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Banking, Commerce and Insurance Committee
January 22, 2007

[LB115 LB118 LB120 LB186]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, January 22, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB115, LB118, LB120, and LB186. Senators present: Rich Pahls, Chairperson; Chris Langemeier, Vice Chairperson; Tom Carlson; Mark Christensen; Tim Gay; Tom Hansen; Dave Pankonin; and Pete Pirsch. Senators absent: None. []

SENATOR PAHLS: Welcome to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls, I'm from Omaha and represent District 31. It is my pleasure to serve as the Chair of this committee. The committee will take up bills in the order posted. Our hearing today is your public part of the Legislative process. This is your opportunity to express your position on the proposed legislation before us today. To better facilitate today's proceedings, I ask that you abide by some of the following procedures. You can see some of the ones that we have outlined on the white board. We ask that you turn off your cell phones. There is an on-deck chair for use when you are going to be the next testifier. We ask that you complete a testifier sheet before presenting your testimony. When appropriate, we will have a separate sign-in sheet passed around for people who are present and wish to express their support or opposition but do not wish to testify. As usual, the introducing senator will make the initial statements. Following the introduction of the bill we will hear testimony from proponents, opponents, and neutral testifiers. We will strive to give equal time to both sides, minus time for questioning. As you know, the closing statement is reserved for the introducing senator only. We ask that you begin your testimony by spelling your first and last names for the record. Written material may be distributed to committee members while testimony is being offered. Please hand it to the page for distribution to the committee and staff. We need ten copies. Right now if you do not have ten copies and you would like to have ten copies, if you would stand up and wave, we will have one of the pages pick it up from you and we will have some copies made. Apparently everyone is well prepared, we appreciate that. We ask you not to be too repetitive, listen to the people who testify before you. And to my immediate right is committee counsel Bill Marienau, to my immediate left is committee clerk Jan Foster. The committee members with us today will introduce themselves beginning at your far left. []

SENATOR CARLSON: Okay. I am Tom Carlson. I live in Holdrege, represent District 38. []

SENATOR PIRSCH: Pete Pirsch from Omaha, representing District 4. []

SENATOR LANGEMEIER: Chris Langemeier, District 23, Schuyler. []

SENATOR PANKONIN: Dave Pankonin, District 2 of Louisville. []

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SENATOR GAY: Tim Gay, District 14, Papillion/LaVista. []

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

SENATOR HANSEN: I am Tom Hansen from North Platte, representing District 42 in Lincoln County. []

SENATOR PAHLS: As you can tell, we have a wide variety. Our pages today are Kristine Kubik from Prague, Nebraska; and Cora Micek, from Hastings, Nebraska coming right on in. Okay the committee will take up the bills today in the following order. LB115 by Senator Pahls; LB118 by the Banking, Commerce and Insurance Committee; LB120, Banking, Commerce and Insurance Committee; and LB186, by Senator Langemeier. []

SENATOR LANGEMEIER: Senator Pahls, you can proceed when ready you are ready. []

SENATOR PAHLS: Thank you. Good afternoon, Senator Langemeier and members of the committee. My name is Rich Pahls, R-i-c-h P-a-h-l-s. I represent District 31, the Millard of Omaha. Today I bring forth LB115. LB115 would amend section 44-514 to provide sections 44-514 to 44-521, which, basically, are the cancellation and nonrenewal of personal automobile liability policies. This shall not apply to, among other things, any policy subject to section 44-523, which is cancellation of commercial automobile liability insurance policy, rather than shall not apply to any policies insuring more than four automobiles. This would repeal provisions which have been interpreted as imposing a limit of four automobiles which may be written on one policy. [LB115]

SENATOR LANGEMEIER: Are there any question for Senator Pahls? Seeing no questions, thank you. [LB115]

SENATOR PAHLS: Thank you. [LB115]

SENATOR LANGEMEIER: First proponent? [LB115]

COLEEN NIELSEN: (Exhibit 1) Good afternoon members of the Banking, Commerce and Insurance Committee. My name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I'm the registered lobbyist for the Nebraska Insurance Information Service testifying in support of LB114 (sic: LB115). As Senator Pahls had indicated, LB115 amends section 44-514 of the Nebraska Revised Statutes. The purpose of this sections is to define what type of auto policies are subject to the cancellation requirements in sections 44-514 through 44-521. The purpose of the language "insuring more than four automobiles" was to distinguish between a private passenger and the commercial automobile

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policies. Section 44-514 covers the private passengers, and then commercial automobiles are covered later in (section) 44-523. There was some confusion that arose with regard to the "four automobile" language in that there was some concern by some of the members that it limited the number of autos that could be on one personal policy. And, so members were not sure where that four more came from, but one indicated that commercial vehicles or fleet vehicles were at one time defined as five or more vehicles in the statutes, and that language is gone. So basically, the removal of this "four automobile" language clarifies that this section was never intended to limit the number of private autos on one policy, and in addition, it doesn't change in any way or effect the current cancellation procedures for private or commercial autos. And I would be happy to answer any questions. [LB115]

