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Banking, Commerce and Insurance Committee  
February 19, 2013

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[LB59 LB384 LB568]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 19, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB384, LB568, and LB59. Senators present: Mike Gloor, Chairperson; Mark Christensen, Vice Chairperson; Kathy Campbell; Tom Carlson; Sue Crawford; Sara Howard; Pete Pirsch; and Paul Schumacher. Senators absent: None.

SENATOR GLOOR: Good afternoon. I'm Mike Gloor, representing the 35th District which is Grand Island. I chair the Banking, Commerce and Insurance Committee. The committee today will take up the bills as was posted on the agenda outside the door. We also have rules. I'll run through a few of those, but those are on the board off to the side displayed for all to see. The first one--not the necessarily the most important, but the one that, of course, we have the most fun with--is cell phones. Turn them off and put them on silent. Even if you think you have, take a quick look just to make sure that occurred. The order of testimony will be the introducer, proponents, opponents, those in a neutral capacity, and then the introducer will have the opportunity to close. Testifiers please sign in and fill out your testifier sheet and be sure and hand it to the clerk. Spell your name for the record before you begin your testimony. Be concise. We have a light system, but given the nature of the bills today I don't intend to use the light system. But would ask you to still try and keep it to five minutes if at all possible. If you're not testifying at the microphone, but would like to go on record as having a position on the bill today, you may sign in on the white sheets that are located next to both of the entrances. Written materials may be distributed to committee members as exhibits, but only while you're providing testimony. And we need ten copies. So if you don't have ten copies, now would be a good time to get the attention of the pages so they can run those off so they're available by the time you testify. To my immediate right is committee counsel, Bill Marieneau, and at the end of the table, Jan Foster, who is the committee clerk. Committee members will introduce themselves. I will start by saying that the Exec Committee I understand is still in session; that's three of our committee members. So I expect they'll trickle in as time goes by. And then I think we may also have a senator who has to introduce a bill. I know Senator Carlson will have to leave after a bit himself, so there will be some coming and going today and we apologize for the distraction. But you know, that's the way the procedure works. Senator Crawford, would you start us off, please?

SENATOR CRAWFORD: Absolutely. Good afternoon. My name is Sue Crawford and I represent Legislative District 45 which is eastern Sarpy County, Bellevue, Offutt.

SENATOR GLOOR: Senator Carlson.

SENATOR CARLSON: Tom Carlson, District 38, I represent all of seven counties and

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part of an eighth, and I live in Holdrege.

SENATOR HOWARD: Sara Howard, I represent District 9 in midtown Omaha.

SENATOR GLOOR: And our pages today are Will, closest to you, and Nathan. And with that, we will start today with LB384. Welcome, Senator Nordquist.

SENATOR NORDQUIST: (Exhibits 1 and 2) Thank you, Chairman Gloor and members of the Banking, Commerce and Insurance Committee. My name is Jeremy Nordquist. I represent District 7 which covers downtown and south Omaha. I'm here today to introduce LB384, the Nebraska Exchange Transparency Act, and I've distributed an overview of the bill--or it's being distributed right now--an overview of the bill to the committee. As you know the Affordable Care Act requires a health insurance exchange to be operational in each state by January 1, 2014. The Governor has ceded this responsibility to create this new health insurance marketplace in our state to the federal government so in Nebraska we will have what is called the federally facilitated exchange or FFE. A health exchange creates a competitive marketplace which gives consumers more control, quality choices, and better protections when buying insurance. It's intended to be an easy to use Web site that will allow consumers and small businesses to make real and educated comparisons between plan options so they can find the best one that meets their needs and their budget. In a nutshell, it's intended to make buying insurance easier for those who need it. The federal government has expressed the desire and, frankly there is a need, to work with states to the greatest extent possible to implement this new health insurance marketplace. The federal Exchange Stakeholder Commission as created under this bill would provide a ready and willing group of stakeholders to collaborate with the federal government. And I have distributed or there has been distributed to you a page--it's called General Guidance on Federally Facilitated Exchanges--and on the back there's some highlighted notes that outlines the federal government desire, their stated desire to work with state stakeholders as we move forward with a federally facilitated exchange in each state. LB384 would create a commission composed of consumers, small businesses, healthcare providers, health insurance and agents, and a representative of the Rural Health Advisory Commission. The Commission would be tasked with providing oversight and recommendations regarding the implementation and operation of the exchange, create technical and advisory groups as needed to discuss specific issues related to the exchange, and to identify challenges and problems in the exchange and prepare recommendations to alleviate the problems as identified. I'd like to note that the composition of this commission is nearly identical to the composition of the exchange governance board as I introduced in LB835 last session which was cosponsored by Chairman Gloor, Senator Campbell, and eight of our colleagues. The only change is we added the Rural Health...a representative of the Rural Health Advisory Committee to ensure our rural health perspective is at the table. LB835 which I said had nearly identical board composition to this bill had the support at the time of the Nebraska

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Medical Association, Nebraska Association of Health Underwriters, Nebraska Association of Insurance and Financial Advisors, Independent Insurance Agents of Nebraska, Professional Insurance Agents of Nebraska, American Cancer Society, Health Care Association of Nebraska, NAMI, the National Federation of Independent Business, the Nebraska Bankers Association, Nebraska Pharmacists Association, Voices for Children in Nebraska, Nebraska Appleseed, Nebraska Hospital Association, AARP, Center for Rural Affairs, among others. And I hope several of those groups will be here to testify in support of this bill today. Last year there was some concern about the constitutionality of the appointment process in the bill. I'd like to let the committee know that my staff worked closely with bill drafters to ensure that we have the appropriate balance of input to the appointment process to ensure we're not infringing upon the Governor's constitutional right to make appointments. In 1987, an AG's Opinion regarding the Governor's power to appoint concluded that the Governor's constitutional right to appoint is not unduly restricted so long as the Governor is not limited to just a few names. The specific...the Opinion goes on to specifically say that a list of three or fewer candidates is unconstitutional. This bill would provide the Governor...the Legislature would provide the Governor a list of at least five candidates for each of the positions. Ultimately, a health insurance exchange in Nebraska, as I said, will create greater choice, transparency, value, and competition in our health insurance marketplace. And I firmly believe that we should create this commission so that we have a voice in this process, that our stakeholders have a voice, and it will ease the process of working side by side with the federal government as they create a new health insurance marketplace in Nebraska and potentially will look down the road to moving us towards a state-operated exchange. In December I joined a group of about 12 legislators from around the country at NCSL's fall meeting to meet with Secretary Sebelius, and it was clear--and it continues to be clear--that the federal government does not want to be in the business of running exchanges down the road. They have said they are going to extend the grant ability as far as statute will allow them to, which would be the end of '15 I believe is when the last time a state could apply. They said they are going to give as much flexibility also in when states can spend that money. As long as states are continuing to work down that road, they would allow them to continue to spend that money. And they may--and while it's probably extraordinarily difficult to do anything to change the statute--they may go back and actually ask for statute changes. That remains to be seen. But it certainly isn't the intent of this federal administration to...for states to keep looking at the option of a state-based exchange. With that, I'd be happy to take any questions. [LB384]

SENATOR GLOOR: Thank you, Senator Nordquist. Senator Schumacher and Senator Pirsch and Senator Campbell have since been able to join us, their meeting adjourned. We welcome them. Questions for Senator Nordquist? Senator Carlson. [LB384]

SENATOR CARLSON: Thank you, Senator Gloor. I thought of two questions, and one of them is more a mechanical one. And I don't know if you'd know the answer to this,

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but you talk about five candidates for each position. Is it specified or do you know or is it understood that all five candidates would have agreed beforehand that if chosen they would serve? [LB384]

SENATOR NORDQUIST: I assume...and I don't know how we do it right now for...like we do this for Accountability and Disclosure. We make recommendations to the Governor for him to select. I assume that the Exec Board when they make that recommendation, checks with those people and makes sure that we are submitting a list of people who want to do it. We can confirm that, but I know for Accountability and Disclosure which this is kind of modeled off of, we give the Governor a list of names that I think people from the Legislature take to the Exec Board, they put the list together and give it to the Governor. But maybe that's a clarification that we would need to make. [LB384]

SENATOR CARLSON: Well, even on a group like this, 12 members, that's 60 people to have interviewed and have said yes. Not that it's wrong, but that's a pretty good job. [LB384]

SENATOR NORDQUIST: Yeah. Yeah. Uh-huh. Yeah. I would just say that just for clarification on that, there's only nine members that are appointed. The other three members are the director of insurance, director of Medicaid, and the Division of Children and Families. [LB384]

SENATOR CARLSON: Okay, so that's 45. [LB384]

SENATOR NORDQUIST: Yeah. But you're right. [LB384]

SENATOR CARLSON: My second question is, do you know are all these plans that might be available for the exchange, is it specified exactly what coverages have to be in each one? [LB384]

SENATOR NORDQUIST: Well, there is the essential health benefits which sets those parameters of what does have to be covered, and that was a...the state had the option to choose from a list of four. Initially, the federal government was going to dictate and say here's the essential health benefits for the entire country. Then they backed off of that, gave the states the option to choose from four options which were the largest small-employer plan in the state, the largest large-group plan, the federal...the benefits offered to federal employees, and the benefits offered to state employees. The Governor made a selection which wasn't on that list and then the federal government came back and said, well, because your selection wasn't part of the options, you take the default plan which is the largest small-group plan in the state. It's a Blue Cross product. I don't remember the exact parameters, but so the benefits in that are what's the baseline for our essential health benefits and all plans sold on the exchange have to

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meet that baseline. [LB384]

SENATOR CARLSON: So those benefits you call essential health benefits? [LB384]

SENATOR NORDQUIST: Essential health benefits and all plans sold on the exchange have to meet that baseline. [LB384]

SENATOR CARLSON: Is there leeway that there can be additional benefits put to it to make a plan more effective and maybe more competitive? [LB384]

SENATOR NORDQUIST: I believe so. I would get clarification on that, but my understanding is that...yeah. [LB384]

SENATOR CARLSON: Okay. I'd be interested in that because that's quite a difference. Otherwise, if we're talking about the exact same benefits in every plan, the only difference is efficiency of claims and efficiency of the company. [LB384]

SENATOR NORDQUIST: Uh-huh. And they have the ability to...so in the exchange, they have to meet certain actuarial values. There's a bronze level, the silver...bronze, silver, gold, and platinum. At the bronze level, the insurer pays 60 percent actuarial value, 70 percent for silver, 80 percent for gold, and 90 percent for platinum. Within that though, there's no requirements about specific copayments levels or deductible levels. So the insurer could tweak, you know, what copayments are on certain things, what deductibles are on certain things, as long as that meets that 60 percent total actuarial value. So there would be some ability to design products a little differently through that. [LB384]

SENATOR CARLSON: But you feel that whichever that percentage is taken, in addition to that there could be other benefits that aren't part of essential? Well, you're going to... [LB384]

SENATOR NORDQUIST: I'll clarify. If I close, I'll make sure I get that on the record if no one behind me does. I'm trying to remember exactly if I'm right on that or not. [LB384]

SENATOR CARLSON: Okay. All right. Thank you. [LB384]

SENATOR GLOOR: Senator Nordquist, in your handout which is the one under general guidance on the exchanges, you've highlighted "HHS is also exploring with the National Association of Insurance Commissioners whether an advisory board can or should be created in states where such boards do not already exist." So obviously, your bill is taking the bull by the horns and establishing one of those advisory boards. At your NCSL meeting with Secretary Sebelius, was there any further guidance... [LB384]

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SENATOR NORDQUIST: That didn't...yeah. [LB384]

SENATOR GLOOR: ...or anything that was offered up? Do you know how other states stand on this right now? [LB384]

SENATOR NORDQUIST: We didn't delve into that. I do know that of the states that did move forward with a full state-based exchange, most of those established...all but I think one or two established a commission, an independent---I shouldn't say independent--a commission of stakeholders to run it. Some did it within their department of insurance, some set up separate state agencies, some...I think there may even have been some nonprofit arrangements too. But most of those states did have a separate board, so I think this is talking about the states that didn't do a state exchange, that are doing a federal exchange. They want some sort of stakeholder relationship in the state. [LB384]

SENATOR GLOOR: How does this appointment process match up with the appointment process you referenced with the bill last year when we set the commission? [LB384]

SENATOR NORDQUIST: It would be that we did the exact same. Yeah. [LB384]

SENATOR GLOOR: Five names down to one name with hearings? Okay. [LB384]

SENATOR NORDQUIST: Yes. Yes. Five names for each spot to the Governor. And the list I think is on the back of the one-page...the handout of who all those people are. One from each Congressional district, a small-business representative, I think two representatives of healthcare provider organizations, one representative to represent the interests of insurance carriers, and one to represent the interests of insurance agents, and then we added the rural-health member is the new Rural Health Advisory Commission member is the new person this year. [LB384]

SENATOR GLOOR: Okay. [LB384]

SENATOR NORDQUIST: But...and I will just say both on the appointment process and the makeup of the board, I'm not completely wedded to any of this. If the committee sees a better makeup or a better appointment process, I just think that we need to have a public commission of stakeholders that keeps the public engaged in any future exchange discussions, keeps the Legislature engaged, comes to us with recommendations for policy changes, looks to the future at potentially setting up a state exchange and making recommendations regarding that, and then also being our liaison largely to the federal government. [LB384]

SENATOR GLOOR: Okay. [LB384]

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SENATOR NORDQUIST: And we do have in the bill also, this commission would be able to set up advisory committees. So if they need more expertise in plan design or IT or whatever it is, they can bring those experts into the public discussion. [LB384]

SENATOR GLOOR: Thank you. Senator Pirsch. [LB384]

SENATOR PIRSCH: Thanks. And I was wrapping up an Exec Board hearing so I missed a little bit of your opening and so I hope I don't ask a redundant question. But... [LB384]

SENATOR NORDQUIST: You would never do that, Senator. [LB384]

SENATOR PIRSCH: With respect to...so you're proposing the creation of something you call the Nebraska Exchange Stakeholder Commission, right? [LB384]

SENATOR NORDQUIST: Yeah. [LB384]

SENATOR PIRSCH: And it's something separate and apart, but could play a role with respect to these advisory boards, right? So could you tell me what in general...right now, the Governor has indicated...we didn't meet the time line of the Department of Health and Human Service(s) in terms of making election indicating that we're going to run our own health insurance exchange. Is it...and you're saying that this commission would play some role in your hope in ultimately adopting a state-based health insurance exchange. Is that right? [LB384]

SENATOR NORDQUIST: I would say that they would not. At this point, they would have no governance ability to do anything like that. They would be our board of stakeholders in Nebraska to make recommendations to us to say, hey, we think maybe here are the problems with the federal exchange or we think there's an opportunity coming up to look at doing a state exchange or here, the deadline of grant money is running out in 2015. If you want to do a state exchange, here it is. To really bring stakeholders together, try to get some consensus among the stakeholder groups to come back to us as policymakers to look at potentially a state exchange down the road. But even more important in the short term is them being in the stakeholder relationship with the federal government. The federal government has said in their regulations and in the Federal Register and on the piece I handed out, that they want to make sure they're engaging stakeholders in each state as they're developing their federally facilitated exchanges. [LB384]

SENATOR PIRSCH: Well, and that's what I wanted to talk to you about. So you're saying that this commission would have relevance even if...even under the existing paradigm where it's a federally run exchange. And what kinds of activities then would this commission do? Is it interrelated with the federal-run exchange then? [LB384]

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SENATOR NORDQUIST: Yeah. Yeah. So on...I'll give you the exact section here and then I can read through it. It's on...all right. It kind of begins the...it's section 5, which is on the top of page 6. Really, to: work with state and federal agencies and policymakers to provide oversight and recommendations regarding the implementation of the exchange, including looking to access of high-quality, affordable plans, promoting competitiveness, incorporating existing state policies, ensuring effectiveness of the navigator grant program, promoting a seamless integration with Medicaid, ensuring small business health option plan meets the needs of those small businesses in the state. And then they can create technical advisory groups. So really, they are going to be our eyes and ears on the ground as the federal exchange is off and running. It would give consumers in our state a public body to take their concerns to if they have issues with it. We require at least quarterly meetings of this commission. And I think it's just pulling our stakeholders together to try to make this work in the best way we can. [LB384]

SENATOR PIRSCH: But this group would be a liaison group for Nebraskans to give some sort of voice and input to the federal government as to how the federal government should structure their federal state...I'm sorry, federal health... [LB384]

SENATOR NORDQUIST: Yeah. [LB384]

SENATOR PIRSCH: ...insurance exchange? [LB384]

SENATOR NORDQUIST: I think that's what...and it may...you know, ultimately how much the federal government listens to the stakeholder group, we'll see. But on the page I handed out from the General Guidance it says, HHS is looking to do this in other states, as Senator Gloor pointed out, too, to work with local stakeholders including consumers, plans, providers, and employers to development successful exchanges in every state. So this would meet that role of what the federal government, I think, is looking for to be the voice of stakeholders in Nebraska to them. [LB384]

SENATOR PIRSCH: You're referring to this, with the second highlighted phrase? [LB384]

SENATOR NORDQUIST: Yes. Yes. [LB384]

SENATOR PIRSCH: Okay. So they refer to them as advisory boards. So they're exploring within NAIC whether an advisory board can or should be created in the states where they don't exist. Has in any other kind of issuance of HHS or through any other federal kind of...is there any other type of federal publication or a kind of pronouncement that they are...that they want this type of interaction with states, and more importantly, that they'll take that into consideration in terms of how they...who at least right now



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have, you know, unilateral control over the exchange in terms of how they structure those exchanges for the benefit of how they feel the state of Nebraska citizens or... [LB384]

SENATOR NORDQUIST: They did also in the Federal Register and rules and regulations; it's from March of last year. And I don't know if...this is from May. So even before this they also identified a list of stakeholders that they would want ongoing communication with, and I can hand out a copy of this as well. But it really identifies consumers who are enrolled in the plan, small businesses, state Medicaid and CHIP agencies, healthcare providers, agents, brokers, and issuers. So really it is, for the most part, the people we're identifying already in this bill that we identified last year, and the governance. As I said in my testimony, this is really modeled out of the bill we introduced last year, that that's who they're looking to get input from. [LB384]

SENATOR PIRSCH: Okay. So your understanding is the federal government is reaching out hands right now trying to get on the ground local...I don't mean local, but state-type of perspectives as they fashion. So each one of the state...I'm sorry, federally run exchanges for particular states will have some sort of, in their opinion...I mean, customization? [LB384]

SENATOR NORDQUIST: Yes, some sort of stakeholder input. I would say that I'm...this bill gives us a formal process to ensure that we are having a sufficient amount of public transparency, that we are having a sufficient public dialog, that we are having public meetings so we're not making decisions, you know, behind closed doors and only specific stakeholders' input gets passed along to the federal government. This really opens the door to that and makes sure that it's a seamless relationship. [LB384]

SENATOR PIRSCH: Uh-huh. Is there more in here that would be geared only toward a transition from a federally run exchange to a state-based exchange in the future? [LB384]

SENATOR NORDQUIST: There's nothing in the bill specifically but depending on how things work and how the makeup of the bill is, I could certainly see this commission eventually maybe transitioning to a governance board if we ever do move to a state exchange. But that would require new legislation, and that is a bridge we can cross when we get there. [LB384]

SENATOR PIRSCH: Would it...you mean new legislation on a state level or on a federal level? [LB384]

SENATOR NORDQUIST: On a state level. So if we eventually did ever move to a state exchange, we could...we would have to give this board new duties and powers under our statute to be a governance...if we wanted that, if we wanted the Department of

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Insurance to run it, we would probably have to authorize that in the statute at that time too. So if we ever did a state exchange there would probably have to be some authorizing language. [LB384]

SENATOR PIRSCH: Is the only thing...you know, so the Governor has indicated by the date that it was set up by HHS, you must elect and show an ability to run your own...have we missed at this point in time, even under that whole paradigm, a partnership-type of arrangement? So you know that was understood as the old time frame. So is there...I guess if you could comment with respect to what choice is there? You had indicated and I don't know if it was you were just giving a hypothetical example or you were actually pointing out that there are grant monies out through the year 2015. Is that correct? [LB384]

SENATOR NORDQUIST: Yeah. So there would be the argument to extend the grant money to the statutory limit which would be the end of 2015, so that gives us a little bit of time there. The deadline for the partnership exchange actually just passed this last Friday, and I think it's exactly 50/50. Half the states are doing federal exchanges, half are doing either state or partnership exchanges, so that a number of states came out on Friday saying we're passing. So all those deadlines have passed. The issue is in the statute it said that it was a hard statutory deadline and July 1, 2013, is when states had...when the HHS, federal HHS had to make the determination whether a state was ready or not to do a state exchange, that's the deadline we missed. They had a little more flexibility with the partnership exchange. That's why they allowed that to go to February. So now that that deadline is passed, October 1 people are going to start enrolling in the exchanges, January 1 they are...the plans they are enrolled and the coverage starts. I don't think HHS has thought, okay, what is the process now after that point? I don't think they've processed it enough to say...and maybe there is guidance I just am not aware of, but from my discussion with the NCSL folks, I don't think they've come to the point of saying, how do states now opt into the state exchange? The money will be there. I think HHS still has to define the process of when that transition can and how it takes place. And that will probably be coming after they...after a little bit more time here with...after they get their head around everything. [LB384]

SENATOR PIRSCH: What..I mean, do we know if it's going to be the full extent of the...that monies...those funds that were originally available to states should you timely elect to be a state-based exchange or a partnership exchange, those exact amounts of monies would be available for the state, conceivably, until 2015? [LB384]

SENATOR NORDQUIST: Yes. That is my understanding. Now certainly with sequestration or with other budget packages, that can certainly change. I mean, there's no question about that, but it's my understanding that it's not impacted by sequestration at this point. But any deals that are cut to avoid that, it could be. [LB384]

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SENATOR PIRSCH: Thank you. [LB384]

SENATOR GLOOR: (Exhibits 3, 4, and 5) For the record, we have letters of support for this bill from the Nebraskans for Peace, Nebraska Association of Behavioral Health Organizations, and the Nebraska Hospital Association we will be passing out to the committee. Other questions? Senator Crawford. [LB384]

SENATOR CRAWFORD: Thank you. And thank you, Senator Nordquist. I appreciate your work on this bill to create a proactive way for stakeholders in the state to be engaged in this discussion. And I also very much appreciate bringing the quotes from the General Guidance that suggest that there is, you know, an interest in federal government and in using that kind of guidance; I appreciate that, and the history as well. It's helpful to hear that in terms of how this relates to the idea of what we might have put together if we were pulling it together at the state level originally. Now it seems to me, the group will be providing input to the federal government, but also, we're seeing in this committee several bills coming across through our committee that relate to the exchange or to insurance policies that are going to impact the exchange. So it seems to me that the stakeholder group would also be able to give advice to the Legislature, the state Legislature as well and to this committee and Health and Human Services Committee specifically. So I wonder if you could comment on that. [LB384]

SENATOR NORDQUIST: Yeah, that's right. Yes, absolutely. And we kind of identified that in subsection (1) of section 5, but if we want any more clarification I'd be happy to let the committee work on that. It says: the commission shall work with state and federal agencies and policymakers to provide oversight and recommendations regarding implementation and operation of the Affordable Care Act insurance exchange. And then it also does identify, you know, if it's the issue of affordability, if it's the issue of competitiveness, those specific issues are identified. But if there are any additional pieces that you want this stakeholder commission to look at in this broader context, I'd be happy to entertain those. [LB384]

SENATOR CRAWFORD: Thank you. [LB384]

SENATOR GLOOR: Senator Campbell. [LB384]

SENATOR CAMPBELL: Thank you, Senator Gloor. I just...mine is just a comment, and I'm sorry that Senator Carlson isn't here. But this last summer the Health and Human Services Committee worked with the process because it was similar to appointing the Foster Care Review office--the five people. And I just wanted to make comment on the record that that process went extremely well and primarily because we had a lot of discussion and help from the Governor's office. So in other words, we did contact those people, we did a preliminary vetting of them, got information. If there were questions, we called and clarified some things, but it was that cooperative working together that made

