

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

Banking, Commerce and Insurance Committee
January 24, 2012

[LB784 LB887 LB942 LB943]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 24, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB784, LB887, LB942, and LB943. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mark Christensen; Mike Gloor; Pete Pirsch; Paul Schumacher; and Ken Schilz. Senators absent: Chris Langemeier.

SENATOR PAHLS: Good afternoon. I think we will get started. A couple more senators will be probably coming in a little late. Senator Langemeier is not with us today. I think he's out of the state, in fact. I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls, and I represent, I'm from Omaha and represent District 31. I have the pleasure of serving as Chairman of this committee, and I think we will start off right away introducing ourselves.

SENATOR SCHUMACHER: I'm Senator Paul Schumacher, District 22, Columbus.

SENATOR PIRSCH: I'm Senator Pete Pirsch, District 4, Douglas County, Omaha.

SENATOR McCOY: Beau McCoy, District 39, western Douglas County.

SENATOR GLOOR: Mike Gloor, District 35, Grand Island.

SENATOR PAHLS: And we have the guy who keeps us legally correct, Bill Marienau, and all the way over there, the one who makes sure that we say the things in the correct order and keeps all of the information for us, which at times, I'm telling you (laugh), it's difficult, is Jan Foster. And I think behind us, we, let me see, I think we have today Michael. Is Matt with us today?

CLERK: Yes, he's making copies.

SENATOR PAHLS: Okay, he's out doing something for you. Okay, great. I would like to have you look over the chart. I'm not going to read all the rules we have here, but if you can follow those rules over there, that would make this hearing run much more effectively. Again, if you do have copies that you want to hand out to the senators up here, we need at least 10, and so if you do need some help, wave your hand right now so we can have one of the pages go get it for you. Great, love it, you're prepared. When you do testify, you will need to fill out this form and give it to Jan Foster. I think that we are ready to begin, and we will start with LB784, Senator Wightman. We make it so those chairs do not roll. (Laughter)

SENATOR WIGHTMAN: Good afternoon, Senator, or Chairman Pahls and members of

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

Banking, Commerce and Insurance Committee
January 24, 2012

the Banking, (Commerce) and Insurance Committee. My name is John Wightman spelled J-o-h-n W-i-g-h-t-m-a-n. I represent District Number 36. I have introduced LB784 at the request of the Nebraska State Bar Association and its section on real estate, probate, and trust law. LB784 will bring provisions of the Nebraska Uniform Trust Code into alignment with the provisions of the Nebraska Probate Code by amending the Uniform Trust Code in two sections which deal with powers of appointment. The probate code approach is recommended as the best option to meet the goals of the public. The holder of a power of appointment can be granted complete or partial control over the ultimate disposition of assets of a trust and who the beneficiaries will be. The power of appointment is created by the person who has created the trust and may be a power which has been retained by that same individual or a power which is granted to another person. Section 30-2208 and 30-2222(2)(i) of the Nebraska Probate Code essentially provide that to the extent that a power holder may affect the potential beneficial interest of other persons, and even to select those persons who will ultimately receive beneficial interest, the power holder is the appropriate person to represent the interests of the potential beneficiaries. The changes made by this legislative bill are intended to provide more uniformity and consistency between the Nebraska Probate Code and the Nebraska Uniform Trust Code. Section 30-3823 has been changed to eliminate the conflict of interest provision between the holder of the power of appointment and other potential recipients of beneficial interests in the absence of exercises of power. In numerous instances, the holder of a power of appointment may appoint himself or herself as the taker and alter or completely eliminate the interests of permissive appointees or takers in default of appointment. As such, the conflict of interest language contained in the current law is inconsistent with Nebraska Probate Code and is inconsistent with what most individuals who create powers of appointment would want or expect. The amendment contained in section 2 of the bill provide that if there is a holder of a power of appointment, the duties of the trustee are owed to the person holding the power of appointment and is consistent with provisions of the Nebraska Probate Code. I will be followed by an attorney with far more expertise than I have in this matter that works with these issues and who will provide to you examples of what these changes will do to assist their clients in carrying out their wishes. With that, I will try to answer any questions you may have for me. [LB784]

SENATOR PAHLS: Seeing none, are you going to stick around for the closing? [LB784]

SENATOR WIGHTMAN: Yeah, I think there will probably be a testifier so. [LB784]

SENATOR PAHLS: We will go in the order of proponents, opponents, and neutral. And just by, just so I can keep track, how many proponents do we have? See one. Any opponents? Seeing none. Any in the neutral? Okay, we are ready. Thank you. [LB784]

DOUG DEITCHLER: (Exhibit 1) Senators, thank you for the privilege of being here today to speak on this. I'm Doug Deitchler, D-e-i-t-c-h-l-e-r. I'm a member of the

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

Banking, Commerce and Insurance Committee
January 24, 2012

Nebraska State Bar Association. I'm speaking on behalf of the Bar as a proponent of this legislation. I'm not a registered lobbyist, more a legislative gadfly, but to pick up on the comments which have been made, currently section 30-3823 and 30-3855 of the Nebraska Uniform Trust Code require certain beneficiaries, potential beneficiaries of a trust interest must be provided accounting and other information pertaining to trust administration even though they may never be actual beneficiaries of the trust interest. Section 30-2208 and 30-2222 of the Nebraska Probate Code do not contain those same requirements but instead provide that the accounting and other information should be provided to the person who has the power to eliminate their interest as potential beneficiaries. Those potential beneficiaries being referred to are those beneficiaries who by the existence of a power of appointment or other power, which by the existence of that power, somebody else, the individual creating the trust, has provided to another person. They may have their potential interest completely eliminated. The purpose of the amendments provided in LB784 are to have similar rules in both the states governed by the Nebraska Probate Code and in trusts governed by the Nebraska Uniform Trust Code. The change made by LB784 does not eliminate the need to provide accounting or other information, but merely provides that the proper person to receive that information and have oversight of trust administration is the person who has the power to determine who will ultimately receive the beneficial interest. And it states that the person holding such power is basically entitled to all of the rights which are otherwise provided to the settlor of a revocable trust. This in essence creates the same rule for trusts as is provided for estates. Except for those potential beneficiaries whose interest may be eliminated, the change made by LB784 does not affect the definition of a qualified beneficiary in the Nebraska Uniform Trust Code and the rights provided to a qualified beneficiary. In 35 years of practice in a practice limited to estate and business planning, it was my experience when a person creates a trust with their own assets to fund the trust, whether it's during lifetime or at death, and they provide another person the power to determine who shall be the ultimate recipient of a beneficial interest, the person who did create the trust does not want a mandatory default rule provided by statute which requires a potential beneficiary whose interest may be eliminated to be provided accounting or other information regarding the trust administration. It must be kept in mind that we primarily are changing a mandatory default statutory rule, and if the person creating the trust wants the information provided to the potential beneficiaries whose interest may be eliminated, that requirement may be drafted into the trust document. The goal of LB784 is not secrecy and lack of oversight of trust administration, but rather to provide the information should go to and oversight should be by those individuals who ultimately control who is the recipient of the beneficial interest. I'll give three brief examples of what is being talked about. Often, the only reason for use of these trusts in estate planning is to minimize taxes which may be due at the death of either the first or second spouse when the planning is being done for a married couple. Powers of appointment permit individuals to deal with dynamic situations over a period of time adding a child as a beneficiary who has overcome addiction or other problems, deleting a child who has encountered addiction or other

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

Banking, Commerce and Insurance Committee
January 24, 2012

problems, changing charitable beneficiaries for charities who have fallen out of favor or come into favor. Without the need for tax planning, many spouses would just leave all of their assets to the surviving spouse to be disposed of at the death of the surviving spouse and permitting the surviving spouse to deal with these issues. To address these types of situations and with concerns over what might happen when there is potentially a lengthy period between the deaths of spouses, many couples will create a trust with a portion of their assets at the first death provide the surviving spouse with the power to appoint the assets to a limited class composed of their issue and in default of appointment to leave the assets in trust at the second death to the surviving children or issue of a deceased child, the potential beneficiaries. For what are called generation-skipping trusts, the children who are beneficiaries may be able to make changes in beneficial interests between their own descendants. For the charitably inclined, there may be concerns about charities losing sight of their mission or geographic move which involves a changing of churches or other charitable interests. These are only a few examples. In all of these situations, those who have an interest as a potential beneficiary but whose interest may not be eliminated are still entitled to an accounting for the assets and all receipts and expenditures of the trust. To conform to the provisions currently in the Nebraska Probate Code, the suggested changes merely say that information should be restricted to those beneficiaries who have a current interest in the trust to those beneficiaries who have an interest which will unquestionably come into being at the death of the current beneficiary if they survive. And for those who only are potential beneficiaries, the information should be provided to the individual having the power to select who those potential beneficiaries will be. In summary, I do not feel it is good public policy to require accounting and disclosure to potential future beneficiaries whose interest may be completely eliminated by the exercise of a power of appointment, general or limited, testamentary or inter vivos, or by the exercise of any other power, however characterized. There is no good reason for accounting to people who may never be beneficiaries, and the accounting should be sufficient if given to the person who has been given the power to determine who the beneficiaries will be. The balance of the memorandum which you've been given provides more discussion and detail respecting the provisions of the Nebraska Probate Code, the Nebraska Uniform Trust Code, and the proposed changes to be made by LB784 and draws comparisons. I will not go into all of that detail in my oral testimony. Section 30-3823 has been changed to eliminate the conflict of interest provision. If the holder of the power also happens to be a beneficiary, but may appoint the interest to whomever they wish, conflict of interest should not be of question and the defining of it is very subjective and potentially a litigation generator. This is even more true as the statute was written to be limited to the holder of a general testamentary power before the suggested change. A general testamentary power would have permitted appointment to the power holder's estate or creditors or anyone else, not just a limited class. So why worry about takers in default who may never have a beneficial interest? The takers in default are individuals whose interests may be completely eliminated by the considered judgment of the power holder or by the whim and caprice of the power holder. The comment to the Uniform Trust

