as part of that--and this would obviously have to be a national decision, not ours--is the public media advertising. There's people that think that that might not be good. What's the relative value of these different things that we've been talking about here? And I guess I'm particularly interested in what you think of the academic point of view of your state medical school or whatever, publishing these kinds of things, or in consortium with other schools? [LB675]

MARK INTERMILL: Yeah, I think the academic detailing has a lot of promise and AARP has been working with the Oregon Health Sciences University which is engaged in a project to review all the academic research about the effectiveness of prescription drugs and put that information together in a form that's accessible to consumers. So I think the academic detailing has a lot of merit. The reason we pursued this approach or asked Senator Lathrop to introduce this bill at the outset, was just to try to maybe get some baseline of information about whether...we don't know that this is a problem in Nebraska. So the reporting requirements would give us some information that we could look at in the future to see if we really need to move farther in other approaches like the

academic detailing or the price posting types of things, some of the other things that states have done. So I guess we were looking at this as kind of a step, a means of getting some information about how the marketplace is working so we could make informed decisions about where to go next. [LB675]

SENATOR JOHNSON: Okay. Thank you. Any other questions? Yes, sir, Senator Erdman. [LB675]

SENATOR ERDMAN: Mr. Chairman, you'd be disappointed if I didn't ask a question. Mark, and Senator Lathrop, I apologize, I was late and you maybe you covered this, but since Mark's in the chair, I'll ask him. Why was the denomination of $25 chosen as the threshold for this bill? [LB675]

MARK INTERMILL: Randomly. I don't have a good reason in terms of why that threshold was established. [LB675]

SENATOR ERDMAN: And again, I apologize, I'm not asking this to Senator Lathrop, but was this modeled after another state's legislation? I kind of caught that off of the... [LB675]

MARK INTERMILL: It is modeled after...and that would actually be the answer to the question of who...it was modeled after the Vermont statute, so I think that's what they included was the $25 threshold. [LB675]

SENATOR ERDMAN: So conceivably we could hold physicians to a higher standard than you hold state senators to for gifts, because ours are $50 and these would be $25? [LB675]

MARK INTERMILL: Yeah, that...yeah, that would be correct. [LB675]

SENATOR ERDMAN: I'm just trying to find a basis for where that limit is, because generally it's accepted, it might even be $100, I don't know. But I think $50 is the number that's generally used, but I'm just trying to find a basis for drawing those lines in the sand as to what's acceptable and what's not. Thanks. [LB675]

SENATOR JOHNSON: Okay, any other questions? Thank you. [LB675]

MARK INTERMILL: Thank you. [LB675]

SENATOR JOHNSON: Any other proponents? Seeing none, let's proceed to opponents. [LB675]

TARA RYAN: (Exhibit 2) Good afternoon, Mr. Chairman and members of the committee.

I'm Tara Ryan. I'm with the Pharmaceutical Research and Manufacturers of America, and we oppose LB675 requiring marketing disclosure. I have, for you, PhRMA statements and I also have the PhRMA voluntary Code on Interactions With Healthcare Professionals. I brought a lot of them; I didn't know how many people were going to be here. Do I have to spell my name for the record? [LB675]

SENATOR JOHNSON: Please. [LB675]

TARA RYAN: It's Tara, T-a-r-a. The last name is Ryan, R-y-a-n. I was sent in today to replace somebody who was going to testify and I'm happy to do it because I think it's important that you be made aware of some of the reasons for which we oppose this legislation. This bill singles out the pharmaceutical industry and not other industries, and requires it to provide information regarding the marketing practices of drug companies, in particular, the detailing of prescription drug information to healthcare providers. PhRMA doesn't believe that effort by the state is necessary. I'll talk quickly in response to what the Senator that proposed this legislation, commented on earlier. He said that there are no federal regulatory schemes. That's untrue. Marketing the information, the scientific and educational information that sales reps give to doctors, is all FDA approved. The other things that they give--the notepads and the pens--are things that the companies choose to do. But the information and the reason that the sales reps meet with doctors to begin with, is to provide them with scientific and educational information on specific drugs, and that is definitely regulated by the FDA. In addition to that, the industry, although it doesn't have mandatory regulation, we do have our voluntary code on the interactions with healthcare providers that was created back in 2002. It was updated again in 2004, and it sort of directs the companies, and all of the companies that are part of the PhRMA association have agreed to abide by the guidelines. In addition to that, HHS, Office of the Inspector General, issued mandatory marketing guidelines in 2003. These guidelines create a strict framework for the pharmaceutical industry to market its drugs. The HHS guidelines are enforced by the U.S. Department of Justice and violations can be both civil and criminal through things like the anti-kickback language. In 2002, let me talk a little bit about the voluntary code on the relationships with healthcare professionals that PhRMA passed. For us, the ethical relationship that companies have with healthcare providers, is the critical component of the industry's mission in helping patients by developing and marketing new drugs. The most important aspect of the mission is to ensure that healthcare providers have the latest, most accurate information about the drugs that they prescribe or use to treat their patients. The PhRMA Code was created to reinforce the industry's intention that the basis of all interactions with healthcare providers are to benefit patients and enhance the practice of medicine. To that end, PhRMA decided what they think is important as far as detailing goes and that the detailing should be about the products providing scientific and educational information. But it should support medical research and education, that occasionally providing items for the benefit of patients such as stethoscopes for the doctors or anatomical models that doctors can use to help

explain things to the patient, are valuable instruments to have in an office. Items of minimal value associated with healthcare such as the pens and pads, are things we don't think distract or in any way convince a doctor that they should prescribe one drug over another. And I've given you the code and you can look through that. Also addressed in our statement is the issue of trade secrets. The information that is required to be disclosed would likely fall under the federal definition of a trade secret. There is no provision in the bill that guarantees that the trade secrets will be protected although under the language of the bill, the company that determines that particular information is a trade secret, could face a lengthy trial to try to have the state fall on the side of finding that it is indeed a trade secret. There is no language in the bill that protects the company if a trade secret is not protected or that provides a penalty to the state for such a violation. It does however, contain provisions that include a civil penalty of $10,000 if the company fails to turn the information over. Marketing practices obviously, for a drug company as with all companies, are part of the company's financial strategy. They are closely-guarded company information. Given the competitive nature of drug manufacturers' marketing, courts are likely to recognize this information as protected trade secrets. I want to comment on what we heard earlier. Only three states and the District of Columbia have passed marketing disclosure legislation. The first state was Vermont and you've heard a little bit about Vermont's report. Then Maine, West Virginia, and D.C. also passed legislation. To date, Vermont is the only state that's actually implemented this marketing disclosure requirement. Maine has been working on this for years and haven't been able to implement it. West Virginia also has not been able to implement it, and about two weeks ago, decided to repeal their marketing disclosure law. And D.C. passed theirs in 2003 and still has not been able to implement it. It's not that the states don't want to, it's a huge burden to put on the state, it's a huge burden to put on the department of health, to try to find a way to get all companies to provide certain information in the same format. It requires an enormous amount of work and it's a big burden on the department of health. We understand that the states believe that tracking prescription marketing costs in the states will, in some way, help the state find a way to reduce the cost of prescription drugs. We don't think that this type of legislation is the way to do it. One comment that I'd like to make and in the Vermont report, they excluded but 60 percent of all marketing costs are the result of samples that are given out to patients for patient use. Talking about generics, although a doctor doesn't necessarily prescribe a generic, when you go to the pharmacist, the first thing the pharmacist says to you, would you like this in generic form if it's available? And then looking at the Vermont report, I just want to have you notice one thing. That if all of the money that was expended on--this is in their 2006 report, June 15--if all of the money that was expended on prescribers were spread evenly throughout the prescribing community in the state of Vermont, then the person authorized to prescribe pharmaceuticals would have received $319 each in FY '05. So that's not a lot of money. If you are talking about the total amount that was commented on earlier, which I think was 1.45, 37 percent of that is for payment for speaking fees and 30 percent of it was on educational activities and promotions. So it's not all just giving vacations away and

paying for resorts and spas that the AARP would like you to believe. It is indeed for educational activities around promoting the use and the benefit of the drugs. I have nothing else, if you have some questions? [LB675]

SENATOR JOHNSON: Okay. Let's go with Senator Howard first this time. [LB675]

SENATOR HOWARD: Thank you, Senator Johnson. I want to have a clear understanding of this, the majority of the funds that are spent are spent with the idea of educating the physician? [LB675]

TARA RYAN: That's correct. [LB675]

SENATOR HOWARD: Do you educate any other group like you do the physicians? [LB675]

TARA RYAN: Do we educate... [LB675]

SENATOR HOWARD: Do you provide education information to any other group? [LB675]

TARA RYAN: We do it to medical students, it's...and to other groups that we do it to consultants that are going to also be doing educational-type programs. [LB675]

SENATOR HOWARD: Do you do the same thing with the pharmacists? [LB675]

TARA RYAN: I don't know the answer to that. [LB675]

SENATOR HOWARD: The reason I ask is because when I pick up a prescription, generally it's the pharmacist that will explain it to me and he'll tell me about the side effects, he'll tell me what to expect. He'll ask me if I have any questions, and I don't usually get that from my doctor. So that's why I ask this question. [LB675]

TARA RYAN: I can't tell you what doctors do and don't do, that's not what PhRMA does. We provide the information to the doctors, what the doctor then does with it with his patients, I, we don't have any control over that. [LB675]

SENATOR HOWARD: Well, no, my question wasn't what you know about the doctors' habits or behaviors, but more what you see as your mission in educating the pharmacist, or assisting the pharmacist in order to do a good job for patients like me? [LB675]

TARA RYAN: I don't know of any program, but that doesn't mean that PhRMA doesn't have any programs that do that. I don't know of any. [LB675]

SENATOR HOWARD: Okay. Thank you. [LB675]

SENATOR JOHNSON: Other questions? Senator Gay. [LB675]

SENATOR GAY: I've got a question real quick, AARP testified in 2002 they adopted a new code of conduct. This says it was revised in 2004? [LB675]

TARA RYAN: It was adopted in 2002, it was revised... [LB675]

SENATOR GAY: Okay. [LB675]

TARA RYAN: I think what they did was they, is they... []

SENATOR GAY: So is this the latest Code that you handed out? [LB675]

TARA RYAN: This is the latest Code that we have. [LB675]

SENATOR GAY: Okay. [LB675]

TARA RYAN: It was adopted in 2002. [LB675]

SENATOR GAY: Has there been any changes since then? [LB675]

TARA RYAN: Since the 2002? [LB675]

SENATOR GAY: Yeah, any updates? [LB675]

TARA RYAN: No. [LB675]

SENATOR GAY: Thanks. [LB675]

SENATOR JOHNSON: Any other questions? Senator Stuthman. [LB675]

SENATOR STUTHMAN: Thank you, Senator Johnson. Tara, how many times do you think you would have these informational meetings for a doctor? [LB675]

TARA RYAN: I think it depends on the companies. I think it's company-specific, on the drugs that they have, on whether or not there are labeling changes on the drugs or whether or not a new drug has come out for a specific type of disease. So I think it's company-specific on what the drug is, the disease state. I don't know company-specific--how frequently they do it and I certainly couldn't answer that either way. But I think it's specific to changes, updates, new information...things of that nature.

[LB675]

SENATOR STUTHMAN: Okay. Thank you. [LB675]

SENATOR JOHNSON: Any other questions? I see none, thank you for coming. [LB675]

TARA RYAN: Thank you. [LB675]

SENATOR JOHNSON: Any other opponents? Sir? [LB675]

GARY CHELOHA: (Exhibit 3) Good afternoon, Senator Johnson and members of the Health and Human Services Committee, my name is Gary Cheloha, C-h-e-l-o-h-a. I'm a pharmacist and administrator with the Health and Human Services System and I'm here to testify in opposition to LB675. This bill would require pharmaceutical manufacturing companies to disclose to HHSS when they provide any gift, fee, payment, subsidy, or other economic benefit to any physicians, hospitals, and others authorized to prescribe, dispense, or purchase prescription drugs in Nebraska. Under the bill, HHS is required to report these annually to the Legislature and the Governor, who would have no enforcement authority against the company that provides gifts or payments to such persons. The Attorney General could enforce reporting requirements but has no other enforcement authority and could not prevent the practice. The definition of pharmaceutical manufacturing company does not specify whether the bill applies to Nebraska-based companies, companies doing business in Nebraska, or all pharmaceutical companies, manufacturers, including those in other states and other countries. If this bill is passed, no action would be taken against pharmaceutical manufacturers who provide gifts or payments but properly report such activity. In addition, the bill does not provide for enforcement against a physician, hospital, or others that accept such gifts or payments. Pharmaceutical companies involved in interstate commerce currently fall under federal authority. The U.S. Food and Drug Administration, part of the U.S. Department of Health and Human Services, has the authority to regulate the manufacture of drugs. Under this bill, HHSS would not have any authority to take action if a company was providing gifts, fees, payments, and subsidies to covered persons and entities. The cost of collecting this information outweighs the public health benefit to the people of Nebraska. I would be happy to try to answer any questions. [LB675]

SENATOR JOHNSON: Any questions? Senator Howard. [LB675]

SENATOR HOWARD: Thank you. When you refer to costs, are you talking about the costs internally to the system, to Health and Human Services? [LB675]