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it work really well. And I've said this in front of the Health Committee, but I think the Governor does find really good people out of the names that were sent. And it was...they're very used to doing this, we are not as much, but they were very helpful. [LB384]

SENATOR NORDQUIST: Right. Thank you. [LB384]

SENATOR CAMPBELL: So it worked really well, and they are...those people are well aware that they could be appointed. [LB384]

SENATOR NORDQUIST: Sure. Great. [LB384]

SENATOR GLOOR: Senator Schumacher, did you have a question? [LB384]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Senator Nordquist, for testifying. You probably worked more on the ACA than anyone or at least as much as anyone else has. Now in the time frame of things that we're supposed to be doing, in...with the essential health benefit thing what was proposed was rejected by the federal government so we are allocated to that one category of policy that contains those. And then we did not make an election with regard to the state-based or partnership exchange so we defaulted to the federal exchange. Are there any other...and that one was in September, the essential health benefits, and I think November or December for the...for electing the state exchange. What deadlines or are there any deadlines that we should be looking at now or worried about apart from the Medicaid expansion? [LB384]

SENATOR NORDQUIST: Uh-huh. Uh-huh. Not any that I'm aware of. The ones that we just as state legislators need to be vigilant of are, is our state administration's relationship with the federal exchange, making sure that our administrations in Health and Human Services are doing everything to be good partners with the federal government. And it's my understanding that they are, through my discussions with Director Chaumont and others, but I think that is something we need to be on top of because if that integration, even if we don't do expansion, we still need that seamless integration of our Medicaid program to the exchange. So there aren't any hard deadlines, but that's something that is between now and October 1 when the enrollment needs to start in the exchange. That's something that we need to be...provide proper oversight over. And then the expansion would be the other one, but there's no hard deadline on that either. [LB384]

SENATOR SCHUMACHER: Thank you, Senator. [LB384]

SENATOR GLOOR: Yes, Senator Howard. [LB384]

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SENATOR HOWARD: Thank you, Senator Gloor. And thank you for this bill, it's really wonderful. But I just wanted to clarify, one of my concerns in a federal exchange was that this exchange wouldn't be responsive to Nebraska law surrounding insurance. And so I wanted to clarify, is your intent in this commission that they would inform the federal government on certain Nebraska laws that might impact the exchange? [LB384]

SENATOR NORDQUIST: I certainly think so, yeah. They would be the...our voice to do that, certainly within...I mean, the Department of Insurance is still going to have a relationship, obviously, with the federal government and federal Health and Human Services. But they...this ensures more...I mean, that's probably more of a role of the Department of Insurance but this would just ensure that there's public oversight of that discussion. Yeah. [LB384]

SENATOR HOWARD: Thank you. [LB384]

SENATOR GLOOR: Other questions? Seeing none, thank you, Senator Nordquist. And if I heard you correctly, you may or may not close depending upon how long this goes. [LB384]

SENATOR NORDQUIST: Yes. Thank you. All right. [LB384]

SENATOR GLOOR: Okay. We'll look for you at the close. Can I see a show of hands of people who would like to testify in any capacity on this bill? Okay, I see about eight or nine hands. We'll start with proponents. I'd take testimony from the first proponent. Afternoon. [LB384]

MARK INTERMILL: Good afternoon, Senator Gloor and members of the Banking, Commerce and Insurance Committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today on behalf of AARP to support LB384. There is a chance that the Affordable Care Act could be implemented without a hitch in Nebraska, but based on my experience with the Medicare Modernization Act, there will be challenges that will arise, and the Medicare Modernization Act is a much smaller implementation than the Affordable Care Act. We support this bill because it provides Nebraskans with a forum for sorting out some of the issues that are likely to arise. We think it's very important to be able to have a place in state government where we can discuss those issues where consumers can come, and I'm also particularly pleased that there are...there is consumer representation on the commission. That's something that is very important to AARP is to make sure that the interest of consumers are taken into account as we look at these issues. So we do support LB384 and with that, I'd be happy to respond to questions. [LB384]

SENATOR GLOOR: Senator Pirsch. [LB384]

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SENATOR PIRSCH: Oh, thanks. And just towards my kind of last line of questioning with Senator Nordquist, have...are you aware...I mean, we can...it seems like it's not that much expense to put together this committee. Maybe \$6,000 I think is what the...but...and in the composition, you know, it seems to have a blend of individuals who...but the question is, so this committee, should it meet and gather all this input from the citizens of the state of Nebraska in terms of what they...do you have any concrete understanding or type of intimations from the federal government that they're going to receive that from each of the 50 states and really do something with that in terms of building out a federally run health insurance exchange for the people of Nebraska and other states for that matter? [LB384]

MARK INTERMILL: Well, I see a couple of responses to that question. First of all, I think it's important to be able to work within state government as well as with the federal government. I think there's value that this commission will bring in sorting out those issues that are within our control within the state of Nebraska. But in terms of this commission being a venue for effecting policy at the federal level, I think any time that you can bring all of those concerns together and present them in a rational manner it helps to be able to change public policy at the federal level. I would hope that the federally facilitated exchange is going to be responsive. I think it's in the interest of the federal government to do that, but I think having the commission in place as a way...a place where we can bring those concerns together makes a lot of sense and will help us to be able to convey those concerns to the federally facilitated exchange. [LB384]

SENATOR PIRSCH: Has the federal exchange--the people who are building this out though--have they given indications to others that they're going to be...that they are very interested in receiving this and that they're going to use those to, you know, to help design their, you know, their build-out for the state? [LB384]

MARK INTERMILL: Yeah. I don't have knowledge about the process of building the exchange. I guess I would just say that in terms of after the exchange is built, I think it would be helpful as a means for providing feedback to the exchange to have that entity that will be able to pull together the information that will help them to be able to do their job. [LB384]

SENATOR PIRSCH: Okay. [LB384]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Intermill. [LB384]

MARK INTERMILL: Thank you. [LB384]

SENATOR GLOOR: Next proponent, please. [LB384]

JON BAILEY: (Exhibit 6) Good afternoon, members of the committee. My name is Jon

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Bailey, that's J-o-n B-a-i-l-e-y, and I'm the director of research and analysis at the Center for Rural Affairs in Lyons, Nebraska. And I come before you today to offer testimony in support of LB384. Almost five years ago the Center for Rural Affairs started a major project on healthcare reform and how it will affect rural people in rural areas of both Nebraska and the nation. As part of the implementation phase of that project, we offer these comments toward making the health insurance exchange work for all Nebraskans. And for those of you who are familiar with the Affordable Care Act, the health insurance exchange is really the guts of the law. It will be what makes the law work and provide affordable insurance...health insurance for more people. We think LB384 is necessary legislation to ensure that Nebraska ideas and recommendations become a part of the process where thousands of Nebraskans will obtain health insurance. LB384 will provide Nebraska-based public oversight to the implementation of the federal exchange in a way that might not be possible without this legislation. My next point goes to Senator Pirsch's line of questioning about the connection between the federal government and the interest in the federal government in what LB384 does. Without (LB)384, recommendations to and oversight of the federal exchange might be on an ad hoc special-interest basis rather than through an official, organized group representing all Nebraska stakeholders. We've had discussions with federal officials, and admittedly low-level federal officials, who are involved in exchange development and they seem to indicate that ideas, recommendations, and oversight from an officially-sanctioned group such as the Nebraska Exchange Stakeholder Commission will be welcome and likely taken more seriously. We hope that their comments to us are indicative of the larger effort. And to respond to Senator Pirsch's last question of Mr. Intermill, as I said, the exchange and the effectiveness of the exchange really is the guts of the law and what will make the law work. And so we're assuming that the federal government want the state exchanges, even the federally run exchanges in states to work because if they don't, then the law won't work. We also believe that proposed membership of the Nebraska Exchange Stakeholder Commission is worthy of support. The proposed commission will have a strong consumer representation from all parts of the state, which will be important to study and oversee how the exchange is working for all Nebraskans. The proposed commission has one specific rural representative, which is critical to a state like Nebraska, and as Senator Nordquist mentioned, that's in addition to the law and one that we thinks makes this bill much better than last session's bill. We have written extensively and discussed with federal officials the unique needs of rural areas in relation to health insurance exchanges. Having at least one rural representative on the proposed commission will ensure the unique needs and circumstances of rural people and rural areas will be considered. The health insurance exchanges are designed to provide affordable insurance for those who do not currently have access to it--the uninsured, small businesses, and moderate-income families. All the data, both at the state and federal level, indicate that those populations all live in rural areas in greater proportion. And so in a large extent the health insurance exchanges are really meant for rural people, and so they have to work for rural areas. So it's good to have a rural representative on this commission to bring out any issues,

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any problems that rural people are facing with the exchanges. So in conclusion, we believe LB384 is necessary to ensure that the health insurance exchange works for all Nebraskans, especially those in rural Nebraska. And we urge the committee to advance LB384. [LB384]

SENATOR GLOOR: Thank you. Are there questions for Mr. Bailey? Senator Pirsch. [LB384]

SENATOR PIRSCH: And thanks for your testimony, especially about the rural areas membership. And maybe you don't know this, I don't want to, you know, put you on the spot or anything. [LB384]

JON BAILEY: If I don't know it, I'll tell you. [LB384]

SENATOR PIRSCH: But it just deals with the build-out with the federal health insurance exchanges. Are you...I'll just ask you this preliminary question. Are you familiar with where they are at in the process, the federal government, in terms of building out the state...the health insurance exchanges for those states that had opted to have the federal government front it for them? [LB384]

JON BAILEY: Honestly, I don't think anyone can tell you they're familiar with it because I don't think the federal government knows yet. I think as Senator Nordquist alluded to, they're still working on that. And that's a big issue because as he said, the deadline last Friday of states to finally decide what they were doing on the exchanges, we have about half the states doing their own and half the states having federally run exchanges. I don't think the law expected that, I don't think the federal government expected that. So I think this is a big undertaking for the federal government and I don't think they yet have all the answers to that. So I know we're waiting on that, and I think everybody else who is interested in this issue is waiting as well. [LB384]

SENATOR PIRSCH: Yeah. And these federally run health insurance exchanges for the states have to be up and running by what date? [LB384]

JON BAILEY: October they will start. They have to be up and running...both the state and federal exchanges have to be up and running in October for promotion and initial enrollment. And then starting January 1, 2014. [LB384]

SENATOR PIRSCH: Yeah. So October of this year. It's February...so we're saying in about eight months they have to be all up and running. [LB384]

JON BAILEY: Right. [LB384]

SENATOR PIRSCH: So I would...and there was an expectation, I think you were



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saying, that there wouldn't be as many as half of the states that would elect to have the federal government run it. [LB384]

JON BAILEY: Right. [LB384]

SENATOR PIRSCH: So more of an undertaking, but nonetheless, would you think that they'd start with just a common template in terms of...I mean, do they have at least a common...I know, without the customization of each state, but a starting point or background for it? Do they have software developed that's kind of a beta type or anything to your knowledge? [LB384]

JON BAILEY: I don't know. I'm not aware of that. I think the idea, the theory is maybe now there will be some economies of scale with that many states that it can be common for half the states. Maybe that's the case, I don't know. But, of course, they'll have to be done for each potential state. [LB384]

SENATOR PIRSCH: Okay. And I'm sorry to have...you know, obviously, I...you know, it just is a point that interests me and, unfortunately, you got stuck in the chair when I asked (inaudible.) So thank you for your testimony here today. [LB384]

JON BAILEY: That's okay. Thank you. [LB384]

SENATOR GLOOR: Any other questions? Seeing none, thank you. [LB384]

JON BAILEY: Thank you. [LB384]

SENATOR GLOOR: Next proponent, please. [LB384]

REBECCA RAYMAN: (Exhibit 7) Good afternoon. My name is Rebecca Rayman, R-e-b-e-c-c-a R-a-y-m-a-n, and I am pleased to be here today to provide testimony in support of LB384. I am the current chair of the Health Center Association of Nebraska which represents the six Federally Qualified Health Centers in Nebraska. I am more directly the executive director of the East Central District Health Department, Good Neighbor Community Health Center located in Columbus, Nebraska. We believe that LB384 is an important vehicle to ensure the success of the implementation of the health insurance exchange for Nebraska. As you may know, Federally Qualified Health Centers are community-based organizations. We provide comprehensive, quality, primary care, preventative care services, including medical, dental, behavioral health, pharmacy, and support services to persons of all ages and backgrounds. Altogether the six community health centers in Nebraska serve 63,532 patients. And it is important that you understand that 53 percent of our patients are uninsured. We know that the new healthcare marketplace or exchange will enable many of our currently uninsured patients to access health insurance, many for the very first time. As an association and

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as the individual health centers we support and we know that the implementation of the exchange will require the best efforts of all of us, and we stand ready and willing to monitor and assist in this effort. Thank you for this opportunity to support the creation of the Nebraska Exchange Stakeholder Commission. And I am pleased to answer any questions that I can. [LB384]

SENATOR GLOOR: Thank you. Are there any questions for Ms. Rayman? Seeing none, thank you for testifying before us today. Thank you. [LB384]

REBECCA RAYMAN: Thank you. [LB384]

SENATOR GLOOR: Other proponents? [LB384]

MARK LISKO: Good afternoon. My name is Mark Lisko, M-a-r-k L-i-s-k-o, I'm here to testify on behalf of (LB)384. I am representing the Independent Insurance Agents of Nebraska. I am a small insurance agent owner in Omaha, Nebraska, and primarily we are in favor of this piece of legislation to aid us in communication with HHS in conjunction with the Department of Insurance. That's my main concern. As insurance agents we are the final professionals to deliver the products in the exchange to the consumers in the state of Nebraska. I'm happy to entertain any questions. [LB384]

SENATOR GLOOR: Thank you, Mr. Lisko. Any questions? Seeing none, thank you. [LB384]

MARK LISKO: Thank you. [LB384]

SENATOR GLOOR: Next proponent. Good afternoon. [LB384]

JERUSA HANCOCK: (Exhibit 8) Good afternoon. My name is Jerusha Hancock, J-e-r-u-s-h-a H-a-n-c-o-c-k, I'm here representing Nebraska Appleseed. I am the Health Care Access Program staff attorney. We're here to testify in support of LB384 which would provide an opportunity for state-based cooperation, coordination, oversight, and transparency for the federally facilitated exchange. A Stakeholder Commission offers Nebraska the opportunity to coordinate with the exchange with the goal of ensuring that it works best for Nebraskans. It would be tasked with monitoring the exchange and hopefully to oversee the navigator grant program and the integration between the exchange and Medicaid. In addition, it would provide information to various political bodies and make recommendations for improvements. We're pleased that LB384 requires the inclusion of three consumer representatives in the stakeholder commission, but we would encourage the executive board as it moves forward to make sure that one or more of these consumer representatives can speak to and have specific knowledge of the barriers that low-income Nebraskans especially face in obtaining insurance. As well, we would hope the commission would make the interaction between Medicaid and

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the exchange as seamless as possible, as that's going to be a foundation of quality implementation of the Affordable Care Act in the state. With that, I'd be happy to answer any questions. [LB384]

SENATOR GLOOR: Are there any questions? Seeing none, thank you, Ms. Hancock. [LB384]

JERUSHA HANCOCK: Thank you. [LB384]

SENATOR GLOOR: (Exhibit 9) Other proponents? We will then move to opponents. Are there opponents who would like to be heard? Those who would like to speak in a neutral capacity? And while the Director is moving forward, the Nebraska Medical Association has given a letter in a neutral position. We will have that handed out to committee members. [LB384]

BRUCE RAMGE: (Exhibit 10) Good afternoon. Good afternoon, Senator Gloor and members of the Banking, Commerce and Insurance Committee. My name is Bruce Ramge, for the record that's spelled B-r-u-c-e R-a-m-g-e. I'm the Director of Insurance and I'm here to testify in a neutral capacity regarding LB384. The stated intent of LB384 is to provide state-based oversight, recommendations, and transparency regarding the implementation of a health insurance exchange required by the Affordable Care Act. While the Department of Insurance has no position on LB384, I'd like the opportunity to brief the committee on our efforts to provide for transparency and stakeholder input in the last few years. First, I want you to know that both the Department of Insurance and the Department of Health and Human Services continue to work on this project. Obviously, the role of the Department of Health and Human Services is more focused on the technology issues related to connecting with the federal hub and with the federal exchange portal. The Department of Insurance has, in accordance with our directive from Governor Heineman, continued to work to preserve as much state autonomy as possible within the Affordable Care Act, specifically in the area of the state's authority over insurance markets. The department is working through the issues related to insurance policy form and rate filings, implementing the new federal changes to insurance standards, and other tasks associated with plan management functions of an exchange. We are working with our federal counterparts to do our part to make the function of the exchange as smooth as it can be. While our work with the planning and designing of a state-based health insurance exchange has come to an end, the work of the creation of a federally facilitated exchange is still very significant. My staff has and will continue to spend numerous hours on implementation and working with our federal counterparts on how to make the transition to this new marketplace as smooth as possible. With that background in mind, I'd like to discuss with the committee about the work that has been done so far on the project by the department to make this process transparent. The exchange project has involved significant research and meetings with many people, including trade associations, public advocacy groups, insurers, insurance

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agents, and the public during statewide forums. Throughout the process there has been a high degree of transparency and the Department of Insurance kept an open-door policy, which many citizens from around the state took advantage of during the course of our work to make comments or to simply check our progress. Governor Heineman convened two days of public meetings on the issue of health insurance exchanges in Lincoln in September. During those meetings, the Governor invited participation by three of the state's largest insurers and all of the state's insurance producer trade organizations. He sought participation of 12 advocacy organizations from all perspectives ranging from Americans for Prosperity to Nebraska Appleseed. He asked for representatives from the Nebraska Medical Association, the Health Center Association of Nebraska, pharmacists, chiropractors, nurse practitioners, Alegent, BryanLGH, St. Francis, and the Nebraska Med Center, Regional West Health Services, and Madonna. These meetings were open for public comment as time allowed. The department briefed the Banking, Commerce, and Insurance Committee several times in detail, both in and out of session, in both 2011 and 2012. These presentations involved long, direct presentation and questioning by the department. Your committee held a series of lengthy briefings with invited testimony this fall as well. In addition, we have had numerous individual meetings with senators on this issue, including a large number of meetings with former Chairman Pahls. The department held two rounds of public stakeholder meetings, the first round in early 2011, where we had public events in Gering, Kearney, Norfolk, Lincoln, and Omaha. Late last summer we held another round of public meetings in Gering, Kearney, Nebraska City, South Sioux City, and Omaha. In order to encourage Nebraskans to attend, we placed ads in newspapers in the appropriate regions, bought radio ads, and issued press releases from Governor Heineman's office. As mentioned before, but a point I don't think I can emphasize enough, is that the department maintained an open-door policy throughout the course of the decision making. I believe we attended every meeting to which we were invited or knew about. While we know there were a number of closed-door meetings of certain and specially selected stakeholders that we were not invited to, we nonetheless stood ready to talk to any of those participants about our research and were willing to listen to their concerns. As those with divergent political views can tell you, we hosted countless meetings at the department for stakeholders of all perspectives. In short, the process was conducted by the department in a very open and transparent way. Nebraska's first Federal Gate Review Report, which is a report issued by the Obama Administration regarding the progress we made on the exchange project, describe the Nebraska effort as follows: Nebraska has conducted an extremely thorough stakeholder engagement process to date, including hosting a series of public stakeholder meetings across the state. The state is extremely committed to expanding transparency for its consumers and utilizing reuse to reduce cost. We believe that this statement by the federal government best summarized our efforts in transparency relating to the work done on the exchange. The department agrees that transparency is an important goal for government, and we have worked to achieve that goal. Regardless of whether or not LB384 passes, we will continue to inform this committee, work with stakeholders, and

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be as transparent as possible as we work with your federal partners in the implementation of a federal exchange in our state. Thank you for your time. [LB384]

SENATOR GLOOR: Thank you, Mr. Director. And I appreciate your review of the efforts of the department in both the legislative and executive branch of government to try and provide open-door policy, whether it was hearings, meetings, interim studies, dialogues with my predecessor, Senator Pahls, but that was all a look back. [LB384]

BRUCE RAMGE: Yes. [LB384]

SENATOR GLOOR: And so you kind of finish up with a couple of sentences to talk about continuing to form forward, but this bill is a look-forward of how we can continue transparency that has been very evident in this process up to this point in time. Can you and have you given any thought to, and if so, could you share with us, if this bill didn't go through, if we didn't have this committee, how would we continue transparency from the department's perspective? [LB384]

BRUCE RAMGE: Sure. You know, again, I would like to emphasize that we're not taking a position on this bill. My main goal was to let you know what has occurred up to date. And we're always willing to work with you, as Chair, and this committee to update you on our efforts in terms of implementation of the act, as well as to respond to anyone with questions. And we're always open to meetings, to questions, that type of thing. So we'll maintain...we'll continue to be as transparent and responsive as we can be. [LB384]

SENATOR GLOOR: And I understand you're testifying in a neutral capacity and not in opposition. But I'm wondering, again, if you've got any meat on the bone here, if there's things that have crossed your mind of, all right, here's a transparency process that's a continuation of the transparency the department has shown up to this point in time. [LB384]

BRUCE RAMGE: Uh-huh. Sure. I briefly mentioned, you know, in the testimony here that we're working primarily on plan management with rate review and oversight of the policy forms. And our goal is to maintain the state's authority--what we've always had--over that process. And to work with the federal counterparts so that they are aware of what we are doing and that they can rely on our work as much as possible. Our goal is to assist with a smooth transition and to reduce any type of duplication of effort for them as well as for the insurers who wish to bring their products to the market. [LB384]

SENATOR GLOOR: Would you see legislative resolutions being appropriate to get regular updates the way we did this past year from the department? Is that something that would be beneficial to maintain transparency? [LB384]

BRUCE RAMGE: And I'm sorry, I didn't understand the question. Legislation to get

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updates or... [LB384]

SENATOR GLOOR: Well, if I introduced a legislative resolution that said we're going to meet with the Department of Insurance on issues related to transparency as we continue to progress in the establishment and success of health insurance exchanges. [LB384]

BRUCE RAMGE: Yes. [LB384]

SENATOR GLOOR: Would that be something that the department would be willing to participate in, in the interest of transparency? [LB384]

BRUCE RAMGE: We'll always be willing to provide you with updates upon your request. [LB384]

SENATOR GLOOR: Okay. I'm kind of trying to figure out if there are alternatives to this bill... [LB384]

BRUCE RAMGE: I see. [LB384]

SENATOR GLOOR: ...is what I'm trying to figure out. [LB384]

BRUCE RAMGE: Okay. [LB384]

SENATOR GLOOR: Other questions? Senator Pirsch. [LB384]

SENATOR PIRSCH: I think Senator Campbell had her hand raised first. [LB384]

SENATOR GLOOR: Well, flip a coin. But go ahead, Senator Campbell. [LB384]

SENATOR CAMPBELL: Thank you, Senator Pirsch, that was very gracious. Director, one of the questions that I have is that in the information that Senator Nordquist gave us is this idea that HHS is exploring with the NAIC on whether an advisory board can and should be created in states where such boards don't already exist. And I know that we've had a very strong connection to the NAIC as you have talked about, and that has been very helpful. Has there been any information from that organization? [LB384]

BRUCE RAMGE: Uh-huh. The NAIC, when it came apparent that many states were going to opt for a federally facilitated exchange, they formed a working group to specifically look at the coordination of those issues. And while they've not really come out with any type of recommendation about advisory boards as such, that working group is underway and we expect to have a lot of good information from that process. [LB384]

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SENATOR CAMPBELL: And I think that the information from the department has always been helpful as we've gone along in the process. I just see that such an advisory board, however it's constituted, does provide for Nebraskans some kind of intermediary group because the exchange will be run federally. And for a lot of people in the state it's like, okay, how do I impact if I have a question? Now that's not to say that some of them won't call you, because they probably will call the department. But there will be Nebraskans who won't think of that and will feel, you know, how do I make somebody know of my problem or what I'd like to see done? And that to me, it seems to me, is the beauty of this is the fact that you do have a group that will be fairly visible and public. [LB384]