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

Banking, Commerce and Insurance Committee
January 24, 2012

Code states the holder of the power is typically also the life beneficiary of a marital deduction trust, meaning the spouse of the person creating the trust, and without the conflict of interest provision, the holder of the power, the spouse, could act in any way which could enhance the spouse's income to the detriment of whomever the spouse might ultimately appoint or the takers in default, whoever they might be. If the person granting the power was concerned about that possibility, there are other ways to qualify for the marital deduction without giving the power of appointment, such as a qualified terminable interest property trust, which would not include appointment to the estate of the spouse or appointment to the creditors of the spouse. The Nebraska comment in the November 2003 Sourcebook on The Nebraska Uniform Trust Code notes the requirements in the trust code are different than in section 30-2222 of the Nebraska Probate Code. The rest of the remarks I'll just leave to the memorandum which has been provided. If there are any questions, I'll be glad to attempt to answer them. [LB784]

SENATOR PAHLS: Yeah, Senator Pirsch. [LB784]

SENATOR PIRSCH: And I appreciate your position here today, and I would assume a large part of the impetus behind this then, I guess with these potential beneficiaries, there is a potential liability. Are they...let me ask this question to start out with. How are other states addressing? Is there kind of a mainline trend towards the way that these type of when you're deciding whether or not you want to grant this broad kind of discretion in the trustee or whether to give this notice to kind of individuals who may or may not take, how are other states approaching it? [LB784]

DOUG DEITCHLER: Unfortunately, I did not anticipate that question and did not look to see what other states who have adopted or are in the process of adopting the Uniform Trust Code have done with their own provision or whether it has come to their attention. One thing to keep in mind here, what we are looking to change is a mandatory default rule, and all of the folks, I've left the practice of law, and now I'm with First Nebraska Trust Company sitting in a back room, retired after 35 years. But working with clients for all that time and being with the trenches, in the trenches, the creators of this wealth in disposing of their wealth don't want trust companies or other individuals who may serve as trustees to be giving information about their assets to more people than necessary until it's necessary. We are still going to account to all qualified beneficiaries as required under the Uniform Trust Code. And that would mean, say we're leaving things to a spouse and then equally to the kids. The kids are entitled to receive an accounting for that so they can see how the trust, would say ultimately be the beneficiaries of, is being administered. But if the spouse or some other person can eliminate the kids as beneficiaries, or maybe it's charities or whatever, we're saying the mandatory default rule should not be that we have to account to them, but if in drafting the document, the person with the wealth wants us to, they can direct us to. [LB784]

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

Banking, Commerce and Insurance Committee
January 24, 2012

SENATOR PIRSCH: Yeah, and I appreciate that and am generally inclined to go, you know, I follow your logic here in that. I'm just kind of playing devil's advocate, though, and looking at unintended consequences. The historical origination of that which has been previously required when we're talking about trust versus probate... [LB784]

DOUG DEITCHLER: Yes, sir. [LB784]

SENATOR PIRSCH: ...and what was, how has that...you said in your experience, it has been quite overwhelmingly clear that you've been able to derive what the grantor's intent was. With respect to the historical origination though, and the requirement that even individuals who may not take, what types of activities would they, or accounting would they be entitled to perhaps currently that, and what type of interest would they, and what type of regulatory? I guess the idea is that they would keep a watchful eye then in some manner, but what types of activities would they have an interest in regulating? [LB784]

DOUG DEITCHLER: They would have the opportunity to be provided regular inventory of assets and periodic accountings, on at least an annual if not more frequent basis unless they waived those rights, so they would be entitled to know everything that was going on within the trust administration. [LB784]

SENATOR PIRSCH: Okay, so, and have those been abused in your estimation? Have there been a lot of these individuals who probably have not a whole lot of, who will end up not having, who may well not take, but who utilize the, these type of duties? [LB784]

DOUG DEITCHLER: I would not say that those people who receive that information have necessarily, to my knowledge, abused the authority that they might have to badger a trustee, or be critical of a trustee, or anything like that that I'm aware of, but it's more the privacy that is expectation of the person who created the wealth, provided for the trust arrangement for their wealth, and what their reasonable expectations are about who all that information should be shared with after their death and going forward. If that person wants it shared with these potential beneficiaries, the default papers, if the power is not exercised, certainly they can provide that in the document drafting. Otherwise, what we're saying is the default rule should not be we have to provide that information to people who may never be beneficiaries. And as much as I love philanthropic situations, you worry if a spouse or anybody else has the power to maybe change beneficiaries on charities. That you have to name charities as beneficiaries when you set up the document, but you've given somebody else the power at some time to change who those alternate beneficiaries will be after the termination of this interest. Are we going to be providing the foundation, the church finance committee and everybody else all of this information before they have an absolute right to something? The same thing maybe you have a childless couple and maybe the power of appointment is among nieces or nephews or somebody else, who all are we going to as

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

Banking, Commerce and Insurance Committee
January 24, 2012

a mandatory rule have to provide this information to if their interest can be defeated? Wouldn't it be better to let the person who has provided this fund say in the document, this is who I want it provided to. Remember, we aren't trying to change the mandatory default rule as it applies to what we characterize as qualified beneficiaries. Those who really have a guaranteed interest in that fund at sometime in the future, as long as they survive to that date, we will still be providing them all of this information for oversight. It is only those whose interest is subject to being defeated by the grantor settlor having authorized somebody to say, if you don't like this beneficiary for whatever reason, whether it's an individual, a charity, or whatever, you can change it to another beneficiary. Give the information to the person who has that power, let them exercise the oversight is what we're saying. [LB784]

SENATOR PIRSCH: Thank you. [LB784]

SENATOR PAHLS: Senator Schumacher. [LB784]

SENATOR SCHUMACHER: Thank you. It's amazing that so few words that appear on a single page can generate so much discussion. (Laugh). Essentially, there's two things being done here, is that correct? One with regard to (30-)3823 and then the entirely different thing at (30-)3855? [LB784]

DOUG DEITCHLER: They both are being done for the same purpose. It relates to the providing of information and who would be entitled to that. [LB784]

SENATOR SCHUMACHER: But yet this doesn't refer to just providing information. For example, (30-)3823 says, it used to say, if there was no conflict of interest between the holder of a general testamentary power of appointment, and that's the guy who the will says can pick and distribute the stuff to himself or to anybody else. [LB784]

DOUG DEITCHLER: Right. [LB784]

SENATOR SCHUMACHER: So to the extent there isn't a conflict of interest between himself and the somebody else that might be in the class that can take the interest, that the guy with the power could represent and sign off on behalf of everybody else. Am I reading that right? [LB784]

DOUG DEITCHLER: Right. [LB784]

SENATOR SCHUMACHER: Okay, and now we're changing that to say even if the guy who holds the power has something to gain as a conflict of interest, with respect to anybody else in the class, that's okay. [LB784]

DOUG DEITCHLER: That would be true if we have given them that power. That should

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

Banking, Commerce and Insurance Committee
January 24, 2012

be up to the grantor, the creator of the document, to determine. Now, keep in mind the example given in the Uniform Trust Code is a spouse being given a general testamentary power that she could appoint it to her creditors, her estate, or anybody else, and in default of that, it goes to the children. And they are saying that a spouse in that situation has potential conflict of interest. What we're saying here is just let the people drafting the document, rather than the state of Nebraska, dictate who ought to have what. These are default rules that we are suggesting the grantor, the person creating the document and their attorney in thinking about what is best for their situation, ought to be able to provide. So we're taking this out of the mandatory default and putting it into the place where people can require this, but it's up to the individual to require it. [LB784]

SENATOR SCHUMACHER: But right now the drafter could reverse the default rule. [LB784]

DOUG DEITCHLER: No. [LB784]

SENATOR SCHUMACHER: They can't? [LB784]

DOUG DEITCHLER: No. That is why I call it a mandatory default rule. Both of these are mandatory default rules we're trying to take out of the mandatory and say, this is the default rule that, who you report to. If it's going to be mandatory, let the person who drafts the document, the person who has created the wealth, the person who is creating the interest, let them put it in their document. They can absolutely put it in their document to require these things. What we're saying is the state of Nebraska should not be dictating this as a mandatory default rule that we provide this information and that on the (30-)3823 statute that all of these potential beneficiaries, where it could be a spouse with general testamentary power, that's about as broad as you can get. The default statute says the spouse may have a conflict of interest, so we need to bring in the potential beneficiaries. [LB784]

SENATOR SCHUMACHER: Okay. Now the language shift, is this something that the local bar and financial institutions drafted, or is this part of some uniform code change? [LB784]

DOUG DEITCHLER: This is language...a little bit of background. I practiced for 35 years specializing in estate planning and probate and business planning, member of the American College of Trust and Estate Council, Lincoln Probate Discussion Group, Lincoln Estate Planning Council. And over the years, I've had a strong interest in legislation, and especially as it applies to the probate procedure, trust, things like that in my practice area that I worked with numerous clients over the years. So I've been interested in trying to streamline the process, be sensitive to what clients wanted and things like that in oversight of legislation. Usually when I've testified with respect to bills,

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

Banking, Commerce and Insurance Committee
January 24, 2012

I've been before the Judiciary Committee, as you might expect. The trust matter gets referred here, but it's based upon that experience and things that in coming across this, I thought this really is not what my clients would anticipate when I was still actively practicing and things, so I initiated the legislation. It went to the legislative committee of the Nebraska Bar Association section on real property probate and trust law. The legislative committee approved it, then the section approved it, then it went to the Nebraska State Bar Association legislation committee, and that's ultimately how it gets here. [LB784]

SENATOR SCHUMACHER: So this would make us inconsistent with other states that have approved the uniform code. [LB784]

DOUG DEITCHLER: Not necessarily. As I indicated, not anticipating that question, I haven't gone to see what other states have provided, but it could make us inconsistent with the provisions of the Uniform Trust Code. Maybe not as it's been adopted other places, but I always viewed in the practice that uniform laws are wonderful. They're the result of a lot of effort by a lot of people. I embrace the Nebraska Probate Code and things, but also it's kind of like a form in the practice of law. A form is just a form. It can be tweaked, it can be improved upon, and it can be made better usually. And so that's part of what my goal is. In trust law, although it's nice to have uniformity in a lot of respects between states, we're concerned about what's best for the state of Nebraska and citizens of Nebraska. And if we can tweak something and make it better, let the others follow us is my view. [LB784]

SENATOR SCHUMACHER: Thank you. [LB784]

SENATOR PAHLS: Senator Pirsch. [LB784]

SENATOR PIRSCH: I appreciate your comments there, and there's a great deal of truth to those. You know, just out of interest, and I don't know if you could provide those to the committee at a later date, obviously not today. Just for informational purposes, but I don't strictly view those as determining which way we go with those, but I would be interested in knowing what the result of that kind of survey is. And I think your point is well taken off. If they didn't want...if the individual did not want to convey the power of appointment, he could have utilized some other structure like QTIPs or whatnot, other mechanisms to effectuate what he intended. But, so is, this is, I'm trying to figure out, are there going to be other individuals who are going to testify behind you? Do you know or is... [LB784]