GARY CHELOHA: Yes. [LB675]

SENATOR HOWARD: Okay. You're not referring to the cost to the drug manufacturers? [LB675]

GARY CHELOHA: No, the cost to the HHS system. [LB675]

SENATOR HOWARD: Thank you. [LB675]

SENATOR JOHNSON: Any other...yeah, Senator Hansen. [LB675]

SENATOR HANSEN: Thank you, Senator Johnson. Do generic drug companies, they are a company for profit, is that correct? [LB675]

GARY CHELOHA: Yes. [LB675]

SENATOR HANSEN: Do they...how do they get their generic drugs? Is it a matter of time where the well-known, when the companies that we know of, do the research and development, the R&D, and then is there at time period in there, and then the generic drug companies formulate the manufacture of those drugs for consumption? [LB675]

GARY CHELOHA: I believe that would have to do with the patent, the original patent of the drug. [LB675]

SENATOR HANSEN: Right. [LB675]

GARY CHELOHA: And when that's expired, the first company that manufactures an approved generic has six months of exclusivity, generally. And then after that other companies may also market generics. Each has to file, what I believe is an abbreviated new drug application with the Food and Drug Administration in order to get federal approval to market that product. That's my understanding. [LB675]

SENATOR HANSEN: Are generic drugs generally as effective as the name brand drugs? [LB675]

GARY CHELOHA: In my opinion, I believe that they are. [LB675]

SENATOR HANSEN: Do generic companies do any R&D? Research and development? [LB675]

GARY CHELOHA: I don't know that they do or not, sir, I'm sorry. My impression... [LB675]

SENATOR HANSEN: Probably not. [LB675]

GARY CHELOHA: Probably not. [LB675]

SENATOR HANSEN: Probably not much reason to do that because it's already been done, correct? [LB675]

GARY CHELOHA: Yes, that's correct. [LB675]

SENATOR HANSEN: Yeah. [LB675]

GARY CHELOHA: They have to provide information about the solution of the product. That's a very basic test. But I'm not aware of any others that they are required to do. [LB675]

SENATOR HANSEN: Thank you. [LB675]

SENATOR JOHNSON: (Exhibits 1-6) Any other questions to Gary? Thank you, sir. Any other opponents? Seeing none, any neutral testimony? Let me, just one second, Senator Lathrop. Let me put in the record that there is a letter here in opposition from Genentech. Here is, I believe it's a private letter, from Marvin Bittner, MD, that's in opposition. Then a letter of opposition from the Nebraska Medical Association; and here's one from AARP, obviously pro; and from PhRMA and we had their representative here. And then again, the other one from Mr. Cheloha, from HHS. So that's all the letters that we have on the subject. Senator? Senator Lathrop. [LB675]

SENATOR LATHROP: Thank you very much, Mr. Chairman, and members of the committee. I appreciate the opportunity to close on this bill and I appreciate the testimony that we've heard today. It is the jurisdiction of this committee to oversee the care systems available to the people in the state of Nebraska. I don't even need to tell you that. I say it because I'm getting warmed up. We all know that the cost of care for Nebraskans is going up faster than the rate of inflation, it is a social problem, and that the cost of medication to Nebraskans is a big piece of that. Today what I've asked...if I came here today with a bill that said, let's regulate the use of detailing by pharmaceutical companies, you'd say, well, what have you got for information, Lathrop? Why should we do that? Because we don't have any information today that there is even a problem. That's why we have to have the bill and why the bill is here. Because I think we need to have the information so that we can look at it and take care and discharge our responsibility to the people of Nebraska as we oversee this part of the care system to people in the state. I want to respond to a couple of remarks in response to the opponents. The suggestion that the federal government is regulating this area was simply misleading to suggest that the fact that they regulate the scientific information provided to physicians is missing the mark. And this isn't scientific information we're talking about, it's trips to golf clubs, it is large fees for speaking that are essentially money to go to Boca Raton to speak at a convention. And I'm not

criticizing the people, we are not trying to find fraud, we're not trying to find illegal activities, all we are trying to do is find out what the practice is so we can see as a committee, as a state legislature, what we need to do about it if anything. And for that reason, I'd ask you to kick LB675 out of committee and send it to General File. Thank you for your courtesy. [LB675]

SENATOR JOHNSON: Thank you. Thank you for coming. That ends the hearing on LB675, and is Senator Nantkes here? There we go, great. And this opens the hearing on LB451. Senator, welcome. [LB675 LB451]

SENATOR NANTKES: Good afternoon, Chairman Johnson, members of the committee. My name is Danielle Nantkes, spelled N-a-n-t-k-e-s. I'm representing the "Fighting 46th" Legislative District here today, and I'm here to introduce LB451. LB451 relates to confidentiality concerning the information maintained by a pharmacist and would require that the name of the prescribing physician be privileged and confidential and may only be released as described under current law. This bill was brought to me by AARP and is a measure designed to try and curb the high costs of prescription drugs. Currently information on physicians' prescribing practices can be purchased by pharmaceutical companies and used in the marketing of their products to doctors. This bill would help to stop that practice. I also have an amendment that would expand this confidentiality to all practitioners who prescribe pharmaceuticals. I urge your consideration of the bill and I'm happy to answer any questions. I also know there's probably a lot of people who would like to share their expertise with the committee in line behind me. [LB451]

SENATOR JOHNSON: All right, fine. Any questions of Senator Nantkes? Senator Erdman. [LB451]

SENATOR ERDMAN: So, if I can connect the dots, it's your argument then that this information is utilized to essentially push pharmacists into prescribing higher cost drugs at the benefit of their patients and that's how it lowers the costs of prescription drugs? [LB451]

SENATOR NANTKES: I think that this is one approach with a plethora of ideas on the table before this committee and before our body and state as a whole, in trying to address rising costs of pharmaceutical costs and how those impact individual families' budgets. [LB451]

SENATOR ERDMAN: So, was that a yes? (Laughter) [LB451]

SENATOR NANTKES: Yes, this is one approach to address that issue. [LB451]

SENATOR ERDMAN: So that, I mean, I guess, it's probably not fair to ask you that, counselor. How about this? (Laughter) Is it fair to assume that the intent of LB451 is

designed to curb the opportunities of pharmaceutical companies from being able to directly market products to their patients that may have a higher cost as opposed to leaving it up to the decision of the physician? [LB451]

SENATOR NANTKES: Yes. [LB451]

SENATOR ERDMAN: I guess that's kind of what I'm trying...I'm trying to connect the dots though because your statement is pretty bold that this helps lower the cost of prescription drugs. I just want you to tell me if that's how you cast this as a part of that stool, which leg that is that accomplishes that. [LB451]

SENATOR NANTKES: The simple answer is yes. [LB451]

SENATOR ERDMAN: Okay. Thanks. [LB451]

SENATOR JOHNSON: Any other questions? Senator Stuthman. [LB451]

SENATOR STUTHMAN: Thank you, Senator Johnson. Senator Nantkes, does this comply with all of the HIPAA regulations? [LB451]

SENATOR NANTKES: I believe so. It's a little bit of a different context in the regard that it's my understanding that that HIPAA comes to us from the federal government on a patient protection kind of position. And this deals more with the relationship between the pharmaceutical companies, the doctors, and the pharmacists. [LB451]

SENATOR STUTHMAN: Okay, thank you. [LB451]

SENATOR JOHNSON: I see no other...will you be able to stick around for closure, or... [LB451]

SENATOR NANTKES: Unfortunately I will not and I will waive my close. [LB451]

SENATOR JOHNSON: Okay. Thank you very much for coming. [LB451]

SENATOR NANTKES: Thank you. [LB451]

SENATOR JOHNSON: All right. Proponent testimony on LB451. I see one and won't you come forward? Oh, opposition? How many? One, two...okay, very good. [LB451]

ROGER KOBAYASHI: (Exhibit 1) You can tell I was a university professor by the amount of reading we will require you to do (laughter). [LB451]

SENATOR ERDMAN: As long as there are no tests, we'll be just fine. [LB451]

ROGER KOBAYASHI: Mr. Chairman, members of the committee, my name is Roger Kobayashi, K-o-b-a-y-a-s-h-i, and I am a practicing immunologist and allergist in Omaha, Nebraska, and a clinical professor at UCLA School of Medicine. I am a member of a number of professional organizations but come here today as a private citizen not influenced by, paid by, or representing any group, organization, or entity. I am here out of conscience to speak against a breach of privacy which exists when pharmacists sell physician-identifiable data for profit. And I am here to speak out against the pervasive influence of large pharmaceutical firms which have corrupted and manipulated our healthcare system driving up costs and distorting practices to maximize profits. Amending the law will correct a longstanding abuse of patient confidentiality and privacy which has increasingly been used to influence doctors to prescribe medications which might not be necessary in the patients' best interests, and raise costs enormously. Thirty-seven years ago my medical school classmates and I refused Eli Lilly's gift of an expensive leather bag filled with equipment given to all incoming freshman. We told Lilly to use their money to provide free medication to patients who could not afford to buy drugs instead of bringing us gifts. Thirty-seven years later these gifts are now far more expensive than a leather bag, and include fancy dinners, trips to resort areas under the guise of education. And for the anointed, trips abroad to Europe, Hawaii, and Asia. The effects are so pervasive and so corrupting that to read Dr. Jerome Kassirer's eloquent testimony before the House Ways and Means Committee in 2005, fills one with anger and dismay. Dr. Kassirer, I would point out, was the editor and chief of the New England Journal of Medicine. [LB451]

SENATOR JOHNSON: Sir, if I could interrupt you for just a second. [LB451]

ROGER KOBAYASHI: Yes. [LB451]

SENATOR JOHNSON: We like to hold testimony to three minutes and you are reading a report that's six pages long and I don't think that you'll make it. We'll read this and keep it in our files. Could you summarize better than reading your statement? [LB451]

ROGER KOBAYASHI: I would summarize that the information...if what happens is that these data are sold by the local pharmacies to an intermediary, one of which makes over $1.75 billion dollars which are then sold to the large pharmaceutical companies. This information then is analyzed and given back to the drug representatives and they target us to prescribe the kinds of medications that they want. I find that this is an unwanted and undue invasion of our privacy. It affects the way in which we prescribe medications, and from all the way from the top to the bottom, be it the academic centers, be it the speakers who are paid by the pharmaceutical companies, be it the information that they give you when they come to visit you, these are all slanted to prescribe their particular product, whether the patient needs it or not. And if they can find out what they are prescribing, what I am prescribing, then they can manipulate the

system to put pressure on me to prescribe the drug they want me to prescribe. And this has been documented many times over. So I would say, in reading the last page if I may, indeed prescribing information is so valuable to pharmaceutical companies, they spent over $18 billion last year, that they are suing the state of New Hampshire to invalidate the laws restricting the sale of doctor prescription information and hoping that doctors will voluntarily be able to resist marketing efforts by large pharmaceutical companies, is an exercise in futility given the sophistication and seductive techniques employed. Amherst College has a better chance of beating Nebraska in football than that happening. Five years ago I asked Senator Kermit Brashear to introduce legislation to prohibit the disclosure of doctor prescription information. Twice it failed. Nebraska could have been the first state to pass such laws. Let's not fail again. Thank you. [LB451]

SENATOR JOHNSON: Thank you, Sir, and thank you for summarizing things. A question from Senator Erdman. [LB451]

ROGER KOBAYASHI: May I put my glasses on? With my old age... [LB451]

SENATOR JOHNSON: Yeah, absolutely. [LB451]

SENATOR ERDMAN: You bet. Of course, doctor, you realize that whether or not Nebraska's any good at football, makes those odds a little different and we may have...you may have a better argument today than you did two years ago, but let me follow up on something that you asked about a doctor. [LB451]

ROGER KOBAYASHI: Yes. [LB451]

SENATOR ERDMAN: You made a comment about a circumstance where a doctor would prescribe a medicine to a patient that may not be needed or could be proven that it was unnecessary. [LB451]

ROGER KOBAYASHI: Yes. [LB451]

SENATOR ERDMAN: What type of existing remedies are there in the law that holds that doctor to an account in the event that that happens? [LB451]

ROGER KOBAYASHI: Well, if you look at where most of the information comes out when the doctor goes into practice, it is from the pharmaceutical companies. Be it by meetings that are sponsored by the pharmaceutical companies to promote their drug, be it these dinner meetings that you go to promoting their drug, be it the information that they give you. Now I think that's a point that I think is essential... [LB451]

SENATOR ERDMAN: And I got that. [LB451]

ROGER KOBAYASHI: Yes. [LB451]

SENATOR ERDMAN: I want to make sure that and I just want... [LB451]

ROGER KOBAYASHI: Yeah, the question you're asking is how can the physician prescribe a drug which is in the best interests of the patient when all the information is given by the pharmaceutical companies? [LB451]

SENATOR ERDMAN: Well, I guess the question actually was what oversight is there currently in law, whether it's under the physicians' licensure or other circumstances where in the event that you would... [LB451]

ROGER KOBAYASHI: I'm not...yeah, I know what you're getting at...yeah. [LB451]

SENATOR ERDMAN: ...you would prescribe to me a prescription or a drug that is not necessary and I would... [LB451]