BRUCE RAMGE: My perception is that there's still a lot of misunderstanding or misconceptions or really not a lot of knowledge yet about the Affordable Care Act, because individuals seem to know about it, but not a great deal about the details. [LB384]

SENATOR CAMPBELL: Takes time. Thank you, Director. [LB384]

SENATOR GLOOR: Senator Pirsch. [LB384]

SENATOR PIRSCH: So thanks, Director, I appreciate your testimony today. And as we discussed, I think with one of the testifiers before you today was a little bit of a surprise that perhaps as many states opted against running their own state-based exchange and therefore defaulted to the federal, and that that has left a big, monumental task for the federal government and a nearing deadline of October. And so anytime you're approaching that monumental task, which is much larger than the Medicaid Modernization Act which had hiccups, and you're looking at all these different states the question is, you know, obviously there's an economies of scale. You can develop the platform or the software process to get that. But when you go on that scale, the fact that there may be 25 states, each one different or peculiar to some degree, you know, but with that narrow of a time frame that kind of defies against customization too much. So if we were to set up this committee and there's not that much expense and whatnot...I guess my line of questioning is, do you think is the federal government to your knowledge, are they going to listen to the recommendations that the state may come up with through a committee such as this and integrate those into their approach to their federally run exchange for Nebraska? [LB384]

BRUCE RAMGE: Our experience is that they are always open to suggestions. There are limitations, too, around the framework of the law because it is pretty prescriptive. But we have found them to be very open to the dialogue that we have on, you know, an occasional basis. And, again, it's a very large...they're often not able to make a commitment because of the wheels of how everything works in the U.S. Department of Health and Human Services, but they have been very receptive to comments and

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questions. [LB384]

SENATOR PIRSCH: Okay. But with then respect to your follow up, you said the law itself is very prescriptive and gives narrow... [LB384]

BRUCE RAMGE: It is. [LB384]

SENATOR PIRSCH: ...so I'm trying to figure out what types of discretion we could...items, action items of which, or, this group could come up...Nebraska-based group could come up with and make recommendations towards...you know, would they still be meaningful enough that we should go ahead and forge this group? And I guess you indicated you don't know to what extent that they are receptive towards taking those suggestions if they were developed. [LB384]

BRUCE RAMGE: Correct. You know, many types of suggestions might actually even require a federal law change, you know, depending on what the recommendation was. Recommendations or advice on how to do things smoother or how...probably would be something that they could uptake, you know, without having to change laws. But I guess it's difficult for me to anticipate what types of recommendations would be coming forth. So I'm not trying to evade your question. [LB384]

SENATOR PIRSCH: No, no. I don't think you are. [LB384]

BRUCE RAMGE: It's just I haven't thought that far in advance. [LB384]

SENATOR PIRSCH: Yeah. Thank you very much. [LB384]

BRUCE RAMGE: You're welcome. [LB384]

SENATOR GLOOR: Senator Schumacher. [LB384]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony, Director Ramge. In your testimony you say our work with the planning and designing of a state-based health exchange has come to an end. If I recall some of the earlier hearings and things like that, we were allocated somewhere on the order of \$5 million, \$6 million to plan a health exchange. [LB384]

BRUCE RAMGE: That's correct. [LB384]

SENATOR SCHUMACHER: Any of that money left over? [LB384]

BRUCE RAMGE: We did not use all of the grant money. And we are exploring opportunities right now for extension for use of that with the assistance of the plan



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management. So to that extent, there is a possibility that the department can put some of that to use in expanding our oversight of the plan management. [LB384]

SENATOR SCHUMACHER: Any idea how much is left over? [LB384]

BRUCE RAMGE: You know what? I wasn't prepared for that, but I can let you know. [LB384]

SENATOR SCHUMACHER: Okay. Thank you. [LB384]

BRUCE RAMGE: You're welcome. [LB384]

SENATOR GLOOR: Why don't you, if you would, let committee counsel know and we'll share that with the entire committee. [LB384]

BRUCE RAMGE: Sure. I will do that. [LB384]

SENATOR GLOOR: I think I see a lot of eyes of people excited about how to spend your money for you. Senator Crawford. [LB384]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you, Director. And I do want to thank you for going out to the public meetings and presenting what was happening with the exchange. [LB384]

BRUCE RAMGE: You're welcome. [LB384]

SENATOR CRAWFORD: I did attend one of the meetings that was in Omaha, and I think that maybe illustrates part of the, you know, value of having this commission in addition to some of those more open public meetings. And I hope that you'll be open to still continuing to have some of those open meetings to allow people to come and learn and ask questions. I mean, it seemed to me at that meeting there was a tension there between people who were wanting to come and ask questions and find out about it, and then other people who are wanting to say, okay, we're supposed to be giving input on whether we're going to go for state or federal or mixed. [LB384]

BRUCE RAMGE: Yes. [LB384]

SENATOR CRAWFORD: We want to vote on this. You know, I think there were some people there who wanted to have this real mechanism for recording a position and other people that were there wanting to rant against Obamacare. [LB384]

BRUCE RAMGE: Yes. Each of the meetings...uh-huh. [LB384]

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SENATOR CRAWFORD: You know, so it was difficult to have, I think, the meaningful input from those most engaged stakeholders in that kind of open public forum. And so I think really it's important...I think it's important and valuable to move forward that we recognize we need both of those kinds of forums. You know, the open citizens forum and then, it seems to me this committee is a different role than that because it would provide a different level of input. And I hope that they would maybe also give you some cover and added backing when you're working with the federal government, that it's...you're able to talk about having recommendations from this committee in addition to...that gives you a little extra backing on that front, too. So I hope it may be valuable with those negotiations as well perhaps. [LB384]

BRUCE RAMGE: Thank you. [LB384]

SENATOR GLOOR: Senator Howard. [LB384]

SENATOR HOWARD: Thank you, Senator Gloor. And thank you, Director, for your testimony. We just received a letter from the Nebraska Medical Association, and so you might not be prepared for this question. [LB384]

BRUCE RAMGE: Okay. [LB384]

SENATOR HOWARD: But they suggested that LB239 that you testified on last week which is the All-Payer Patient-Centered Medical Home Act that creates the Medical Home Advisory Committee, they suggested that the efforts in this bill may be duplicative. And can you comment on whether you would like to see both advisory committees, whether you would like to see just one? [LB384]

BRUCE RAMGE: Well, you know again, we're...I think that the issues are broad enough that they could be...they're different, but related. And, again, I don't believe we took a, you know, a position but just, you know, testified in a neutral capacity in that as well. And with either one, I just wanted to share our willingness to communicate with you, Chairman Gloor, and with the committee providing the information that we can. [LB384]

SENATOR HOWARD: Thank you. [LB384]

SENATOR GLOOR: Other questions? Senator Campbell. [LB384]

SENATOR CAMPBELL: This is just a comment and that is about seven years ago, the Legislature really became concerned about the growth of Medicaid in the state and developed a Medicaid Reform Council which is somewhat like this in the nature that it was advisory. And I think there were people who kind of went, jeez, what are they going to do? You know, that type of thing. But it was particularly helpful because we did have the public forums and we met quite regularly and it was a chance for people to watch a

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discussion of policy and questions that would be forwarded to the Legislature. And what was interesting to me was the fact that so many people said, I just appreciate the fact that there's a place where somebody can watch a question be raised. So and I think there's previous models to that. Just because they don't effectuate the actual policy nature of it, it could be helpful to us in terms of that along with any forums that you do. But I just wanted to say to my colleagues, it's not as if we haven't used this model before. [LB384]

BRUCE RAMGE: I see. [LB384]

SENATOR GLOOR: Other questions? Thank you, Mr. Director, appreciate it. [LB384]

BRUCE RAMGE: Thank you. My pleasure. [LB384]

SENATOR GLOOR: Other neutral testifiers? Seeing none, Senator Nordquist, you're recognized to close. [LB384]

SENATOR NORDQUIST: Great. Well, just let the Appropriations Committee know if there's leftover money that we can spend. So always appreciate hearing that. But to answer Senator Pirsch's question, I remembered reading an article last week and I found it on my phone and would be happy to distribute it to the committee. Director Gary Cohen, who is the head of CCIIO which is the Center for Consumer Information and (Insurance Oversight) something office as part of Health and Human Services created under the Affordable Care Act, he testified before Congress last week and kind of gave a little overview of where they were. They were currently testing the data hub which links Health and Human Services with IRS, Homeland Security, they need to verify citizenship status, and with state Medicaid operations. So they're ping-ponging around data making sure that those pipelines are all cleaned out and working. They're going to have an application period between March 28 and April 30 which would be for state...in states that are operating the federal exchange which will allow an application for insurers, I think, to submit their plan designs. And the federal government will do that review and have that completed by July. So those are some of the pieces that are happening right now. Also, I wanted to clarify, earlier I spoke about there isn't...there wasn't guidance on how to move forward with the state exchange. There is one paragraph in the...this is the Blueprint guidance that came out earlier that does say, states that seek HHS approval to operate a state-based exchange or partnership exchange for coverage years beginning after January 1, 2014--either 2015, 2016 or beyond--should submit an exchange Blueprint in accordance with the same process and time frame specified for those who sought that approval for January 1, 2014. So there is a pathway to move if we did want to go towards a state exchange. But just to summarize you know, this bill overall, creating the exchanges, the first time--at least that I can pinpoint--that government is going to be setting up a system to sell a private product and I think with that there comes needed transparency. This bill will help set up a regular, consistent,

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formalized process to have that public engagement. So I encourage your support of the bill. Thank you. [LB384]

SENATOR GLOOR: Senator Nordquist, Senator Howard mentioned the Nebraska Medical Association's letter. And let me read the phrase...one of the phrases that's in there. It says, "in lieu of creating more than one stakeholder committee, we suggest that the Legislature consider amending one of the bills to create a single point of coordination to oversee the state of Nebraska's implementation of and compliance with health care delivery and insurance payment models..."Would you be comfortable seeing your commission sort of absorbed into a broader oversight committee that has responsibility for clinical areas with healthcare in addition to the healthcare exchange insurance dialogues and models? [LB384]

SENATOR NORDQUIST: Yeah. You know, I would certainly be open to it--to the idea. I think the practicality becomes, I haven't seen...I didn't look at Senator Wightman's bill, the expertise of who you want on both of those. I don't know if there is different expertise or not. I do think with the exchange, you certainly want a little bit more of an on-the-ground consumer experience. I don't know. I think you probably need a different level of expertise, but can that be combined? Maybe. So I'm open to it and would be happy to work with you and the rest of the committee on talking that through, seeing if there is a pathway to do a combined effort there. Yeah. [LB384]

SENATOR GLOOR: And I'm assuming...I have to absorb the letter a little more but I think I understand what the Medical Association is trying to do and that is avoid who knows how many potential committees and commissions could spin out of healthcare reform... [LB384]

SENATOR NORDQUIST: Sure. That's right. [LB384]

SENATOR GLOOR: ...and fractionalize us as opposed to one. [LB384]

SENATOR NORDQUIST: Sure. Absolutely. [LB384]

SENATOR GLOOR: But whether what you're proposing fits under it, I understand you would want a little bit more time to evaluate that. [LB384]

SENATOR NORDQUIST: Yes, absolutely. [LB384]

SENATOR GLOOR: Senator Schumacher. [LB384]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Senator Nordquist. The state of Nebraska seems to have gobs and gobs of commissions and boards, many of which we would never recreate if we had to do it over again, but all of which once

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created have their own constituency that make it immortal. Would you have any problem with us putting a sunset on this thing of seven years or ten years or something like that? [LB384]

SENATOR NORDQUIST: No, of course not. I think that would be great. [LB384]

SENATOR SCHUMACHER: Thank you. [LB384]

SENATOR NORDQUIST: Yep. [LB384]

SENATOR GLOOR: Other questions? Seeing none, thank you for spending some time with us today. [LB384]

SENATOR NORDQUIST: Of course. [LB384]

SENATOR GLOOR: (Exhibit 11) And that will close the hearing on LB384. We'll now move to LB568. Senator Harr, welcome to the Banking, Commerce and Insurance Committee yet again. [LB568]

SENATOR HARR: (Exhibit 1) Thank you, Chairman Gloor, members of the Banking, Commerce and Insurance Committee. Once again, my name is Burke Harr, H-a-r-r, and I am the state senator from Legislative District 8 located in Omaha, Nebraska. And I am here to introduce a navigation bill...navigator bill as related to the Affordable Care Act. Nebraska will have to sign up an estimated 100,000 uninsured Nebraskans for health coverage in the upcoming year. Many of these people will find the task daunting as they will be confused by a myriad of choices they will have before them, and this is where the navigator comes in. Most of the individuals who will be purchasing this insurance will be purchasing it for the first time and will not have any experience with purchasing insurance. And many will be also poorly educated. The Affordable Care Act requires health insurance exchanges to be operational in every state by October 1, 2013. The law requires every exchange, whether state based or federally facilitated, to establish and have operational a navigator program by October 1, 2013. States possess the ability and authority to license and regulate the navigators even in jurisdictions such as Nebraska where a federally facilitated exchange will operate. All states, including jurisdictions where the Department of...the U.S. Department of Health and Human Services, HHS, will have federally facilitated exchanges, have broad authority and wide discretion to license and to regulate navigators as they deem appropriate. No provision of the Affordable Care Act prohibits state officials from licensing, certifying, or regulating individuals or entities who seek to be navigators. The federal exchange regulations which were promulgated in March of last year, 2012, recognizes the authority of states and requires navigators and potential recipients of navigator grants to satisfy any "licensee, certification, or other standards" established at the state level, i.e., the Nebraska. A bipartisan group of 18 members of Congress wrote to Secretary Sebelius

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in May of 2012 seeking confirmation that, in fact, states do possess the authority to oversee and regulate navigators. Secretary Sebelius offered such confirmation in July of 2012. She agreed, "states should have the authority and flexibility to institute appropriate licensing and certification standards for navigators," and noted regulations reflect the same view. HHS provided guidance on this subject in December of 2012 and once again affirmed the authority to license and regulate navigators extends to states with federally facilitated or partnership exchanges. Obviously, we in Nebraska are a federally facilitated exchange. That being said, the question is what does...since we now establish the authority to regulate and create our own navigator, what does this bill do? Well, first of all I have some amendments, that I will hand around, to the original bill. Thank you. The overall idea behind this...and this is based on model language. Parts have been adopted in other states so we are not the first state to adopt this exchange model for navigators. But what this does is, with the amendments...obviously, section 1 identifies what an exchange and a navigator are. Section 2 identifies what a navigator can and can't do. So what is the role of a navigator, which I think is very important. Section 3 sets out the procedures for the license...navigator to be licensed. And what we've tried to do in working with the Department of Insurance is to create a licensure...not that the navigators have to have the same level of knowledge as a independent insurance agent but, rather, that they have to...that the procedure is the same so we don't create a whole new set of rules and regulations. So for instance, the license is renewed every two years, and it's based on that individual navigator's birthday. So what we're trying to do is create clarity and simplicity. Section 4 talks about the renewal of the licenses for the navigator. Section 5 deals in the amendment on how to deal with--and that's more the amendment is what we look at, not the actual bill--but how to deal with an insured who goes to a navigator. If they decide they don't want it, they want to buy insurance, obviously a navigator can't sell insurance. But do they want to buy from a navigator or do they want to be referred back to their independent insurance or how to handle that. Section 6 deals with how to deal with bad actors, how to regulate the industry. This is very important. We have a whole bunch of new individuals who will be navigators who have no experience as navigators, obviously, since this has never happened. And we want to make sure that someone doesn't come in and try to exploit this population especially given, as I said, who the population is. We want to make sure that they have some protection. Section 7 deals with what the navigators must report to the Department of Insurance which, again, I think is very important. It creates some oversight and some responsibilities for the navigators. And section 8 allows the Department of Insurance to create rules and regs to carry out this act. And most importantly, we have an emergency clause on here. And that is because the deadline is pretty quick. July 1 is when we have to have the navigators up and ready to go; and October 1, they're selling. So we need an E clause on here. With that, I would like to thank Senator Carlson who agreed to cosponsor this bill, and I would entertain any questions anyone might have with the caveat that there are experts more knowledgeable than I coming afterwards. [LB568]

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SENATOR GLOOR: Senator Pirsch. [LB568]

SENATOR PIRSCH: A brief question. So this language is...is the model law, NAIC or something or is it... [LB568]

SENATOR HARR: The green I would say is largely a model code...model law, but we have made it...done it the Nebraska way with the amendments. [LB568]

SENATOR PIRSCH: From where was it the underlying take? [LB568]

SENATOR HARR: That's a good question and I don't know the answer to that. I do not believe it was the NAIC, but I'm not positive where it came from. [LB568]

SENATOR PIRSCH: Okay. Thank you. [LB568]

SENATOR HARR: But I can...I will follow up with that or you might want to ask someone after myself. [LB568]

SENATOR PIRSCH: I might ask someone else. Yeah. [LB568]

SENATOR HARR: More knowledgeable, again. [LB568]

SENATOR GLOOR: So Senator Harr, does the amendment basically replace the bill? [LB568]

SENATOR HARR: Largely, yes. Yes, I would say it does. [LB568]

SENATOR GLOOR: I don't think there's room for much else. [LB568]

SENATOR HARR: We worked on it this morning. So, yes, it does. Having read through it, yes. [LB568]

SENATOR GLOOR: Senator Campbell. [LB568]

SENATOR CAMPBELL: Senator Harr, can you just kind of step through how the navigators are hired? I mean, once they're...once we certify that they are, so are they then employees or independent or how are they paid, where does their money come from? [LB568]

SENATOR HARR: Very good questions, and I'm going to try to answer it with the, again, the caveat that those coming after me are more knowledgeable. But the way it's set up, it has to be a nonprofit. It can't be a for-profit operation that applies for the navigator license. Once though...for instance, you might have...in other states AARP

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has stepped forward, chamber of commerce, health centers have stepped forward, groups that traditionally help the underserved have stepped forward. They then...their job is to seek out those who traditionally have not been able to afford insurance. And to say--not to sell insurance because that's prohibited--but to lay out here is...and to give them the steps that they need to do to purchase insurance. Initially, the navigators will be paid for through a federal grant. Eventually, as these policies start rolling in and as there's renewal, insurance companies will pay for the cost of the navigator through their right to sell insurance through the navigator. So the initial...because in the private sector, you know, when you first start selling insurance you don't make any money until you sell that policy. Well, this is a little different. There's money up front because nonprofits by their very essence don't have a lot of money. They invest, reinvest in their cause so they don't have that level of expenditure to employ five, ten people to go out and find these individuals who don't have insurance. So foreseeing this problem, the federal government has allowed for grants. Now as far as are those navigators independent agents of the entity or are they employees of the entity, I don't know for sure, but my gut would tell me they would have to be employees of that nonprofit. [LB568]

SENATOR CAMPBELL: Thank you. [LB568]

SENATOR HARR: Any other...sorry. [LB568]

SENATOR GLOOR: Senator Schumacher. [LB568]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Senator Harr. For those...is it your...for your impression that the folks--let's say making...family of four making less than \$80,000 a year who might be eligible for some subsidies and who want to collect those subsidies. To collect the subsidies, they have to buy through the exchange. Is that your impression? [LB568]

SENATOR HARR: No, that is not my impression... [LB568]

SENATOR SCHUMACHER: Okay. [LB568]

SENATOR HARR: ...but I'm not positive on that. But no, my understanding is if you have insurance before and you qualify for a subsidy--and I don't know what the cutoffs are--I think you can still go through your independent insurance agent or through your insurance agent. But, again, there are those coming after me who are much more qualified... [LB568]

SENATOR SCHUMACHER: I'll ask them that question. [LB568]

SENATOR HARR: ...but I don't think...it would seem...well, I'll reserve, but it would



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seem counterintuitive to public policy because your agent will know you a lot better than a navigator will because an agent can ask questions and a navigator can't. So if you have specific problems or you may want to be insured for something, it would make sense that you'd want to go to an insurance agent over a navigator. [LB568]

SENATOR SCHUMACHER: Is that supposed to make sense? [LB568]

SENATOR HARR: Well, time will tell. [LB568]

SENATOR SCHUMACHER: I withdraw the question. [LB568]

SENATOR HARR: Yeah. [LB568]

SENATOR GLOOR: Senator Crawford. [LB568]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you, Senator Harr. One thing I'm trying to sort out in my mind is we have, you know, emphasis on making sure that the insurance agents that have a license, that the bill is keeping navigators from doing that...those tasks. And then it has a separate licensure for the navigators. And what I'm trying to figure out for sure is what that training and exam would be about for a navigator, if it's mostly outreach. It sounded like maybe navigators were mainly engaged in outreach and trying to get people to the exchange, and maybe helping them with... [LB568]

SENATOR HARR: That's correct. [LB568]

SENATOR CRAWFORD: ...working the Web site, which is a very different thing than the licensure or...and knowledge that an insurance agent may have which I understand the bill addresses that by saying, let's make sure those two things are separate. But I'm not clear right now what the knowledge base or exam content focus would be for navigator licensure. You know, what is it we're trying to make sure they're able to do? [LB568]

SENATOR HARR: Yeah. Well, let's start out with the basics. An insurance agent is not a navigator and a navigator is not an insurance agent. [LB568]

SENATOR CRAWFORD: Right. Right, so... [LB568]

SENATOR HARR: We get that. Now maybe an insurance agent can be a navigator, I'm not quite sure. So what is the required level of knowledge for a navigator versus a higher level, we all agree, is required for an insurance agent? And so you're asking what are the specific rules and regulations and what is that information required, is what I'm taking from your question. [LB568]

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SENATOR CRAWFORD: Not even necessarily detail specifics. I'm just trying to get a general idea of the kind of...what we're concerned about in terms of making sure that the navigators are licensed. What kind... [LB568]

SENATOR HARR: And what I would say is that a navigator is not going to...because they're not advocating for a specific policy nor are they...they are advocating for health insurance. They are not going to go out and say, do you have a history of heart disease, do you have a history of cancer, what are you looking for in your family? They can merely...because they're limited. We have these federal rules and regs so they're limited in what they can ask and how they can ask it. So, again, I think you're very accurate in your comment that their job is to more go out and herd and explain what a navigation...navigator system is, what it is and what it isn't, to bring them to a computer or to then fill out the questionnaire, to help them with that questionnaire if they have problems. But again, not to advocate for a specific policy or against a specific policy which insurance agents could and probably should do. So their job is less...they're not sales. Their job is of a policy, their job is sale of a navigator, if that makes sense. So it's a lower level, what is required. [LB568]

SENATOR CRAWFORD: Right. And so the exam and licensure is to ensure they have knowledge for... [LB568]

SENATOR HARR: Specifically what their roles and responsibilities are, what they can and can't do... [LB568]

SENATOR CRAWFORD: What they can and cannot do. Okay. [LB568]

SENATOR HARR: ...so that they don't have rogue navigators out there advocating to sell for one insurance policy or another. That's the last thing we want out there. [LB568]

SENATOR GLOOR: Senator Carlson. [LB568]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Harr, I'm looking on page 2 and line 23. "A navigator shall not:" and then there are five things that the navigator shall not do. But (b) "provide advice concerning the benefits, terms, and features of a particular health plan or offer advice about which health plan is better or worse for a particular individual or employer;" and then the next one, "recommend or endorse a particular...plan," and I understand the intent here. It would seem like after a navigator goes through quite a few people, it may be kind of hard to stay away from not recommending a particular plan. So this is meant, they're not selling. [LB568]

SENATOR HARR: That is correct, they are specifically prohibited. If you go to...on page 3, line 4, (sic: subsection (4)), only persons licensed as an insurance producer or

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consultant in this state can: and (a) is, line 12, "sell, solicit, or negotiate health insurance." So they are specifically prohibited from selling. [LB568]

SENATOR CARLSON: Yeah. I think that's a tough line sometimes, but that's what it says. Thank you. [LB568]