DOUG DEITCHLER: I don't think so. I think I was the only one testifying, and I don't think there were any opponents that were signed to testify. [LB784]

SENATOR PIRSCH: Well, I tell you, if I have any other additional questions, maybe we

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

Banking, Commerce and Insurance Committee
January 24, 2012

can just talk about it. [LB784]

DOUG DEITCHLER: Okay. [LB784]

SENATOR PAHLS: I do have one question. Okay, as I interpret this, this originally came from your inner self, and you have moved this idea along. There has not necessarily been a problem in the past, you're looking to streamline? [LB784]

DOUG DEITCHLER: I don't know of any problems that have been reported to me because of providing this information to people who may ultimately never receive any beneficial interest, but it's more coming from the other side in saying, if I've created this wealth, if I've provided this vehicle for how this wealth should be distributed or who it should benefit and things like this, I would rather myself say whether these potential beneficiaries should receive all of this information about my wealth or whether the Nebraska Legislature should dictate that it's absolutely essential. You know, as you start drafting, a mandatory default rule that encroaches on the privacy of wealth and wealth distribution tends to bother me. [LB784]

SENATOR PAHLS: Okay. Yeah, I understand where you're coming from. [LB784]

DOUG DEITCHLER: When you can draft to provide that it will be provided if you want it provided. [LB784]

SENATOR PAHLS: Okay, thank you. I see no more questions. Thank you for your testimony today. [LB784]

DOUG DEITCHLER: Thank you. [LB784]

SENATOR PAHLS: I do not see any other proponents. Opponents? Neutral? Senator. [LB784]

SENATOR WIGHTMAN: I'll only take about a half a minute, and I'll quote a famous American who once said after hearing that that above my poor power to add or detract, I don't believe I can do that (laugh), so with that, I urge you to advance the legislative bill. Thank you. [LB784]

SENATOR PAHLS: Thank you. Thank you, Senator. Appreciate it. That will conclude the hearing on (LB)784. Now we are ready for (LB)887. That is the next bill which was introduced by me on behalf of the Department of Insurance. My opening of the bill will be limited to now asking our Director of Insurance to come forward and to testify. [LB784 LB887]

BRUCE RAMGE: (Exhibits 1 and 2) Good afternoon. Good afternoon, Senator Pahls

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

Banking, Commerce and Insurance Committee
January 24, 2012

and members of the Banking, Commerce and Insurance Committee. My name is Bruce Ramge, and for the record, that's spelled B-r-u-c-e R-a-m-g-e. I'm the director of Insurance. I'm here to testify in support of what we call the department bill introduced by Senator Pahls at the department's request as LB887. The bill in front of you includes a good number of insurance-related topics. A number of them, such as the filing fee reductions, are in the nature of housekeeping for the insurance code. A number of them, such as amendments to the holding company act (Insurance Holding Company System Act), involve technical changes to very important insurance regulatory tools. I'd like to begin with some of the more tailored changes made by the bill. The bill would simplify the department fee structure without losing much fee revenue by reducing one fee and eliminating another. Both are assessed on small, local insurers and yield needless complexity in a combined total of \$575 a year. Also, we are asking you to amend the special purpose financial captive section which allows Nebraska domestic life insurers access to the capital markets to finance and maintain redundant reserves. Actuaries would tell you that these are reserves that are higher than the insurer needs to hold to secure their obligations under life insurance policies. The amendment allows a special purpose financial captive to use a guaranty of a parent instead of a letter of credit and allow the director to consider additional factors in determining whether to issue a certificate of authority. This amendment would allow Nebraska domestic insurers the ability to operate more efficiently, and upon approval by the Nebraska Department of Insurance, dispense with a line of credit which is backed arguably by a guaranty of a parent as a last resort anyway. Iowa, Indiana, and Texas have adopted similar provisions. We're asking the Legislature to adopt the most recent revisions to the National Association of Insurance Commissioners annuity suitability model. Annuity suitability standards regulate the marketing of annuities so purchasers will have more suitable products available to them. Adoption of these amendments will allow insurers a uniform compliance standard and will allow Nebraska domestic insurers more flexibility to issue these products under federal law. If these amendments are adopted before June 16, 2013, under federal law, the federal SEC must treat as exempt non-variable annuities that are issued by an insurer domiciled in the state that has adopted these amendments. Adoption therefore benefits the Nebraska domestic insurers. The revisions make three core changes to the existing act: 1) Clarify that the insurer is responsible for compliance, even if the insurer delegates compliance to a third party; 2) Require the review of all amended annuity transactions to protect consumers from unsuitable sales and abusive sales and marketing practices; and 3) Establish general training and product-specific training for insurance producers to ensure the producer knows what he or she is selling. LB887 would amend the Nebraska Life and Health Guaranty Association Act to bring Nebraska law into line with national standards. Insurer insolvency generally involved insurers doing business in many states. In an effort to simplify the administration of guaranty fund claims associated with insolvency, nationwide efforts are being made to standardize provisions in an effort to reduce the cost of administration. Ultimately, it will reduce the amount of premium tax offsets resulting from the cost of administration, thereby saving money for the state. The

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

Banking, Commerce and Insurance Committee
January 24, 2012

guaranty fund protects Nebraska residents against insolvency of life and health insurers and pays claims up to the levels set forth in the statutes. If an insurer licensed by the state is liquidated, these policyholder claims are paid by the association up to these amounts. These payments are funded by assessments on insurers which then offset these amounts against their premium tax obligations. Among other changes, the bill sets claims coverage levels more precisely instead of the current system in which all health insurance benefits are covered at \$500,000 and adopts limits of \$300,000 for disability and long-term care, and \$100,000 for an other category. Limits for annuity structured settlements would be...excuse me. Limits for annuity and structured settlements would be increased from \$100,000 to \$250,000 to correspond with limits set by the Federal Deposit Insurance Corporation for covered bank deposits, hopefully reducing the possibility for consumer confusion. The amendments will also completely exclude coverage for viatical settlement contracts, which have been excluded from coverage by the Nebraska Supreme Court case law and for Medicare Part C and D coverages. Last, the bill adopts additional definitions to the act to add precision to these statutes. Last, the department is asking that the Legislature adopt the National Association of Insurance Commissioners model act amendments to the holding company act. The (Insurance) Holding Company System Act regulates the financial interactions between insurers, their parent and affiliate companies to prevent reserves and other insurer resources from being inappropriately diverted from the insurer, which could result in the insurer's obligations being transferred to the largely state-funded guaranty funds. The act also governs service agreements and financial transfers between insurers and their parent and affiliate entities. This is in response to the need to modernize holding company regulations to respond to criticism from international regulators and insurers. The National Association of Insurance Commissioners has undertaken amendments to the holding company act to bring it up to date and tighten its provisions in response to specifically identified flaws in the act. The amendments have been adopted in Illinois, Michigan, Pennsylvania, Texas, and West Virginia. The holding company act is an important factor for other insurance regulators in determining whether we have laws that we can use to regulate insurers effectively. If we have those laws, the Nebraska department is accredited by the National Association of Insurance Commissioners, and other states defer to Nebraska as a solvency regulator. Without accreditation, Nebraska domestic insurers are subject to solvency regulation by all states. This would not make Nebraska an attractive domicile for insurers, to say the least. It also helps up keep up with the growing responsibility surrounding regulation of international business. The bill makes a series of changes, which I'll describe in detail. First, the bill would require filings to regulators relating to enterprise risk, which is defined as the risk posed to the insurer by noninsurer affiliates which are a part of the same holding company system and will grant the director express authority to examine affiliates of an insurer and order production of documents held by insurer affiliates. This will allow us to keep an eye on the potential for the sort of financial contagion that brought insurers down in the past. The best example here was AIG, which was brought down not by insurance operations, but by noninsurance regulated affiliates in the

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

Banking, Commerce and Insurance Committee
January 24, 2012

holding company operations. The bill would require filing of financial statements across the entire holding company system, not restricted to the insurer per se, but allow SEC filings to be used to satisfy this requirement. The bill would require filings and approvals of divestitures of insurers by holding company systems so that a holding company cannot transfer controlling interest to an insurer by gifting or any other method without notice and review by the director. Such an action could leave the state guaranty funds responsible for paying unpaid losses. In an effort to impose tighter controls on money flowing between an insurer and its affiliates, the bill would grant rule-making authority to the director. This would permit the director to define when cost-sharing agreements between insurers and their affiliates are fair and reasonable so that the agreements are not used as a means of withdrawing capital from insurers inappropriately. In addition to improving financial solvency regulation tools to monitor interactions between insurers and their affiliates, the bill is also intended to improve our ability to cooperate with other state regulators in the regulation of these often complex financial structures. One tool we're seeking is explicit statutory authorization for supervisory colleges in which regulators from various states and foreign jurisdictions meet formally to cooperate in the regulation of complex holding companies. There is implicit authority under current law. It is a common mechanism in the regulation of international financial institutions, but the bill would add specific standards in statute that we could apply. In addition, to coordinate our hearings more appropriately and thereby reduce somewhat insurer regulatory burdens, we would ask that the law allow hearings on insurer acquisitions to be held on a consolidated basis with participation by several insurance regulators at once. With the drive to increase interstate cooperation and the requirements for additional filings, last but not least, we're asking for additional statutory safeguards against access to highly sensitive corporate financial information so it can use the National Association of Insurance Commissioners as a repository for the filings and share information with two international regulatory bodies. The department is also asking that a brief amendment to the bill be made to the section setting forth penalties for violations of the Nebraska Protection and Annuities Transactions Act. Violations of the act are punished under the terms of the Unfair (Insurance) Trade Practices Act. The amendment would specifically empower the director to reduce a penalty under the act if the violation was not part of a practice or pattern. The authority probably already is inherent in the director's discretion over levying administrative penalties up to the amount set by the Legislature. The clause was unintentionally omitted. I'm asking for the amendment for the sake of conformity with the National Association of Insurance Commissioners model act, as it makes compliance easier for people who have to comply with the act on a nationwide basis. With that, I ask that you advance the bill to general file, and I would be happy to answer any questions you have. [LB887]

SENATOR PAHLS: I have one. I'm just...the term supervisory college. Would you be one of those members of that? [LB887]