ROGER KOBAYASHI: I wouldn't do it, if you'd read my testimony... [LB451]

SENATOR ERDMAN: I'm aware...okay. We'll say a certain doctor does this, not you, but a certain doctor would do this. What is the existing process that the accountability of the medical profession would hold that individual to, or is there any? [LB451]

ROGER KOBAYASHI: I don't think currently there is a good system of reviewing. And you as a patient, how would you know that is what is being done to you is in your best interest? [LB451]

SENATOR ERDMAN: And that's a fair response. I'm just trying to figure out in the event that you could prove it, what would be that remedy? I mean, if I as a consumer, figured out... [LB451]

ROGER KOBAYASHI: Well, I, yeah...the problem is we do not have a good system to review that when the physician is out in private practice. And secondly, I say, if the pharmaceutical companies know exactly what you're prescribing within three or four days, they can send people or they can do things to influence your practices. [LB451]

SENATOR ERDMAN: I just want to make...I hope you don't think my question, that I'm trying to detract from your testimony. You brought up something that I wasn't aware of what the oversight would be and I thought I would ask, so I... [LB451]

ROGER KOBAYASHI: And the oversight, I think, is insufficient. [LB451]

SENATOR ERDMAN: Okay. That's a fair response. Thank you, sir. [LB451]

SENATOR JOHNSON: Other questions? Thank you very much, sir. Oh, I'm sorry, I didn't see Senator Gay. [LB451]

SENATOR GAY: A little follow-up on this. There's a code of ethics I would assume, that a physician has to follow. [LB451]

ROGER KOBAYASHI: Yes. [LB451]

SENATOR GAY: You are saying the temptation is so great we just cannot do it, the system is broke, is the way I'm taking what you're saying? [LB451]

ROGER KOBAYASHI: Yes, yes. [LB451]

SENATOR GAY: There's no other continuing education offered. It only comes through one source. Is there no other forms of continuing education that somebody can take... [LB451]

ROGER KOBAYASHI: It is, yes, yes, yes. [LB451]

SENATOR GAY: And there's an ethical responsibility by a doctor, I assume, to do the right thing--how they get their information. Why is that being perverted by the current system? [LB451]

ROGER KOBAYASHI: Read my testimony. [LB451]

SENATOR GAY: Okay. [LB451]

SENATOR JOHNSON: Any other questions? I see none, sir, thank you. Next please? [LB451]

TARA RYAN: Tara Ryan again from PhRMA. [LB451]

SENATOR JOHNSON: Yes, it looks like we're...two opponents here. Oh, I'm sorry. [LB451]

TARA RYAN: Oh, are you (inaudible)? [LB451]

SENATOR JOHNSON: Yeah, it's my fault. [LB451]

TARA RYAN: I thought there was only one. [LB451]

SENATOR JOHNSON: You're fine, I only saw one to start with but...looks like he was intent all the time with the paperwork he got with you, so... [LB451]

MARK INTERMILL: You bet. Sorry, Senator. [LB451]

SENATOR JOHNSON: No, my fault. [LB451]

MARK INTERMILL: (Exhibit 2) My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l. I'm here today to represent AARP. And we also support LB451. Consumers and doctors often find themselves caught in the middle of a high-stakes competition between drug manufacturers to control market share. With a number of products available within a class of drugs, and no objective evidence that one product is more effective than another, the relative effectiveness of a company's marketing can be the determining factor in deciding market share. Drug companies do spend substantial sums on marketing their products to doctors and others who are in a position to prescribe them. Drug companies purchase information about the prescribing practices of physicians and other prescribers to target marketing efforts towards those prescribers who are not ordering their product, and to evaluate the effectiveness of the sales representatives assigned to the prescriber. The desired result of the use of prescribing information to target marketing is to increase the market share of higher-priced prescription drug products--in effect to replace lower-priced products with higher-priced products. The end result of this desired outcome is to drive up the cost of prescription drugs. There is evidence to indicate that the prescribers are growing weary of the marketing efforts of the drug companies. In an editorial in The Nurse Practitioner: The American Journal of Primary Health Care, Editor-in-Chief, Linda Pearson cites a poll conducted by Accel Healthcare communication that noted significant problems in the physicians/sales representative relationship. According to Pearson, the Accel poll found that a vast majority of physicians perceive today's sales representatives as more focused on sales than science. According to the poll, physician respondents wanted more trustworthy, credible information. The majority of physicians, 63 percent, reported they would stop meeting with drug representatives if free samples weren't provided, and nearly 70 percent viewed the information they received from the sales reps as very unbalanced. Pharmacies are a source of the information used in prescriber profiling. LB451 would amend current state law relating to the information that pharmacies would be required to keep confidential to include the name of the prescriber. This simple step could help to make it... [LB451]

SENATOR JOHNSON: Mark, if I can interrupt you for just a second, you've been here before... [LB451]

MARK INTERMILL: I have... [LB451]

SENATOR JOHNSON: You know the rules, you don't read and read and read. Would

you please summarize? [LB451]

MARK INTERMILL: Okay. I would. We have also included a booklet that has some information about relative effectiveness and cost of prescription drugs. Those happen to be the high blood pressure medications. On page 7, they look at beta blockers and they find that there's no evidence that any beta blocker is better than any other, but there is a tenfold difference in the price of those prescriptions. This is the intent of marketing is to try to shift market share to those higher-priced products. We believe this bill would help to disrupt that process. Thank you. [LB451]

SENATOR JOHNSON: You bet. Thank you, I'm sorry to interrupt you but this is going to be a long day and we need to move along. Any questions of Mark? Senator Stuthman, did I see you waving? Okay. Just parting your hair, okay (laughter). Mark, I see none and thank you very much and excuse me for being blunt, but it is necessary. [LB451]

MARK INTERMILL: No problem. Thank you. [LB451]

SENATOR JOHNSON: Now, opponents, please? [LB451]

TARA RYAN : (Exhibit 3) Your hair looks lovely by the way, you did a good job with it. (Laughter). Tara Ryan again from PhRMA to oppose LB451. I have statements for the Senators. I'll try to keep this short. LB451 would restrict the sale and use of physician-prescribed data. It's a little bit unclear and a little bit vague, the language of this bill. But banning the use of this data could result in significant unintended consequences that could adversely impact patient care and safety and hamper a manufacturer's ability to alert physicians of important new drug information. Let me first make clear that none of the information that's provided through prescriber data services contains any patient identifiable information. All patient identifiable information is protected under federal law specifically under HIPAA. So any state law that attempts to protect this information is totally unnecessary. PhRMA totally supports the protection of patient identifiable information and would reject any such legislation that would allow that to be passed through. Prescriber data is critical to patient safety. The data allows manufacturers to target critical information about specific medicines to healthcare providers whose patient populations are most in need of this information. It's a falsehood that prescriber data is only used by pharmaceutical companies for marketing purposes. There are several programs required by the FDA that depend on the ability of drug companies to quickly and accurately contact physicians about the medicines they prescribe. I'm not going to go through these in great detail, you have them in our statement. But I will tell you what they are: drug recalls; dear healthcare provider letters that alert physicians about new information regarding specific drugs; adverse health reporting that is required by drug manufacturers; labeling changes that allow targeted communications to physicians of new safety information, including the black box warning. And it's important to note that there are such things as risk maps. They are the

risk management, or risk minimization plans that the FDA and drug companies create before a drug is introduced to the market and approved. They're designed for high-risk drugs that treat diseases such as cancer, leukemia, diabetes, epilepsy, and multiple sclerosis. These are drugs that treat people for diseases and everybody knows someone that has one of these diseases. Risk maps: when the FDA spots a drug that may have difficult safety issues, it works with the manufacturer to create a plan to minimize the risks associated with that drug. Some of these risk maps require outreach to physicians who are already treating patients with the specific disease, to notify them of the new drug and require them to enroll in an education program about the drug before they are able to treat a patient with that drug. Risk maps also can require a drug company to monitor the prescribing practices of physicians to ensure that they are communicating critical safety information to the patients. Some risk maps actually include language that require the companies to utilize prescriber data to track certain events. So if pharmaceutical companies did not have access to this prescriber data, there are drugs on the market today that would not be able to reach the market because without the risk map and the ability to use this information, the drug wouldn't be able to be approved. These are drugs like Tysabri, which treats MS--it reaches 400,000 Americans. It's got a risk map. There are drugs for epilepsy--I think Diastat treats epilepsy. It keeps people going longer without the seizures that they have so they can live more normal lives. These drugs wouldn't be able to be approved by the FDA if pharmaceutical companies didn't have access to this information. The passage of LB451 will not eliminate pharmaceutical detailing by drug manufacturers. What it will do instead is undermine the safety of quality of healthcare by making it more likely that manufacturers have to saturate all doctors with information that's less than relevant to most of their practices. What this information does that pharmaceutical manufacturers use, is it allows them to target and efficiently and timely disseminate information about drugs that prescribers are actually using. PhRMA is aware of the physicians' concerns about the potential inappropriate use of prescriber data. We support the American Medical Association's Prescription Data Restriction Program which we call the opt-out program. This program allows doctors to opt out of having their prescribing data released to pharmaceutical sales representatives for a period of three years. It also offers a means of registering complaints against companies or individuals who use prescriber data inappropriately. The AMA has attached significant penalties to companies that violate the PDRP. All doctors, not just members of the American Medical Association, can access the AMA opt-out program and take advantage of making sure that their prescribing data is not passed on to sales representatives. A 2004 Gallup poll found that two-thirds of the doctors surveyed were opposed to the release of their prescribing data, but 77 percent of those same doctors felt that the AMA opt-out program would alleviate their concerns. There is a mechanism in place right now to satisfy the needs of doctors who don't want to be inundated with sales reps' calls. It is for all physicians. Right now, only 4 percent of doctors are utilizing the opt-out program. Nebraska Medical Society is doing outreach to the doctors in the state of Nebraska right now to educate them on the opt-out program so that they will be aware that if they don't

want to have their prescribing data released to sales reps, they can opt out. Currently, only one state has passed legislation dealing with a ban on prescriber data, that state is New Hampshire. And IMS and Verispan, two of the aggregate prescribing data firms, sued to have the law declared unconstitutional. The court will determine whether law restricts free speech which can only be regulated to protect an important state interest. The companies have argued that the law prevents people from educating doctors about new drugs. They're trying to take information away from people. It does not advance a substantial state interest. The AG in New Hampshire argued that it keeps prescription spending lower, protects privacy of doctors and patients, and protects the public health. Those are all untrue. It will not keep prescription spending down, it will increase the costs of detailing because instead of being able to use targeted efficient detailing, companies are now going to be forced to give this information to all doctors rather than targeting the doctors that will be using it for their patient population. It does not protect the privacy of individuals because that is already protected under HIPAA. And in the era of transparency in healthcare, there is no reason that we should be trying to hide doctors' prescribing habits. What we want is transparency in the healthcare system, and this is one good way to make sure that doctors are doing what they're supposed to be doing. It does not protect the public health. It makes getting information about medicines to doctors harder and more time-consuming and more cumbersome. IMS has asked that we... [LB451]

SENATOR JOHNSON: I hate to interrupt you as well... [LB451]

TARA RYAN : I'm okay, I'm just going to say... [LB451]

SENATOR JOHNSON: ...but I was kind of hard on Mark, so... [LB451]

TARA RYAN: I'm okay...IMS asked... [LB451]

SENATOR JOHNSON: ...I better be fair as well here. [LB451]

TARA RYAN: Okay, IMS just asked me to say that they sent a statement in opposition to this and I think that you have that in your files. [LB451]

SENATOR JOHNSON: Okay, fine, thank you. [LB451]

TARA RYAN: Any questions? [LB451]

SENATOR JOHNSON: All right, any questions? I see none, you must have covered it. Thank you very much. [LB451]

TARA RYAN: Thank you. [LB451]

JONI COVER: Good afternoon, Senator Johnson, members of the committee, my name is Joni Cover, J-o-n-i C-o-v-e-r. I'm the executive director of the Nebraska Pharmacists Association, and we are here today to oppose LB451 for the simple fact that while all of these folks have talked about the costs of drugs and drug detailing and all that sort of thing, this particular language would prohibit us pharmacies in many cases, from getting paid. Many of our third parties, many of the insurance companies, require prescriber information on the claims when they are submitted from the pharmacy to the insurance company for payment. And if we are restricting that information, then it is going to be a little difficult to get paid for that prescription. Now if you'd like to have everyone just pay cash, I guess we would go along with that, but I don't think that that's really going to happen. I also want to mention that with Medicare Part D, there have been new programs such as Medication Therapy Management Programs, that have been implemented across the nation, and some of those programs also require prescriber information to be shared with the MTM Programs. So again, pharmacists...our hands will be tied with this legislation. I've already spoken with Senator Nantkes about our concerns. She was very willing to listen to us. As far as detailing, you know, that's not really our issue except we have pharmacists that get detailed too by drug companies and I can tell you that many of them welcome the pharmaceutical manufacturers into the pharmacies because it is an opportunity to talk about new drugs. Others prohibit them from being in their pharmacies, and I'm assuming that physicians could probably say, you're not welcome in my clinic either. Although then they probably won't be able to get the samples that are provided by the drug manufacturers, so they are kind of in a catch-22. One of the questions that you asked the physician was education. I know with Nebraska Pharmacists Association, we are an accredited provider of CE and we have certain strict guidelines that we have to adhere to for continuing education for our pharmacists, and I'm assuming, I don't speak for the medical association, but that they have the same sort of strict guidelines. And one other question I wanted to follow up with, if you know a physician who's in the state who is doing some improper prescribing, under our state Uniform Licensing Law, other healthcare practitioners are required to report that information. So with that I will stop talking and answer any questions. [LB451]