SENATOR HARR: And that is the intent, is...because they do not...we are...require a lower level of knowledge than an insurance agent. [LB568]

SENATOR GLOOR: Senator Pirsch. [LB568]

SENATOR PIRSCH: Thanks. Senator Harr, is there a clause in here that requires or states that the department shall develop rules and regs to set criteria in terms of (inaudible)? [LB568]

SENATOR HARR: Section 9, I believe. [LB568]

SENATOR PIRSCH: Okay, thanks a lot. And then just kind of as a follow up, with respect to that last question. "Recommend or endorse a particular health plan" I think is the language in line 3 of page 3. So if you're a navigator, you can't recommend a particular health plan. And then there's something on page 2 that says you have to...a navigator may do this. And it says: distribute impartial general information. By the use of the term "impartial," what do you intend? [LB568]

SENATOR HARR: Well, so you might have a chart that lays out what benefits exist. And then you might have the companies on the top and little dots that say, this company offers, you know, X, Y, and Z. And this one has A, B, and C or A, B, D, X, and Y. But it lays out...so you could have an impartial...what is a chart that shows what you're being insured for and what you are not being insured for. [LB568]

SENATOR PIRSCH: Uh-huh. Okay. And can you...are you allowed to...though you can't refer to...you have to be...I guess impartial in terms of the general information that you distribute. You can't recommend a particular or endorse a particular health plan. Can you recommend a particular agency or agent? [LB568]

SENATOR HARR: No, because you would buy through the navigator, you don't buy through an agency. So there is no referrals to an agency even if they ask. [LB568]

SENATOR PIRSCH: There's no way that you can funnel something through that? [LB568]

SENATOR HARR: No. If asked, because it's very clear that you can't advocate so if, let's say you're...name a charity. [LB568]

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SENATOR PIRSCH: Say you're... [LB568]

SENATOR HARR: Name a charity. You're Pete's Kids and it's a wonderful nonprofit that helps drive families with young children towards to get health insurance that otherwise did not have it. And one of those people asks, hey, Pete, can you refer me to an agent? You are not allowed to be referred to an agent. [LB568]

SENATOR PIRSCH: Is that...okay. [LB568]

SENATOR HARR: Because a navigator...that would be, again, advocating and they're not allowed to advocate. [LB568]

SENATOR PIRSCH: Is that in...and I'm sorry, there's a lot to it so I'm trying to digest the particular language. Obviously, in section (c) of page 3 you can't recommend a particular health plan so you couldn't say the gold, silver or bronze. But I take that...is that correct? Is that what you mean by recommend a particular health plan? [LB568]

SENATOR HARR: Because you'd be recommending, yeah, a health plan or advise consumers about which health plan to choose. So you're referring them to an agent, that could be construed as choosing because that agent may not sell what's on the navigator. [LB568]

SENATOR PIRSCH: Yeah, but if he...assuming he is or that agency can sell a full range of products, is there anything else in here that guards against a referral to a particular... [LB568]

SENATOR HARR: No, and maybe we need to clarify that a little bit. Maybe that can be an amendment to... [LB568]

SENATOR PIRSCH: And I haven't had the time to look. I'm just...I mean, it probably is in here if this is model language. I'm just trying to...and maybe that's the...what's implied by the use of the term must "distribute fair and impartial general information" in line 8 of page 2. But thank you for...I mean, I'll look through here and see if I can find it. [LB568]

SENATOR HARR: And I think that's what we're trying to do is develop some legislative intent, and that would seem to be...yeah, "fair and impartial general information" as opposed to specific information, which would be referral to an agent. [LB568]

SENATOR PIRSCH: Yeah. [LB568]

SENATOR GLOOR: Senator Howard. [LB568]

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SENATOR HOWARD: Thank you, Senator Gloor. Thank you, Senator Harr. I'm actually going to piggyback a little. I have two questions, but I'm going to piggyback on Senator Pirsch's as well. It was my interpretation of the ACA that the intent of the navigator system was for them to be able to talk to you about your income because you're saying that navigators' work would primarily be among low-income, low-literacy type of folks who would be eligible for subsidies in the exchange. [LB568]

SENATOR HARR: Who traditionally have not had insurance. [LB568]

SENATOR HOWARD: So it would be helping them work on the exchange in order to apply for health insurance. And since there are only going to be four plans available--bronze, silver, gold, platinum--but multiple providers within those plans, would you be willing to work with us to clarify that language because the ideal would be you're low income, you may only be able to afford a bronze plan. And you would want the navigators to talk to them about what they can afford in terms of the bronze through platinum plans. [LB568]

SENATOR HARR: I would be willing to work with the committee within the constraints set by the HHS, so there are only certain things we can and can't do. But yes, I think as long as it's within the constraints of what we are allowed. You know, as I said, we are prohibited to really dealing with certification and licensure, not necessarily, again...so I'm not quite sure if we have that range to do that. But if we do, I'd be more than willing to work with you on that. [LB568]

SENATOR HOWARD: And your intent is that the navigators would not necessarily recommend like Blue Cross/Blue Shield over another type of provider? That's your intent? [LB568]

SENATOR HARR: That is specifically, I would not want that. Yes. [LB568]

SENATOR HOWARD: So then it wouldn't matter as much if they were making recommendations based on income and coverage options between bronze through platinum? [LB568]

SENATOR HARR: I'd be a little uncomfortable in that area, I think. But I'd be more than willing to give it some more thought, is what I would say. That's my first...my first impression is, I'm a little leery about navigators recommending even levels within there, but I can be convinced. [LB568]

SENATOR HOWARD: And then my second question actually goes to this bill doesn't speak at all about Medicaid. And I believe the intent was that Medicaid would somehow dovetail with the exchange and that sometimes people would float in and out of subsidies in the exchange and then down to Medicaid and then back up again. Do you

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view the role of the navigators as understanding the Medicaid enrollment process as well as the exchange enrollment process? [LB568]

SENATOR HARR: And I'm not quite sure, I'm not knowledgeable in that area. There are those that are coming after me, myself, that are more knowledgeable. I'm not sure what the enrollment procedure is for Medicare...Medicaid. So the answer is, I'm not sure. But I'm sure those coming after me can answer that questions. [LB568]

SENATOR HOWARD: Thank you. [LB568]

SENATOR GLOOR: Any other questions? Senator Crawford. [LB568]

SENATOR CRAWFORD: Thank you. On...thank you, Senator Gloor. And thank you, Senator Harr. On page 8, if this hasn't been changed in this amendment, it talks about "Sections 1 to 9 of this act do not apply to any individual or entity licensed as an insurance producer...in this state." And so I just wanted to clarify what that meant. [LB568]

SENATOR HARR: What an insurance producer is? [LB568]

SENATOR CRAWFORD: Right. It doesn't say agent, it says producer. Because when I first read it I thought maybe that meant, you know, if you have someone who is licensed as an insurance agent and all these restrictions wouldn't apply to them, they would be able to do those kinds of things as a navigator. [LB568]

SENATOR HARR: And in preparing for this I know this was explained to me--what is a producer versus...and I'm not sure if I know the answer to it. I'm not going to answer that question but reserve... [LB568]

SENATOR CRAWFORD: Okay. We'll put...okay. [LB568]

SENATOR GLOOR: Agents and brokers I think is what you're talking about. [LB568]

SENATOR HARR: Is that insurance producer? Okay, agent and broker. Okay, thank you. I wasn't sure about broker. And I think that may include consultants as well, is where I wasn't sure. [LB568]

SENATOR GLOOR: That would be my guess. [LB568]

SENATOR CRAWFORD: Okay. So it's a broad term. [LB568]

SENATOR HARR: And that's my concern. [LB568]

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SENATOR CRAWFORD: Okay. All right. All right, thank you. [LB568]

SENATOR GLOOR: If we're wrong, someone will correct us. [LB568]

SENATOR HARR: Thank you. [LB568]

SENATOR GLOOR: Any other questions? Senator Harr, will you stay to close? [LB568]

SENATOR HARR: I will, thank you. [LB568]

SENATOR GLOOR: Okay. Thank you very much. Can I see a show of hands of people who would like to speak to this particular bill? We have again, about eight, nine hands. All right, we'll start with proponents. First proponent, please. Not seeing anyone who wants to. [LB568]

BRUCE RAMGE: (Exhibit 2) Good afternoon. [LB568]

SENATOR GLOOR: Good afternoon. [LB568]

BRUCE RAMGE: Good afternoon, Senator Gloor and members of the Banking, Commerce and Insurance Committee. My name is Bruce Ramge, 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 LB568. Although I'm here in support of the bill, however, there are a few provisions that should be strongly considered before the bill is advanced which I would like to discuss with you. At this time I'd just kind of like to let you know that the comments were based on the bill as originally presented and not had an opportunity to look at changes from the amendment. So bear with me if they are not...are no longer applicable. Under the Affordable Care Act, federal law requires that all exchanges have a navigator program to assist consumers in accessing the health insurance exchanges. Under a federally facilitated exchange or a partnership exchange, the federal government selects the navigators and has the option to remove them as well. As you have heard and will hear, there remains a great deal of uncertainty from the federal government regarding this part of the exchange project. The role of the navigator is still being shaped, as we speak, in Washington, D.C., even after promulgation of a number of initial federal rules on the topic. That statement is where the clarity on the subject of navigators ends, with one exception to be found in state law. The exception I mentioned is this: we do know that under the law in the vast majority of states, that no one can sell, solicit, or negotiate insurance without a license issued by the Department of Insurance. This is a key component of consumer protection as it requires people who interact with consumers to have a basis of knowledge before they give advice. LB568 is consistent with this longstanding public policy. It requires that navigators have some basis of knowledge before they act in that capacity, and it creates a clear line between what an insurance producer may do and what a navigator may do and may not do. As the

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navigator role is not recognized in state law, creating this distinction is an important feature of the bill and one the department strongly supports. Requiring training and testing of navigators will provide important safeguards to benefit people buying coverage from the exchange. It will also allow the state to provide some insight in this very important area. That said, there are a number of provisions that should be strongly considered before the bill moves forward. The bill holds navigators to a higher licensing standard than insurance producers in a number of areas. The bill requires fingerprints and surety bonds be provided by navigators. These are not required of insurance producers. In the event of a violation of state law by the navigator, LB568 allows imposition of a penalty not to exceed \$5,000; insurance producer penalties are limited to \$1,000. Under LB568, a navigator must reside or maintain their principal place of business in Nebraska. Insurance producers, on the other hand, may be given a license no matter where they live. The bill requires that individual licenses have a two-year expiration; generally, insurance producers' licenses have a two-year expiration, but expire on the month in which the licensee has a birthday. And that's important for our computer systems in terms of our licensing systems. The bill extends to navigators some features of insurance producer licensing that may be excessive in view of the fact that they will be subject to training requirements adopted by the federal government. These training requirements may--we are not in full possession of guidance from the federal government--come into conflict with federal law and therefore be preempted. There are requirements for prelicensure and continuing education for navigators, presumably in addition to that required by the federal government. One significant issue that has emerged is that we know that the federal government will promulgate further guidance on the roles of navigators. However, we don't know when that will come out from them. Nor do we know what they will say, obviously. We also understand from the federal government that the navigator grants' application will not be available until June. This, of course, is subject to change. Even with these concerns stated, the department believes that licensure of navigators is a good idea, and we ask that the bill be advanced to General File. We look forward to working with Senator Harr and the committee as discussions continue on this area in legislation. Thank you for your time. [LB568]

SENATOR GLOOR: Director Ramge, do you have time to draft rules, come up with the tests? I mean, there are a lot of things that have to be done in a very short period of time. Even with an E clause, it's going to take a while before this shakes out. Is there time to get all this accomplished? [LB568]

BRUCE RAMGE: It's very tight in terms of an October deadline. I believe that the federal government HHS will have a baseline body of knowledge or testing that they will require or training, at least. And that can be the basis of a test. But, again, the time lines for this year is very, very tight, I will say. [LB568]

SENATOR GLOOR: Explain something to me. If we don't move forward with LB568,



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does the federal government then step in and institute its requirements for navigators?  
[LB568]

BRUCE RAMGE: Yes. And they will be responsible for administering the navigator grants and selecting the navigators in any event. This would give us some enforcement authority and ability to set forth the training requirements and education. [LB568]

SENATOR GLOOR: So you think...but right now there's no way to know until you get the final rule from the feds, that this bill may give you a greater role... [LB568]

BRUCE RAMGE: That's correct. [LB568]

SENATOR GLOOR: ...and a greater degree of self...state control as opposed to just deferring and hoping that what the feds come out with provide a degree of involvement of our Department of Insurance. [LB568]

BRUCE RAMGE: Yes. [LB568]

SENATOR GLOOR: Okay. Senator Campbell. [LB568]

SENATOR CAMPBELL: I want to clarify that. Thank you, Chairman Gloor. It's my understanding that the federal government is going to do what you say in the second paragraph. They're going to select the navigators and have the option to remove them as well. [LB568]

BRUCE RAMGE: Yes. [LB568]

SENATOR CAMPBELL: And so they're going to set down in their rules and regs exactly what these folks will do and will not do. And we don't yet know whether the feds will require licensure of those navigators... [LB568]

BRUCE RAMGE: That's correct. [LB568]

SENATOR CAMPBELL: ...or I'm assuming that we could make it tougher but we couldn't make it less. [LB568]

BRUCE RAMGE: Could not make it less. [LB568]

SENATOR CAMPBELL: So we could say all of our navigators, let's say, they're going to have to meet all the federal requirements of what they are, but we're going to say they must be licensed. [LB568]

BRUCE RAMGE: Yes. [LB568]

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SENATOR CAMPBELL: Would that be accurate? [LB568]

BRUCE RAMGE: Yes. [LB568]

SENATOR CAMPBELL: Because the latest article that I read...for instance, the state of Arkansas has gone ahead and started hiring these making the...you know, they're going to find out whether they truly can fit because they want to get them trained and up and going and all that kind of thing. So they're going to assume that their navigators are going to fit into the federal program. But the Secretary is going to determine that program, will she not? [LB568]

BRUCE RAMGE: Ultimately, yes. [LB568]

SENATOR CAMPBELL: So anything that we do here will be subject to what the federal government tells us in the navigators. [LB568]

BRUCE RAMGE: That's correct. If they come up with a final rule that were to, you know, supersede any portion of this, that would have to be taken into account. [LB568]

SENATOR CAMPBELL: But we could make it tougher you think? [LB568]

BRUCE RAMGE: I believe so. [LB568]

SENATOR CAMPBELL: Okay. Thanks. [LB568]

BRUCE RAMGE: More comprehensive. [LB568]

SENATOR CAMPBELL: Yes, that's probably a better word. Thank you, Director. [LB568]

SENATOR GLOOR: Senator Pirsch. [LB568]

SENATOR PIRSCH: Thanks. Do you recognize the...you've had a chance to look at both the green copy of the version of...and the amendment that Senator Harr...or not? [LB568]

BRUCE RAMGE: I have not had a chance to review the amendment. [LB568]

SENATOR PIRSCH: Just based upon the green copy, is that...is this...do you recognize the model basis for...is it NAIC language or some other model that you recognize? [LB568]

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BRUCE RAMGE: I don't recognize the model, I'm sorry. [LB568]

SENATOR PIRSCH: Okay. And I, you know, I do appreciate it. I guess one question I have is with respect to the language here as it's written, and I don't know if you noted this. You haven't looked at the amendment language? [LB568]

BRUCE RAMGE: No. No. [LB568]

SENATOR PIRSCH: Okay. Well, I don't...it's not fair to put you on the spot. [LB568]

BRUCE RAMGE: I have it here if it's... [LB568]

SENATOR PIRSCH: What's that? [LB568]

BRUCE RAMGE: I have it here now in front of me, but... [LB568]

SENATOR PIRSCH: Oh, okay. And one question I'll just ask for feedback that you can provide over the coming weeks or what...you know, future, in any case. Is there language in there--and you brought some kind of concerns to the forefront in terms of parity of licensing--but with respect to a question of either the, you know, in some spots it seems like the amendment is saying you can do this. And then in other spots, it says you can't do that. And then the rest would be rules and regulations, I think, under...that would be probably deferred to your department. But one of the questions I had, is there anything about that I'd ask you to take a look at with respect to that question of referring individuals...navigators referring individuals not to specific types of policies because I think there's adequate language there; particular health plans and whatnot, but to...with respect to specific places or agencies or agents, if there's enough in there to kind of guard against that? [LB568]

BRUCE RAMGE: We would be happy to take a closer look at that. It's my general understanding that a navigator would explain to a potential buyer what the differences are between the different levels. They would understand how an insurance policy works, they would know the difference between the deductible, coinsurance, that type of thing, but not make a recommendation because when you start making recommendations, that's getting into the realm of selling, soliciting, negotiating. But yet, they certainly should be educated to be able to answer questions, you know, what does this mean? And also how to fill out an application, how to direct an individual to the help that they might need if that ends up to an insurance producer or back to... [LB568]

SENATOR PIRSCH: Because I know there's another safeguard that's written in on page 3 of the amendment on line 8, and that says...or lines 7, 8, and 9 actually: accept any compensation or consideration dependent, in whole or in part, on whether a person enrolls in or purchases a health plan. But if you're only merely referring as a navigator,

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individuals to one particular agent or agency over and over and over again, you're not enrolling them. You're not gaining compensation based upon enrollment, but rather, just based upon referral which is a different type of basis for compensation. So just with that kind of question... [LB568]

BRUCE RAMGE: We'll look at that. [LB568]

SENATOR PIRSCH: ...I'll ask you to review it. [LB568]

BRUCE RAMGE: You bet. Just an analogy, the Department of Insurance administers the Senior Health Insurance Information Program which is basically a federal grant program. And the individuals in that program track encounters. So basically, whether someone buys Part D or just has a question or whatever, that's how they're judged, in part, by how many outreach encounters that they do each year. So I think that this may be a similar concept, where it's really not based on going out and making a sale but how many people you visit with. [LB568]

SENATOR PIRSCH: Well, and I understand that they want it to be based upon outreach encounters. But I'm just saying by using that particular language, that doesn't serve as a prohibition about me receiving compensation from... [LB568]

BRUCE RAMGE: Oh. If... [LB568]

SENATOR PIRSCH: ...a particular agent or agency for merely referring everyone. [LB568]

BRUCE RAMGE: I see. [LB568]

SENATOR PIRSCH: I want to know, what about this language... [LB568]

BRUCE RAMGE: Okay. [LB568]

SENATOR PIRSCH: ...prohibits me from referring strictly to one particular agent... [LB568]

BRUCE RAMGE: Oh, okay. [LB568]

SENATOR PIRSCH: ...or agency, despite, you know... [LB568]

BRUCE RAMGE: Yeah. We'll take a look at that. [LB568]

SENATOR PIRSCH: ...without making recommendations about the type of policy that's appropriate for the individual, continuously referring them to the same place? [LB568]

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BRUCE RAMGE: Yes. [LB568]

SENATOR PIRSCH: Yeah. Thanks. [LB568]

SENATOR GLOOR: Senator Crawford. [LB568]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you, Director. I have two questions. And the first comes back to the SHIP example. So they are outreach volunteers and they sit down and walk people through the Part D plans, in front of a computer often. But they are not supposed to give recommendations on which plan to purchase, if I understand correctly. So it sounds like it's very similar. [LB568]

BRUCE RAMGE: Correct. Yes. [LB568]

SENATOR CRAWFORD: Is there any licensure requirement for them? [LB568]

BRUCE RAMGE: No. There is training requirements, but not licensure. [LB568]

SENATOR CRAWFORD: Okay. Okay. Okay. And do you run that training or vendors run the training? [LB568]

BRUCE RAMGE: Both. [LB568]

SENATOR CRAWFORD: Both. Okay. [LB568]

BRUCE RAMGE: It's all under...the volunteers ultimately are, you know, accountable to the program administrator who is housed in the Department of Insurance. [LB568]

SENATOR CRAWFORD: Okay. And so in the absence of licensure, can you tell us how those individuals are held accountable? So they have training, but no licensure, so what do you see as the mechanism for holding them accountable without a license to provide advice but not... [LB568]

BRUCE RAMGE: I think just tracking. They're tracked in terms of that they've received the prerequisite amount of training and... [LB568]

SENATOR CRAWFORD: And do you feel pretty comfortable with how well we do in monitoring those advisors? [LB568]

BRUCE RAMGE: Yes. [LB568]

SENATOR CRAWFORD: Okay. And do you see...what do you see as the difference

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between that program and this program? [LB568]

BRUCE RAMGE: I believe this is a lot more extensive than...I mean, the senior health program is basically only assisting enrollment in Part D and occasionally Medicare Advantage. But the...and answering questions on how Medicare works. [LB568]

SENATOR CRAWFORD: Uh-huh. Okay. And if I could, the second question comes back to Senator Gloor's question to you about if you have enough time to do this. And it looks like in a fiscal note that perhaps you indicated you would like to be using vendors for the testing and perhaps training. And I didn't...could you talk to us a bit about if you've already had discussions with vendors about providing this kind of training and testing? Is that in place already happening? [LB568]

BRUCE RAMGE: Yeah. Currently insurance producers have to take a test before they are licensed, and that test is developed and administered by a vendor that goes out through the RFP process every few years. And so the primary vendors that do that type of business are interested in this type of testing as well. [LB568]

SENATOR CRAWFORD: Okay, so they've expressed an interest. [LB568]

BRUCE RAMGE: So they're out there and they're available. [LB568]

SENATOR CRAWFORD: All right. And do you know if they were in any way involved in shaping this legislation? [LB568]

BRUCE RAMGE: I don't know. [LB568]

SENATOR CRAWFORD: Okay. All right. Similar vendors who do the insurance testing are interesting in being in this market, doing the navigator testing, is that what you're saying? [LB568]

BRUCE RAMGE: Yes. Yes. Yes. [LB568]

SENATOR CRAWFORD: Okay. Thank you. [LB568]

SENATOR GLOOR: Director Ramge... [LB568]

BRUCE RAMGE: You're welcome. [LB568]

SENATOR GLOOR: I'm sorry. Help me with...help educate me because I've gone from thinking I knew what I knew to being confused about what I think I know. Navigators are not insurance producers or consultants, they're not brokers or agents. [LB568]

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BRUCE RAMGE: Correct. [LB568]

SENATOR GLOOR: Are insurance producers and consultants navigators? [LB568]

BRUCE RAMGE: Insurance...licensed insurance producers are not precluded from applying to be navigators. But if they do that, if they take a navigator grant, then they cannot collect commissions. [LB568]

SENATOR GLOOR: Okay. Important point. [LB568]

BRUCE RAMGE: Yes. [LB568]

SENATOR GLOOR: Important point. Just running some numbers...I'm back to the timing phrase. [LB568]

BRUCE RAMGE: Okay. [LB568]

SENATOR GLOOR: I'm going to use Senator Harr's number of 100,000 people who will be accessing navigators. Assuming we take June as a start date and running through and right up to a New Year's party on December 31, not counting Saturdays and Sundays, which may not be appropriate. Maybe there will be interactions on Saturdays and Sundays, but that leaves us with about 150 days for people to make contact with navigators in order to find out what's available for them for enrollment through the health exchanges. That's about 700 people a day in my rough calculation. Are we going to have enough people to be able to enroll that many folks appropriately, because I don't see this as being a quick 10-minute phone call or 15-minute stop by the office? [LB568]

BRUCE RAMGE: I don't think that every person who purchases insurance through the exchange will be having contact... [LB568]

SENATOR GLOOR: I'm sorry. [LB568]

BRUCE RAMGE: Not everyone who purchases insurance through an exchange will have contact with the navigator. I believe that the federal government's thoughts are for the navigators to really reach out to the harder-to-reach populations or individuals who are typically uninsured and maybe need more assistance in the process. Individuals who are made aware of the exchange through the federal government's outreach process will likely access help through, you know, either on-line on the exchange or by telephone or through walk-in centers. But I think that the navigators will be doing a good number, but not every single person. [LB568]

SENATOR GLOOR: Well, then that leads me to another process question which is, if I access this on-line, do I have the help of a e-navigator as I'm doing this on-line? Is there

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a navigator... [LB568]

BRUCE RAMGE: That's a good question because we have not really seen the federal exchange. But it certainly would be one good way to... [LB568]

SENATOR GLOOR: Find out. We need to find out. [LB568]

BRUCE RAMGE: Yes. Yes. [LB568]

SENATOR GLOOR: Okay. Thank you. [LB568]

BRUCE RAMGE: You bet. [LB568]

SENATOR GLOOR: Senator Campbell. [LB568]

BRUCE RAMGE: I'll pass that along to our federal counterparts. [LB568]

SENATOR GLOOR: Yes. We'll be waiting. [LB568]

BRUCE RAMGE: Okay. [LB568]

SENATOR CAMPBELL: Director, I just...as you are reviewing the amendment, I just don't want to lose sight of Senator Howard's question because it's critical. And that is, how does the...because this is a one-stop. These people will help people figure out whether they are eligible for Medicaid. And so this is all meant to be one stop. So just as you review the amendments, and we may have to have DHHS take a look at it, too, because those navigators are expected to answer questions on that facet of it, too. [LB568]

BRUCE RAMGE: Okay. And that may very well be more in line with Director Chaumont's area. But we can visit... [LB568]

SENATOR CAMPBELL: Yes. I think Senator Howard is raising a valuable question that we probably need to look at. [LB568]

BRUCE RAMGE: Okay. All right. [LB568]

SENATOR GLOOR: Senator Schumacher. [LB568]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Director Ramge. Am I correct in presuming that the only way you can claim your subsidy, if you're eligible for one, is by buying your insurance through the exchange? [LB568]



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BRUCE RAMGE: Correct. [LB568]

SENATOR SCHUMACHER: Okay. So and roughly a family of four, give or take \$80,000, has got to go through this computerized exchange program with or without the help of a navigator. [LB568]

BRUCE RAMGE: Yes. [LB568]

SENATOR SCHUMACHER: And they can't sit down with their local insurance agent and say navigate me through this because if they're paid, the local insurance agent can't be a navigator helper. [LB568]

BRUCE RAMGE: Oh. The insurance agent would be able to help them through the process, yes. [LB568]

SENATOR SCHUMACHER: Okay. So then what's...now I thought I knew something I don't know anymore. So if my insurance agent--if I'm under...if I'm eligible for a subsidy--can sit down at this computer screen with me and help me navigate through the "now click here's." Then how does that affect the rule that says paid insurance agents can't be navigators? [LB568]

BRUCE RAMGE: They wouldn't be eligible for grants. They wouldn't be able to be paid through the federal facilitated exchange to do that. Their compensation would be through the commission structure. [LB568]

SENATOR SCHUMACHER: So then... [LB568]

BRUCE RAMGE: But there...I'm sure there will be some additional rules that they will have to follow as well, promulgated by, you know, Health and Human Services. [LB568]

SENATOR SCHUMACHER: So then can my local insurance agent hang out on his shingle "Stop by. Let me help you get your well-deserved federal subsidy?" Are we going to see those ads or signs? I didn't think they could, but I don't know now. [LB568]

BRUCE RAMGE: I don't know of any prohibition on that, but we could certainly look into that. And, again, as they develop these final rules, it may be addressed in there as well. [LB568]

SENATOR SCHUMACHER: Now if we...right now these rules might set down procedures for qualifying as navigators and what tests you have to take on the federal level. To the extent that--and there's been talk that we can be tougher, but we can't be more lenient--is that exactly accurate? I mean, to the extent the federal government says, okay, you do steps one, two, three, and four and you get your navigator's card.