BRUCE RAMGE: Yes, and if you'd like, I can explain how those operate. For example,

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

Banking, Commerce and Insurance Committee
January 24, 2012

for insurers that have, under a holding company that have business in other countries and other states or have entities domiciled in those other countries or states, basically how this works now is there's generally a quarterly conference call regulator only to share information about analysis, concerns, financial results of all the entities so that the financial analysts can better evaluate the situation. And then generally once a year, there is a meeting with, in conjunction like with the National Association of Insurance Commissioners meeting that's attended by all the applicable regulators, and often times management of the insurance company will come for a few hours and give presentations on the updates on their risk management and what new undertakings they have in the enterprise. [LB887]

SENATOR PAHLS: Okay, and so, but you'd be part of that, you or your staff. [LB887]

BRUCE RAMGE: Yes. Yes. [LB887]

SENATOR PAHLS: Okay, and another thing that just, because when you said AIG and then you also refer to enterprise risk. I see the rationale behind that. [LB887]

BRUCE RAMGE: Um-hum. [LB887]

SENATOR PAHLS: Is that, is this an NAIC idea? Is this Dodd-Frank? [LB887]

BRUCE RAMGE: Yes. Yes, a little bit of both. The NAIC is undergoing a solvency modernization initiative, and it's all part of to meet not only international demands so that there will be...they will review our regulation as to be consistent with theirs, and there will be more international trust among regulators that everyone is doing their job appropriately and up to the standards that they would have let's say in Europe. So that's part of it, and part of it is, of course, to meet the Dodd-Frank requirements of having a more thorough risk analysis, review of the enterprise as a whole as opposed to just the one component. [LB887]

SENATOR PAHLS: And let me ask one more question. A lot of the concepts in this piece of legislature (sic: legislation), you base it around the NAIC, because we have a couple of new members, so the NAIC model? [LB887]

BRUCE RAMGE: Yes. Yes, we do. The National Association of Insurance Commissioners generally works really hard to develop these models, and everyone tries to maintain a certain amount of consistency so that various state insurance laws can be as consistent as possible and only vary where necessary. And that allows us to have a better sense of trust that the way we do things are being done in other states and vice versa. [LB887]

SENATOR PAHLS: Okay, Senator Christensen. I'll go this side. [LB887]

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

Banking, Commerce and Insurance Committee
January 24, 2012

SENATOR CHRISTENSEN: Thank you, Chairman. You're talking about the second to third last paragraph here about additional safeguards against access to highly sensitive corporate information and using the NAIC model for filings to share information with international regulatory bodies. Like who are you sharing information with, and what are you sharing? [LB887]

BRUCE RAMGE: There's an association, it's called the International Association of Insurance Administrators, and it gets its authority through, let's see here if I may, through the Bank for International Settlements, and that is in, it's called, also called BaFin. It's in Switzerland, and it is very active in the international regulation of financial institutions, banks, and insurance. [LB887]

SENATOR CHRISTENSEN: So like, what type of information are you trying not to share, and what do you share? [LB887]

BRUCE RAMGE: Well, especially for publicly traded companies, there may be forward-looking information that would not be subject to review, or there may be analysis or concerns that the regulators would like to share so that they could coordinate in evaluating further, but yet not create concerns in the marketplace, because it's really not yet public information. Or it could be specific trade information that is particular to an insurer and would place them in an unfavorable position if competitors were to obtain the information. [LB887]

SENATOR CHRISTENSEN: So like what do you share then? [LB887]

BRUCE RAMGE: Basically, information such as level of investments, discussion of issues such as reputational, company reputational risk, information about new types of businesses the companies may be entering in and as to whether or not the regulators feel that the management has placed the appropriate people in place to handle those types of business. It could just vary by the specific situation and the nature of the businesses that the company are engaging in. [LB887]

SENATOR PAHLS: Director, just for clarification, would you repeat those two entities that you... [LB887]

BRUCE RAMGE: Yes. One is the International Association of Insurance Supervisors, and it gets its authority through the Bank for International Settlements. [LB887]

SENATOR PAHLS: Okay, those are government agencies then? [LB887]

BRUCE RAMGE: Yes. The Bank for International Settlements is, and then it authorizes the International Association of Insurance Supervisors, which would be, which is a

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

Banking, Commerce and Insurance Committee
January 24, 2012

regulatory body. [LB887]

SENATOR PAHLS: Okay, okay, thank you. Senator Schumacher. [LB887]

SENATOR SCHUMACHER: Three years ago, the banking and financial industry just about destroyed our economic system by various practices to improve their efficiencies. I think a lot of people have studied that and said that it was part responsible because boards of directors, regulators, Congress didn't ask hard questions and didn't understand what they were talking about. Boy, can I understand that now (laugh) after trying to digest what you just said. Let's just take the first paragraph a little bit, and I want to just try to get my head around that a bit. You want this amendment to allow Nebraska insurance companies to get money to finance and maintain redundant reserves. What is a redundant reserve? [LB887]

BRUCE RAMGE: Okay, it's a cushion. Think of it as a financial cushion where a reserve for an insurance product is basically an estimate of what will have to be paid out in the future. In particular, like for life insurance claims, the companies would use mortality tables to estimate how much they will have to pay out in the future. They're required to hold monies in reserve so that they are able to meet those obligations as they become due. And a redundant reserve is, it's not arbitrary, it's required as sound financial regulation, but it is over and above what would normally be expected. Again, it's just a cushion. [LB887]

SENATOR SCHUMACHER: So how do the changes, as a practical matter, enable a Nebraska insurance company to access what the equity, or the debt markets, to get that redundant reserve? [LB887]

BRUCE RAMGE: Well, currently now if they are financed by an affiliated captive insurance company, there would be a requirement that they obtain a letter of credit from a bank, and those letters of credit are expensive to maintain. And basically, it's circular anyway, because to obtain a letter of credit, the insurer's holding company will have to offer collateral or a guaranty as well, because it is basically a guaranteed loan. So this would allow the financial regulators in our office to review to see if the holding company has adequate reserves to give that guarantee directly, rather than having the bank as an intermediary. [LB887]

SENATOR SCHUMACHER: But to the extent that that redundant reserve, that safety net there... [LB887]

BRUCE RAMGE: Yes. [LB887]

SENATOR SCHUMACHER: ...when you have, you buy the letter of credit, not only are the assets of the parent or the affiliate on the line, but also the assets of the bank that

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

Banking, Commerce and Insurance Committee
January 24, 2012

gave the letter of credit. [LB887]

BRUCE RAMGE: Yes. Correct. [LB887]

SENATOR SCHUMACHER: So you've got another independent straw... [LB887]

BRUCE RAMGE: Yes. [LB887]

SENATOR SCHUMACHER: ...that's holding up that redundant reserve, that safety net. [LB887]

BRUCE RAMGE: That's correct. [LB887]

SENATOR SCHUMACHER: And we want to let that go? [LB887]

BRUCE RAMGE: For this particular limited area, yes, we feel it would be appropriate. [LB887]

SENATOR SCHUMACHER: And is there...and what benefit to society is there for letting that go? [LB887]

BRUCE RAMGE: I guess a benefit to the state is that this helps keep our insurance laws consistent with other laws, and it helps maintain Nebraska as a place where insurers would want to continue operating. But because again, because these are not the primary economic reserves, since these are the redundant or excess reserves, we feel that they could be handled well enough with the supervisory view of the Department of Insurance rather than having that extra expense to the insurance company. [LB887]

SENATOR SCHUMACHER: So in order to make Nebraska competitive for having insurance companies hanging their shingles out here, we've gotten into a competition as to who has less in reserve requirements? [LB887]

BRUCE RAMGE: No, I wouldn't propose something that would be a, what I would view to be a weakening of our solvency regulation. I believe that this is something that truly makes sense, because when you impose unnecessary expenses to the insurers, those ultimately get passed along back to insurance consumers in terms of higher premiums and higher prices. [LB887]

SENATOR SCHUMACHER: So fundamentally, just on this one little paragraph, what we're saying is we're going to let the anchor into an independent source of finance, the issue of the letter of credit, we're going to give up on that, and we're going to substitute for that safety, redundant safety net, the opinion of the review of the department to get the warm and fuzzy that this is okay. [LB887]

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

Banking, Commerce and Insurance Committee
January 24, 2012

BRUCE RAMGE: Yes. [LB887]

SENATOR SCHUMACHER: I don't have any further questions. [LB887]

BRUCE RAMGE: Okay, thank you. [LB887]

SENATOR PAHLS: Senator Pirsch. [LB887]

SENATOR PIRSCH: I was, two brief questions. How would such a guaranty be structured then? We're substituting in lieu of a letter of credit which was... [LB887]

BRUCE RAMGE: It would be an intercompany agreement that would be on file and have to be formalized... [LB887]

SENATOR PIRSCH: Formalized and filed with... [LB887]

BRUCE RAMGE: ...and approved by the Department of Insurance. [LB887]

SENATOR PIRSCH: Okay, in terms of checking to make sure those assets were then set aside, so to speak and earmarked, I mean, is there any earmarking that you would verify then, or is that just backed by the...? [LB887]

BRUCE RAMGE: I believe there would be, you know, subject to the holding company act. It would be subject to review at time of examination. [LB887]

SENATOR PIRSCH: Okay. Thank you for that. The only other question I'm going to ask you quickly about is just a little bit more background information on the supervisory colleges... [LB887]

BRUCE RAMGE: Sure. Yes. [LB887]

SENATOR PIRSCH: ...which you referenced with Senator, with Chairman Pahls here. And so, create I would understand because there's unique animals out there with varied in terms of that which is regulated, complex holding companies you mentioned here. Can you give me an example of how did these develop and how often they occur and what type of, you know? [LB887]

BRUCE RAMGE: Sure, sure. We are, we have familiarity with one, and these again are new processes being implemented, and so as we see need to change the procedures and improve, we certainly do. But periodically, there will be chosen a lead regulator state that will basically be in charge of notifying all the other regulators, and they'll set up an agenda, a conference call, and it will...the one I'm frequently aware of involves not

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

Banking, Commerce and Insurance Committee
January 24, 2012

only other states, but the regulators in Germany with the BaFin. And we'll find a time that's appropriate for everyone to call in, and each regulator will give a presentation and share information with the other regulators. And then... [LB887]

SENATOR PIRSCH: The information they're sharing is the extent to which they're regulating the entity at this point... [LB887]

BRUCE RAMGE: Yes, yes. [LB887]