SENATOR JOHNSON: Very good. Are there any questions? I see none, you must have answered them all. Thank you very much. [LB451]

JONI COVER: Wow, thank you. [LB451]

SENATOR JOHNSON: (Exhibits 4, 5, 6) Let me enter into the record here a letter from the Nebraska Academy of Physicians Assistants which is in support of LB451, an opposition letter from IMS Health Incorporated, and a neutral letter from the Nebraska Medical Association. Any other opponents? Any neutral testimony? Seeing none, let's close on LB451. Senator Nantkes said waive and she's gone. Senator Kruse, welcome to our humble committee. [LB451]

SENATOR KRUSE: Thank you, Mr. Chairman. If you want to see humility, come visit us (laughter). I am Lowen Kruse, L-o-w-e-n is the hard part of that, representing District 13. This committee would want to know that our doctor of the day rescued one of our Senators within the last hour with a prescription, so we're really being current here (laughter). The Nebraska Pharmacists Association has drafted LB577 to request an increase in Medicaid dispensing fees paid to the pharmacies. I support this consideration because it has not happened for over 20 years. The concept of it, the rate-setting, is part of our regulations and so on, so that's not under debate as much as the amount of the fee. So if we can focus on that. The current dispensing fee paid to pharmacists across Nebraska per prescription, is around $4.66. LB577 requests that the fee be raised to at least $12 per prescription for generic or multisource drugs. The federal Deficit Reduction Act has changed the rules in calculating the payment from Medicaid prescription drugs, generic. Current reimbursement is based on average wholesale price minus a percentage because the deficit reduction aid payments are calculated on the average manufacturers' price, which is never defined, plus a dispensing fee. These payments for acquisition of generic drugs are projected to be at least 36 percent below cost and as you would understand better than I, the uncertainty of those prices and the projection of them is one of the real problems. Preliminary calculations suggest that Nebraska pharmacies are set up to lose nearly $8 million over the next year--one year--due to the new calculation. The request for an increase in dispensing fees for generic drugs from just under $5 to no less than $12, is based on national statistics that show the costs associated with dispensing medications, not including the product of course. That amount of cost from a national survey, arranges from $9.50 to $15. Nebraska Medicaid has just conducted a cost-of-dispensing survey and the results are pending. The last survey of this kind was conducted in 1984, 23 years ago. Since that survey, pharmacies across Nebraska have not had an increase. So we're talking about a time when the cost of living has gone up dramatically and the rate has not. The Coalition for Community Pharmacy Action has recently released survey results that show the national average of dispensing is $10.50 per prescription. The pharmacy association will be offering an amendment to also include brand drugs, single-source drugs, to be considered for a different dispensing fee. Any questions on the ins and outs of that would be much better satisfied if you would ask some other providers that will be following me. Since our committee is having a very difficult time keeping a quorum, I will waive closing. [LB577]

SENATOR JOHNSON: Okay. Well I'm going to start out with a question of you since the committees that you're on... [LB577]

SENATOR KRUSE: All right. [LB577]

SENATOR JOHNSON: It looks to me, and would it be a fair statement that the federal government has passed on another unfunded mandate? [LB577]

SENATOR KRUSE: Oh, yes. [LB577]

SENATOR JOHNSON: Well, I see the... [LB577]

SENATOR KRUSE: And we got quite a few of those. [LB577]

SENATOR JOHNSON: Yes, and we're talking give or take a little bit of $3 million a year for what they've passed on, as I see it and is that your... [LB577]

SENATOR KRUSE: That's what we're seeing around...we are really into a crunch in our committee because of these things that are passed on and then you estimate them like at one percent or that's estimated budgets. Well, that's not realistic. And so we are really struggling. [LB577]

SENATOR JOHNSON: You can see whose deficit-reduction bill it is, can't you? [LB577]

SENATOR KRUSE: Yeah. [LB577]

SENATOR JOHNSON: Senator Pankonin. [LB577]

SENATOR PANKONIN: Thanks, Senator Johnson, just a follow-up then, Senator Kruse, seeing that the fiscal note is what it is, and I don't know, does that leverage any federal dollars if we spend money? Do we get any more from the federal government on that? Do you know? [LB577]

SENATOR KRUSE: I'm not for sure. Ask somebody else. I think so. [LB577]

SENATOR PANKONIN: Okay. But do you think the Appropriations Committee would be open to do doing this, I mean, you're promoting this bill as a good policy. But do you think the Appropriations would look at this? [LB577]

SENATOR KRUSE: The Appropriations, and I obviously can't speak for them, but by tradition, the Appropriations Committee respects what the floor says is a good thing to do. So if this would forward that way, why we would respect it. This afternoon we have to plug in about $9 million that nobody said was there. Well, it has to be there, so, you know, we do what we have to do. [LB577]

SENATOR JOHNSON: Senator Erdman, is that the... [LB577]

SENATOR ERDMAN: No, I don't have a question. I would have a bunch of observations but now is not the time, so I'll save those for later (laughter). [LB577]

SENATOR KRUSE: Well, Senator, both of us, and we've had conversations before, both of us are striving to hold these costs down and we have cut some agencies below where a reasonable person would say that they could operate. [LB577]

SENATOR JOHNSON: Without any comment on the merits of the bill, I think that this expenditure increase is more than every other bill that we've had before us so far this year, combined. So it's a fairly significant number. [LB577]

SENATOR KRUSE: Yeah, yeah, it's just a multitude of questions and sources. [LB577]

SENATOR JOHNSON: No other questions? Senator Kruse, I take it you won't be back? [LB577]

SENATOR KRUSE: I will not be back. [LB577]

SENATOR JOHNSON: All right, thank you very much. How many proponents do we have? Two. Opponents? One. Sir? Okay. [LB577]

JEFF HINES: (Exhibit 1) I do have some handouts here. I also have two letters as well for the committee. My name is Jeff Hines, and that's spelled H-i-n-e-s. Senator Johnson, members of the committee, thank you for having me here today. I am a pharmacist and I'm a member of the Nebraska Pharmacists Association. In fact, I'm on the board of directors for the pharmacists association, and I appear here today on behalf of the Nebraska Pharmacists Association in support of LB577. I'm passing out the same information that I'm going to give to you. Much of this was also discussed by the good Senator before me, so I won't go over this word-for-word. I also have an amendment to LB577 that is also being passed out. And I know that you had just said that the $12 is quite a hefty amount. We're merely asking in the update of the bill, that pharmacists be recognized for the cost of the items that we purchase, and then also to have a dispensing fee on top of that, that allows us to stay in business. Again, you had mentioned the unfunded mandate by the federal government with the passage of the federal Deficit Reduction Act. That is true for our pharmacies; they're changing the way they pay us. They're going from something called AWP to a thing called AMP, average manufacturers' price. The way I understand it, this is just a simple percentage markup on the cost of medications, okay? If a generic drug or a generic prescription costs $20 and we stand to lose money on that $20 sale, a branded item that sells for $90-100, if we make a percentage on the greater sale, then pharmacies will be forced to choose to make the higher sale incurring a higher cost to the state. Right now the federal government and the state government pay for about 41 percent of the prescriptions dispensed, okay? That's the way we see it. So this giving money to pharmacies to make sure that generic drugs are dispensed is actually in the good interest of the state of Nebraska as well as our pharmacies. Now I don't know if you've seen this, there's one other little piece of information. This is a map right here of the state of Nebraska, and

currently there are 19 counties that do not have a single community pharmacy in the county. So if pharmacists are not getting reimbursed sufficiently, then it can become an access issue. Any questions or comments? [LB577]

SENATOR JOHNSON: Any questions? Senator Howard. [LB577]

SENATOR HOWARD: I don't, thank you. [LB577]

SENATOR JOHNSON: Well, we've got two over here. Senator Erdman. [LB577]

SENATOR ERDMAN: Well great, I don't have a question, but I was told this morning on the floor that if you find something that needs to be corrected, you should do it. This bill is actually quite conservative compared to a couple of bills that we have, Senator, LB410 and LB265 are both more...have a higher fiscal note than this one. [LB577]

SENATOR JOHNSON: Okay. We'll look forward to it. [LB577]

SENATOR ERDMAN: Just for the sake of clarity in the record. [LB577]

SENATOR GAY: You done? (Laughter) [LB577]

SENATOR ERDMAN: Yeah. (Laughter) [LB577]

SENATOR GAY: You never know, so... [LB577]

SENATOR ERDMAN: Unless you'd like me to ask your questions, Senator Gay? (Laughter) [LB577]

SENATOR JOHNSON: We thought you were reloading there. Senator Gay. [LB577]

SENATOR ERDMAN: Okay. You'll hear the shotgun. [LB577]

SENATOR GAY: You spoke about a disincentive to prescriber per the generic drugs. Is there a lot of examples like that going on or... [LB577]

JEFF HINES: You know, we don't know that right now with this coming bill because we haven't seen the AMP, but what the initial information is is that on a generic dispensing, we will lose 30 percent of the total cost of that transaction. Now we have more information coming to us but the AMP, those actual dollar amounts, have not been sent to us from the federal government quite yet. [LB577]

SENATOR GAY: Okay. Thank you. [LB577]

SENATOR JOHNSON: Now, we've got Senator Erdman. [LB577]

SENATOR ERDMAN: Okay, I'll play nicely. You don't have the same problem in the private pay and cash pay because you are able to sell that at a cost that's more reflective of the product as opposed to what you are reimbursed under Medicaid. Is that the rub? [LB577]

JEFF HINES: That's what will be happening, yes. As far as each pharmacy's ability to price their product, I'm sure everyone has a different way to do that. But yes, as we are going to be paid from the federal government, we will be losing money. [LB577]

SENATOR ERDMAN: In regards to the Medicaid system? [LB577]

JEFF HINES: Medicaid system, yes. [LB577]

SENATOR ERDMAN: Okay, thank you. [LB577]

SENATOR JOHNSON: Any other questions? Senator Stuthman. [LB577]

SENATOR STUTHMAN: Thank you, Senator Johnson. Is there going to be any additional fee for dispensing or anything in this? [LB577]

JEFF HINES: Well, what we would like to do is set the fee at a point that is higher than what was set in the past. It was set in 1984 at $4.66, I believe, and we are looking for an increase in that so pharmacies can remain viable. So I don't know if I answered your questions, but... [LB577]

SENATOR STUTHMAN: Yes, I mean, what type of an increase would you be looking at? [LB577]

JEFF HINES: Well, the information that was given out by the Senator before me was that one national survey said $10.50 per prescription is the fixed cost of a pharmacy doing business. So we are looking for something that would be closer to that amount. [LB577]

SENATOR STUTHMAN: So is this going to make drug costs cheaper or higher for the individual? [LB577]

JEFF HINES: I would say...I couldn't say that. I do know that it's going to make pharmacies viable and it will, in the long run, cost the state less money, in my opinion. [LB577]

SENATOR STUTHMAN: Okay. Thank you. [LB577]

SENATOR JOHNSON: (Exhibits 3, 4) Any other questions? Let me say this, you've got quite a few friends here. We have letters of support from the Nebraska Hospital Association; the Nebraska State Chamber of Commerce; the Nebraska Retail Federation; and the National Association of Chain Drugstores. Thank you, sir. [LB577]

JEFF HINES: Thank you. [LB577]

SENATOR JOHNSON: Any other proponents? [LB577]

GARY RIHANEK: Senators, pleased to meet you. I am Gary Rihanek, registered pharmacist. R-i-h-a-n-e-k. I own, with my wife, Wagey Drug, located here in Lincoln, Nebraska, a single, independent pharmacy. I understand...I receive every week, one of the largest checks to an individual pharmacy in the state. So I felt it was important that I make myself available to you. Wagey Drug, to just verify some of the information--I figured it out--costs me $10.68 to fill a script. And 74 percent of my business prior to Medicare D was Nebraska Medicaid. After Medicare D, it was down to 41 percent. But of course, all of those dual-eligibles--I do all of their OTCs and everything--are billed to you, and there is really a great profit on those. It costs plus a third, so some of those scripts are 35 cents. Also, we do a lot of services that I think save you a lot of money. We have free delivery. Half of my business is I set up "medisets", or blister packs, for those that are custodial foster care residential living. These people, in the past, have been in institutions--very expensive for you guys to take care of. We are able to take care of them. We send them out their meds on a weekly basis. You don't have to have an RN dispense their meds. We believe it is very cost effective. Along with that if a medication is changed such as Seroquel, which costs $500 for a 30-day supply, we are able to reverse that cost and only charge for the amount dispensed, another great savings for you guys. So I believe, I represent a lot of pharmacists in this state that are out to do the best job they can to help you. I'm also a farm boy from Thurston County. I never thought I would be in this position but that's part of the American dream is that we all have an opportunity to be businesspeople. I actually make $2.15 over that cost, that $10.68. With that I am able to buy new equipment, or in the case of the last six months, pay $20,000 to properly get rid of drugs that were in the basement of Wagey Drug since the 1930s, something we never dream of. So we have expenses to stay in business. Medicare D has hit me hard, cut my salary in half, and none of my employees, I have 30 employees, were able to get bonuses this year. But they are thankful that they all have jobs and they are still going, and I am too. I am a scrapper, okay? But I'm here today to let you know that what we're proposing, just even the $12 is not an increase. We're just saying, if you're going to redo it so that you charge us for the cost of the drug, I would like to have $12 on those generics. We are just talking about the generics, okay? And the price increase on the other would be very much needed to continue. With that I would like to make myself available. [LB577]