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And they do that because they want to get a whole bunch of navigators out there to outreach to these people who don't have insurance. To the extent they say this is what we require, aren't they preempting us from being tougher because they want to move a lot of people into the field? I mean, can we create what essentially this bill does, several obstacles to market entry? [LB568]

BRUCE RAMGE: Yes. I suspect that many of the requirements in here are going to move...be hand in hand with what we see come out of the federal rules as well. And it occurs to me that they will probably require a certain amount of training from insurance producers who use the exchange as well. And keep in mind, there's always off-the-exchange sales but, again, they don't qualify for the subsidy if they go off the exchange. [LB568]

SENATOR SCHUMACHER: So are we jumping the gun as far as writing regulations that might be trumped by the federal regulations and then have to go back and do it all over again, because the federal government could trump us here, right? [LB568]

BRUCE RAMGE: They could. They could. [LB568]

SENATOR SCHUMACHER: Thank you. [LB568]

BRUCE RAMGE: Yes. [LB568]

SENATOR GLOOR: Senator Carlson. [LB568]

SENATOR CARLSON: Thank you, Senator Gloor. Director Ramge, you're testifying on a positive note here. Kind of summarize again why is LB568 good for Nebraskans? [LB568]

BRUCE RAMGE: Uh-huh. Two reasons that I see are: one, to help ensure that the folks who are doing this have an appropriate level of training. And two, if there's a problem, if there's a navigator out there operating in bad faith that we can take enforcement actions through either a fine or revocation of a license and get that person out of the system more rapidly than perhaps the federal government could. [LB568]

SENATOR CARLSON: All right. And the second question, this adds an entire layer of new expense--the navigators. And that's...those are going to be federal dollars? [LB568]

BRUCE RAMGE: Yes. Yes. They have to be paid...ultimately paid through the exchange operations. [LB568]

SENATOR CARLSON: Do you know, are they...they're not going to be paid by...are they going to be paid by the hour, are they going to be paid by the appointment, do you

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have any idea? Rules aren't out on that. [LB568]

BRUCE RAMGE: I don't have any idea. Right. Right. [LB568]

SENATOR CARLSON: And we don't know, an eight-hour shift for a navigator what that might provide them in terms of compensation? [LB568]

BRUCE RAMGE No. [LB568]

SENATOR CARLSON: But it's going to be federal dollars. [LB568]

BRUCE RAMGE: Yes. [LB568]

SENATOR CARLSON: And how many navigators do you think we need in this state? [LB568]

BRUCE RAMGE: That's a good question. I've not seen any analysis really. My guess is in the earlier years, there will need to be more because we're going to have a lot of people out there in the general public who aren't aware of the program or know how to use it. And the program will be new, the bugs won't be worked out of it. And as time goes on and people get accustomed to purchasing their insurance or have insurance, then perhaps the need will drop. [LB568]

SENATOR CARLSON: Okay. Fine. Thank you. [LB568]

BRUCE RAMGE: You're welcome. [LB568]

SENATOR GLOOR: Senator Howard. [LB568]

SENATOR HOWARD: Thank you, Senator Gloor. And thank you, Director Ramge. My concern goes back to the language. You know I work at a federally qualified health center and so when people come into our FQHC, they...before they go to their appointment they talk to our financial counselors... [LB568]

BRUCE RAMGE: I see. [LB568]

SENATOR HOWARD: ...about whether they get on a sliding fee scale, whether we help them get on Medicaid. And so I believe some of our intention in watching this would be, obviously, to have some of those financial support counselors become navigators as well, since they would serve multiple roles. But my concern is this. If we have the baseline of coverage and then other offerings offer speciality services included and a patient comes to us needing those speciality services, the way this is written here if they're only allowed to distribute impartial general information without talking necessarily

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about the benefits that are within each package, how would they be able to address a patient who has a specific specialty need without discussing the terms and benefits that are in a specific type of insurance? [LB568]

BRUCE RAMGE: Yes, that's something we'll take a look at and through the amendment and also monitor...what we know with the draft rules and see how that can be addressed. [LB568]

SENATOR HOWARD: Okay. Thank you. [LB568]

SENATOR GLOOR: Other questions? Seeing none, thank you. Long testimony, but a lot of good information. Thank you. [LB568]

BRUCE RAMGE: Well, if I may, going back I have the number of our grant. Would you prefer that I give that later or now? [LB568]

SENATOR GLOOR: No. Why don't you, for the record, why don't you state it if you would. [LB568]

BRUCE RAMGE: Okay. The Level One (Establishment) Grant still has unspent funds of \$4,448,156. But I just want to make sure you know that we have to get specific clearance or permission on how that is used before we're able to use any of it. [LB568]

SENATOR GLOOR: Okay. That related to another bill, not this bill I think. [LB568]

BRUCE RAMGE: Yes, from before. [LB568]

SENATOR GLOOR: So I don't want to take any questions on that number right now. Thank you. [LB568]

BRUCE RAMGE: Okay. All right. Thank you. [LB568]

SENATOR GLOOR: Thank you very much. Other proponents? [LB568]

WES BISSETT: Good afternoon. [LB568]

SENATOR GLOOR: Good afternoon. [LB568]

WES BISSETT: (Exhibit 3) Mr. Chairman and members of the committee, my name is Wes Bissett, W-e-s B-i-s-s-e-t-t. I'm senior counsel, government affairs for the Independent Insurance Agents and Brokers of America, and I'm here to testify today both on behalf of that organization and the Independent Insurance Agents of Nebraska. I thought what I'd do is maybe take a step back before getting into the navigator-specific

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issues and talk a little bit about how people are going to get enrolled in plans through the exchange. The buzz words you often hear is that there's no wrong door when it comes to enrollment within the exchange. And so that's the approach that's also being taken within the FFE environment. So what that means is, consumers and small businesses will come to the exchange in a variety of different ways. They can enroll directly through the Web site. They may after sitting down with a navigator ultimately enroll in a plan that way or they'll have the ability to operate perhaps as many always have, working with their insurance agent and enroll in a plan through that mechanism. What agents will have to do is what they do today. They'll obviously have to be certified and licensed by the state, but in order to get access to the federal exchange, they'll go through a specific exchange certification program. It's somewhat analogous to what plans will have to go through. You know, plans will have to be approved by state regulators and then they will similarly get certified by the federal exchange in order to gain access. So what we're talking about with this bill is the same sort of structure for navigators; a two-step process. Navigators will ultimately have to comply with whatever federal requirements exist, but this bill would require that they be subject to the jurisdiction of state officials and satisfy whatever requirements that the state, itself, would establish. So we're not talking about anything more rigorous for navigators, we're talking about the same sort of two-step process. So whatever you think about the PPACA, there will be navigators operating this sort of new class of entity on the ground no later than October 1 of this year. And they'll be interacting with consumers on some fairly significant types of issues. And this bill would attempt to impose and establish the Nebraska-based oversight. The PPACA outlines five specific duties that navigators have to perform and so that the activities--and, Senator Howard, this may go to your question--there are five new provisions in section 2, sub (2) of the amended bill, and those five things, where it says navigators can do, come directly from the PPACA. So when you see the reference to fair and impartial information, that's from the Affordable Care Act. When you see the reference to them having to facilitate enrollment, that's also from the ACA. Now the establishment of this new sort of class of entity--which is new, I mean, this has been something that nobody has really seen before created by the Act--raises a number of fairly significant public policy questions for this committee and the Legislature. And I wanted to cite some of those, not just from us, but from one of the most renowned insurance consumer advocates in the country. Her name is Mila Kofman, she's a former Maine insurance commissioner, but she's also now the head of the D.C. insurance exchange which is a state-based exchange; very well known. And during her time between those two jobs, she was with the Georgetown Health Policy Institute and wrote a paper on navigator issues. And these are some of the observations and potential problems that she cited: one, that navigators will have significant responsibilities. And this may act...this act would preclude them from getting to the point where they make recommendations or offer advice or put their hand on the scale to affect the decisions that are made. But there's lots of activities and discussions and stuff that can happen between here and there, including educating people about new options and helping them ultimately enroll in coverage. So there's a broad scope of activities

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that have significant repercussions for consumers, and navigators are going to be asked to do that even though today many will have little or no insurance expertise and will be asked to perform activities that have long required licensure. Second, the stakes are high. You know, if a navigator fails in their responsibilities because of incompetence or misconduct, the stakes are high; the implications for consumers are significant. And the other thing that Ms. Kofman recognized is that state policymakers, she said, should assume that there's going to be unscrupulous people who are going to be out there. There's lots of money floating around that these navigators will be selected by the federal government in receiving federal funds. So the opportunity for unscrupulous activities is there, especially when you consider that they're going to have access to very sensitive and proprietary information, including social security numbers, tax information. You know, it's not going to happen every day that a navigator is going to rip somebody off, but it's not hard to fathom a bad actor engaging in bad activities with that kind of access to information. So what this bill does, what LB568 does is attempts to respond to and head off those potential problems and we support this legislation for several reasons. It helps ensure that navigators will be qualified for what they're being asked to do, that their activities are properly defined and I want to talk a little bit more about that, and that they're subject to the jurisdiction of Director Ramage and the state insurance code. I mean, without some specific action, there's this big vacuum out there. HHS isn't going to be operating as a traditional regulator, so without some clear statement that navigators are subject to state law, it's completely wide open. And they also should be held accountable for their actions. So regardless of whether they're intentional wrong acts or unintentional acts, they should be held accountable. So why shouldn't Nebraska act on these issues? And I'll come out, give you some reasons why. Any person today who engages in insurance consulting and enrollment activities has...is subject to licensure; they're subject to the jurisdiction of the state. And those that have, have been required to get some form of license for a very long time to satisfy certain educational requirements, to comply with state law, to remain accountable, etcetera. Now the levels that we're talking about aren't the same. We're not assuming that navigators would be licensed at the level of producers when, I mean, in fact, they're going to be operating at a lower level, so there's no reason that they'd go through all sort of heightened level of training that we do, but it's still important that they be subject to those types of requirements because licensing is really the primary reason or ability that states have when bad things do happen, to go in and take action. Without that hook, the state is sort of helpless. I mean, it can't go in. You can try to convince the feds to maybe withdraw their ability to operate as a navigator, but you can't go in and take enforcement action. You know, the HHS will administer this program, but they won't be acting as a regulator in the same way that Director Ramage and his staff do today. So the failure of the state to act in this area would create a regulatory vacuum that would be of great concern to us because of the clients that we represent and work with, and you'd lack the ability to take actions when there's improper conduct. So let me talk about a couple of comments and provisions that have been the subject of questions during the hearing so far. One is about the scope of activities the navigators can engage in. So the

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ACA says there are five things the navigators have to be able to do. That even if you're a state and you wanted to say a navigator couldn't do that, federal law clearly preempts in that situation, but you've got extensive authority to say what navigators can't do as long as you're not interfering and conflicting with those five. And what this particular bill says is that it would prohibit a person from recommending a particular plan, from discussing which plan may be better or worse for a particular person, or for discussing issues that are sort of outside of the operation of the exchange. One of the...much of the text that you see here with regard to that legislation...with regard to those prohibitions actually comes from things that HHS itself has said. You know, Senator Harr mentioned earlier a letter from Secretary Sebelius to members on the Hill and she specifically said that, you know, navigators should not be permitted to offer guidance about which plan is better or worse for a person. And that's exact language that we used in this bill. So we're not...this isn't stuff we're kind of creating from whole thought, these are provisions working with the senator that are based on guidance that has been provided by HHS already. The other set of provisions is the, you know, making clear that states have the ability to take action...enforcement action for those who violate marketplace and consumer protection requirements. That's significant and, again, if the code doesn't say that you can take action, then most likely you do not have that authority. One of the other reasons for taking action with regard to navigators is that they are going to be selected by the federal government, they'll be compensated by the federal government, but they will sort of have the status of...I mean, that kind of brings a special status. You must act under the cloak of government authority when you have that, so it's going to be particularly important that they have proper scrutiny and oversight. Let me also talk really quick, I know the senator mentioned before about whether states have the authority to operate in this area. And the answer, unequivocally, is yes. He cited the exchange regulation itself which says that states can impose licensing certification or other standards on navigators. And he also, I think, cited a more recent FAQ from HHS from December which was specific to FFE states and said that, again, that states would have the authority to act in this area. Finally, as I start to wrap up here, let me talk about timing and urgency. I mean, I've talked about why there's a regulatory vacuum. The urgency part of this is that HHS is very quickly going to be setting up the exchange in this state. You've heard the Director say about the time lines and deadlines that he would have to meet to put this all into place, so it's important to move quickly. Nebraska is not the only state that's considering similar legislation. I wouldn't call it a model. The components that you see in the Nebraska bill, education, state jurisdiction, defining the scope of activities, those are all components of other bills that are being addressed in one way or another somewhat similarly. But, you know, I wouldn't say there's model legislation. I would point out that the National Conference of Insurance Legislators, NCOIL, will be considering a resolution in two weeks urging states, based on consumer protection and sort of state autonomy, to enter into this sort of a empty space right now and to establish many of these same components. But there are bills in places like Ohio, Indiana, Illinois, Missouri, Oklahoma, Texas, Wisconsin, just since we're the Great Plains Midwest region. Iowa and Maine already have such laws in place. Maryland, my

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home state, a very blue state, has many of the provisions that you see in this bill, including the producer-referral provision that some people have asked about; that's a provision from the Maryland law. There have been several meaningful amendments that have already been made to the most recent version of this that address some of the issues that the Director brought, so there's no surety bond requirements, the background-check provision has been removed. I know those were a concern to some of the consumer advocacy community that we've met with about this, but we think our view is that this is a thoughtfully constructed bill, it does not impose any undue burdens on would-be navigators, does not interfere with their ability to perform the acts that they've been directed to do, but simply brings in the same way the plans and agents will be subject to the jurisdiction of the state going forward, it would establish a similar regulatory-oversight structure for navigators because they're going to be here. Whatever you think of the ACA, there will be navigators in Nebraska and similar people operating in similar capacities in a very few months. So with that, Mr. Chairman, thank you again. [LB568]

SENATOR GLOOR: Thank you, Mr. Bissett. Are there questions for Mr. Bissett? Senator Pirsch. [LB568]

SENATOR PIRSCH: I appreciate this. And so I take it then you...just for the purpose of further questions, you helped kind of draft some of the language? [LB568]

WES BISSETT: Absolutely. We've worked with a number of states so we've shared some other legislative proposals, including a bill that was drafted in Ohio late last year that's under consideration now, one in Iowa. So yeah, I mean, we've met with other stakeholders in trying to figure out ways to hopefully make everybody happy with the bill and have no unintended consequences. [LB568]

SENATOR PIRSCH: Wonderful. I appreciate...you have a lot of testimony there in such a short period of time, so that's helpful. Just a couple of questions. So you think it's a well-settled matter, there isn't the issue of preemption. There is...that essentially, the federal government is on record as having stated in these specific ways, states cannot (inaudible) with respect to anything else, you're free to operate. [LB568]

WES BISSETT: Right. [LB568]

SENATOR PIRSCH: And this bill, in your opinion, operates in those areas, right? [LB568]

WES BISSETT: Right. So the default rule with all this is that, you know, there's a provision in the act that talks about state interference and says that, you know, the only state laws that are preempted are those that interfere with the actual implementation of the act. So none of what we're talking about here would run afoul of that. The other



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thing is HHS has been on the record both in the actual exchange regulation itself and in the more recent FAQ guidance from December, and we can give you specific cites. But, yeah, absolutely. I mean our view...now is it possible that in, you know, in a month from now HHS will come out with something and go 180 degrees? I guess that's possible, but the actual regulation has been promulgated and in subsequent FAQs, it clearly permits states to do this. [LB568]

SENATOR PIRSCH: Yeah. The only other question I want to put to you is with respect to my...the issue I raised earlier--and you may have a better understanding of the language that's in there to safeguard against it--obviously, with respect to these navigators recommending particular type of policies, particular health plans or advising consumers about which health plan to choose there's specific language and there is language in here--and I'm referring to page 3 on lines 7 through 9--that says, if you're a navigator you can't take money for enrolling people... [LB568]

WES BISSETT: Right. [LB568]

SENATOR PIRSCH: ...in purchases of a health plan. And there's some, I guess to me, a little bit more ambiguous language that says you have to be...distribute fair and impartial information, on page 2, line 8. But is there anything in here that would, you know, reasonably, clearly prohibit navigators from not recommending a health plan, but steering individuals to particular places, agencies, agents? [LB568]

WES BISSETT: Right. Okay, let me...so listening to the fair and impartial question you raised--because I know Senator Howard had the same question--I mean this is my personal view. I don't think that being required--and that's a federal mandate that they provide fair and impartial information--so this is the state sort of codifying what federal law already says. So that's a directive from the federal government. I don't think that that precludes a navigator from talking about, in general terms, the benefits of tax subsidies, the benefits of different, you know, considerations that, you know, you...but what it does preclude is the navigator sort of putting their hand on the scale, right, and directing a consumer or small-business person to go a particular course. Ultimately, the decision should be left in the hands of consumers. And it's a gray area, admittedly. But the other thing about the recommendation language and prohibiting the offering of recommendations is, that's also sort of typical language that you see across the country when it comes to SHIP programs which the Director alluded to earlier. They're generally prohibited from making those kinds of recommendations about particular plans. I think what this says is, recommending, you know, one over another, you know, kind of endorsing a particular plan. So I'm not sure that there...I don't see any inherent intention there. With the wording of the compensation provision, the reason we think that makes sense is because of the no-wrong-door philosophy, right? The goal is to bring people to the exchange to get them covered no matter how they get there. And navigators--I think even those in the consumer advocacy community would acknowledge--that they're not

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going to have the level of insurance expertise and just background and information as agents. So what you don't want to have is sort of perverse incentives. If they are compensated on a per-enrollment basis, you could see a number of things happening. If that per-enrollment basis was greater for new enrollments versus referrals, you could see churning, you know, where people were being encouraged to be moved from plan to plan for no other reason, but that the navigator gets compensated more for that kind of initial placement. I mean, that happens in other contexts so, you know, that's an issue here. The other thing would be, you know, I think everyone sort of acknowledges and hopes that if a consumer is really looking for the kind of level of guidance that a navigator is not qualified to provide, that the navigator won't be reluctant to hand them off to somebody at the exchange, to an agent, whoever it might be. But if they were only compensated or compensated in large part based on getting the enrollment themselves, they're going to be reluctant or hesitant to do that. If you're getting paid only when you enroll the person, but if you hand it off to an agent so that you can have a more detailed, you know, conversation, they're going to be...there's a reluctance that's going to be there to refer them. So I think that's what the compensation provision is aimed at because with the federal grant...or with the navigator program, they're going to be funded through the operational funds of the exchange anyway. In-Person Assistance, which is sort of a similar category of entities will be funded by federal grants, so I'm not sure that that...I don't see any unintended consequences from the prohibition-related compensation. But, I mean, we'd be happy to think about that more. [LB568]

SENATOR PIRSCH: So the end result, if a navigator had built up through the years a relationship with or comfort with a particular agency or agent, then they're not prohibited to referring? I mean, maybe part of this is born of my lack of understanding about how this software platform will perform. [LB568]

WES BISSETT: Right. Right. [LB568]

SENATOR PIRSCH: So you, I mean, that's the advice that they're going to be giving is, you know, do this when you're on the exchange, right? [LB568]

WES BISSETT: Right. So, you know, the... [LB568]

SENATOR PIRSCH: So you can't...I mean, is it just the only thing that you're blind to particular agencies or agents and the only information that you're privy to when you're on this software is types of policies? Is that what it is or... [LB568]

WES BISSETT: So you...through the system, I think everybody is in the same boat you are. We don't know...I mean, I know...and I think some of the folks that follow are going to talk about how there are standard applications out there. The application by HHS is 21 pages long, so it's not going to be, I think, as easy as maybe some were assuming. But, you know, there may be some people who can sit down at the computer and knock

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it out themselves. There may be some who can sit down or talk with a navigator or call such a person. They have a couple of basic questions, once they get those answered they can go back and do it themselves. There are going to be others though, especially businesses who have to think through maybe some more significant ramifications who are going to want to have conversations with their longstanding agents or they're going to want to know, all right tell me, Mr. Agent, in your view tell me about plan A versus plan B; what's the pros and cons. Or they may want to say, all right, I see what's in the exchange, what's outside the exchange? You know, navigators aren't going to be able to have that conversation. They're not going to be able to talk about plans outside the exchange because they're not going to be able to have any awareness or familiarity. So depending on where you sit as a consumer or small-business person on a continuum will determine where you go. The compensation provision in here...I guess I'd say the bill is silent. You know, if a navigator and agent had a relationship along the lines of what you're saying, there's nothing here. There may be other provisions of state law that address it, but there's nothing in this act as proposed in the amendments that would preclude that sort of relationship. [LB568]