SENATOR PIRSCH: ...or past experience? [LB887]

BRUCE RAMGE: Frequently, it's financial analysis information. [LB887]

SENATOR PIRSCH: Is the underlying concept with all this trying to streamline regulatory to give that which is closest or already has the most contacts the lead? [LB887]

BRUCE RAMGE: Yes, to streamline, to reduce the need for a company to answer the same question to, you know, 13 or 14 different regulatory bodies and to also help sharpen, if you will, and focus the areas that we as regulators need to delve into more, because more sets of eyes are often better. [LB887]

SENATOR PIRSCH: Okay, so looking at red flags in certain areas perhaps could be a topic of conversation. [LB887]

BRUCE RAMGE: Yes, absolutely. [LB887]

SENATOR PIRSCH: Would you thus be given the power from the Legislature to be, would you be delegated the power here then to delegate to other regulators and other, even nations or whatnot power? [LB887]

BRUCE RAMGE: I don't believe it's a delegation. It's more just information sharing. It gives us authority. [LB887]

SENATOR PIRSCH: Well, and, but you... [LB887]

BRUCE RAMGE: And it provides some clarification too. [LB887]

SENATOR PIRSCH: Okay. So you feel that you need specific authorization by this body to do so? [LB887]

BRUCE RAMGE: I believe that our current law gives us some authority to do this. However, this provides more certainty and also more clarification for those who we

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

Banking, Commerce and Insurance Committee
January 24, 2012

regulate, a better understanding as well. [LB887]

SENATOR PIRSCH: Okay. Thank you. [LB887]

BRUCE RAMGE: You're welcome. [LB887]

SENATOR PAHLS: Am I to believe by that last statements then we have a lot of belts and suspender-type of things that are presented to us? [LB887]

BRUCE RAMGE: Yes. [LB887]

SENATOR PAHLS: I mean, you're just sort of double-checking to make sure. [LB887]

BRUCE RAMGE: Yes. [LB887]

SENATOR PAHLS: Okay. [LB887]

BRUCE RAMGE: Yes. [LB887]

SENATOR PAHLS: Thank you. [LB887]

BRUCE RAMGE: Thank you, thank you. [LB887]

SENATOR PAHLS: Thank you very much. Proponents? Can I see a hand how many proponents? I see one. Opponents? Neutral? Floor is yours. [LB887]

JAN MCKENZIE: (Exhibits 3 and 4) Good afternoon, Senator Pahls and members of the Banking, Commerce, and Insurance Committee. For the record, my name is Jan McKenzie, spelled J-a-n M-c-K-e-n-z-i-e. I am here in support of LB888 (sic: LB887) representing the Nebraska Insurance Federation as their executive director and registered lobbyist. I'm handing out a couple of pieces of material for you just partly for our new members, but also just kind of as a reminder to the committee about who the members of the Nebraska Federation are and that we are the Nebraska domestic industry here, but we range in scope from property and casualty to life, health, work comp, and title insurers. You'll see from my list there are a number of folks on there who you may or may not recognize, but of that group, and I'm never quite certain because I don't always know everybody's book of business, but I believe 12 or 13 of our members and several of the largest members in Nebraska are life insurance sales companies. Many of the pieces of the department bill this year deal with their sales, book of sales, and in fact, the way in which our state regulates them. They work closely with the department as a regulator, which is an unusual circumstance. In many states, the industry and their regulators are at odds and at war, and we are unique in Nebraska in that regard. But we are also unique in the regard that we are the only state that has a

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

Banking, Commerce and Insurance Committee
January 24, 2012

state association that includes all lines of business, not just property and casualty or life and health, which is the standard in most states, which makes us unique in many ways along with a Unicameral in that we really do try to work together, and we try to work together in a civil manner. We understand that the importance of this industry in Nebraska depends on a strong department, but it also depends on a strong regulatory environment. The second document I gave you is taken from a powerpoint presentation from the impact study that I think I made sure all of you got last year, but it's a little easier to boil down a few key factors. This industry in Nebraska has been around since the beginning of the state. It's a powerful and important economic driver in Nebraska, and it continues to be one industry that recruits new jobs, creates new jobs, attracts new companies to this state, and is a healthy growing part of our sales income and premium tax base. I'll just draw your attention to a couple of things. On page five, and you'll see the little dots up here are the page with the number in it. This is the gross premium receipts from Nebraska companies as reported by the economic impact study. And you can see that in Nebraska, life insurance annuity premiums, accident and health, property and casualty are listed separately. They are for 2009, and in total it's almost \$8.3 billion in premiums. And in fact, the companies pay about \$94 million in 2009 in premium tax and about \$214 million in sales and other taxes to the state of Nebraska. We generate enough overall economic activity that in general it's considered about 56,000 jobs in Nebraska depend on the industry, and about 3.5 percent of Nebraskans are directly employed as a result of the industry. I bring all this to your attention again because we believe that keeping the regulatory environment in Nebraska strong is critical. We believe it's important that our state laws which regulate the industry are compatible, are modernized, and allow companies to do business not only in other states in a manner that makes sense, but also internationally. And we do have members of the insurance federation who do business internationally. So with that in general, I just wanted to kind of give you a little brief update on why we believe these bills are so important and that the manner in which the industry and the department work together to try to bring department bills and updates and revisions to our statutes are important to us as an industry, but I think also important to us overall as a state. And I will be able to answer some of your questions, but if I cannot, I will find someone who can specifically. [LB887]

SENATOR PAHLS: I have a question or two. Okay, I've heard you say the Department of Insurance is good, and your area that you lobby for is good. [LB887]

JAN McKENZIE: Yes. [LB887]

SENATOR PAHLS: Okay. Okay, what about the consumers? How do you feel the consumers feel about insurance in the state of Nebraska, this be your opinion? [LB887]

JAN McKENZIE: Well, we've always believed, I think, that the best possible scenario for consumers in Nebraska is a healthy competitive market, because if you have multiple

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

Banking, Commerce and Insurance Committee
January 24, 2012

choices and you have companies who employ you or your neighbor or your son or your daughter and support your university and provide scholarships, that that creates a kind of environment where it's not somebody you're buying from 3,000 miles away that isn't really going to care for you. So, I think if you look around Nebraska, in general, people feel pretty good about the industry. I can't tell you specifically. I know every person I know has a story where they weren't necessarily happy with the way something was settled or the way something was handled, but I think overall as an industry, we try very hard to consider the consumer in everything that we do. And many of these companies are the first ones to support community activities, school activities, philanthropic activities in the communities in which they do business. They try to be good corporate citizens. [LB887]

SENATOR PAHLS: Okay, so, and I'm just using you as an example. So you're telling me as a state, we should trust the Department of Insurance because of their integrity? [LB887]

JAN MCKENZIE: Yes. [LB887]

SENATOR PAHLS: And we should trust the industry? [LB887]

JAN MCKENZIE: Yes. [LB887]

SENATOR PAHLS: Because we will have legislation in front of this committee at some time, and I want to get that on the record that we at least, although the consumers may have some issues with insurance in the state, it's because of probably some personal things, but... [LB887]

JAN MCKENZIE: Well, we actually have a consumer hot line at the Department of Insurance that I don't know that all states have where if a consumer is having a concern, they can call and ask for assistance. The department will investigate complaints against unfair practices. We have unfair practice trade acts. We have a number of consumer protections that we believe enable our Nebraska consumers to get help if they feel they've been treated unfairly. We also have a really excellent fraud division that protects against consumers who are trying to defraud their insurance for personal gain. [LB887]

SENATOR PAHLS: And you're telling me this is in the Department of Insurance. [LB887]

JAN MCKENZIE: Yes. [LB887]

SENATOR PAHLS: Okay, thank you. Senator Schumacher. [LB887]

SENATOR SCHUMACHER: It appears that this bill covers a various number of topics.

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

Banking, Commerce and Insurance Committee
January 24, 2012

[LB887]

JAN McKENZIE: Yes. [LB887]

SENATOR SCHUMACHER: Which would you say is the most important? [LB887]

JAN McKENZIE: I really like my job. (Laughter). You're going to have to ask me to pit one child against the other. Which is my favorite child? (Laugh). I think there are some very...I think different companies have different interests in parts of the bill, to be honest, Senator. The department usually tries to consider a number of modernizations from the NAIC models that have come out, and they put them together, and they vet them through their process with the Governor's Office, and the companies get a chance to look at them and provide feedback. But in the end, I think there are a number of companies who have a specific interest in the bill, so I'd get myself in a lot of trouble. [LB887]

SENATOR SCHUMACHER: But my intent, I'm probably going to get myself in more trouble than you are, but you know, with such a various depth of different ideas and concepts in here, this is a whole lot to digest and to get a real image in one's head about what is being done here, how much authority we're moving around, what is the total impact of, first of all, the persons who are insured. You know, we go in on page 77 for example. At the time a special purpose financial captive insurer files an application for a certificate of authority or submits an amended plan in accordance with a statute. And on the date special purpose financial captive insurer is required to file a financial statement. A senior actuarial office and the ceding insurer will file a certificate. You know, all that seems to begin to describe a very integral process, and it doesn't describe the roles, and to a certain extent, what impact this has on the viability of the insurance company and the security of the policyholders. I mean, is there a way that we can digest this with, you know, motive and how this fixes a problem or what the problem is, because this doesn't tell us what the problem is and how this would impair our insurance industry or help it. [LB887]

JAN McKENZIE: Well, in many cases, there aren't problems. In many cases, because this is such an incredibly complicated regulated industry, regulated more than any other industry that is out there, regulated more than banks, more than anything else. These complex financial instruments and doing business in multiple states and across international lines, the NAIC works together in their meetings with input from companies and consumers and the other different states' departments of insurance to try to put together model language that based on their legal teams and knowing what they have to do is what generally ends up in the department bill as modernizations to what was existing situations or new financial products. I will concur with you that understanding what a special captive is, is really hard to get your head around. [LB887]

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

Banking, Commerce and Insurance Committee
January 24, 2012

SENATOR SCHUMACHER: But to the extent we're Harry Truman, and the buck, for at least this little area of the world, stops here. And you know, boards and regulatory bodies have been severely criticized for just not asking the next question. Of saying, gee, this is all complicated because after all AIG is selling credit defaults loans back to this company, and Lehman Brothers is over here doing this, and it's just all big, but you know, it will all work, so look the other way. And then all of the sudden, we were in a big mess. So you know, how can we avoid this as a committee in doing our job to understand really what we're doing here? [LB887]