SENATOR JOHNSON: Any questions? Senator Howard. [LB577]

SENATOR HOWARD: Thank you, Senator Johnson. I'm just wondering, you mentioned foster care--of course that perks my interest right away. Can you tell me what percentage of your business that you see, just your observation or your recordkeeping, what percentage is billed through the Medicaid Program? [LB577]

GARY RIHANEK: Probably on foster care, I would imagine 90 percent is through the state, maybe 10... [LB577]

SENATOR HOWARD: Ninety percent of your business is Medicaid? [LB577]

GARY RIHANEK: Right, 90 percent of my...not my business, but my foster care business. [LB577]

SENATOR HOWARD: I would understand that because they are all state wards, but I'm talking about your business, your percentage of business that you do. [LB577]

GARY RIHANEK: My business...okay. Fifty percent of my business is custodial foster care. I do 720 "medisets" a week, and that's about 50 percent of my business. [LB577]

SENATOR HOWARD: Okay. Do you think you are fairly typical in terms of... [LB577]

GARY RIHANEK: Independent drugstores? [LB577]

SENATOR HOWARD: Yes. [LB577]

GARY RIHANEK: No. [LB577]

SENATOR HOWARD: Why not? [LB577]

GARY RIHANEK: Because I don't know of that many...I don't know how many others are...know like, none of the chains are doing this because that doesn't fit into their system. You know, what I'm doing, I started back in 1977 as a pilot program for Health and Human Services to provide a better dispensing system. And so a lot of the work that's been done in that area, I pioneered that and the regulations that they have today on that, came about from what I did. [LB577]

SENATOR HOWARD: Okay, so 50 percent of your business approximately... [LB577]

GARY RIHANEK: Fifty percent of my business... [LB577]

SENATOR HOWARD: But you're not telling me that other, say the chain stores, are not

dispensing medications to children that are in the foster care system on Medicaid? [LB577]

GARY RIHANEK: No, no. [LB577]

SENATOR HOWARD: That wasn't the statement you wanted to convey? [LB577]

GARY RIHANEK: No, no. [LB577]

SENATOR HOWARD: Okay. I didn't think so because I know they do. [LB577]

GARY RIHANEK: Yeah. [LB577]

SENATOR HOWARD: Okay, thank you. [LB577]

GARY RIHANEK: I do know in Lincoln that there are probably a half a dozen other pharmacies that I've been helping them get started to do this, are doing this now. [LB577]

SENATOR JOHNSON: One quicky. [LB577]

GARY RIHANEK: Sure. [LB577]

SENATOR JOHNSON: Do you bill electronically or what kind of system basically? [LB577]

GARY RIHANEK: Sure do. [LB577]

SENATOR JOHNSON: Yeah. [LB577]

GARY RIHANEK: I have...believe it or not, I have 16 computers in my drugstore. Very effective and... [LB577]

SENATOR JOHNSON: I would say you'd just about have to, I would think to make things at all functional (inaudible)...yeah. [LB577]

GARY RIHANEK: Very much state-of-the-art, okay? And I would like to keep it that way. And you would want it that way. [LB577]

SENATOR JOHNSON: Sure. Okay. Thank you. I see no other questions, thank you very much, sir. [LB577]

GARY RIHANEK: Thank you. [LB577]

SENATOR JOHNSON: Any other proponents? Seeing none, let's go to opponents. And do we have any neutral people around today? Okay. Welcome back. [LB577]

GARY CHELOHA: (Exhibit 2) Thank you. Good afternoon, Senator Johnson, members of the committee. I am Gary Cheloha, C-h-e-l-o-h-a. I'm still a pharmacist and administrator with the Health and Human Services System, at least I hope (laughter). I'm here to testify in opposition to LB577, due to the potential costs and conflict with federal Medicaid requirements. Much of what I say here will seem somewhat technical, but it's meant to give you the background of how we've gotten to this point talking about the dispensing fees and the costs of the drugs and Medicaid. Medicaid calculates the most it can pay for every prescribed drug using very specific formulas and we too, use computers. We calculate the cost of every drug and then we add a dispensing fee to that which is a fee for each pharmacy. The pharmacy must also submit its usual and customary charges and also the dollar amount that it expects to be paid. Medicaid pays the lowest of these three dollar amounts: the department's calculated amount; the pharmacy's usual and customary; and the amount the pharmacy expects to be paid. In terms of the drug costs, we have three ways of calculating drug costs. The first is to estimate acquisition cost which applies to every drug, that's based on the average wholesale price which is published by First Databank in San Bruno, California, we reduce that by 11 percent. Some drugs, which the federal government pays for generics, have a limit called the Federal Upper Limit. That's only certain multiple-source drugs, and then the state also has a generic program called the state Maximum Allowable Cost Program and that also applies to certain multiple-source drugs. A drug may have both a Federal Upper Limit and a state Maximum Allowable Cost and every drug has an (inaudible). Generally, the lowest of these allowable costs is used by Medicaid to reimburse the pharmacist unless the prescriber certifies in writing, that the brand name drug is medically necessary. Talking about the usual and customary just a little bit; that's the amount the pharmacy charges a cash-paying customer and the general public. For example, the pharmacies that are advertising that they will dispense a month's supply of certain medications for $4, must not charge Medicaid more than that. A little bit of history here now about that Federal Upper Limit and this won't take too much longer. The GAO announced a study saying that the Federal Upper Limits were paying more than the cost of the drug. That was no surprise to the people in state government or those that manage these programs, that the Federal Upper Limits, some of them were too high and therefore the state of Nebraska had a state Maximum Allowable Cost Program. In response to the GAO report, the Deficit Reduction Act of 2005, requires that the Average Manufacturers' Price or AMP, must now be used to set this Federal Upper Limit. The AMP is part of the federal Drug Rebate Program Statute. Since that, the GAO, the Government Accountability Office, has now studied and reported on the impact of the use of the AMP. They sampled 77 drugs during the first quarter of 2006 that were paid for by the state, by Medicaid. In that report, reimbursement to the average retail pharmacy would be less than cost for 59 of the 77

drugs. Now after that, the federal centers for Medicare and Medicaid services, which provides about 60 percent of the funding for Nebraska Medicaid, has since rejected that finding. Clearly this matter is not settled. We are still waiting to see what those Federal Upper Limits are going to be. During the last fiscal year, Nebraska Medicaid paid for over 600,000 prescriptions at less than $12 each. LB577's requirement, as written, for a minimum $12 reimbursement, would result in additional costs for each of these prescriptions. Federal funding may not be available for some or all of this increase if the state cannot demonstrate that it meets the federal requirement on total payments for drugs covered under the FUL Program. That requirement simply says that the states cannot see the FUL on payment, it can on a prescription, but must not exceed it in aggregate for all of the FUL drugs. Setting of the dispensing fee for the pharmacy is at the state's discretion. Nebraska established its current fee structure by a survey more than 20 years ago as you have already been told by Dr. Jake Jacobsen, who was then at the University of Nebraska College of Pharmacy. Dr. Jacobsen is now with the University of Oklahoma and we have this contract, as you've heard about, to do this cost of dispensing survey. There are some preliminary results, but the final report is not yet in. I don't think there will be any surprises in the terms of the costs of dispensing that will be shown by that report. [LB577]

SENATOR JOHNSON: When will that be available? [LB577]

GARY CHELOHA: We received the very preliminary reports a day or two ago, just like a few lines about what the overall averages were. I would expect that we would have something within a month from now, or there about. In summary, HHS believes that the information necessary to assess the impact of the new Federal Upper Limits and the full understanding of the costs of dispensing survey, are not here yet. Passage of LB577 as it's written, would be based on less than complete facts and carries a potentially high fiscal impact. HHS recognizes that its reimbursement to providers of care for Medicaid recipients must be delicately balanced to assure fiscal responsibility, and recipient access to care. I'd be happy to try to answer your questions. [LB577]

SENATOR JOHNSON: Well, I think there's one more component and that would be keeping pharmacies in business. [LB577]

GARY CHELOHA: Absolutely. [LB577]

SENATOR JOHNSON: And, you know, so I think that's a part of the necessary calculations that we do so, how many counties do we have now without pharmacies...quite a few. [LB577]

GARY CHELOHA: Yes, sir. [LB577]

SENATOR JOHNSON: And it would seem to me that the small pharmacies out in the

boondocks are the ones most likely to be affected by this. But then, that's a little bit of editorial. Senator Hansen. [LB577]

SENATOR HANSEN: Thank you, Senator Johnson. I think my question is similar to yours, too. How do you interpret the federal mandate that we've been talking about that it's an unfunded mandate? How do we account for that? [LB577]

GARY CHELOHA: The unfunded mandate in terms of setting the costs of the drug at that low level? [LB577]

SENATOR HANSEN: Right. [LB577]

GARY CHELOHA: Final regulations or the final decision has not been rendered. I don't know where they'll set that final pricing, if it's going to...when this all began, the federal government talked about using an average sales price. After six months of discussion about that, they threw that aside and said, okay, let's use AMP. And by definition an average will underpay the costs of some providers and pay more than the cost on others. I think this GAO report showing that 75 percent of the drugs will be paid of the higher-volume drugs, will be paid at less than costs, has to be taken into consideration before they make their final decision. I can't predict where it'll end up except I think that they will lower the Federal Upper Limits, but I'm not sure if they'll use the AMP or if they'll add on an increase to that. And it's because of that uncertainty, I believe they will lower the current FULs, but I don't know what level it'll end up at. And they will make us use them. [LB577]

SENATOR HANSEN: Thank you. [LB577]

SENATOR JOHNSON: Senator Howard. [LB577]

SENATOR HOWARD: Thank you, sir. This will be an easy question for you but it will help me better understand. You talk about the average wholesale price. And then I understand there's another price called the manufacturers' price. What's the difference between those, and I assume one is more? [LB577]

GARY CHELOHA: The average wholesale price? The average wholesale price, again, is set, and we purchase that indirectly for Medicaid through our point-of-sale contractor, ACS. First Databank, at one time, manufacturers provided these suggested average wholesale prices. Many have gotten away from that. Right now, First Databank is setting that AWP at 20 or 25 percent above wholesale acquisition costs. We then reduce that by about 11 percent and use that as our basis for estimating the acquisition costs of all drugs. The AMP, it's in the federal rebate language from OBRA '90 and it's been updated. It has to do with...and the manufacturer has to calculate that amount. And that's, up till now, has been confidential information. And it's supposed to represent

what the manufacturer receives on average from that product for all but the sales that are at nominal, which is less than 10 percent--I believe the number is less than 10 percent of that average selling price. So they throw out the drugs that they give away as samples. If they have very low cost contracts with some pharmacies, they throw those out and the average price that they get for the drugs, is that AMP price. [LB577]

SENATOR HOWARD: So that actually isn't the cost of making them, it's the cost... [LB577]

GARY CHELOHA: That they receive. [LB577]

SENATOR HOWARD: On the market. [LB577]

GARY CHELOHA: That's correct...they receive. [LB577]

SENATOR HOWARD: Thank you. [LB577]

GARY CHELOHA: You're welcome. [LB577]

SENATOR JOHNSON: One other thing before you go, and that's this: is that it dawned on me that this is, if it's a national program and our gentleman that was here before you, talking about their problems here in Lincoln, are these numbers national numbers? And to get where I'm saying is this: let's just say this gentleman's pharmacy was worth, cost him $500,000 to build and so on. Now one in Los Angeles might cost $1 million. Now there would be a logical increase in the amount that the federal government and so on, would allow. Is that true with pharmaceuticals as well? For instance, again, you take the physician in San Francisco with his high overhead. He gets paid a lot more from Medicaid and Medicare than the Nebraska physician. Nebraska physicians happen to be kind of the low end of the totem pole nationally. What's the effect on the pharmacies? Are they at the low end of the totem pole? [LB577]

GARY CHELOHA: The AMP is a national number for the company, I mean, just averaging sales across the country. The state has had that ability to set the dispensing fee and by that we've been somewhat able to compensate our pharmacists, perhaps more fairly than some other plans, but the fee is set by the states and this AMP is a national number for the cost of the drug that takes into account the high- and low-dollar sales and that's just the national price. And right now, the way the Deficit Reduction Act is written, the state does not have flexibility in changing that to a great extent in terms of what we can pay the pharmacist for the cost of the drug portion. But we can adjust the dispensing fee, that's up to the states. [LB577]

SENATOR JOHNSON: I got another question from Senator Pankonin. [LB577]