SENATOR PIRSCH: Okay. Or with respect to referring to plans outside the exchange. [LB568]

WES BISSETT: Right. And the reason for not allowing them to talk about plans outside the exchange is because they'll be educated on what's inside the exchange, but they're not going to know what's outside. And so one of the reasons which raised the question about the referral to the agent provision, there may be lots of reasons why a consumer has elected with the help of an agent to be in a particular plan, maybe one that's even outside the exchange. The navigator may not have any awareness of why somebody has been in a particular plan, what the network concern...I mean, there could be a whole host of reasons so there's a default sort of provision in here that if you have existing coverage, rather than simply replace you and put you in a new plan, the default is that you would refer back...the person back to the agent that they dealt with, although there are some caveats. You know, if you don't want to talk to the agent, you don't have to. If you're eligible for subsidies and you haven't taken advantage, you don't have to provide the referral. If the agent is not authorized to operate in the exchange, you don't have to refer them back. But that's the reason for that sort of additional provision. It's just so that navigators don't do something maybe well-intentioned that has the effect of...you don't want to take somebody out of a plan that really made sense for them and put them in a plan that doesn't make any sense for them at all, and then find out later you made a huge mistake. [LB568]

SENATOR PIRSCH: Right. [LB568]

WES BISSETT: That's the reason for that. And that actually comes from Maryland; that's a verbatim provision, I believe, from Maryland state law. [LB568]

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SENATOR GLOOR: Senator Carlson. [LB568]

SENATOR CARLSON: Thank you, Senator Gloor. Just one question. This...I'm not trying to be smart here, but I have a reason. What's ACA stand for? [LB568]

WES BISSETT: The ACA is the Affordable Care Act. [LB568]

SENATOR CARLSON: Now you use a word long enough and you begin to think it's maybe got more meaning than it really does. What makes this affordable? [LB568]

WES BISSETT: Are you asking me whether this...all of this will reduce the cost of health coverage for people? I'm trying to think of a way to deflect that question in a nonoffensive way. There are a lot smarter people who have written a lot more about that than I will. I guess we'll know...if I come back in a year from now, maybe I'll have a better answer for you about whether...what the effect has been. I think there are a lot of people...you know, we just don't know, I think, what the true effects of this are going to be. Wherever you sit...I think that there's a hope that, you know, it will work, especially in light of all the money that's being spent on it. But I think it's impossible to predict today what's going to happen. [LB568]

SENATOR CARLSON: Okay. Thank you. [LB568]

SENATOR GLOOR: Senator Howard. [LB568]

SENATOR HOWARD: Thank you, Senator Gloor. And thank you for your testimony. [LB568]

WES BISSETT: Thank you. [LB568]

SENATOR HOWARD: You mentioned Mila Kofman. [LB568]

WES BISSETT: Yeah. [LB568]

SENATOR HOWARD: She's with the Georgetown Center for Children and Families? [LB568]

WES BISSETT: She used to be. Yes, she used to be with the Georgetown Health Policy Institute. She was an NAC consumer representative for a long time, then she became the Maine insurance commissioner. She went back to Georgetown for a short period of time, and now she actually runs the new Washington, D.C. state-based exchange; so someone who has a tremendous amount of experience when it comes to consumer advocacy and these issues in particular. [LB568]

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SENATOR HOWARD: Absolutely. And I actually read the Georgetown blog all time... [LB568]

WES BISSETT: Okay. [LB568]

SENATOR HOWARD: ...and can you respond to, they had a blog that actually quoted this bill... [LB568]

WES BISSETT: Okay. [LB568]

SENATOR HOWARD: ...and stated that on page 2 at the bottom, lines 26, 27, on to page 3, that that was sort of a misguided attempt to stem the work of navigators. Is that in the Maryland bill? [LB568]

WES BISSETT: This particular provision is not. I will say this, I think there are some of our friends--and Mila and I are friends--I don't think she wrote that, but I think there are some who sort of view of all this as an inherently adversarial thing between the producer community...I mean, we really don't view it that way. I think the roles are complementary. I mean, I think navigators...the true intent of navigators is that they're going to be out there working with hard-to-reach populations that for whatever reason just aren't being reached and they don't have health coverage. So we completely agree philosophically with the whole no-wrong-door concept, and so before I answer I wanted to frame kind of where we're coming from. With this I will say, the language that kind of follows on page 3--and I'm going to quote from the Secretary's letter--you know, she said that navigators will not offer advice about which QHP is better or worse for a particular individual or employer. So that's Secretary Sebelius, and that's largely what we track here. If the other clause, which I think is what you're asking about on 26 and 27, providing advice...you know, I think from our perspective, the more important part of that is the second part or offer advice about which plan is better or worse. We think...you know, I think the word "advice" conveys...I think there's a difference between providing impartial information and providing advice. Providing advice sort of conveys that you are putting your hand on the scale and sort of providing...leading someone in a particular direction as opposed to simply more passively describing what the options are, what the opportunities are, and allowing the person to describe. So, I mean, it's not...you know, our goal is not to put a blockade so that navigators can't be out there operating. I don't think this provision would do that anyway. I mean, if there's a better way to word this or get at this issue, we're all for having conversations with the appropriate people about that. But I do think the second part--the offering advice--especially since it comes from the Secretary herself, I think that there's a logic to going with that; at least keeping that in some form. [LB568]

SENATOR HOWARD: Thank you. [LB568]

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WES BISSETT: Thanks. [LB568]

SENATOR GLOOR: Other questions? Senator Pirsch. [LB568]

SENATOR PIRSCH: Thank you. I'll be really quick. With respect to prohibition, you can't provide information or services related to health benefit plans or other products not offered in the exchange, page 3, that's lines 5 and 6? Is there ever a...I mean, will it be all inclusive, this exchange, such that if you're trying to recommend, you know, you should get this and this, but it's dependent upon something that wouldn't necessarily be offered via the exchange, would it ever come to that at some point in time? [LB568]

WES BISSETT: I'm sorry, can you ask that again? I'm sorry. [LB568]

SENATOR PIRSCH: Well, let me put it this way. You can't give any information if you're a navigator--according to my reading of this--of any information or services...well, you can't advise the client there's this product. We don't offer it on the exchange, by the way, but it makes sense for you to use this other product because it's complementary with this product that's not on the exchange. But I can't mention it or...would that be...I mean, is there ever a situation where that might be a...where that might arise where it says you can't provide any information related to health benefit plans or any other product that's not offered on the exchange? Might you have to at least allude to a product that may not be offered on the exchange so that it makes sense that the product you're offering on the exchange would be suitable? Or... [LB568]

WES BISSETT: Yeah. I guess, you know, the goal of this is to make sure the navigators aren't talking about sort of...I mean, the health plan part of this I guess makes sense. Right? Because you're not able to talk about plans because you don't know anything about those, because you're only dealing with the exchange. In terms of the other services, I mean, I think the same sort of sentiment applies which is, you know, you don't want people talking about issues outside of their depth. I mean, I'd want to maybe talk to others, but if...you know, I see your point about other products maybe being ambiguous in raising some question about what that means. I think the bigger part is, you know, talking about plans that you just don't have access to. I mean, I would defer to others. The plan part we kind of know already. I mean, the other products part, it goes back to the uncertainty, right? It's hard to know today, in February of 2013, how things are going to change. I mean, I can't contemplate...I don't know today of any product that would be along the lines of what you're talking about in complementary. Would things evolve in five years? You know, it's just hard to know from where we sit today. [LB568]

SENATOR PIRSCH: Right. Okay. Thank you. [LB568]

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WES BISSETT: Sure. [LB568]

SENATOR GLOOR: Any other questions? [LB568]

WES BISSETT: Mr. Chairman, could I just say...I do want to...fair enough. [LB568]

SENATOR GLOOR: I would say, please, if you would, we're past the point of dialoguing and... [LB568]

WES BISSETT: Okay. Sounds good. Thank you, Mr. Chairman, appreciate it. Thank you very much. [LB568]

SENATOR GLOOR: Thank you, but I appreciate time. Thank you. Other proponents? Could I see a show of hands of how many more proponents there are? I'm trying to judge time for a break here, and so we'll try and hang in there a little longer before we do our break. Thank you. [LB568]

DENNIS BUTLER: Thank you, Senator Gloor. My name is Dennis Butler, D-e-n-n-i-s B-u-t-l-e-r, I'm an insurance broker here in Lincoln. I'm not a lobbyist, I'm not a lawyer. I'll try and be brief because they gave me the job--thank you, Senator Harr and Senator Carlson, for introducing this bill--but also to try in layman's terms to describe what is and who is a navigator and what their role is in the state of Nebraska, what the role of an agent is in the state of Nebraska. So I'll try to do that for my groups. I'm representing the Nebraska Association of Health Underwriters, but also the Big "I," the PIA, and the NAIFA today. So as Wes mentioned, we don't have final federal rules on what navigators are, but we do have some duties that they list. And I'm not going to go through all of them other than just repeat or to conduct public education activities, which gets overlooked a lot, distribute fair and impartial information, facilitate enrollment, provide referrals, and provide information in a manner that is culturally and linguistically appropriate. Those are their five duties. So there is a need by...in the state for the navigators. And the navigators are...say you're the local Red Cross, say you're a faith-based organization, the Salvation Army, Catholic Social Services, a clinic, a healthcare clinic, a nonprofit health organization, health organizations that have certain advocacies, cancer societies, diabetes foundations, these are the types of organizations who advocate for a population that needs help. It's some of that same population that needs help obtaining insurance. A navigator's first priority is an outreach priority. It's there to reach out to a segment...a target segment that they already serve who may not be in the sights of the insurance industry to provide them with coverage or they've been in the past unable to get coverage. It's not affordable or they've had some health history, unable to get it. And those rules are changing. So the role of the navigator as we see it, is to develop plans to reach out to their target audience within their communities. There's a need to facilitate community information, presentations to raise awareness of the availability of this new marketplace. You know, come this fall it's a

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new marketplace to buy insurance with a lot of the strings not attached that made it hard for people to obtain insurance in the past. So the navigator role is to reach out to the underserved, those without insurance, those whose insurance is unaffordable, and make them aware that the new market is coming this fall. There's a need to take it to the people that are in their space, take this information about this new marketplace to the people they advocate for, in their space, in their language so that that community service organization, I use in my own mind, someone like the Lincoln Action Program. In the past when we did some charity work and we were looking for people to do that work for, we'd go to the Lincoln Action Program. They would provide us with the names of people to see and talk to and do the things we wanted to do for them. That's the role of a navigator is that kind of outreach. They are also the organizations who are used to working on grants, they apply for grants all the time. So a part of their function is to reach out to tell people about this new marketplace that's coming. Now we also see this as this outreach can be very collaborative between my industry. There's no reason that insurance agents and brokers can't work with navigators jointly in this outreach effort. We feel that we can be an important part of that. The navigator is not to replace people to sell insurance. The navigator is there to help facilitate this new marketplace, reach the people not being reached, tell them about it and then help facilitate them getting there. Now why does a person who's going to do that need to be licensed? And it's because of the information that they're really going to need to know. And some of the enormous amount of information is required for the exchange, people are going to need help accumulating this information. Navigators must be familiar with qualifying for Medicaid, qualifying for the new subsidy programs, and then also whether the person they're talking to is eligible to go to the exchange because participation in a employer-sponsored health plan may take their eligibility away from going to the exchange. So it's not just an income. There are other things they need to know about whether the person can go to the exchange to obtain coverage. Wes, who did a really good job, mentioned the application. And this is a...I just got this in the last week. This is a sample, a draft of the application for health insurance from the exchange, and it's 21 pages long. Now it can be simplified by if you don't have family members and those types of things, but in this whole 21 pages there's not one question about what health plan you want or have looked at. This is all about eligibility and qualification. That's the kind of information a navigator is going to need to know, that they can help that part of the population that they serve and help them through this process because this is not Expedia. This is not call up a Web site and fill this stuff out for a lot of our population, I'm just going to tell you that. I know that I just heard in the last week that the federal government is planning a four-month campaign to encourage people to use their exchange to go to healthcare.gov and find out all the information they need and use it to enroll in the exchange. Well, my own personal 35 years in the insurance business of talking to people, not everybody is going to go to a Web page, not everybody can, not everybody knows how. But that can be the part of the job of a navigator and part of the people in my industry. It doesn't take a navigator to go through the exchange. They're there to reach those people who need the help to get there. Our industry can help them



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facilitate that to make the decisions about purchasing what kind of plan that they should have. Senator Howard, as you mentioned, it's made to sound simple that there's an essential health benefits package and every policy is going to be like that. What that essential health benefits is, is ten items that have to be covered by every policy. They have to be covered by every policy. Policies are different, you may have limits inside of policies, there's going to be different networks available. And it's people in my business who are going to answer the question, I've got a kid in rehab in Kansas, is this plan going to cover him? You know, I take a certain drug that's this kind of formulary, you know, is this plan going to pay for it? That's the kind of questions only a health insurance professional can answer, so that's why there can be referrals. There can be...people can do it on their own, but for instance as an example, my...what's my target as a navigator, if you will though? I look at small businesses that don't have insurance, and they're going to have people that are going to qualify for subsidies. I can go to that business and talk to them about here's your opportunity, here's your way to get a subsidy, we can help you through the process. I can have them fill this out, I could be on-site with a computer and walk them through the whole process. Not everybody's going to have that opportunity. That is what we see as the role of a navigator, is to help us reach that population that needs help getting to where they can get the services they need. Be glad to answer any questions. [LB568]

SENATOR GLOOR: Thank you, Mr. Butler. Further questions? Senator Schumacher. [LB568]

SENATOR SCHUMACHER: Thank you, Senator Gloor. And thank you for your testimony today. Just a couple of things so I can get it clear in my head how this is going to work. Let's say, are we going to see advertisements come the first of the year, "stop by your local insurance agency, he'll help you get a discount or a federal subsidy?" Is that the world we're going to see? [LB568]

DENNIS BUTLER: As I understand it, agents are going to have to be certified to use the exchange. Now that's also so that we can learn how to use the process. Can a person advertise that? I would imagine so. Can we help you through the exchange? I'm telling employers that. I'm going to be able to help you and your employees through this new process. [LB568]

SENATOR SCHUMACHER: Okay. Now under the health care act I think that if an insurance company has more than 15 percent, in some cases 20 percent of expenses, they get docked or penalized or something. [LB568]

DENNIS BUTLER: Uh-huh. [LB568]

SENATOR SCHUMACHER: So can an insurance company basically advertising "buy direct off the exchange and we'll save you 3 percent?" [LB568]

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DENNIS BUTLER: I'd let the insurance companies answer that question. [LB568]

SENATOR SCHUMACHER: Okay. I'm trying it because I can see that that's one way they can decrease their expenses and stay away from being penalized. [LB568]

DENNIS BUTLER: Well, we've seen...our industry has seen some of that happen. I think that there's still a lot of support in the insurance industry for what people in my chair have done in terms of creating their markets, keeping their markets. Remember also, we handle the service aspects down the road for people who need help after they've purchased, which that's kind of hard to find on an on-line purchase. [LB568]

SENATOR SCHUMACHER: Okay, thank you. [LB568]

SENATOR GLOOR: Any other questions? Seeing none, thank you, Mr. Butler. We will take a five- to ten-minute break and then we'll finish with our last proponent and then move to opponents and those in a neutral capacity. Thank you. [LB568]

BREAK

SENATOR GLOOR: We'll get started again. Thank you for your patience. Go ahead and start. [LB568]

MARK KOLTERMAN: Thank you, Senator Gloor and fellow senators. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n, I'm here today representing NAIFA Nebraska. We have 1,100 agents throughout the state. We're here in support of LB568 as amended. A lot of things have already been said about the role of agents. I would just add that we're looking at this bill...we're involved also--NAIFA--with NAHU and the Big "I" and the PIA. All four of us worked on this together and we appreciate the two senators that have sponsored and cosponsored this bill. I would tell you that we look at this as a consumer-protection bill as much as anything. We like to think as professional agents we provide consumers with many protections. We know the knowledge of the product, we have continuing education on an ongoing basis, we're licensed, we're regulated by the state of Nebraska Department of Insurance. In many cases we have E and O protection, and we are the marketing arm for health insurance and life insurance products throughout the state of Nebraska. I would tell you that we currently operate in every county in this state already. So for us to be involved in the exchange, we feel it's imperative that we're involved. We do know that we will have to go through certification very similar to what we do now when we sell Medicare Part D. There's a specific licensing that goes on in that particular arena, and we anticipate that this will be very similar to that on a federal level. We think from the perspective of why is this bill important, because of what we have to go through as agents to keep ourselves up to date and informed, we think there ought to be a level playing field as well as protection

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for the consumer from the perspective of a navigator. And Mr. Butler, one of my good friends, has already talked about the role of a navigator and the application--I don't know if he left that with you--but as he said, there's 21 pages in that application. We think the navigator can do a good job in helping, and we look forward as agents in the smaller communities throughout this state in partnering with the navigators to make sure that the consumer gets the proper insurance product that they need. The analogy has already been brought up today regarding the SHIP program. We see it acting very similarly, although there's more delicate information probably that goes into this product than there is with the SHIP program and the Part D. In many cases, we as agents become the back room human resource departments for a lot of our smaller businesses, and the role of the navigator can't really help in that regard. We've been doing this for many, many years and we feel it's important that that continues. We think that the consumer should know that navigators are equally qualified as agents. That's the bottom line; that's why we think this is important. I would tell you of an example that just happened in our agency two weeks ago. We had a lady that was just turning 65. She came into our office and said, I'd be interested in knowing what you offer from an insurance perspective. The agent that visited with her said, well, we think that you ought to go into a Medicare supplement and this is the products that we recommend and this is why we recommend them. She said, well, I'll get back to you. Two days later she called and said, well, I'm going to go with the Medicare Advantage because it's a lot less expensive. The agent said to the lady, have you checked into if you're providers are in the Medicare Advantage that's being offered to you? Now we as an agency in Seward, Nebraska, knew that there was no Medicare Advantage plans...there's not one provider in our county that services the Medicare Advantage population. She said, go back and talk to the agent and find out what providers are in the network. Long story short, the lady came back and said, well, I'd have to go to Lincoln or Omaha to get my medical care. If the agent hadn't asked that question, this lady wouldn't have known she had a problem until she needed to have the claim service. And at that point in time, she would have had to go to Lincoln or Omaha to get her medical attention. That's the role that a good, qualified navigator can play. They're going to know in Seward, Nebraska, whether or not there's someone in the network or they're going to know what kind of a product...what kind of an agency to push them toward. That's just a pretty ongoing example of what happens in our agency. Senator Schumacher, I believe you asked or either Senator Pirsch asked, do you see people advertising, you ought to come our way? I absolutely think that will happen; and why shouldn't it? If you have a professional agent that's licensed and has gone through all this rigmarole of becoming a professional agent, they ought to be advertising that we can do a good job for you in our office. And so I don't think we should bow our heads and say don't do that. I think we should take that opportunity to do what's right for the consumer, and I think it will happen. With that, I'll close and answer any questions. [LB568]

SENATOR GLOOR: Thank you, Mr. Kolterman. Questions? Senator Carlson. [LB568]

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SENATOR CARLSON: Thank you, Senator Gloor. Mark, did you say SHIP or CHIP?  
[LB568]

MARK KOLTERMAN: SHIP, S-H-I-P. [LB568]

SENATOR CARLSON: Okay. I've been away long enough, what does that mean?  
[LB568]

MARK KOLTERMAN: I don't know what the...it's an acronym that...it's help for people that want to get on Part D Medicare, which is the prescriptions. And it's not...it's an organization that's regulated by the Department of Insurance and they go there and get information. [LB568]

SENATOR CARLSON: Okay. [LB568]

MARK KOLTERMAN: What we find a lot of times is those people are steering people to certain products. It shouldn't be done that way, but it's happening. [LB568]

SENATOR CARLSON: Now do you see this series of options, whatever it turns out to be? It will be rather similar to writing somebody a Medicaid supplement, won't it? You have certain options, you really can't add or subtract to it? [LB568]

MARK KOLTERMAN: Correct. [LB568]

SENATOR CARLSON: But it's just guiding them into the correct one that's... [LB568]

MARK KOLTERMAN: Into the right product for them individually based on their socioeconomic position. [LB568]

SENATOR CARLSON: Okay. All right. [LB568]

MARK KOLTERMAN: You know, if you've got somebody that's right up against a 400 percent poverty level or they're on the top of the pay scale and close to not qualifying, it might be best for them to look at an individual product outside of the exchange. You know, that's something that we do on a regular basis. [LB568]

SENATOR CARLSON: Okay, thanks. [LB568]

MARK KOLTERMAN: Yeah. [LB568]

SENATOR GLOOR: Senator Howard. [LB568]

SENATOR HOWARD: Thank you, Senator Gloor. Thank you for your testimony. I have

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a question about training and licensure for insurance agents. [LB568]

MARK KOLTERMAN: Okay. [LB568]

SENATOR HOWARD: I don't know very much about it. Are you subject to only the laws of the state of Nebraska or are there federal requirements as well? [LB568]

MARK KOLTERMAN: There are reciprocal agreements with other states so in many cases if I'm licensed in the state of Nebraska and I've gone through all the testing, I can apply to--as an example--California and pay a fee and they'll accept the licensure agreement with the state. Some states have individual qualifications that they ask us to go through; maybe it's some additional testing, maybe it's some additional continuing education. But we do that on an ongoing basis. [LB568]

SENATOR HOWARD: And you mentioned that you felt that navigators would be equally qualified as agents. [LB568]

MARK KOLTERMAN: No. I'm just saying that a navigator will have to be licensed and go through the testing similar to what we do. [LB568]

SENATOR HOWARD: In addition to the federal requirements. [LB568]

MARK KOLTERMAN: Correct. [LB568]

SENATOR HOWARD: Thank you. [LB568]

MARK KOLTERMAN: Yeah. [LB568]

SENATOR GLOOR: Any other questions? Seeing none, thank you for your testimony. [LB568]

MARK KOLTERMAN: Thank you. [LB568]

SENATOR GLOOR: Any other proponents? [LB568]

JOE ELLIOTT: Am I the end of the trail? [LB568]

SENATOR GLOOR: Of proponents, I believe. We're still working our way through the bill. [LB568]

JOE ELLIOTT: Senator Gloor and members of the insurance committee, my name is Joe Elliott, J-o-e E-l-l-i-o-t-t. I'm a lobbyist for the Professional Insurance Agents and we have some 2,000 agents throughout the state of Nebraska. We do a lot of work in Iowa

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as well. We handle the CIC--which to many of you, you've heard of the CPCU. This is a very similar type of courses that's taken and we have some, oh, I think 25 to 30 a year. So if you go back 10 years, we've got 250 some. Iowa traditionally draws 100 people at a lot of their sessions over there. It takes you five years to get a CIC license, and it's well recognized and it's all over the country. And that's the kind of thing that we think is so important because if you get into this situation we're in with the exchange, you're going to find a lot of loopholes, you're going to find a lot of slowness. I know I talked to Martin Shane (sic: Swanson) who is one of the top people in the commissioner's...working on this particular exchange, and he had 200 questions that were over a month old. And I think I talked to him about a month later, and I think he had five or six of them answered. Now whether there were some other details of that, I don't know. But that, I think, is going to be ongoing. I don't know. But it's certainly something to consider. They talked a lot about the navigators. They didn't talk about errors and omissions and a bond. That was in that original draft. I asked one person and they couldn't give me a good reason why it was taken out, but I think Mr. Bissett certainly gave you the impression there's a lot of responsibility on that navigator and certainly on the manager of that navigator unit. And I think that's going to be of great concern because we've got...we have a lot of agents, too, that are going to be called because of nobody around in that small community, in Chadron let's say. They're going to go to their local agent and ask all the questions about the exchange and they're not probably going to be getting any commission on it. It's just something they're going to do as a matter of good faith because they've been loyal auto and homeowners' policyholders for 50 years. So that is a consideration. But back to this navigator, you know, a gal by the name of Sebelius is the chairman of that committee, of the whole HHS, and she wrote a letter in August that I saw that she committed that something will be done about this, you know, and the bond because if someone sues this navigator, I don't know, I suppose that's going to fall right on the...but she gave the impression in the letter that they weren't going to be responsible for it. Well, I don't know where else they're going to go, but it certainly might be a factor. But we're certainly in support of LB658 (sic: LB568) and we are well aware of the responsibilities put upon the Department of Insurance. We have great faith in the ability to know how to handle this project. I've known Bruce for some 25 years--he's been there about 28, I think--in the department. And he can handle his people and I think we certainly are going to pledge our support to him because he's got a big load; there's no doubt about it. And it's going to take some help from this committee in my estimation as well, because there's a lot of steps that are going to happen. And we wish you all well on it. Any questions at all?  
[LB568]