JAN McKENZIE: Well, on those very complicated pieces, I can certainly find someone from one of the companies who deals with that daily to come in and visit with you, because I can't explain it. These are such sophisticated products in the life insurance and annuity markets that not everyone is in that business, for one thing, but the other is I think you have to be working in that world daily and with that kind of legal training to really be able to explain in a way I think you're asking for it to be explained. [LB887]

SENATOR SCHUMACHER: So we're being asked to advance an 88-page bill that is so complicated it can't be explained. And if we don't understand it here, the likelihood of it being understood up on the floor is pretty limited too. How does the system work? [LB887]

JAN McKENZIE: Well, the system works because we have worked with the group of folks at the national level who creates and works together, and they're very legislative-based... [LB887]

SENATOR SCHUMACHER: They're insurance company folk, right? Or are they regulatory company folk? [LB887]

JAN McKENZIE: No, they're not insurance company folk. [LB887]

SENATOR SCHUMACHER: They're the regulators? [LB887]

JAN McKENZIE: They're the regulators. They're the regulators, and the regulators meet in their NAIC, and they work together on developing model language that they vet through multiple steps, multiple processes, and in the end, only the commissioners vote on the final product. Those products then are what states look at to use as their model for legislative changes. Maybe it's because we've always put pieces together in a single cleanup bill, as do other departments. This has multiple pieces in it because if you look at chapter 44 and all the different pieces of the insurance code, there are multiple areas of governments and of statutes. So this is the department cleanup bill, so it has this year mostly life pieces, but a lot of years there will be a property and casualty piece, there will be a preneed burial piece, because they're all in one bill for the cleanup bill for the department, I would guess basically. Okay. [LB887]

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

Banking, Commerce and Insurance Committee
January 24, 2012

SENATOR SCHUMACHER: Thank you. [LB887]

JAN MCKENZIE: Okay. [LB887]

SENATOR PAHLS: Thank you. [LB887]

JAN MCKENZIE: I think I like neutral better. (Laughter). Thank you. [LB887]

SENATOR PAHLS: That's not an inside joke, everybody said...(laugh). Well, we have neutral available if you want to come up again. Okay, seeing no more, thank you. That closes the hearing on (LB)887. Thank you. Yes, we are ready for LB942, Senator McCoy. [LB887]

SENATOR MCCOY: Thank you, Chairman Pahls and members of the committee. I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District, and I'm here this afternoon to introduce LB942 which makes the publish notice requirements for forming an LLC consistent with requirements for certificate of organization. LB888 in I believe 2010 changed the requirements for the information required for filing a certificate of organization with the Secretary of State. This bill would state that the published notice required after the filing or amendment of the certification of organization must contain only the information contained in the corresponding filing. This bill was brought to me by the Nebraska (State) Bar Association. They will be following behind me with more information. And with that, I would entertain any questions if there are any. [LB942]

SENATOR PAHLS: Seeing no questions, proponents? Thank you, Senator. Good afternoon. [LB942]

KATIE ZULKOSKI: (Exhibit 1) Good afternoon, Chairman Pahls, members of the committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying today on behalf of the Nebraska State Bar Association. Senator McCoy did an excellent job of explaining this bill, and it is actually a much simpler bill than the first one you heard today on behalf of the bar association. As Senator McCoy indicated, this bill comes from the changes that were implemented in LB888, which was the uniform Limited Liability Company Act. That act was adopted in 2010 but was enacted in 2011, and so now we've had one full year of companies complying under the new uniform Limited Liability Company Act. And after a year, you begin to hear from practitioners about some of the things that continue to need change, so I will be back next week with another bill, but this one is a much simpler cleanup bill that we wanted to bring to you first. This has to do solely with what you publish in the notice of formation or the notice of the amendment of your certificate of organization. What this bill does is say that the notice that you publish only needs to contain those four elements that need to be contained in your certificate of organization. The certificate of organization is what you file. When I give notice to the Secretary of

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

Banking, Commerce and Insurance Committee
January 24, 2012

State that I've created an LLC, I file a certificate of organization. Under the new uniform law, it's a much shorter document, and there's much less information that's contained in there, and so what this bill would do is just streamline the notice provision. What you publish in your notice only needs to be the information that you've given to the Secretary of State. Right now, what we have to publish in 2011, the information you put in your published notice is more than the information we're giving to the Secretary of State. This would just put those two together. We have, the Nebraska Press Association has seen this. That's the first question that usually comes up when we talk about published notice. They have seen this, and this does not lessen the requirement to publish notice, it just shortens what is published, and so they are not concerned with this bill. Secondly, I did hand out a letter from Professor Steve Willborn who is a professor at the law college, the university law college. He is a uniform law commissioner. The uniform law commissioners look at this because it has to do with the uniform law. They are supportive of these changes, and Dean Willborn asked that I hand out this letter in support. [LB942]

SENATOR PAHLS: Senator Pirsch. [LB942]

SENATOR PIRSCH: Can you give me an example, concrete example then of that which existed before which we have to publish, including more language and what would be left on the chopping block in terms of if this was put through? [LB942]

KATIE ZULKOSKI: Yep. On page two of the bill, the language that's crossed out there is what right now, if you form an LLC, what you would publish. So you would say the general nature of the business, you say the time of commencement of the business, or if you're planning on terminating it, what date you would terminate it, the members or managers, and the affairs, the members or managers that are going to manage that. What is now included...the internet's not working in our office, I had to bring an actual statute book. But the, to show you what is now in the new notice, there are only four requirements. There are things that you may publish, but the requirements of what needs to be in your certificate of organization, the name of your company, you need to tell them your initial designated office and your initial agent, so that they can serve you process, and then if you are going to be a professional service LLC, you need to tell them what professional service you are legally authorized to render. [LB942]

SENATOR PIRSCH: So, instead of the address of the designated office, it's just the initial designated office, so that's the same? [LB942]

KATIE ZULKOSKI: Yep, yep, so that would be the same. [LB942]

SENATOR PIRSCH: Name of the limited liability company, that's the same? [LB942]

KATIE ZULKOSKI: Yep, that's the same. [LB942]

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

Banking, Commerce and Insurance Committee
January 24, 2012

SENATOR PIRSCH: General nature of the business to be transacted? [LB942]

KATIE ZULKOSKI: Nope, that wouldn't be in there. [LB942]

SENATOR PIRSCH: And then indeed the time of commencement and termination if any of the limited liability company? [LB942]

KATIE ZULKOSKI: Yep, that would not be in there. [LB942]

SENATOR PIRSCH: Okay, and (e), by what members or managers the affairs of the LLC are to be conducted? [LB942]

KATIE ZULKOSKI: Right, that's no longer included either. And that's because, Senator, that's not, we don't, if I form an LLC, I don't even tell the Secretary of State that information anymore, and so really the thought is to just make those two the same. [LB942]

SENATOR PIRSCH: What's the purpose of the notice of organization to the general public, right? [LB942]

KATIE ZULKOSKI: Um-hum. [LB942]

SENATOR PIRSCH: So what sorts of reasons are we wanting to inform the general public? Why are we public? [LB942]

KATIE ZULKOSKI: I think that stays the same. That's not changing. The public still gets notice of filing an LLC and that an LLC has been created, and they still would get notice of the initial agent and the initial office that...the intent of the published notice is not changing. [LB942]

SENATOR PIRSCH: Right, but things such as the general nature of the business will no longer be known by the public, right? So, I guess, what is, is there a need to know? What was the original purpose by which the requirement was originally enacted? Why did they say, give us the general nature of the business originally, which in today's, in light of today, is no longer necessary? [LB942]

KATIE ZULKOSKI: I think you're exactly right that the initial reason that we were giving that is just to give the public notice. What's happening now, and those of you that practice in this area know, when you file any sort of business entity, the general business is, it's a very broad, blanket statement. Anything I'm authorized to do is the general business that you put, so that's not giving people much notice anyway. [LB942]

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

Banking, Commerce and Insurance Committee
January 24, 2012

SENATOR PIRSCH: Is that typically though, in all of the cases, that which has been filed, or were there more filed with greater specificity in some instances? [LB942]

KATIE ZULKOSKI: I think it's definitely a mix. There are certainly those that are more specific and then those that are, are pretty broad. And there are now things you...there is in 21-117, which is the certificate of organization, what's required there in those filings, there is a provision in that statute that says a certificate of organization may also contain other statements other than those that are required, so you can put more information. If I want to say it's a manager-managed LLC, I can put that. [LB942]

SENATOR PIRSCH: At the discretion of the organization... [LB942]

KATIE ZULKOSKI: Um-hum. [LB942]

SENATOR PIRSCH: ...to whom it's being published, but not, okay. But generally you err on this, I mean, it just creates more ad dollars when their publication expense include unnecessary information. [LB942]

KATIE ZULKOSKI: Yeah, I'm not generally looking to make it (laugh) as long as I possibly can. [LB942]

SENATOR PIRSCH: The time and commencement and termination, if any, of the limited liability company. What was the original reason that that requirement was put into statute, now that we're... [LB942]

KATIE ZULKOSKI: I do not know that answer, why they would put that in there. Generally, and especially under when this notice provision was in place, when you, the time of commencement of an LLC was when you formed it. So the notice would be the time of commencement, I think, and termination, I don't know that many people were planning on terminating, and that even said if any, so I doubt that many people were including a termination date. [LB942]

SENATOR PIRSCH: Yeah, that almost seems contrived like at the outside you had some sort of phase out date, and then (e), another provision which is being eliminated. By what members or managers the affairs of the LLC are to be conducted? What was the original reason for which that information was required to be disclosed to the public but for which in today's, in light of today's realities, it's no longer necessary to tell the public? [LB942]

KATIE ZULKOSKI: You know, I think again, the original reason it was put in place I'm not sure, but certainly with LLCs, because they can be member-managed or manager-managed, I think that probably had something to do with why we were telling people that. And again now, the intent of changing the bill is just so that what we are

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

Banking, Commerce and Insurance Committee
January 24, 2012

giving notice of is the same thing that we're giving the Secretary of State notice of, so the intent of crossing that out is to streamline this with 21-117. [LB942]

SENATOR PIRSCH: Is there, and certainly there's less that the Secretary of State could be in a position to disclose, but this is kind of a separate duty as it exists right now to disclose, so to speak. But is there anything that may be valuable for the public to know in terms of helpful about the organization that would be eliminated in crossing that out? [LB942]