SENATOR PANKONIN: As I'm hearing the discussion, Gary, just one more question. I'm in a quandary, we've got the bill and I think we're somewhat sympathetic to the pharmacies' situation. Also understanding that we don't have all the information, you don't have all the information to make a final recommendation. But we are going to have to make some decision about this bill and you said it might be a month before you have the information. What would be your...are you saying to us, that if we didn't move this bill along, you think by the dispensing level, that you have discretion over, the department has discretion over, you can try to be fair to Nebraska pharmacies? Or do you think we should move this bill along, it could be amended later once we have all the information? What's your recommendation? [LB577]

GARY CHELOHA: I believe that the department has, in the past, been fair with the pharmacists in setting the fees and trying to deal with issues such as the Federal Upper Limit in the past. And it would be my preference that the agency would do this. I think the Pharmacists Association has an amendment to this bill to make it clear that is the dispensing fee portion. I think they would prefer that it be done by the Legislature. As a staffer, I believe that we could also fairly set the fees. I guess it would be my preference that we do it, sir, to be very honest with you. [LB577]

SENATOR PANKONIN: Thanks for your answer. [LB577]

SENATOR JOHNSON: Seeing no other questions, thank you very much. Any neutral testifiers? Seeing none, and you are not going to be Senator Kruse's closer, are you here? Okay. I thought maybe you were in the bull pen here. That ends the testimony on LB577. Next, Senator Pankonin, let's open on LB426. Adopt a Pharmacy Technician Act on...yeah, go ahead. [LB577 LB426]

SENATOR PANKONIN: Good afternoon, Chairman Johnson, and esteemed members of the Health and Human Services Committee, and colleagues I might add. My name is Dave Pankonin, spelled P-a-n-k-o-n-i-n, and I represent the 2nd Legislative District. I'm here to introduce LB426. This bill creates the Pharmacy Technician Act that requires pharmacy technicians to register with the state of Nebraska within 30 days after being hired as pharmacy technicians in Nebraska. Technicians who are currently employed in Nebraska have 30 days after the effective date of this act, to become registered. The Pharmacy Technician Act legislation was developed after the completion of a 407 review with the assistance of the Nebraska Pharmacists Association, and the Nebraska Board of Pharmacy. The goal of this legislation is to establish a registry of all practicing pharmacy technicians in Nebraska. Currently, Nebraska is only one of two Midwestern states, the other is Colorado, and one of 15 states nationwide, that does not regulate pharmacy technicians. All existing statutes that address pharmacy technicians, have been moved to the Pharmacy Technician Act. No new requirements to the technicians' practice abilities or duties have been added. The act includes a provision that allows technicians to report firsthand knowledge of technicians or other licensed healthcare

professionals, who are practicing impaired or diverting medications. In addition, the act establishes procedures for disciplinary actions, removal from the registry, and reinstatement provisions. The act also allows pharmacy technicians to participate in the state's licensure assistance program. LB426 proposes that anyone who knowingly violates the provisions of the Pharmacy Technician Act, is guilty of a Class III misdemeanor. I would be happy to answer questions if I can, however, the Nebraska Pharmacists Association is here to support LB426. Because the association assisted with the 407 review, Joni Cover can provide more specific information about the provisions of LB426. In addition to the association's testimony today, every member of the committee received a letter of support for LB426 from the Nebraska Board of Pharmacy. Additional copies have been passed out and the letters were delivered to Senators' offices yesterday. Thank you. [LB426]

SENATOR JOHNSON: Any questions of the good Senator Pankonin? Senator Erdman, you should be able to think up one. [LB426]

SENATOR ERDMAN: Okay. Can you spell your name for us again? (Laughter) I didn't catch that. [LB426]

SENATOR PANKONIN: D-a-v-e. [LB426]

SENATOR ERDMAN: Good job. (Laughter) [LB426]

SENATOR JOHNSON: Thank you very much. Oh, we do have an honest question over here. Senator Stuthman. [LB426]

SENATOR STUTHMAN: Thank you, Senator Johnson. What's the penalty for a Class III felony? [LB426]

SENATOR ERDMAN: Misdemeanor. It's a misdemeanor. [LB426]

SENATOR STUTHMAN: Misdemeanor, okay, thank you. I just wanted to get you to thinking. [LB426]

SENATOR JOHNSON: Seeing no other questions...okay, great. [LB426]

JULIE WOLLBERG: Good afternoon, I'm Julie Wollberg, J-u-l-i-e W-o-l-l-b-e-r-g. I currently am a nationally certified pharmacy technician and have been for the past ten years here in Nebraska. And I serve as a pharmacy technician representative on the Nebraska Pharmacists Association Board of Directors. On average, U.S. statistics show there's about five technicians per pharmacy. And currently there are 38 jurisdictions in the U.S. that regulate pharmacy technicians--Nebraska and Colorado are the only two states in the Midwest that do not. Other states, including Nebraska, are experiencing

diversion and impairment by pharmacy technicians, but in Nebraska we have no recourse to stop these technicians from becoming rehired at other pharmacies. There is no way to track them. So having no registration for pharmacy technicians raises the concerns of the patient's safety as well as business and economic issues. This legislation would require a technician registration for all technicians working in the state of Nebraska. It would not change our scope of practice. We would still not able to use our professional judgement. Our duties of assisting pharmacists with prescriptions, filling prescriptions, preparing IVs and compounds, none of those would change. LB426 also allows a registration fee of up to $50 to offset the costs to the state to enact the registration. The NPA believes that the benefits of LB426 would be the accountability of the pharmacy technicians, protection of our pharmacy technicians, and protection of the public. [LB426]

SENATOR JOHNSON: Yes, sir. Senator Hansen. [LB426]

SENATOR HANSEN: Thank you, Senator Johnson. Julie, where do pharmacy technicians work? [LB426]

JULIE WOLLBERG: A majority of our pharmacy technicians work in the retail setting, but they also work in hospitals, some nursing homes, that type of thing. [LB426]

SENATOR HANSEN: I'm familiar with the ones that work at the retail setting. If I go into my pharmacist and I don't feel good anyway, and I look around at the people that are there, and do you have different name badges? Is that consistent across the state? [LB426]

JULIE WOLLBERG: Yes. Yeah. [LB426]

SENATOR HANSEN: So what are the questions I can't ask you? That I shouldn't ask you, that I should... [LB426]

JULIE WOLLBERG: The pharmacy technicians cannot counsel on any medications. We can, you know, insurance-type questions, we could help you with that. But if you were looking, you know, for a recommendation, or something on your prescription, you would have to talk to a pharmacist. So none of the drug type questions we can answer. [LB426]

SENATOR HANSEN: Can you answer the question, is it available in a generic drug? [LB426]

JULIE WOLLBERG: Yes, we can. [LB426]

SENATOR HANSEN: Okay. Thank you. [LB426]

SENATOR JOHNSON: Any other questions? I see none. Thank you very much. [LB426]

JULIE WOLLBERG: Um-hum. [LB426]

JONI COVER: I promise to be brief. [LB426]

SENATOR JOHNSON: Well, okay. We're doing pretty well this afternoon. [LB426]

JONI COVER : Good afternoon, Senator Johnson, members of the Health Committee, my name is Joni Cover, J-o-n-i C-o-v-e-r. I'm the executive director of the Nebraska Pharmacists Association and I'm here today in support of LB426 and I'd like to thank Senator Pankonin. Unfortunately you have to listen to me. We had a pharmacist lined up to testify today and he couldn't be here, so you get me instead. I just wanted to clarify a couple of things. The result of LB426 is from a 407 review. We went together with the Board of Pharmacy and went through the review process. The Board of Pharmacy asked Health and Human Services to introduce legislation to register pharmacy technicians and the department did not prioritize the issues, so the Nebraska Pharmacists Association stepped up to introduce the legislation. One of the differences that you will see in our...if you have a copy of the 407 review materials. If you don't I'd surely get you one if you'd like to read it. One of the differences is that in our bill, LB426, we allow pharmacy technicians to report diversion and impairment. One of the issues that the Board of Pharmacy raised was they would like to see that mandated. I was just told that our friends, the trial lawyers, have an issue with the immunity provision that is written into the statute in Section 9. I will have you know that that language came directly from the Uniform Licensing Law that covers all other healthcare professionals in this state so it's nothing new. And again, I would like to just reiterate the reason for this legislation isn't to change the scope of practice or do anything different to the profession of pharmacy technicians other than to register all of the statutes that are currently on the books, are going to be put under one act, and then there will be a registration. So I will be happy to answer any questions. [LB426]

SENATOR JOHNSON: Senator Hansen. [LB426]

SENATOR HANSEN: Thank you, Senator Johnson. Joni, 39,000 members across the state, is that right? [LB426]

JONI COVER : Thirty-nine thousand members of the Pharmacists Association? [LB426]

SENATOR HANSEN: Well, I'm not sure, what...how many... [LB426]

JONI COVER: No, I would love to have 39,000 members. [LB426]

SENATOR HANSEN: ...I mean, how many pharmacists...well, there's 39,000 in here employed by the Hospital Association, okay. How many technicians are there? [LB426]

JONI COVER : I have about 1,600 members. [LB426]

SENATOR HANSEN: Sixteen hundred. [LB426]

JONI COVER: And they're mostly pharmacists, although we do represent technicians. And I can't tell you how many technicians we have working in the state because we don't have a registry. [LB426]

SENATOR HANSEN: I suspect the fiscal note should give us an idea of that, right? [LB426]

JONI COVER : It says...well, if we figure every pharmacy has around five, and there's 510 licensed community pharmacies, I think those include hospitals. And then I don't how many are employed in the hospitals--5,000 and some technicians in our state? [LB426]

SENATOR HANSEN: The fiscal note says that they approximate it to be 5,000 technicians. [LB426]

JONI COVER : Okay, that's a pretty good guesstimate. [LB426]

SENATOR HANSEN: And so do you think they're going to be okay with the $50 fee? [LB426]

JONI COVER : If you notice the bill, it says up to $50. [LB426]

SENATOR HANSEN: Oh, up to $50. [LB426]

JONI COVER : Up to $50. It can't be more than $50, and that was added to the legislation per request from the National Association of Chain Drugstores. [LB426]

SENATOR HANSEN: Some of the other groups have been in here didn't like the idea of having that fee every other year, every two years. Would three years be more consistent with some of the others, or do you have a problem with that? [LB426]

JONI COVER : You know, I would be okay with that. I'm not sure the department would, but I would be fine with that, so...We wanted to have some fee structure in there to help the department offset the costs. So but we did want to limit how much they would be charged and that's why we said up to $50. [LB426]

SENATOR HANSEN: Up to $50, okay. [LB426]

JONI COVER: So yeah, if they--one of the things that we discussed with the Board of Pharmacy and with the department was, an every two year registration. So do you want them to register every two years or do you want them to register every three years? That's kind of up to the department. We don't really care about that. Whichever is going to make it easier for them. But we want there to be some, you know, annual, biannual, triannual--whatever--registration. [LB426]

SENATOR HANSEN: Okay. Working with government, when it says no more than $50, I thought that meant $50. (Laughter) [LB426]

JONI COVER : No, that means no more than $50. The department might say $50, but we're saying no more than $50. [LB426]

SENATOR HANSEN: Okay, thank you. [LB426]

JONI COVER : You're welcome. Any other questions? [LB426]

SENATOR JOHNSON: Yeah, Senator Erdman. [LB426]

SENATOR ERDMAN: Joni, how does this fall in line with, or does it, the rewrite of the Uniform Licensure Law? [LB426]

JONI COVER : It does not fall in line because we are putting it in its own act, and it will not be under the Uniform Licensing Law, or the Uniform Credentialing Act. [LB426]

SENATOR ERDMAN: Okay. So we don't have...so essentially, in the arguments, I think what Senator Hansen is talking about, is trying to keep all of those consistent. We could do this differently, but as far as they... [LB426]

JONI COVER : We would prefer to keep it out of the ULL and the UCA at this point. [LB426]

SENATOR ERDMAN: Okay. [LB426]

JONI COVER: I think medication aides are another group that is registered or licensed or whatever...credentialed, and they are not included under the ULL. Now whether they will be in the new rewrite, I don't know that for sure, but I know that they aren't currently. [LB426]

SENATOR ERDMAN: Okay. [LB426]

SENATOR JOHNSON: Seeing no other...we do have one, Senator Gay. [LB426]

SENATOR GAY: Just a real quick...on the fiscal note and you may not be able to answer, you said not to exceed $50 biannually, the registration fee. We're guessing that there's 5,000 people out that are technicians and this is going to be revenue-neutral. But I guess, is there any way that we could put a sliding scale in or do these things have to be looked at? Or we just have to keep it up I guess, the cost? I'm just worried about the cost escalating. You've got four employees, their benefits, everything is going to go up, and then we are going to lock in a $50...how is that looked at? [LB426]

SENATOR JOHNSON: I think Senator Erdman might have a better idea about it than I do, but I've been in on some of these discussions in the Banking Committee and Insurance and so on, and they do actually calculate out how much the fees are going to be. Or the cost of administration, and then set a fee accordingly. So they may well pick out a number like $25 to start with, and then a few years later, they'll review it and maybe increase it to $35 or whatever. [LB426]

JONI COVER : Yeah, I don't believe the statute says they can't set it at $10 and next year raise it to $15, it just says you can't charge more than $50. [LB426]