SENATOR GLOOR: Thank you, Mr. Elliott, and thank you for your well wishes. Hopefully we won't need all of them, but some of them. Any questions? Seeing none, thank you. [LB568]

JOE ELLIOTT: Okay. [LB568]

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SENATOR GLOOR: Any other proponents? Can I see a show of hands of the opponents--number of people who are in opposition? How about people in a neutral capacity? I saw about four or five hands so let's start with opposition, those in opponents, please. [LB568]

REBECCA RAYMAN: (Exhibit 4) Good afternoon. Good afternoon, my name is Rebecca Rayman, R-e-b-e-c-c-a R-a-y-m-a-n, and I'm the current chair of the Health Center Association of Nebraska which represents Nebraska's six Federally Qualified Health Centers. I am also the director of a health center in Columbus, Nebraska, and we currently serve a population that is 60 percent uninsured in the health center that I'm from. I am really here to represent the population that's been talked about today, the harder-to-reach population that's been mentioned. Federally Qualified Health Centers, again, we provide quality, comprehensive services, medical services, dental services, behavioral health services, and support services to persons of all ages and backgrounds according to their ability to pay. In our health centers, 89 percent of the people who come to health centers in the state of Nebraska have incomes below 200 percent of poverty. Sixty-five percent of our patients are from racial and ethnic minorities. Fifty-three percent throughout the state are uninsured. Our patients may be some of the most challenging to help with learning about the new insurance exchange. Examples of these challenges include: poor access to transportation, complex health problems, lacking access to and familiarity with technology, including computers, having challenging schedules because they work many part-time and temporary jobs. I have many patients in the health center that I serve that are working two low-paying jobs. And they have low literacy levels, low educational levels, and they need interpretation services. Statewide, our health centers provide interpretation services in 25 languages. Forty percent of the people on my staff are bilingual and bicultural to meet the needs of our patients. We oppose LB568 out of a concern that requiring licensing and bonds with requisite fees and penalties will make it extremely difficult, most likely impossible, for many of the traditional entities that serve the most vulnerable among us to help with this tremendous task that we have before us of getting people signed up for insurance. I just want to say, please don't limit the ability of our community organizations to help our patients and to help the communities that we serve by adding layers of requirements that will result in fewer and fewer people having the ability to serve in this important effort. Let us use the strength and the skills of our dedicated employees and volunteers in the nonprofit and faith-based sector, once trained and certified, to help the people they know and care deeply about to access new health insurance coverage. And then I would just like to say a couple of things regarding previous testifiers. There already is federal certification requirements and training required for navigators. Sitting in the audience as I think about our agency, I become a little concerned. If our agency has navigators, will I have to send them for federal training and certification and then will I have to turn around and send them to state training and state certification? And at what cost to the system that I come out of will that be for us? I also...Senator Howard had

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asked about people churning in and out of Medicaid and the exchanges. And I was just recently in West Palm Beach, Florida, for a workshop on the ACA. And in Massachusetts which, of course, was kind of a pivotal point in this process, we were told that 50 percent of people churn out of their Medicaid and into the exchange in any given year. And so there's going to be a lot of churn within the system, and I think that will occur. It was also said...it was also the idea brought up about consumer protection, and I believe that is very, very important. But I would respectfully say that we have a lot of unlicensed people handling very confidential information right now. For example, hospital admission clerks usually have access to people's social security numbers, they have sensitive information about their health conditions and find out about the most intimate details of people's life, and those individuals are not licensed. I would also like to say that I know our patients; I work with our patients every day. We need navigators that know our patients, that understand our patients. We need navigators that will help them because our patients, like most of us, when they're given...when we're given a variety of options to choose from a lot of us will choose, if you will, kind of the Walmart option. We're going to take the lowest priced option that we feel is going to meet our needs. And I really think that our patients, especially, are going to need help with that process. And I say that because once you sign up on the health insurance exchange, you're really locked in for an entire year. And so if our patients sign up, maybe they unintentionally sign up with a program that doesn't have the provider that they're used to seeing--you've already heard that discussed--maybe they sign up unintentionally with a program that doesn't have the specialist that they need to see. So I think people are going to need a lot of help navigating through this system. Thank you for this opportunity to testify, and I would be happy to answer any questions. [LB568]

SENATOR GLOOR: Senator Crawford. [LB568]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you for your testimony. Do the health centers sometimes operate in the SHIP program? Do they supervise volunteers in that program at all? [LB568]

REBECCA RAYMAN: We actually have in the past worked very hard to sign up individuals with Medicaid and into other programs and so, yes, I think the health centers have varying degrees of experience with doing that. It's hard to speak for six health centers. [LB568]

SENATOR CRAWFORD: Okay, sure. I did notice the bill has language about a navigator entity maybe having a license. And as it's written right now, it looks like the assumption would be that every single individual navigator under that entity would still follow all the individual rules. So I just wanted to get a sense from you, perhaps from your experience with SHIP or just if you have any recommendations or input, if there was an emphasis on creating the navigator entity license and then the accountability and responsibility would rest with you for consumer protection and protection of privacy



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information, if you see other examples of programs where you play that role that would be a model for that or if you have any input on recommendations if we were to think about that possibility. [LB568]

REBECCA RAYMAN: Uh-huh. Well, I know right now, you know, we're already legally responsible for what our employees do. And I think most employers are legally responsible for what their employees do. We work very hard to ensure that our employees have the competency that they need to carry out the task. It really concerns me, the requirement to have individual navigator's license, because I think the more barriers that we put up, the less people we're going to find to do this important work. And I think when we're talking about reaching populations, you have to have people who speak the language of the population. You have to have people that the population are going to trust. If you don't have people that the population trusts, it isn't going to work. So I hope you answered your question. [LB568]

SENATOR CRAWFORD: All right. Thank you. [LB568]

SENATOR GLOOR: Other questions? Seeing none, thank you Becky. [LB568]

REBECCA RAYMAN: Thank you. [LB568]

SENATOR GLOOR: (Exhibit 5) While the next opponent is stepping forward, I have a letter from the Cancer Action Network in opposition. We'll have the pages hand it out. Good afternoon. [LB568]

JON BAILEY: (Exhibit 6) Good afternoon, almost evening. My name is Jon Bailey, J-o-n B-a-i-l-e-y, and I'm the director of research and analysis at the Center for Rural Affairs. And we come before you today to offer testimony in opposition to LB568. I want to preface my comments by saying I have not read or reviewed the amendments, so I may not be in opposition as much as I thought I was. So the written testimony that is being passed out to you, I think some of the amendments actually go to some of my comments and address some of my comments. But I still have some issues and concerns that we would like to bring up and so I'll summarize those. I think Senator Harr and Senator Carlson have brought a very important issue before you today. We heard in the hearing on the last bill, I talked about how important the exchanges will be to rural people in particular populations in rural areas. I think the navigators will be equally important because they will help those populations make the exchange work and help those people get the affordable insurance that is the theory behind the Affordable Care Act. And we think the navigator is maybe even more important in rural areas because public education on health insurance choices and outreach to people, just outreach in general in rural areas, is harder in rural areas and is less likely to exist in rural areas. I think the comments that were made by Ms. Rayman, Senator Crawford, go to a lot of the questions you asked earlier about what are the actual roles of the navigators. And I

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think you're right, the navigator is basically an outreach and education role. And as Ms. Rayman pointed out, community groups that already exist fill that role in a lot of different ways. And we're concerned about the requirements of the navigator system putting too many requirements on people who want to be navigators. I think those requirements might inhibit rather than facilitate the important work and the need for navigators. The Affordable Care Act directly says that people who will be navigators, who will be chosen to be navigators, have to have a relationship or can easily create a relationship with people who will purchase insurance through the exchange. And so these community groups, whatever kind they are, already have those relationships. And I'm not sure you need a license to teach somebody how to do outreach and basic education on these issues in rural areas. You might need some license or some education on the direct issues involved in the Affordable Care Act, but on how to reach these people, I'm not sure you need a license to do that because these people have been doing it for a long time, that's their job. So I share the same concern that Ms. Rayman did, that if you start putting too many restrictions and requirements on people who want to be navigators, you're going to reduce the pool and you're going to reduce an already small pool, particularly in rural areas. And I think it's important as you go through the process of amending this bill and changing it however you think it needs to be changed, I think it's important that you realize that the Affordable Care Act already tells you who can be navigators, who the federal law thinks should be navigators. So the Affordable Care Act allows several entities that are important in rural communities to act as navigators: ranching and farming organizations, community and consumer-focused nonprofit groups, chambers of commerce, small business-development centers, if we had fishing organizations those are also addressed. So the kind of organizations that already exist in rural areas that already have a connection with populations that are going to purchase insurance through the exchange, those are the kind of entities that will be and can be navigators. So again, I think it really defeats part of the purpose, and I think you need to be careful about putting too many restrictions, too many requirements on these entities and employees of these entities to be navigators. Again, I want to point out this is an important issue. I think it's an important issue to be brought before you, and it's something that the state obviously needs to work on if we're going to have a viable navigator system because if we have a viable navigator system, we'll have a viable exchange that works for all Nebraskans. So thank you for the opportunity. [LB568]

SENATOR GLOOR: Thank you, Mr. Bailey. Are there questions? Senator Crawford. [LB568]

SENATOR CRAWFORD: Thank you, Senator Gloor. Are you familiar with this portion of the Affordable Care Act, so is it a case that there are money that's available to these groups to be navigator entities? And then is there separate money that can be given to independent navigator agents? [LB568]

JON BAILEY: I'm not real clear. I mean, there will be grants. And there has been talk

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about so many grants per state and probably not enough grants for a state as big as Nebraska. But I'm not sure about that. [LB568]

SENATOR CRAWFORD: All right. And so it's a grant and application process so probably thinking in terms of organizational entities. [LB568]

JON BAILEY: Right. Right. And people have talked earlier today that that's how the navigators will get paid to do their work, and that eventually the payment for the navigators will come through the exchange system. The exchange will collect monies to pay people to do that work. [LB568]

SENATOR CRAWFORD: Okay. Thank you. [LB568]

SENATOR GLOOR: Questions? Senator Carlson. [LB568]

SENATOR CARLSON: Thank you, Senator Gloor. I just would really encourage you to read the amendment because you haven't, correct? [LB568]

JON BAILEY: I don't even have a copy of the amendments. [LB568]

SENATOR CARLSON: Okay. All right. Well, one of the things in your statement here is, "the bill appears to allow navigators the authority to provide consumers opinions on what insurance products are better or worse." And in the amendment it is very specific, the navigator shall not "provide advice concerning the benefits, terms, and features of a particular health plan or offer advice about which...plan is better or worse..." [LB568]

JON BAILEY: That's right. [LB568]

SENATOR CARLSON: So it specifically says they can't. [LB568]

JON BAILEY: Yeah. Yeah, exactly. And I hope I made that clear that I haven't read the amendment so a lot of...some of the things in my testimony many have been covered by the amendments or addressed by the amendments. So in talking with others who are also concerned about this bill, I think the general feeling is that the amendments make it a much better bill. And there are still some concerns, but generally a much better bill. [LB568]

SENATOR CARLSON: Okay. Well, good. Thank you. [LB568]

SENATOR GLOOR: Other questions? Seeing none, thank you. [LB568]

JON BAILEY: Thank you. [LB568]

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MARK INTERMILL: (Exhibit 7) Good afternoon, Senator Gloor and members of the Banking, Commerce and Insurance Committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today on behalf of AARP. I would also note that the draft of the statement that you are seeing was prepared before we sent off the amendment, so there may be a little variance there, but many of the comments that I have still pertain, I believe. We have provided in the statement just some background information about what we are seeing in terms of the numbers of people that might need navigators. Now not all of them will, but we have just a short table there that--this is census data that tells us how many people fall into which income groups who are currently uninsured in Nebraska, the estimates of the Census Bureau in 2011. And also on the right side, shows you what sort of coverage might be available to this and the Medicaid expansion is making an assumption that Nebraska would participate in the Medicaid expansion. But we would have 52,000, almost 53,000 under 100 percent of poverty who could only get coverage through the Medicaid expansion. They wouldn't be eligible for the tax credits. Those between 100 and 137 percent of poverty, 27,835 could obtain either if we participate in the Medicaid expansion. One hundred thirty-eight to 400 percent, tax credits would be available to those. Those individuals over 400 percent of poverty would not be eligible for any subsidy. These are the uninsured estimates as of 2011. What we see as how the navigator program would work is that the focus should be those on the top of the chart, those individuals who have limited incomes who will be eligible for either Medicaid or the tax credits. We agree that there's going to be some shifting between certain individuals between Medicaid and tax credits over the course of time. And if we don't address Medicaid in this navigator bill, we will have missed the boat in my opinion. We need to be able to assist those individuals who may...whose incomes might increase during the course of a year that they would move out of the Medicaid eligibility to be able to get those tax credits. And when we look at what sort of organizations are likely to be able to be in a position to help those individuals, I think we know which organizations in our community provide that assistance. For example in Lincoln, the Center for People in Need or the Good Neighbor Center provides services to low-income individuals in their communities. They would be, in my opinion, good navigator entities. They probably would have a number of staff who would be providing navigation services as part of their responsibilities. I'm not sure I would see...just the reality of nonprofits in Nebraska is that people wear many hats so you may have a couple of individuals who will be...have navigation as part of what they do. So every...if we license them, that means that every individual who has a part-time responsibility in helping to identify those individuals who might benefit from either the tax credits or Medicaid or they would need to be licensed. I completely agree that we need standards related to training, and I think Director Ramge mentioned that the two purposes are to ensure navigators have training and also enforcement action for bad actors. I can't argue with that at all. But I'm not sure a licensure regimen, as is envisioned in this act or this proposal, is the appropriate response. The analogy that I'll mention is...the one I'm familiar with is the Long-Term Care Ombudsman Program where we have volunteers who are advocates for nursing home residents. They go into nursing homes and assist

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residents who have problems, who have complaints. They're dealing with a lot of confidential information, and there's a certification process for those individuals. They have to have a requisite amount of training and they have to have supervision. And I think that type of approach would be appropriate for this type of navigation service. There is a process for decertification, too. There's a means of being able to remove that certification if somebody has violated the basic principles of what they're supposed to be doing. So while I agree that we need to address these issues, I'm not sure it is through a licensure process. And I guess the other thing I would leave you with is to be sure to include Medicaid in this navigation process. I'd be happy to try to answer any questions. [LB568]

SENATOR GLOOR: Thank you, Mr. Intermill. Any questions? Senator Pirsch. [LB568]

SENATOR PIRSCH: And thank you for testimony. With respect to your handout, it shows you've given a breakdown based on Census Bureau and 2011 estimates. You said the number of individual Nebraskans who are between 100 and 137 percent of the federal poverty level is, was rather, 27,835. Is that right? [LB568]

MARK INTERMILL: Who were uninsured. So that's the number who are uninsured between those income...at that income level. [LB568]

SENATOR PIRSCH: Okay. So I'm...something is being conjured up...I thought we had been talking about Medicaid expansion a number of 54,000 individuals. So half of those then would be uninsured? [LB568]

MARK INTERMILL: In the 100 to 137 percent there would be the...if we do...if we have the Medicaid expansion, those individuals would have the option of either participating in the tax-credit program or the Medicaid expansion. And there are, just in talking to some individuals who would fall into that income level, there are some legitimate reasons why they would want to be in the tax credits instead of the Medicaid expansion. So each...and this is part of the role of a navigator to help discuss with that individual what their options are and then talk to them about what might be most advantageous for them. So that's kind of the crux of what I believe a navigator should be looking at. [LB568]

SENATOR PIRSCH: Okay. Thank you. [LB568]

SENATOR GLOOR: Senator Crawford. [LB568]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you, Mark. You mentioned the example of the Long-Term Care Ombudsman Program. We thought the certification program like that would be appropriate, but not licensure. I wonder if you could just tell us what you see as the difference between certification in that case and

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licensure in this case, and what's appropriate. You know, to help us understand that difference that you're making. [LB568]

MARK INTERMILL: And I guess it's more in terms of what the requirements are to...and basically in the case of the ombudsman program it is...there's an initial training requirement, a pre-service requirement, and then continuing education. There is oversight from...there is an entity that supervises anybody who is certified, so they're responsible for making sure that...providing the supervision making sure that they're providing good service. So it may not be as important as what we call it, just that it's a manageable process for those people who we really need to perform the service. [LB568]

SENATOR CRAWFORD: Uh-huh. So it sounds like in that program there is this entity role. [LB568]

MARK INTERMILL: Yes. [LB568]

SENATOR CRAWFORD: So the entity is the one ensuring training and certification, and the entity is held accountable as opposed to the individual getting a license? Is that a difference? [LB568]

MARK INTERMILL: The individual is certified though... [LB568]

SENATOR CRAWFORD: Okay. [LB568]

MARK INTERMILL: ...and can be decertified. [LB568]

SENATOR CRAWFORD: Does the entity determine that or... [LB568]

MARK INTERMILL: Yeah. The entity makes that determination and then the state enforces it. You know, they make the final decision. [LB568]

SENATOR CRAWFORD: The state...okay. The state makes the final decision? [LB568]

MARK INTERMILL: Yeah. [LB568]

SENATOR CRAWFORD: So the entity may nominate them or... [LB568]

MARK INTERMILL: Right. But the certification is done by the state and agency. And it's my understanding of the role of...the relationship between the entity and the exchange is that, I would assume, that there will be a contractual relationship between the navigation entity, whether that be Center for People in Need or Good Neighbor Center, that would specify what the expectations of the exchange are of the entity. [LB568]

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SENATOR CRAWFORD: Thank you. [LB568]

SENATOR GLOOR: Senator Schumacher. [LB568]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony today. Every state has got to be struggling with this. Why wouldn't the federal government just issue a simple certificate to an agency who would then baby-sit the people under them or to individuals directly and streamline the process, particularly where a majority of the states or a good number have decided that they're going to just walk away from this and let the federal government run it? [LB568]

MARK INTERMILL: And I think the federal government does have some certification standards that are still, as I understand, under development. So...and I think we've discussed those a bit today, but there will be those certification standards. Now I wouldn't...we don't know what those are yet, so I think there could be some merit in specifying what it is that we believe in Nebraska those should be. And the issue of confidentiality came up in previous testimony and I think that's something that's a big part of the ombudsman certification is to understand that those ombudsmen understand the importance of confidentiality in the treatment of information that they may receive. So that could be...I don't know that those will be in the federal certification standards. That could be an example of something that we should have in state standards that may not be in the federal standards. [LB568]

SENATOR SCHUMACHER: What would be the advantage of setting up a regulatory system before we've seen what the federal government? We may be satisfied with what the federal government is doing. [LB568]

MARK INTERMILL: I think that's a very good point. I think that makes a lot of sense. [LB568]

SENATOR SCHUMACHER: Thank you. [LB568]

SENATOR GLOOR: Other questions? Senator Crawford. [LB568]

SENATOR CRAWFORD: I apologize. I just want...is the Long-Term Care Ombudsman (Program), is that a grant program? So is there a grant funding that's also an enforcement mechanism there? [LB568]

MARK INTERMILL: Just the nature of aging services is that there is not. There...it's something that Area Agencies on Aging are generally the local organization that does...is...supervises the ombudsman, but we don't have funding to provide to those organizations. [LB568]

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SENATOR CRAWFORD: Okay. Thank you. [LB568]

SENATOR GLOOR: Seeing no further questions, thank you, Mark. [LB568]

MARK INTERMILL: Thanks. [LB568]

JAMES GODDARD: Good evening. [LB568]

SENATOR GLOOR: Evening, James. [LB568]

JAMES GODDARD: (Exhibit 8) My name is James Goddard, that's J-a-m-e-s G-o-d-d-a-r-d and I'm the director of the Economic Justice and Healthcare Access Programs at Nebraska Appleseed. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans. I'm here today to testify in opposition to LB568. I first want to state that we understand that amendments to the bill are being made that may improve the bill and may speak to some of the concerns that we raise, and we really appreciate the work of Senator Harr as well as his staff in working on the changes to the bill. I do still want to share some of the concerns that we have at this point. As we've already discussed today, the healthcare exchange will be open for business in the fall and there will be thousands of Nebraskans that will need to enroll in health insurance coverage. That's going to be a big task. Many of them may have not been insured ever, and they will face barriers to understanding how to navigate the system, and that's where the navigators come in. And they will be a vital part of making this process a success. We appreciate that LB568 attempts to ensure that navigators are well trained and competent to do the work they're tasked with, but we are concerned that the bill as it's currently constructed would inhibit rather than facilitate the important work of navigators. This is because the bill would create additional and potentially redundant requirements in order to be a navigator. The first concern is, I think, what Senator Schumacher was referring to a moment ago, and that is it could result in a two-step process to allow navigators to do their task. Again, we agree we need to ensure training and competence to do the work, but there will be a federal certification process that is intended to train and ensure competence. We don't know all of the details of that. We know there will be a training, there will be an exam that has to be passed and a certification will be obtained. That should cover training in health insurance packages through the exchange as well as Medicaid, and I believe it's supposed to be between 20 and 40 hours of training in order to get the certification. So the concern there is, are additional state-level licensure requirements unnecessary and do they potentially delay a navigator from getting the training they need in order to quickly move forward with their work? Secondly, the bill does not technically require a producer's license to be a navigator, but it does treat navigators as a producer in other respects. Section 8 deems navigators to be producers for the purpose of the Unfair Insurance Trade Practices Act. Section 3 would exclude navigators...excuse me,



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section 8 would also come into play in treating them as a producer. We, I think, heard earlier that one thing we are sure of is we cannot make all navigators be insurance producers. And the concern here is that if we treat them as such in other respects, are we walking up to the line of what is permitted under federal law? Thirdly, section 5 requires navigators to refer people back to a producer if they have a preexisting relationship. The concern here is in that situation, is the navigator able to give that person impartial and fair information if all they're allowed to do is refer them back to someone they decided not to see in the first place? And fourth and lastly, we do have a concern regarding the cost of the licensing process. The fiscal note, as I understand it, assumes that the cost of the license as well as continuing education will be born by the navigators. These costs may be low, they may be nominal, but navigators aren't transacting business. They're not going to earn money for the work that they do; this will be supported by grants. And so could this mean that there are fewer dollars to go around to do the work that needs to be done? Moreover, I think there is something of a question of whether the federal grants that allow this whole idea to operate permit those dollars to be used to gain a state-level license. I don't think that's entirely clear. So in closing, we want to say that ensuring navigators are quickly prepared to help provide needed information is paramount, and we would be happy to work with Senator Harr and the committee to work towards that important goal. Thank you. [LB568]

SENATOR GLOOR: Any questions for Mr. Goddard? Senator Carlson. [LB568]

SENATOR CARLSON: Thank you, Senator Gloor. You just help me understand the statement, navigators won't earn money for their work. I thought they did. [LB568]

JAMES GODDARD: Well, they'll be paid, but they won't operate on a commission basis the way a producer might, and so they can't use a commission to pay for the cost of licensure. There will be a grant that's either given to an entity or an individual, and that's the pot of money that they have to work with. And with that, presumably they would have to use that money to pay for their licensure fee under the bill. [LB568]