KATIE ZULKOSKI: For the most part, I think when the public is looking, I would say, this is personal opinion. When I'm looking for information on an LLC that's a Nebraska LLC, I would look on the Secretary of State's website, So rather than going, if I'm in Brown County, and looking at the Ainsworth Star Journal for the last three months to see if there's been published notice, I would go directly to the website. So that I think really we're not making it harder on the public to find information with this. The published notice requirement, again, is still out there, so if you are a newspaper person that looks for notice there, that's still there. You're still getting the published notice. [LB942]

SENATOR PIRSCH: Thank you. [LB942]

SENATOR PAHLS: Senator Schumacher. [LB942]

SENATOR SCHUMACHER: What we're really after is substituting a, b, c, d, and e with what you have on your exhibit here as 1, 2, and 3. Why don't we just print this into the statute rather than making us have to pick up another heavy red book and find out what (laugh) 21-117 says? Wouldn't it be easier? [LB942]

KATIE ZULKOSKI: You know, I think that part of the problem is, when you have it in two different places, then you're going to have someone like me up here again saying, well, we changed one of the statutes, but we neglected to change the other statute. And if you do it this way, and we've changed the certificate of organization, the Secretary of State at some point says, you know, we really need LLCs to be telling us this, then by default, we're going to have already changed the notice provision, and so that will get this all sort of back into our streamline theme here. [LB942]

SENATOR SCHUMACHER: Okay, thank you. [LB942]

SENATOR PAHLS: Seeing no more questions, thank you. Any more proponents? Opponents? Neutral? (Cough). That closes the hearing. (Cough). You choked me up, Senator. (Laughter) (Cough). LB943. [LB942]

SENATOR McCOY: (Exhibit 1) Thank you, Chairman Pahls, and good afternoon again, members. I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District. I'm

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

Banking, Commerce and Insurance Committee
January 24, 2012

here again this afternoon to introduce LB943 to the committee, which creates a (Insured) Homeowners Protection Act. It allows a person to cancel a written contract with a residential contractor, to provide goods or services to be paid from proceeds of insurance prior to midnight on the later of the third business day after the person has entered into a written contract, or when the person has received notice from the person's insurer that all or part of the claim or contract is not a covered loss under the insurance policy. The bill also prohibits a residential contractor from promising to rebate any portion of an insurance deductible as an inducement to the sale of goods or services. I also have an amendment, which I think all of you have. If not, I have it here to be handed out, which just literally changes two words we discovered after the green copy of the bill was put out that we needed to change to make it fit together and adds the words "if applicable", which would clarify that the written notice from the person's insurance company is only required when cancelling the contract when the claim is not a covered loss under the insurance policy, which just needs to fit together to make sure someone didn't have to obtain that from their insurance company, only in applicable circumstances, as we said. And with that, I believe there are others behind me that can provide some more perspective on this legislation. Thank you. [LB943]

SENATOR PAHLS: Okay. Thank you, Senator. We will have the proponents. So I can have a feel, how many proponents do I see? Three. How many opponents? Neutral? Okay. The floor is yours. [LB943]

DAN PLUCKNETT: (Exhibit 2) Good afternoon. Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Dan Plucknett, that's spelled D-a-n P-l-u-c-k-n-e-t-t. I am testifying as a proponent to the Insured Homeowners Protection Act, LB943. I am currently a team manager in the state of Nebraska for State Farm Insurance Companies. I have worked with homeowners and contractors on various types of claims for the last 25 years. From my experience, it is a common practice for most residential contractors to provide a written estimate to consumers to whom they intend to do business. Typically, this estimate provides a reasonable period of time for the homeowner to consider the estimate and then sign and date it to bind them to the proposed work from the contractor. The homeowner will typically observe, or obtain several different bids and choose the contractor that is most competitive. This bill gives homeowners who had signed a blank contract or one in which the contractor promises to work for insurance proceeds the option to void the contract and shop elsewhere. Over the last few years, we have seen an increase in contractors requiring homeowners to sign contracts that do not specify the work to be performed until their insurance company inspects the property for storm damage. Many times, out-of-state roofers and contractors who are responding to a natural catastrophe are the companies using this business practice. Today, I would like to describe two examples where contractor business practices concern us. The first example involves contractors who respond to a natural catastrophe in a particular area. Many of these contractors are from out of state and employ sales people who go door-to-door trying to

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

Banking, Commerce and Insurance Committee
January 24, 2012

convince homeowners that they have damage from the recent storm. If they do convince the homeowner, they require them to sign a contract that indicates they will complete the necessary repair based on what the homeowner's insurance company pays. Feedback we have received indicates many homeowners feel stuck after talking with friends, neighbors and other contractors who don't use this business practice. Many companies who use the signed contract practice are very aggressive about reminding the homeowners that the contract is binding to their company regardless of the customer's wishes. To illustrate this, a recent example in Hastings involved a contractor who had customers complete a signed contract. This contractor also required a deposit to get the customers on their list to get work completed and to allegedly buy building materials. This contractor left town with deposit money from hundreds of customers in the area. These customers not only lost their deposit money, but were also confused on whether they were still bound to the signed contract. Many contractors who use the signed-contract practice are only interested in total-replacement jobs and do not follow through or honor the contract when a repair to the roof is all that's needed for the customer. The next example involves contractors who canvas neighborhoods looking for worn roof shingles or building materials that are obsolete. Again, these contractors employ sales people who go door-to-door, sometimes visiting the same property multiple times a day to ensure they discuss the roof condition with all adult residents. Even if the area has not had a recent storm, the contractor contends the damage found could be related to storm damages. Recently, a police sting was conducted in the state of Georgia. A test house was chosen, and local contractors confirmed that no storm damage existed to the shingles. Contractors who were soliciting the area were videotaped causing man-made damage to the shingles during their inspection process. After their inspection, these contractors told undercover officers posing as the homeowner that they found storm damage to their roof, and if they signed a contract with them, they would rebate a portion or all of their insurance deductible. Many of the roofers involved were arrested for insurance fraud. I would like to conclude by saying that LB943 is not intended to create any unnecessary burden on contractors who do not require an up-front signed contract. We acknowledge that there are numerous local contractors who conduct business that supports competition and free enterprise in Nebraska. They have worked hard to create and maintain business relationships with homeowners in Nebraska by relying on their reputation and referrals from their customers. Thank you, and I would be more than happy to answer any questions.
[LB943]

SENATOR PAHLS: Senator Pirsch. [LB943]

SENATOR PIRSCH: So the jurisdiction of the bill here just applies to those contracts that are not set in writing, is that? [LB943]

DAN PLUCKNETT: They are contracts that do not stipulate that they're either blank, meaning that they are waiting for the insurance proceeds, or they actually specifically

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

Banking, Commerce and Insurance Committee
January 24, 2012

state that they are willing to work for insurance proceeds or whatever the outcome of the insurance claim is. [LB943]

SENATOR PIRSCH: So both written and verbal contracts... [LB943]

DAN PLUCKNETT: Correct. [LB943]

SENATOR PIRSCH: ...that don't have specificity in terms of dates of payments and other... [LB943]

DAN PLUCKNETT: Correct. [LB943]

SENATOR PAHLS: Senator Schumacher. [LB943]

SENATOR SCHUMACHER: Thank you. Does this apply only when there's a catastrophe? [LB943]

DAN PLUCKNETT: No, it does not. [LB943]

SENATOR SCHUMACHER: In any... [LB943]

DAN PLUCKNETT: Anytime, anytime there's a catastrophe or noncatastrophe, if you will. [LB943]

SENATOR SCHUMACHER: I noticed the law defines catastrophe. Why is that in there if it applies in both senses? [LB943]

DAN PLUCKNETT: I think someone probably behind me can maybe answer that better. I'm not sure why. [LB943]

SENATOR SCHUMACHER: Thank you. [LB943]

SENATOR PAHLS: Senator Pirsch. [LB943]

SENATOR PIRSCH: And how late might you cancel? It says you can cancel a written contract to be paid on the later of the third business day after the person has entered into the written contract or when the person has received notice from the person's insurer that all or part of the claim is not a covered loss. Can you cancel under this at a point in time under which, after which the new say...and this is broader than just roofing, right? [LB943]

DAN PLUCKNETT: Yes. [LB943]

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

Banking, Commerce and Insurance Committee
January 24, 2012

SENATOR PIRSCH: Or is this just roof? [LB943]

DAN PLUCKNETT: No, it's broader than roofing. [LB943]

SENATOR PIRSCH: Exterior repair or replacement construction. [LB943]

DAN PLUCKNETT: Yes. [LB943]

SENATOR PIRSCH: So any type of construction, essentially. Can you cancel then after that construction is completed, right? Or no? [LB943]

DAN PLUCKNETT: Well, after, you mean after the work is done, Senator? [LB943]

SENATOR PIRSCH: After the work is done, the purported work is done. [LB943]

DAN PLUCKNETT: Yeah, no. Because obviously, you know, I think a vast majority of the time, any work that's done would probably take longer than three days, and you would have to cancel within three days of signing that contract. [LB943]

SENATOR PIRSCH: But if it's kind of immediate, you know, there's a hole in the roof or something like that, and it could not apply if they do happen to get on it earlier. [LB943]

DAN PLUCKNETT: Yeah, I don't know the legality of that. If they follow through with the work that was specified and or set forth by the insurance company, if there was work that was completed under that contract, I would think that would be a binding contract. [LB943]

SENATOR PIRSCH: That would be a binding contract. But in the event that there's disagreement as to, I mean, are there appeals processes with respect to an insurance company's initial declination of coverage? [LB943]

DAN PLUCKNETT: Certainly, you know, if a customer doesn't agree with the initial assessment, any additional information that's brought up to the insurance company is considered. Certainly, if there is valid information that warrants a further consideration, that certainly, you know, as far as from the insurance standpoint, is a valid claim or a valid additional claim. [LB943]

SENATOR PIRSCH: Because it's on the later of either the third business day after the person has entered into the written contract, which would be three days after, and presumably, most contracts would not have been acted on at that point in terms of the construction or roofing. [LB943]

DAN PLUCKNETT: Right. [LB943]

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

Banking, Commerce and Insurance Committee
January 24, 2012

SENATOR PIRSCH: Or if it's later when the person has received notice from the insurer that all or part of the claim or contract is not a covered loss under the insurance policy. Is that just, that status alone that it's been declined for coverage would allow for the invalidation of the contract? Is that alone, or is, I mean, is that status alone enough to invalidate the original agreement between... [LB943]