SENATOR GAY: Yeah, and I apologize, Joni, for putting you on the spot. I probably shouldn't have asked you that...but they just went...popped out... [LB426]

JONI COVER : That's okay, that's just quite all right. [LB426]

SENATOR GAY: Maybe Senator Pankonin can follow up with that. [LB426]

JONI COVER: I'm just sorry that I don't have a better answer for you. [LB426]

SENATOR GAY: That's okay. [LB426]

SENATOR JOHNSON: All right, I see no other questions. [LB426]

JONI COVER : Thank you. [LB426]

SENATOR JOHNSON: (Exhibits 1, 2) Thank you. Just a couple of other things here. Letters of support for LB426. Needless to say, the Nebraska Board of Pharmacy and the Nebraska Hospital Association. Do we have any other proponents? Opponents? Neutral? Paul, come on up and make yourself at home. [LB426]

PAUL O'HARA: Thank you, Senator Johnson, members of the committee, my name is Paul O'Hara, that's O'-H-a-r-a. I'm a registered lobbyist appearing today on behalf of the

Nebraska Association of Trial Attorneys. I'm appearing in a neutral position because we have absolutely no position whatsoever on the bill. However, we found that on page 16, line 14, there is a sentence that reads, "Any person making a report to the department under this section, except for those self-reporting, shall be completely immune from criminal or civil liability of any nature...", etcetera. Immunity bills appear about ten or fifteen times every session. Now almost all of the time, they go to Judiciary Committee. But as Senator Stuthman knows, yesterday one appeared and I testified in Transportation and Telecommunications, and as Mr. Santema knows, I have appeared before and we've tried to work out immunity issues. In fact, with one governor, we had an agreement that the lawyers at Health and Human Services would quit putting immunity provisions until they at least check to see whether they're going to be opposed and fought on the floor or in committee. But what we try to do is work out with the introducer of the bill, or with the committee counsel, language to find out first of all, is the immunity necessary? Is it necessary or does it just clutter the laws? And if it is necessary, what standard of liability should apply? You have ordinary negligence, you have gross negligence, and you have willful and wanton conduct. Willful and wanton which is somebody trying to hurt someone else or something that bad. This bill has a total immunity and with a total immunity, even irresponsible acts are protected. I don't know that that's something that the committee would want to do, to protect irresponsible acts. And as my colleague and friend, Mr. Hallstrom, advised me this was taken from another immunity section that appears elsewhere in the law. And as I said, when you have ten or fifteen, some of them appearing in model bills that may be 120 pages long, some slip by me. I admit it and this one slipped by me sometime in the nineties. But and that notwithstanding, I have visited with Mr. Hallstrom, I visited with the chairman of the committee, and would only ask this committee to have the opportunity to try to sit down with the parties involved, try to visit the issue of this immunity and work it out before it gets to the floor. Because I can guarantee you that if there is something that is not worked out on the floor, it will be a major issue in debate on the floor of the Legislature. And with that I'd be happy to answer any questions you might have. [LB426]

SENATOR JOHNSON: Yes, sir. Senator Hansen. [LB426]

SENATOR HANSEN: Thank you, Senator Johnson. Mr. O'Hara, would...Joni Cover said that they want this as a standalone law, standalone type of registration. I can't see that happening. It looks like it's going to go into the universal licensure. Will that help? Will that help the part for immunity? [LB426]

PAUL O'HARA: Senator, in any respect we will...if this appears beyond this committee, there will be a debate on the floor about whether or not someone, anyone, should be granted total ability to have irresponsible behavior protected under the law. That will be opposed. As I said, if it's moved to another section, if this is still in there, it will be opposed in that method. If it is a standalone bill, it will be opposed in that, unless something is worked out. [LB426]

SENATOR HANSEN: Okay, should we take any wording out...of immunity...out of the bill? [LB426]

PAUL O'HARA: Our preference is to take immunities out. There are times that we have, for example, with Good Samaritan bills. We have with Good Samaritan bills, said that the standard of gross negligence, which is higher than the ordinary standard. The ordinary standard, you have to go through four different gates. They have to prove that there was a duty to act in a certain way, or refrain from acting. You have to have violated that duty in some way, and that broaching that duty has to have caused damage. And then the actor had to have been the proximate cause of that damage. All four have to be proven before you can even get ordinary negligence into a case. So sometimes we go to gross negligence for a Good Samaritan Law. Sometimes we reword it so that it's just fair. So that somebody who is a victim of something happening isn't, all of a sudden found...Senators, back in 2007, immunized that behavior. I hope that answers your question? [LB426]

SENATOR HANSEN: Well, it does, it does. Thank you. [LB426]

SENATOR JOHNSON: I see no other questions. Mr. O'Hara, let me say for the record that I did invite you to come and express your opinion formally, and we will work with you and the proponents of the bill to see if we can come to an equitable conclusion here. [LB426]

PAUL O'HARA: Thank you. Thank you, Senator. [LB426]

SENATOR JOHNSON: Any other neutral testimony? Seeing none, Senator Pankonin--and would you please spell your name? (Laughter) [LB426]

SENATOR PANKONIN: I'd just like to close with a couple of answers to some questions that maybe came up today, and also just one comment. Senator Stuthman has stepped out, but a Class III misdemeanor, as my fine staff has delivered me a message, has a maximum penalty of three months imprisonment or $500 fine, or both. And as far as your question, Senator Hansen, about the costs, I think the intent is, in talking about this bill, that the fee could have been, you know, specified less, but we wanted to give the department some discretion to go up to $50 so that hopefully they can balance that out and have neutral fiscal impact as the fiscal note says. The third thing, when I had a chance to talk about this bill, I called my local pharmacist in Louisville, a young woman by the name of Kitran Geise, who has bought that pharmacy just in the past year. And we are so fortunate to have a pharmacy in Louisville. You won't know the names of some of these communities, but in western Cass County, even though Cass County is growing rapidly, the pharmacy in Weeping Water has closed, and Elmwood has closed, so the one in Louisville services the western half of that county and we're just very glad

to have it open. And when I asked her about this bill, and I also know the pharmacy technician there very well, Donna Dolan, she was my next door neighbor for years and her kids and my kids grew up together, but she said she had worked at Hy-Vee in Council Bluffs before coming to Louisville and she thinks it's a good piece of legislation. A little more work for her and her staff to keep some records, but she thinks it worked well in her service in Iowa. And she also reminded me if pharmacies like hers are going to stay open, they are going to have to use pharmacy technicians to leverage the pharmacist's ability to serve an area. And so I think it's good public policy and hopefully you'll agree. Thank you. [LB426]

SENATOR JOHNSON: Thank you. That is the end of, or close, on LB426. We're going to take a three- to five- minute break. [LB426]

BREAK [LB426]

SENATOR GAY: All right, we'll open the public hearing on LB400. Senator Johnson. [LB400]

SENATOR JOHNSON: I brought the wrong packet. [LB400]

SENATOR GAY: Okay. That's all right, go ahead, Senator Johnson. [LB400]

SENATOR JOHNSON: Senator Gay, members of the Health and Human Services Committee, I am Senator Joel Johnson. I'm representing District 37. First of all, let me say that this is not a Health and Human Services bill, although it may sound like one. I think the main thing here is to understand and you've got some explanation here, earlier in the day, about the change in the way the federal government is renaming things and reusing thing from what they had in the past. Now, here let's find out exactly what we're talking about. Medicaid, of course, is the low-income things that Nebraskans and others use for their prescription medications. Now, federal legislation passed in 1990 mandated rebate payments from the pharmaceutical companies participating in state Medicaid programs. Okay. In FY 2006 these rebate payments totaled $72 million to the state of Nebraska, a very significant number. In fact, it's 36 percent of the total state Medicaid prescription costs. Now, Congress recently passed the Deficit Reduction Act which required the federal government to provide states with each product's average manufacturing price or the AMP that we heard about in our previous discussions. The average manufacturing price, AMP data, it will simplify the auditing process and allow the state to identify any uncollected rebate dollars. So this time, in this situation, it possibly could make it easier for Nebraska to amplify the $72 million that they now receive. I think with that, I will cease and desist here to those following me other than to say this: LB400 would require an audit by the Department of Health and Human Services to assure that all manufacturers are paying the rebates required by the federal law. [LB400]

SENATOR GAY: Thank you, Senator Johnson. Are there any questions from the committee? Got a question...Senator Hansen. [LB400]

SENATOR HANSEN: Thank you, Senator Gay. What was the total price that is due? [LB400]

SENATOR JOHNSON: Seventy-two million dollars that the state of Nebraska gets back under the present program. And there is the potential that this could go up a little bit more and where that potential comes from is when you go from brand name pharmaceuticals to the generics. And there is a six-month waiting period in there before this takes into effect and so this makes it so that the auditing would take part or place in this area as well. [LB400]

SENATOR HANSEN: A follow up question. Is it both human and animal health rebates? Or just...human health? [LB400]

SENATOR JOHNSON: No, that's the next bill is about the animal health as best I am aware of. [LB400]

SENATOR GAY: Senator Erdman. [LB400]

SENATOR ERDMAN: Senator Johnson, two questions. [LB400]

SENATOR JOHNSON: Yes, sir. [LB400]

SENATOR ERDMAN: The first one is why do we need the bill? [LB400]

SENATOR JOHNSON: To... [LB400]

SENATOR ERDMAN: Can they do this without the bill? [LB400]

SENATOR JOHNSON: I would suspect that they could but I don't know that. But this requires that they do it. [LB400]

SENATOR ERDMAN: Okay, and that kind of leads into my second one because you generally would require something, and if it doesn't happen, there is a penalty or some circumstance. The language on page 3 says that the, "Manufacturers shall cooperate with the department to accomplish the audit." What if they don't? Is there a federal law that governs...I mean, there's no penalty in the bill if you don't cooperate. We are asking the department to do something that according to the testimony from Dr. Schaefer, they've begun updating the program, and I'm assuming there's folks that will testify as well. But I'm trying to figure out... [LB400]

SENATOR JOHNSON: Senator Erdman, I don't know that I can answer accurately. It would be my guess that there is similar language for the other part and that this would just fit in with that so that whatever rules and statutes pertain to the other requirements and penalties, would also apply in this area. [LB400]

SENATOR ERDMAN: So if you have an example where it's in their...and my understanding is the state has contracts with these folks. If it's in their contract that they have to cooperate with us in meeting the requirements under federal law and our state program, and that's already in the law that they have to cooperate, and the department's already working on this, I guess it comes back down to again, then why do you need the bill? Why can't we just say that the department's going to go ahead and do this under the general duties that they have? [LB400]

SENATOR JOHNSON: Well, the problem is, and I think it will be more understandable with the others...yes... [LB400]

SENATOR ERDMAN: And I'm asking you the tough questions so they can formulate their... [LB400]

SENATOR JOHNSON: ...but what I'm getting at is this is that with this area and with the brand-name medications, and this might not be entirely accurate the way I'm describing it, but it's an illustration... [LB400]

SENATOR ERDMAN: That's okay. You are totally immune, Senator (laughter). [LB400]

SENATOR JOHNSON: All right. [LB400]

SENATOR ERDMAN: Completely immune, sorry. [LB400]

SENATOR JOHNSON: Let's just say that a brand-name medication costs $100 a pill. There is an adjustment area of six-month duration where the generic that takes over in this area for the six months, that they then wouldn't come under this AMP as I understand it. So that theoretically they could take the pill which is going to be sold after six months, at $20 instead of $100, and make it so that they sell it for $50 or $75, and that is the type of thing that would show up in this audit in this area. [LB400]

SENATOR ERDMAN: Very well. It seems to me like it's a...it's something we should be doing and we shouldn't need a bill to do it. But I'm sure there is a good reason why you brought us the bill and I'll continue to await those valuable testifiers to shed more light. [LB400]

SENATOR GAY: Thank you, Senator Johnson. [LB400]

SENATOR JOHNSON: You bet. [LB400]

SENATOR GAY: Other proponents? Come on forward. [LB400]

SENATOR JOHNSON: Somebody left a good pen here. It must have been mine. [LB400]

SENATOR GAY: Better leave it there...committee. [LB400]

SENATOR JOHNSON: Oh, I know it is, it's one of those pharmaceuticals (laughter). [LB400]

SENATOR GAY: Less than $25? [LB400]

_____: Did somebody report that? (Laughter) [LB400]

SENATOR GAY: Other proponents? [LB400]

KELLY BORYCA: (Exhibit 1) My name is Kelly Boryca, that's K-e-l-l-y B-o-r-y-c-a. I represent Pfizer. I'm testifying in favor of the bill. A little background and Senator Johnson pretty much explained it, but in 1990 they passed the OBRA 90 Legislation which required any manufacturer who wanted to participate in Medicaid, to pay rebates. Again, as Senator Johnson mentioned, last year, FY 2006, they came to $72 million which represented about 36 percent of the drug budget. This is a significant amount of money. The name-brand manufacturers are expected--and here is where the alphabet soup comes in--are mandated, to pay a minimum of 15.1 percent of the average manufacturers' price or the best price that we give any private sector customer. The reason that they passed OBRA 90, put these rebates in, is because again, Medicaid is treating or taking care of the poorest and most vulnerable population and they wanted to make sure they were getting the lowest price. The generic manufacturers are expected to pay a flat rebate of 11 percent. The name-brand companies also pay a CPI penalty if they raise the price of the drug over the CPI in any given year. So because these rebates are a significant offset for the Medicaid pharmacy budget, several states have taken a look and done these audits including Florida and Kansas to make sure that manufacturers are paying the rebates that are mandated by the federal government. So this is a bill that would, the department has noted, and somebody from the department, Gary, will be speaking after me...that there have been some problems in getting the rebates. They have asked the contractor to get them this information and it has been slow in coming, so they felt that this would be a good way for them to assure that they are getting the data and that all of the companies that are participating are paying their fair share. [LB400]