SENATOR CARLSON: I guess I don't have...I can't see the difference between using a salary to pay for the licensing or using a commission to pay for the licensing. [LB568]

JAMES GODDARD: Well, I guess the idea is there is a lump sum of money that we get in order to do all the things that navigators are supposed to do. There isn't a continual amount of transactions that produce money over time to be able to pay for the license. So there's only a set amount of money on the one...for navigators and there may be, you know, the opportunity for producers to actually earn additional money over time through commissions and so forth. [LB568]

SENATOR CARLSON: So it's a matter of how much expense is involved in the licensing for a navigator versus how much is involved in the licensing of an agent? [LB568]

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JAMES GODDARD: Well, I think it's ultimately how much will it cost a navigator to get what they need to get under the bill and will that reduce the number of dollars that they have to do to do their work because they only get so much in a grant. [LB568]

SENATOR CARLSON: Thank you. [LB568]

SENATOR GLOOR: Senator Crawford. [LB568]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you, James. Have you been talking to other organizations that see themselves as participating as likely entities in this program? [LB568]

JAMES GODDARD: It's something we are attempting to really ramp up and do more of, but we have done some of that. [LB568]

SENATOR CRAWFORD: And from those discussions, are you hearing those entities discussing the use of volunteers or are they discussing mostly the use of paid navigators? [LB568]

JAMES GODDARD: I haven't gotten to that level of detail with entities. I would suppose that with the amount of work that needs to be done and the amount of knowledge that you need to have that this is going to be a paid individual. I don't know if that's full time or half time, but probably a member of the staff. [LB568]

SENATOR CRAWFORD: All right. Thank you. [LB568]

SENATOR GLOOR: Other questions? Thank you. [LB568]

SENATOR CAMPBELL: I just have a quick question. [LB568]

SENATOR GLOOR: Oh, I'm sorry. Senator Campbell. [LB568]

SENATOR CAMPBELL: Do you know how much it costs to be licensed as an agent? And maybe Senator Burke (sic: Harr) does. [LB568]

JAMES GODDARD: Unfortunately, I don't. I heard the license fee itself is somewhat nominal, maybe \$60. But I'd have to let someone else answer that. [LB568]

SENATOR CAMPBELL: Senator Harr may know. Thank you. [LB568]

SENATOR GLOOR: Seeing no further questions, thank you, Mr. Goddard. [LB568]

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JAMES GODDARD: Thank you. [LB568]

SENATOR GLOOR: Any other opponents? Anyone in a neutral capacity? Senator Harr, would you like to close? [LB568]

SENATOR HARR: I would, thank you. So being an old prosecutor, I always got to go last because I had the burden of proof. So introducing a bill, I think I have the burden of proof so I think I need to address some issues that have been raised. First of all, I want to thank Doctor Ramage or Doctor...Director--can't read my own handwriting--Ramage for coming to testify. You know with this Affordable Care Act, it is very difficult and very complicated what we're doing. It is very easy to say no and it's very easy to say let's let this thing fall under its own weight. What's more difficult is to say yes. What's more difficult is to say, let's go forward and let's find a way to do this as practicably and simply and fairly as possible. And that's what this bill is trying to do so I want to address some of the issues that were brought up. You know, you have this...Mr. Elliott and the woman from the healthcare of Nebraska both brought up this issue of E and O and surety bonds. It was in the original, it's not in the draft or it was in the original draft, it's not in the amendment. The reason it's not in the amendment is simple; time. Well number one, E and O can't be allowed. It's not permitted to be required under the Affordable Care Act. Number two, surety bonds may or may not be allowed to be required, it's a little unclear, but there isn't timing to create that type of policy in this short period that we have. Now going forward, there is nothing that will prevent an agency from getting that to protect themselves because, in fact, if someone does screw up, the last thing we want is for that consumer out there to be on the hook and there just hanging in the wind. That is the opposite of what we're trying to do with the Affordable Care Act. We're trying to help people get insured, we're trying to help pay for coverage, and that's what this bill does. So maybe that issue should be addressed later on and maybe that's something once the first nonprofit gets sued and loses they may decide, hey, we'd better get some E and O insurance or a surety bond. So the healthcare centers of Nebraska said they're against it. They talked about they have vulnerable individuals and they said, "they need a lot of help" and "these are people that don't have a lot of education"--these are all direct quotes. Well, that's exactly why we need this training, because these are people that aren't used to having insurance, who don't understand insurance. And if you have an ignorant person who doesn't understand insurance and you have someone walk him through the system that doesn't know insurance, what have we done? Have we helped that individual? The answer is no. We're trying to help this individual. We're not trying to hinder them, we're trying to help them; this is a consumer-protection bill. We had...Mr. Elliott said, we know how to do outreach, we don't need a license. That's exactly right. Now what we need to do is leverage their ability to outreach with the ability to connect these people with insurance, and that's what this navigator system does. It's not meant to regulate your outreach, it's meant to regulate the insurance. So you know how to contact these people, but you may not understand insurance and all the terms and what they mean and what they don't mean and what they say and, more importantly, what

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they don't say, and what that means by not saying what they don't say. So it's important that you have a level of competency so that when you approach this individual you know what you're doing, and you're sure of who and what you're selling. Excuse me, restate that. Who and what you're navigating the system through; there is no selling. It's a late hour, sorry. This bill...the people that came to testify today they're the good actors, they're not going to be the problem people. So I want to embrace them and say, you are not who this is written for. These bills are written...this bill is written for those who aren't here today. They're written for the person, the fly-by-night who says, hey, maybe we'll make some quick, easy money. This is a population, we can come in, we can take a whole bunch of money, we don't have to worry about the effects, we don't have to have a surety bond, we don't have to have an E and O, we're a fly-by-night. We're going to sell a bunch, we're going to get this grant money up front, and then we're gone, we're done. So we've got to have something to protect these people. Now the grant money is only temporary. After the grant money, remember, we're paying for this by the right to be on the navigation system. So there is going to be some accountability down the road, but that's what this is about. So, you know, there's a lot of this could result in that, this could result in this, and that's right. We don't have all the answers here today. This is a work in progress, and there is a level of trust. I'm asking everyone here to take...is there going to be redundancy between the federal and the state? There is...you know, a lot of the language in this amendment and in this bill is pulled directly from regs...federal regs. Right now, we're not asking for anything more. So it could be we're asking for the exact same test as the federal and probably initially we'll have to, given the short time span. But we're going to find there are specific Nebraska problems that we need to address as Nebraskans. We are a rural state, we are not the Northeast, okay? The issues in the Northeast, the issues in California may be different than the issues we find and encounter in Nebraska. So we may want something different. One size does not fit all. There is a reason why every state today has their own Department of Insurance, why we have not nationalized insurance before. It's because there are state-specific problems; that's what this is looking to address. And then the other question becomes, who do we want to...if we have a bad actor, who do we want to enforce that? Do you want a bureaucracy in D.C., the U.S. Department of Health and Human Services? Huge. That is not built...not structured to regulate and oversee people involved in insurance. Or do you want a state-level, somebody that this is what they do? They know how to regulate and they know how to certify sellers or, again, I used the seller...navigators--late at night. Do you want someone local or do you want a bureaucrat in D.C.? Let me ask you, if you had a problem today I can...if we pass this bill today, you know who you'd call? You'd call the director of insurance, you'd call consumer affairs. If we don't pass this, who do you call? You don't know. This is about certainty. There was talk about the fiscal note. Well, and who's going to pay...you know, why are we charging a licensing fee? It's very simple. Again, look at the population this is meant to serve. These are the vulnerable people in our society, these are the ones who are less educated, by definition almost. So they generally don't trust the system. We are going to need a consumer affair advocate because they are going to think they

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have been wronged. That's what that licensure...if you look at the fiscal note, that's what that goes to pay for is a new consumer affair person, and there probably should be. I mean, if we can get away with one, that's great because we're all of a sudden bringing in 100,000 people who never had insurance before, who don't know the system and generally don't trust the system because the system hasn't been great for them in the past. So they're going to have a lot of questions. I have no problem with charging a fee so that we can make sure that, again if there is a bad actor, that bad actor is taken care of, or if they have a question because that navigator may say, my job is X, it is to walk you through the system and get that policy. Once you get that policy, that's not my job. So we're going to need that consumer affair advocate and that's what this pays for, and I think it's a very good thing. Again, this is a consumer-protection bill, this is about licensing certification. This is not about what is a navigator's role, who is a navigator? That's all handled on the federal level. What this is, this is about licensing and certification and having control of that bad actor so we can nip that person in the bud sooner rather than later. So with that, I would entertain any questions. [LB568]

SENATOR GLOOR: Any questions for Senator Harr? Senator Carlson. [LB568]

SENATOR CARLSON: Thank you, Senator Gloor. It seemed like maybe all those that were opponents or at least three of them had not read the amendments, so I encourage your staff to contact them and make sure that they've seen that. [LB568]

SENATOR HARR: And we will. Thank you. And we will reach out to them. I had two copies. I gave those extras...and we will. And I think a lot of those issues are...and quickly, the issues raised by Director Ramage in his...when he came and testified, have all--every last single one of them--were addressed in the amendment. I want to be very clear on that. [LB568]

SENATOR CARLSON: Okay. Thank you. [LB568]

SENATOR HARR: And his office and staff have been wonderful to work with as well, along with all the other groups that came to testify. [LB568]

SENATOR GLOOR: Any other questions? Thank you, Senator Harr. [LB568]

SENATOR HARR: Thank you. And thank you for being patient with me. I think this is my last time here so I'll see you next year. [LB568]

SENATOR GLOOR: And with that, we'll end the hearing on LB568 and move to LB59. Senator Larson, thank you for your patience. [LB59]

SENATOR LARSON: (Exhibits 1 and 2) I'm not quite sure how I got stuck behind those two--my simple little one--but...thank you, members of the Banking (, Commerce) and

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Insurance Committee. I'm Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n. I'm here today representing District 40, from O'Neill, and I'd like to introduce LB59. LB59 would raise the percentage of business a licensed agent can undertake with himself or herself, immediate relatives or employers and employees from 10 percent of an agent's total business to 30 percent of an agent's total business. I have offered an amendment to this bill that would raise the percentage only for the agents selling crop insurance and it would be applicable only to the agent's crop insurance business. The statute this bill and its proposed amendment aim to change the statute that controls how much business a crop insurance agent can write for himself or herself, for the agent's family, and for employers or employees of businesses in which the agent has an interest. The original statute's purpose is to place a limitation on an insurance agent from writing business to those individuals with whom that agent has a close relationship with the intent to prevent unethical business practices in the insurance industry. Specifically, Nebraska's insurance statutes prohibit agents from giving rebates or special consideration on policies generally and a Nebraska insurance agent will likely be found in violation for those statutes if 10 percent or more of his or her business is with a family or business interest. Different versions of this statute are found in states throughout the country and in federal law. Under the Federal Crop Insurance Act, a crop insurance agent has to complete and file an annual Controlled Business Certification form which provides proof that an agent's business with immediate family is at or below the percentage requirements laid out in the act. The Controlled Business Certification process was incorporated into the Federal Crop Insurance Act by the 2008 farm bill. The farm bill set the Controlled Business Certification percentage cap at 30 percent or the percentage specified in state law, whatever is less. Since Nebraska's cap is at 10 percent in statute, this means Nebraska's crop insurance agent operating under the Federal Crop Insurance Act can only write 10 percent or less of his or her business to family to stay in compliance with the federal statute. Currently, New Hampshire and Nebraska are the only two states with a controlled business cap of ten percent, which is the lowest in the nation. Michigan is the second lowest at 15 percent cap, but the rest of the country has Controlled Business Certification percentage is at 25, 30 percent, or for crop insurance purposes under the federal statute, automatically default to 30 percent. Raising Nebraska's percentage requirement to 30 percent will bring us in line with the overwhelming majority of states and the Federal Crop Insurance Act's controlled business allowance. Raising our percentage for crop insurance agents will be beneficial to crop insurance agents who would like to do more business with family members. The idea for this bill originally came from a crop insurance agent in Bridgeport who said that doing business for one family member who has a policy for a large farm will put him, as an individual crop insurance agent, over the 10 percent cap every year. This results in local crop insurance agents having to turn away business so they can stay in compliance with federal and state law. It is typically easier for larger insurance corporations to spread out businesses among agents so that the 10 percent Controlled Business Certification limits are never an issue. But it is a problem when local crop insurance agents who have the trust of their smaller, rural communities, have to lose out

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on business due to the 10 percent cap that hasn't been changed since the statute was enacted in 1955. As we all know, agriculture is the industry that drives the state. Farmers want to make sure that the livelihood that provides for their families and the state as a whole is protected, and purchasing a crop insurance policy is one way to ensure that happens. Oftentimes they want to do business with those individuals they trust most--family. Of course, it is more than reasonable to require that a majority of an agent's business be with customers outside of the family or business interests. LB59 and its amendment would keep that spirit of the law intact, but would remove some of the disadvantages small rural crop insurance agents face with the 10 percent controlled business cap in place. Thank you, and I'd attempt to answer any questions the committee may have. [LB59]

SENATOR GLOOR: Thank you, Senator Larson. I'm sorry, I've missed what the amendment attempts to do that's different. [LB59]

SENATOR LARSON: It just changes...right now, the way that LB59 was originally introduced, it covered all insurance. There's limits...my understanding, there's limits on how much insurance you can sell family like property and casualty, all types of insurance. The amendment just changes it just strictly to crop insurance because that was the spirit of my intentions and it slipped by us in bill introduction, and that's my fault. I apologize for that, but the amendment specifically clarifies it to just crop insurance. [LB59]

SENATOR GLOOR: If I then drop to line 22 on the first page, it talks about--and then carries over to the next page--the percentage shall be 50 percent for commissions and underwriting fees on crop insurance. What does the 50 percent relate to? [LB59]

SENATOR LARSON: That falls in line with the federal government, so it's my understanding that the...of how the Federal Crop Insurance Act is written, 30 percent--and forgive me for not explaining it perfectly--it's kind of the...they'll call it the yellow light. It's like you're getting into bad-actor neighborhood, and when it hits 50 percent you're officially in bad-actor neighborhood. Is kind of why...how it's been explained to me and why we wrote it like that, and that's how it's my understanding that the federal government does it, too. Technically, it's a 30 percent cap, but that's kind of, like I said, the warning light if you go over that, they start asking questions. And if you go over the 50, then you're definitely over. So that's my understanding of it. [LB59]

SENATOR GLOOR: Okay. Other questions? Senator Schumacher. [LB59]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Senator Larson, for introducing this. What is the evil that this limit seeks to prevent? What's wrong with writing 100 percent of your business with family members? [LB59]

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SENATOR LARSON: I think I had that same question at the beginning, but I think as we looked into, somebody could just start writing their own crop insurance and take all the commissions off of that. And we want to make sure that the people that are doing this are the people that, you know, are selling it and do it for a living instead of people that just like, well, I have such a large business, I can write my own crop insurance, pay it, and then take the whole commission off of it. And so I think that was the intention of the act. And obviously, we wouldn't be able to do that under federal law because federal law wouldn't prohibit that or would prohibit that. We have to be at least what the federal law says we should be. [LB59]

SENATOR SCHUMACHER: But bigness is all through the system. You're able to provide something for yourself if you're big enough and you get to keep the profit. [LB59]

SENATOR LARSON: You'd have to talk to Congressman Fortenberry and Congressman Smith and our senators because obviously, as I said, we have to fall within lines of the Federal Crop Insurance program. We have to be either what the feds are at or less. Currently, we're at 10 percent which is less of what the federal government says we can be, and this just brings us up to what the federal government would allow us to be at. [LB59]

SENATOR SCHUMACHER: Why did you back off on the original bill to go just to crop insurance? [LB59]

SENATOR LARSON: My intention is...if you read the letter, I mean, crop insurance was what we were originally at. The way that we drafted it, it structured all insurance and that was my mistake as I've already said; it's an apology of mine. And we meant to just do it on crop insurance and we just drafted it wrong, so we offered the amendment. [LB59]

SENATOR SCHUMACHER: Thank you, Senator Larson. [LB59]

SENATOR GLOOR: Senator Carlson. [LB59]

SENATOR CARLSON: Thank you, Senator Gloor. All right, Senator Larson, if your bill as amended, if I'm licensed to sell crop insurance then I can sell 50 percent to myself or my family and still be okay? [LB59]

SENATOR LARSON: That's my understanding. At 30 percent, it's my understanding that our local Department of Insurance would start investigating--is kind of my understanding--at 30 percent they'd start looking at you and at 50 percent...and to make sure that you're not doing anything shady, and at 50 you would eventually be officially...I'm not sure how they determine whether at 30 or 50, but we stayed in line



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with what the federal government...and right now, the law is at 10 and 30. So at 10 percent...right now under current law, at 10 percent you're at the warning and at 30 you're officially over. And we're just bumping it up to the federal maximums which are 30 and 50. [LB59]

SENATOR CARLSON: Well, I don't have a problem with that. I'm going to follow up a little bit on what Senator Schumacher said. I think the reason it's probably not 100 is it maybe gets back into the idea of bargaining and rebating with somebody. And that's, in general, not allowed and I understand, and I don't think it ought to be allowed. On the other hand, with farming operations what they are, I think 10 percent was totally inadequate. I'm okay with the 50 percent, but you're not really answering my question that if I'm doing this, am I okay at 50 percent? [LB59]

SENATOR LARSON: It's my understanding that you'll be completely okay at 30 and after that, you're starting into the Department of Insurance determining whether or not you'll be okay up to 50. I can't answer that specifically, and maybe the Department of Insurance would be better. Like I said, currently the statute says 10 and then they start...it's my understanding they start looking into you at 10 as you go over. But essentially, the statute would give you the possibility to go up to 50 and explain why you're at 50. [LB59]

SENATOR CARLSON: Okay. Would you talk to the insurance department about that because... [LB59]

SENATOR LARSON: I'd be happy to talk to them more. I've had it explained to me and that's kind of how it's been explained to me. I know it's not a great explanation. [LB59]

SENATOR CARLSON: Well, you need it in layman's terms so (Senator) Carlson can understand it because he might want to sell hail insurance and he wants to make sure if he gets to 50 percent with family and relatives he's okay, because I've had agents talk to me about this and with farm operations the way they are we need to have this moved up. And if we're okay at 30 and 50, then I'm okay. [LB59]

SENATOR LARSON: Yes, and I think you make a great point. I mean, I'll be happy to have the conversations with them more, but I think the big point I think you're getting at, Senator Carlson, is it needs to move up no matter what. Ten and 30 in my opinion is too low, and it's my understanding you think 10 and 30 is too low, and that's why we're bumping it up to that 30 and 50. [LB59]

SENATOR CARLSON: Okay. [LB59]

SENATOR GLOOR: I would relay some information from committee counsel which points out that in line 10 where we're talking about 30 percent, the term "presumed" is

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used. On line 20 where we're talking about 50 percent, you are "conclusively presumed." And I think the difference with conclusively is, you hit 50 and you've broken the sound barrier. Yeah. [LB59]

SENATOR LARSON: Yes, that's kind of what I said. Like 30 is kind of--and I may not have explained it--30 is kind of like the warning light and 50 is the... [LB59]

SENATOR GLOOR: Yes, the language...I think the language does make the different. [LB59]

SENATOR LARSON: And that's the original language from the 1955 statute, you know. Right now 10 is the presumed and 30 is the conclusively presumed, so... [LB59]

SENATOR GLOOR: I would imagine up to 50 you can argue your point. Once you hit 50, you're guilty as charged. Book 'em. [LB59]

SENATOR LARSON: Yes, you can argue your...yes. [LB59]

SENATOR GLOOR: Welcome. Senator Christensen. [LB59]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator Larson. Can you define relatives? How far does that go out? Is that cousins, is that just basic family, is that Uncle Vance? That's a huge difference when you get in a family like mine, everybody's farm. My dad had 13 brothers and sisters and all of them ended up on the farm. I mean, it's huge. [LB59]

SENATOR LARSON: You make a great point. I don't know if the original--and maybe I should have done my homework--I don't think the original statute defines what a relative is, and maybe that's something we can do in this while we have the opportunity if you'd be open to that. I've read through and I don't think it does define what a relative is. So maybe that's something that needs to happen. [LB59]

SENATOR CHRISTENSEN: But I appreciate that. I just...the question hit me and I appreciate the bill. I agree with it so thank you. [LB59]

SENATOR GLOOR: Other questions? I'm assuming since there aren't a lot of testifiers, you're going to stay and close? [LB59]

SENATOR LARSON: I'll stay at least for that. [LB59]

SENATOR GLOOR: Okay. All right. Great, thank you, Senator Larson. Proponents? [LB59]

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JAMES CAVANAUGH: Senator Gloor and members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh, J-a-m-e-s C-a-v-a-n-a-u-g-h. I'm an attorney and registered lobbyist representing the Independent Insurance Agents of Nebraska. We appear here today in support of LB59. Our agents write, if not the majority, a great bulk of the crop insurance in Nebraska. This brings it in line with the federal requirements relative to the 30 percent, and that makes it a lot simpler for everybody to comply and do the right thing. Relative to the two percentages, you have a rebuttable presumption you're doing something wrong at 30 percent and an irrebuttable presumption you're doing something wrong at 50 percent. The consanguinity is a term of art. It's defined in statute and it can tell you how far out your relatives go to qualify under this statute. I'd be happy to answer any other questions you might have. [LB59]

SENATOR GLOOR: Questions for Mr. Cavanaugh? Yes, Senator Crawford. [LB59]

SENATOR CRAWFORD: Thank you, Senator Gloor. Thank you, Mr. Cavanaugh. Would you answer Senator Schumacher's question why you limit this to crop insurance? What's distinctive about that in your understanding of agents and insurance? [LB59]

JAMES CAVANAUGH: Right. I think the initial question was brought to Senator Larson relative to crop insurance specifically, and the bill was intended to be that narrow initially because there was a disparity between the federal crop insurance being at 30 percent and ours being at a 10 percent level which should have been moved up a long time ago. So, you know, there is no really federal property casualty insurance. You don't buy federal car insurance, you don't buy other lines of insurance. This is primarily a federal program not unlike the Affordable Care Act. And what this says is, in certain areas the feds and nobody else will provide this kind of insurance. This exists in crop insurance and it exists in flood insurance and it is soon going to exist in the area of health insurance. [LB59]

SENATOR GLOOR: Senator Schumacher. [LB59]

SENATOR SCHUMACHER: Thank you, Senator Gloor. It seems to me remembering back a state law they talked in terms of degrees of consanguinity. And a fifth "degreer" was farther away than a third "degreer." So is it just any degree? I mean, if you're my 32nd cousin? [LB59]

JAMES CAVANAUGH: I can't imagine it's any degree, Senator. Perhaps it's referenced in another statute. My understanding from the agents who have concerns with this is it's close kin. It's your close family, it's not your 32nd cousin. [LB59]

SENATOR SCHUMACHER: I think committee counsel may have the answer so thank you. [LB59]

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SENATOR GLOOR: Other questions? Senator Carlson. [LB59]

SENATOR CARLSON: Thank you, Senator Gloor. I still am having some difficulty. I think I understand the 30 percent now and don't go over 30. Why don't we just say that and not even have section two? [LB59]

JAMES CAVANAUGH: I think there might be areas where you could make a defense over 30. Say for instance, I'm the only agent within a hundred miles of my family's operation. And it would work a hardship on us to travel that 100 miles which is an affirmative defense to the 30 percent rule. So what they're saying is between 30 and 50 percent come in and tell us why you're doing it that way. [LB59]

SENATOR CARLSON: You better have a good reason. [LB59]

JAMES CAVANAUGH: You better have a good reason, yeah. [LB59]

SENATOR CARLSON: Okay. All right. Thank you. [LB59]

SENATOR GLOOR: Other questions? Thank you, Mr. Cavanaugh. [LB59]

JAMES CAVANAUGH: Thank you. [LB59]

SENATOR GLOOR: (Exhibit 3) Other proponents? Opponents? Anyone in a neutral capacity? Senator Larson waives closing, and that will end LB59. [LB59]