DAN PLUCKNETT: To my knowledge, yes. [LB943]

SENATOR PIRSCH: Okay. And if it says all or part of the claim is not a covered loss, how would that work with respect to, say, some part that was validly covered, then that would be still an effective contract for which the homeowner would have to make payment to the contractor, is that how that would work? [LB943]

DAN PLUCKNETT: Yeah, if the contractor decided to uphold that contract, certainly that would be part of that contract. [LB943]

SENATOR PIRSCH: Thank you. [LB943]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. Next proponent? [LB943]

MARK JOHNSTON: Good afternoon, Senator Pahls and members of the committee. My name is Mark Johnston, M-a-r-k J-o-h-n-s-t-o-n, and I am the midwestern state affairs manager for the National Association of Mutual Insurance Companies. Coleen asked me to testify basically just to explain that they're identified other states that are either considering or have passed legislation in this bill, but before I do that, I'm going to take a stab at Senator Schumacher, your question about why catastrophe is in the bill, and why it's defined. The way I read it is, you know, the contractor needs protection, too, from people who would want to abuse the rights they might have under this. And so if a contractor provided some emergency services, you know, hole in the roof to cover things up due to the catastrophe and then find, you know, the person that exercises the rights under the contract to cancel for whatever reason that's allowed, the contractor would still be reimbursed for those services, the emergency type of services that are necessary. And so I think that's why the term is in there, to separate, you know, the roof that has a hole in it because of a storm versus maybe some other repair that would be covered by insurance, but it isn't quite catastrophic. As to other states, within the Midwest, four states have passed legislation very similar to this, Illinois, Missouri, Oklahoma and Minnesota. And at this time, I am told that the Kansas legislature and the Iowa legislature are also considering similar bills, again not identical, but address this issue. I am happy to take any, answer any questions if you have them. [LB943]

SENATOR PAHLS: Senator Schumacher. [LB943]

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

Banking, Commerce and Insurance Committee
January 24, 2012

SENATOR SCHUMACHER: Just a follow-up on my question then. The definition of catastrophe means any occurrence that damages or destroys more than one piece of residential real estate. So if a wind comes by and blows a tree over onto my roof, my tree over into my roof, it's not a catastrophe. But if it blows my tree over onto my neighbor's roof, it's a catastrophe. [LB943]

MARK JOHNSTON: Well, it's probably a catastrophe for everybody involved (laughter), but, seriously, I think they're trying to distinguish between one-off events and events that are, you know, the huge hailstorm, or take an extreme example, I'm from Missouri, Joplin, where this bill or bills similar to this have been very helpful in dealing with people who come in from out of town, swarm on in, and try to prey on the citizens who are just under tremendous stress and often are doing things, signing contracts that they really shouldn't be doing. These people just coming in, out-of-state contractors and all of the like, so I think that's an attempt to go back, it's an attempt to distinguish between one-off events and then areas that get huge storms that are...because if you think about it, if you just have one roof, you're doubtfully, you're not likely going to have a storm chaser come in just because somebody had a tree fall on his roof, but you would if a hailstorm attacked an entire neighborhood. [LB943]

SENATOR SCHUMACHER: But this doesn't apply just to storm chasers. This applies across the board. So I mean, shouldn't the contractor who comes and fixes the hole in the roof because of the, on an emergency basis, because a tree fell on my house, have the same rights as if the same tree fell on my neighbor's house? Isn't this catastrophe definition, doesn't that need a little honing, if we're talking about a big thing that brought in a hoard of claims people? [LB943]

MARK JOHNSTON: I would have to defer to the Nebraska companies, but I think that there's always, people who have been worked on this legislation in different states have always been kind of, well, should you say this, or should you say that? No, I think that there's always room for discussion, but I don't want to impose work on other people. [LB943]

SENATOR SCHUMACHER: Oh, (laugh). Thank you. [LB943]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB943]

MARK JOHNSTON: You're welcome. [LB943]

COLEEN NIELSEN: (Exhibit 3) Good afternoon, Chairman Pahls, members of the Banking, Commerce and Insurance Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I'm a registered lobbyist for the Nebraska Insurance Information Service, and I am the person that Mr. Johnston is probably going to impose

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

Banking, Commerce and Insurance Committee
January 24, 2012

on. But I do agree, I believe that Mr. Johnston stated very well the intention of the bill, and we would be happy to work on that definition of catastrophe, and I appreciate that, Senator. I have also handed out a letter on behalf of the American Insurance Association, who is represented by Tad Fraizer, and he was unable to attend this afternoon because he had a funeral, but he is also in support of this bill, as am I, and I would be happy to answer any questions. [LB943]

SENATOR PAHLS: Thank you. Any more proponents? [LB943]

KORBY GILBERTSON: Good afternoon, Chairman Pahls, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America and the Nebraska Realtors Association. I thought maybe you'd appreciate hearing from someone other than an insurance company this afternoon. The realtors have been involved in a number of consumer issues ever since we started talking about contractor registration years ago in the state. And they look at this piece of legislation as a step forward in consumer protection, for they deal with people all of the time, homeowners that deal with things like this, and they don't understand what happens. I'm going to take a stab at trying to answer your question, too, Senator Schumacher. When you look at section three on page two, this is just for contracts that depend on the proceeds from an insurance contract or an insurance policy. So it would not be, if I hired someone, I had a tree branch come through my roof, and I called ABC Roofing, they came out and said it's going to cost you \$500, I sign a contract, I owe them \$500. This is for when you have specific companies who come in, and they will say, we will do it for whatever your insurance company will pay us. We'll take the money. We'll handle the claim. We'll do all this for you. They make grandiose claims, rarely follow through on them. This type of legislation helps protect those people from those types of contracts. We, too, would be willing to sit down and help try to talk about the catastrophe definition, but we did not see any problems with it. I would be happy to answer any questions. [LB943]

SENATOR PAHLS: Senator Pirsch. [LB943]

SENATOR PIRSCH: Thanks for the explanation. And so the effect of this then is to nullify the validity of any written, is this written or verbal contract? [LB943]

KORBY GILBERTSON: I believe it's just written. I didn't write the bill, but the two places where I read the language about contracts in the bill say written, and then there's two ways to cancel it. [LB943]

SENATOR PIRSCH: Yeah, and I understand two ways to cancel... [LB943]

KORBY GILBERTSON: And one requires a written notice from an insurance company,

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

Banking, Commerce and Insurance Committee
January 24, 2012

and the other does not, so I could be wrong, but that's my reading of it. [LB943]

SENATOR PIRSCH: And who receives the written notice, the person who's entered into the contract? The homeowner? [LB943]

KORBY GILBERTSON: Right. The written notice would be, if you had the homeowner, they submit a claim to their insurance company, and then the insurance company either can deny it, or they send them a written notice. And it's my understanding that when you get that written notice from the insurance company, then that's the instance in which you give them the written notice, and that's why they added the language "when applicable," because sometimes you need it, and sometimes you don't. [LB943]

SENATOR PIRSCH: Sometimes you need it, it being? [LB943]

KORBY GILBERTSON: The written notice from the insurance company. [LB943]

SENATOR PIRSCH: Oh, and that's in the eventuality of (b) receive written notice from the person's insurer? [LB943]

KORBY GILBERTSON: Right. [LB943]

SENATOR PIRSCH: In all cases, you would need it if you're going on that section, and that would probably give you the greatest...okay. [LB943]

KORBY GILBERTSON: Yeah, and I think the issue isn't nullifying the contract. The issue is giving the homeowner the opportunity to cancel a contract. [LB943]

SENATOR PIRSCH: Would there still be some legal means or theory by which a contractor could still go against the homeowner or seek to say, notwithstanding the fact that this contract is null and void, we're continuing to hold...and looking on page three, subsection two, it says, within 10 days, and it says, within 10 days after a contractor provide goods or services to be paid has been cancelled, the residential contractor shall tender to the person cancelling the contract partial payments or deposits made by the person and any note or other evidence of indebtedness. Okay, so that answers the... [LB943]

KORBY GILBERTSON: Right, and then there's an except, and then except the contractor gets to get paid for any, entitled to be paid for the reasonable value of such goods or services that they rendered during that time. [LB943]

SENATOR PIRSCH: Yeah, isn't that, isn't that exception liable to subsume the general rule which means... [LB943]

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

Banking, Commerce and Insurance Committee
January 24, 2012

KORBY GILBERTSON: Are you against contracts? [LB943]

SENATOR PIRSCH: ...that's great, we don't have a written, that written contract that you signed is null and void, but from an equitable perspective, we ain't giving it back, because we earned it, and I mean, does it get the property any, in real terms, any... [LB943]

KORBY GILBERTSON: Well, I think the property owner would probably have standing to then sue the contractor for the return of those monies because... [LB943]

SENATOR PIRSCH: Sure. [LB943]

KORBY GILBERTSON: ...unless they could show that that was the reasonable value of any goods or services, they would not be entitled to them. [LB943]

SENATOR PIRSCH: He could sue, but wouldn't they have a suit, I mean a legal theory anyhow? I mean does this, at the end effect of all this, is the homeowner in a stronger position? At the end of the day, aren't they going to be left with a legal theory, but they're going to have to affirmatively sue the contractor for, if they did achieve the monies? [LB943]

KORBY GILBERTSON: You know, I think that's the case with a lot of laws, (laugh) unfortunately. [LB943]

SENATOR PIRSCH: Yeah. (Laugh). Yeah, although that assumes that the contractor had... [LB943]

KORBY GILBERTSON: Taken a down payment. [LB943]

SENATOR PIRSCH: ...taken a down payment. Which begs the question then, what is the common practice with these types of things when, you know, and I suppose it differs whether you're doing a roofing job or a siding job or what the nature of the damage is, but is, what's, is there a common practice as you understand it in terms of deposit, those kinds of things? [LB943]

KORBY GILBERTSON: You know, since I've been a homeowner, I've had to, done three roof projects, (laugh) and I've never had to pay a down payment, but I'm guessing Senator McCoy might be able to give you a little insight into that. [LB943]

SENATOR PIRSCH: Okay, thank you. [LB943]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB943]

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

Banking, Commerce and Insurance Committee
January 24, 2012

KORBY GILBERTSON: Thank you. [LB943]

SENATOR PAHLS: Any more proponents? Opponents? Neutral? Senator. The good senator closes. That closes the hearing on LB943. [LB943]