SENATOR GAY: Okay, any questions from the committee? I have one, Kelly. Florida and Kansas have done this. Do you know any success they've had as far as finding loopholes... [LB400]

KELLY BORYCA: You know I believe, and I don't have the numbers in front of me, but I think that the branded companies paid on average about 30 percent and I believe that the generics were only 3. And they were concerned because they are supposed to be paying 11 percent, so there was a decrease there. [LB400]

SENATOR GAY: Okay, thank you. I see nothing else, thank you. [LB400]

KELLY BORYCA: Okay. [LB400]

SENATOR GAY: Further proponents? [LB400]

JONI COVER: Good afternoon, Senator Gay, members of the committee, my name is Joni Cover, J-o-n-i C-o-v-e-r. I'm the executive director of the Nebraska Pharmacists Association. I'd like to offer my support of LB400. And the only statement that we have is that we feel that this is a step in the right direction as far as looking at rebates, but we would recommend that all drugs be looked at, not just multisource, but brand as well. So that's my comments. [LB400]

SENATOR GAY: Thank you, Joni. Any questions? Senator Erdman. [LB400]

SENATOR ERDMAN: I'm going to share this observation in case it preempts somebody's response, but Joni... [LB400]

JONI COVER: Yes? [LB400]

SENATOR ERDMAN: ...would it be your impression that the reason one might introduce a bill such as this is to allow for funding of such a program, should it pass the Nebraska Legislature? [LB400]

JONI COVER: You know, I'm not sure that I'm qualified to answer that question... [LB400]

SENATOR ERDMAN: You can just hypothetically think out loud with me, because there is a fiscal note and it says that the department has a drug rebate agreement with the manufacturers and the audit is anticipated to cost $37,000. So you have two options: if we say just go ahead and do it, they'll eat the $37,000 and try to do it, or we pass a bill and then the Appropriations Committee has to put some money in it to actually do it. Would that be a strategy that one might employ to do this? [LB400]

JONI COVER: I think that would be a fair strategy to employ. [LB400]

SENATOR ERDMAN: Thank you. [LB400]

JONI COVER: I'm not saying that is the strategy, I'm saying that is a fair strategy. Okay. [LB400]

SENATOR ERDMAN: I'm not either, I'm just saying hypothetically. Okay. [LB400]

JONI COVER: Okay. [LB400]

SENATOR GAY: Thank you. Any other questions? Seeing none, thank you. [LB400]

SENATOR JOHNSON: (Exhibit 2) Proponents? Any other proponents? Anybody? Any opponents? Anybody that would like to speak in a neutral capacity? Just for the record, we do have a letter of support from Nebraska Health and Human Services System. Senator Johnson waives closing. And then with that we'll close the public hearing on LB400, and open the public hearing on LB550. Senator Johnson. [LB400 LB550]

SENATOR JOHNSON: Senator Gay, members of the Health and Human Services Committee, I'm Senator Joel Johnson, representing District 37. Last year we passed a bill that basically tracked the wholesale drug or pharmaceutical distribution from its manufacturer to its retail outlet. We called it a pedigree bill and it basically tracked these pharmaceuticals along the way. One of the things that happened is that after this was done, and I might say first of all, that I recently checked with the national pharmaceutical people and they thought that the bill that we passed last year has proven, at this point in time, to be one of the better bills that were passed along this past year. However, here's what the problem is. By definition the process of selling, delivery veterinarian pharmaceuticals to the livestock owners, doesn't fall under the jurisdiction of the Wholesale Distributor Licensing Act that we passed this last year. Also the activities governed by the pharmacy act are not entirely relevant to the normal course of business within the livestock industry. There's been conversations with the Board of Pharmacy and others about these disparities and this time I will defer to my colleagues behind me and I must also say this, is that since the time that I was asked to submit this bill for your consideration, they have detected additional problems and therefore, we will air the problem as it is today. But we've been asked that, with due consideration, to hold this bill in committee. So with that... [LB550]

SENATOR GAY: Thank you, Senator Johnson. Are there any questions? I see none, thank you. Other proponents? [LB550]

DUANE GANGWISH: Good afternoon, Senator Gay, members of the committee, my name is Duane Gangwish, D-u-a-n-e G-a-n-g-w-i-s-h. I appear before you this afternoon

as on behalf of, and as a registered lobbyist, for the Nebraska Cattlemen. It's been duly noted to not read my testimony and to be brief so I will, even though we were last, I will hurry your exit. The Nebraska Cattlemen brought this issue to the Senator to address some conflicts regarding the dissemination of veterinary products in the state to ranchers, farmers, feeders. For decades, consulting veterinarians have issued prescriptions for medications and those individuals have been able to purchase those items from who we call, wholesale distributors. The practice is common throughout the U.S. though it is not specifically authorized in Nebraska. The intent of LB550 is to bring this business transaction out into the bright light of day and under the supervision and regulation of the department. However, since the introduction of the bill, we have been in close conversation with the Board of Pharmacy, the Nebraska Veterinary Medical Association, and the Nebraska Association of Pharmacists and other professionals. And through these interactions, we've discovered some technical flaws in the bill as you have it before you. The language of the bill has conflicting terms as Senator Johnson has described, that are somewhat between the Nebraska Pharmacy Act and the Nebraska Wholesale Distribution Licensing Act. Therefore we strongly support the spirit of the bill. The Nebraska Cattlemen respectfully request the bill be held in committee and we pledge to work with the aforementioned parties to bring you proper and appropriate legislation next year. I would be happy to answer any questions. [LB550]

SENATOR GAY: Thank you, Duane. Senator Erdman. [LB550]

SENATOR ERDMAN: Duane, give me an example of this gray area between the laws. Is it where I go and purchase vaccine? I mean, what are we talking about when we are talking about the types of drugs that you are intending to address that may not be existing...currently addressed under existing law? [LB550]

DUANE GANGWISH: Currently, in the pharmacy act, only a pharmacist or a licensed veterinarian can dispense prescription drugs. So many of the normal places that we, as livestock producers, purchase those drugs, they do not employ a pharmacist or a licensed veterinarian. So therefore, the drug being a script given to the livestock owner is being filled in a manner of a bill to ship to. And it's our desire to bring that out into the full open. The other problem that exists, Senator, is in the definition of wholesale drug distributor. The Wholesale Distribution Licensing Act only addresses human pharmaceuticals and so therefore what is a normal vernacular in our business, doesn't apply. And so that's some of the fault in the bill as is before you, that it...the terms and definitions, cross between two different acts, the pharmacy act and the licensing act. [LB550]

SENATOR ERDMAN: So we are not talking about a situation where you go and pick up some LA-200 or something at the Country General, or wherever you can purchase that for your livestock, you are talking about an actual prescription that is... [LB550]

DUANE GANGWISH: I mean, I'm assuredly not qualified to answer all your technical questions in that realm, but there are medications that are used that do not require a prescription and are not restricted in those distributions. [LB550]

SENATOR ERDMAN: Okay. [LB550]

DUANE GANGWISH: There are others that do and our desire and full intent is that first of all, there be a valid and righteous... []

SENATOR ERDMAN: Righteous? [LB550]

DUANE GANGWISH: ...vet righteous, veterinary-client patient relationship. And that it be done correctly. [LB550]

SENATOR ERDMAN: Okay. That's fine. Thank you. [LB550]

SENATOR GAY: Any other questions? Thank you. [LB550]

DUANE GANGWISH: Thank you. [LB550]

SENATOR GAY: Other proponents? Any other proponents? Any opponents? [LB550]

JONI COVER: My name is Joni Cover, J-o-n-i C-o-v-e-r and I'm the executive director of the Nebraska Pharmacists Association, and on behalf of the NPA, we would like to offer our opposition to LB550. We would also like to offer our assistance in drafting, or redrafting, or revising, this legislation. I have spoken with the Cattlemen's Association and understand the issue. I see it from the pharmacist perspective as far as who can dispense and what drugs need to be dispensed, especially human-use drugs for animal use. We have a labeling issue but I also understand it from the cattle producer backgrounding lot side, as that's what my family does. So we would be happy to help work on this legislation in the future and that's all I have to say. [LB550]

SENATOR GAY: Thank you, Joni. Senator Howard. [LB550]

SENATOR HOWARD: Joni, right now pharmacists can disperse human drugs for animal use, can't they? [LB550]

JONI COVER: Yes. [LB550]

SENATOR HOWARD: Okay. I just wanted to make sure. We had a cat with a problem. [LB550]

JONI COVER: Yeah, so you would go to the veterinarian, get your prescription, take it

to the pharmacy, or the veterinarian could dispense it. And you'd have a label on it and it would be just like a human drug except it had your animal name on it and you'd give it to your cat. [LB550]

SENATOR HOWARD: Right. Fluffy...the vet knew, I mean the pharmacist knew that was for... [LB550]

JONI COVER: Fluffy, exactly, the name is Fluffy, exactly...that's correct. [LB550]

SENATOR HOWARD: Thank you. [LB550]

SENATOR GAY: Senator Erdman. [LB550]

SENATOR ERDMAN: Joni, this is, and I should have given Duane a bad time, but I just realized that this was the one-liner that caused us in the Referencing Committee, quite a bit of wonder because it's providing for the sale of prescription drugs to animal owners. And I was of the opinion that it didn't matter whether you owned an animal, if we were going to prescribe you a drug (laughter), you should be treated the same. But the hearing really clears up the intent of this bill and I think that's a very valuable part of our legislative process, would you agree? [LB550]

JONI COVER: I have no comment on that. (Laughter) [LB550]

SENATOR GAY: (Exhibit 1, 2) Any other questions? I see none, thank you, Joni. For the record we do have two letters opposed to...the Nebraska Board of Pharmacy, and the Nebraska Veterinary Medical Association have written letters that they've sent in. Other opponents? [LB550]

LARRY WILLIAMS: (Exhibit 1) Good afternoon, Senator Gay and Senator Johnson, my name is Larry Williams, W-i-l-l-i-a-m-s. I am a veterinarian and retired and reside here in Lincoln. I'm chair of the Nebraska Veterinary Medical Association's legislative committee and it's on their behalf that I am testifying today. We, as well, appreciate Senator Johnson introducing this bill. Distribution of drugs, labeled for veterinary use, has been an issue for years and we appreciate the attempt to clarify the rules for distribution, distributing drugs for use in animals. I practiced in north central Nebraska some 20 years ago and it was an issue then and I don't think it's any more clear today. The NVMA does have concerns with the language that Duane has already mentioned and so I don't really need to go into a lot of detail, and it's because of that the NVMA does oppose the legislation as it's written. There is conflict in the language that a prescription drug refers only to human drugs. Wholesale distribution excludes the sale and distribution only on pursuant to a prescription and I'm not quite sure how that fits in here, but it's something that needs to be clarified, I think. It talks about prescription drugs that are labeled for veterinary use and there are no human drugs that are labeled

for veterinary use. However, they can be written as a extra label prescription for certain drugs, so. We had a little concern about the reference to controlled substances and we would hope that maybe Sections 5 and 6 could be combined and then given some due diligence as far as considering whether or not those kinds of drugs, which are very dangerous drugs, should be even distributed through a distributorship. And again, thank you for the opportunity to comment on the bill and we, as well, would welcome the opportunity to work with the committee and the drafters to provide documents and that sort of thing to further the cause. [LB550]

SENATOR GAY: Thank you. Are there any questions? Senator Erdman. [LB550]

SENATOR ERDMAN: Not a question, just a thank you, Larry. I know that we've had a number of bills that you've expressed some interest in, in front of the Ag Committee this year and have shared your insight, and we appreciate your willingness to continue to be involved in the process. [LB550]

LARRY WILLIAMS: Thank you. [LB550]

SENATOR ERDMAN: And I think highly of what you've shared with us and look forward to working with you on this one as well. [LB550]

LARRY WILLIAMS: Thank you. [LB550]

SENATOR GAY: Thank you. Any other opponents? Anybody that would like to speak in the neutral capacity? Senator Johnson, would you like to close? [LB550]

SENATOR JOHNSON: (Inaudible). [LB550]

SENATOR GAY: Senator Johnson waives his closing and with that, we will end the public hearing on LB550. (See also: Exhibit 2) [LB550]

SENATOR JOHNSON: And that closes the hearings of Health and Human Services Committee for today. [LB550]

Disposition of Bills:

LB400 - Advanced to General File, as amended.
LB426 - Advanced to General File, as amended.
LB451 - Indefinitely postponed.
LB550 - Held in committee.
LB577 - Indefinitely postponed.
LB675 - Indefinitely postponed.

Chairperson

Committee Clerk