SENATOR LANGEMEIER: Are there any questions? Go ahead, Senator Gay. [LB115]

SENATOR GAY: I have one question Coleen. Thank you. Where is the concern? Can you state an example? [LB115]

COLEEN NIELSEN: The concern was, apparently...there was just some concern that four or more would limit the amount, and I don't know that it comes from anywhere because clearly this particular section applies to cancellation procedures and does not define or limit the policy in any way. But there were some members that felt that they would just like that language taken out and clarified, and that's the only thing that it does. [LB115]

SENATOR GAY: Thank you. [LB115]

SENATOR LANGEMEIER: Senator Christensen. [LB115]

SENATOR CHRISTENSEN: Thank you. Better clarify. I've got a policy of four on, another policy with three on... [LB115]

COLEEN NIELSEN: Right. [LB115]

SENATOR CHRISTENSEN: ...now they can all be seven on one, correct? [LB115]

COLEEN NIELSEN: If the company chose to write seven vehicles on one policy, they could. [LB115]

SENATOR CHRISTENSEN: Yeah, I thought that's...thank you. [LB115]

SENATOR LANGEMEIER: Thank you. Senator Hansen. [LB115]

SENATOR HANSEN: Senator Langemeier, thank you. If a person has a fleet insurance

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and for some reason or other that fleet insurance gets cancelled, could that person come back and get four or more vehicles on one personal policy? [LB115]

COLEEN NIELSEN: I think a fleet is defined in a particular way, and so if it is a commercial business and it's part of a fleet, it couldn't go on a private auto policy, no. So they are definitely distinctive. [LB115]

SENATOR HANSEN: Okay. [LB115]

SENATOR LANGEMEIER: Thank you. Senator Pirsch. [LB115]

SENATOR PIRSCH: This particular provision deals only with the cancellation aspect. The writing aspect is already...there's no problems with that. If you had seven right now and wanted to do it through a personal policy, nothing is written that would present a problem. It's only in the cancellation aspect, correct? [LB115]

COLEEN NIELSEN: That's my understanding, and actually, we are doing nothing to the statute here. The cancellation procedures will not be changed in the least. It's just merely taking out four more vehicles because that was a confusing language to some. [LB115]

SENATOR PIRSCH: Okay, so a bit of housecleaning is what... [LB115]

COLEEN NIELSEN: Right. It's merely clarification. [LB115]

SENATOR LANGEMEIER: Any other questions? Seeing no other comments, thank you. [LB115]

COLEEN NIELSEN: Thank you. [LB115]

SENATOR LANGEMEIER: Any other proponents? Welcome. [LB115]

JAN MCKENZIE: Senator Langemeier, members of the committee, for the record, my name is Jan McKenzie, spelled M-c-K-e-n-z-i-e. I am the executive director and registered lobbyist for the Nebraska Insurance Federation. This is my first time to appear before you, but you will see me often. Just to clarify a bit of the difference between the organization that Ms. Nielsen represents and mine, NIIS is a membership of PNC companies, who do business in Nebraska. The Nebraska Insurance Federation is a federation of domestic and large regional insurers located here in Nebraska. We share members. I have life, health, and property and casualty, and I'm here today in support of LB115 and support of the fine work that NIIS did in finding this small glitch in the statute. I would answer any questions you might have. [LB115]

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SENATOR LANGEMEIER: Are there any questions for Ms. McKenzie? Seeing none, we're going to let you off. [LB115]

JAN MCKENZIE: Thank you. [LB115]

SENATOR LANGEMEIER: Any other proponents? Opponents? Neutral testimony? Senator Pahls, you are free to close. Senator Pahls waives closing. That concludes the hearing on LB115. I will turn the chair back to the Chairman for LB118. [LB115]

SENATOR PAHLS: Thank you. I think we are ready for LB118. [LB115]

TIM WAGNER: Thank you Senator Pahls, committee members. My name is Tim Wagner, W-a-g-n-e-r. I am the Nebraska director of insurance, and I am here in support of LB118. The comprehensive health insurance plan, which we know as CHIP, is a plan to enable individuals to buy insurance that are otherwise not eligible for insurance within the insurance marketplace. It, in effect, is a residual mechanism so that we can keep people insured, and it is one that is required under HIPAA, which is the federal statute governing health insurance coverages. CHIP is a plan that is heavily subsidized by the state. Last year we subsidized it through the premium taxes that the department collected in an amount of roughly \$24 million. And this amount has been increasing due to increased medical costs. The concern that the department has is that we only have so many available funds within the premium tax pool that would apply. As a result of that, we believe that we need to do three things now. And in addition, we are very supportive and encouraging a legislative study committee over the summer to grapple with the major issues, because the issues that we have today will not solve the problems of the financing or the financing of the CHIP plan. They are stopgap measures, but here they are, it's to basically make ineligible for the CHIP plan, any individual that is eligible for insurance under a group policy. The second thing that we would like to do is make an individual ineligible for CHIP if the premium for such coverage is being paid by a nonrelative. And the reason for this is a perception, and we have no real documentation to support this, that because physicians or medical care organizations are reimbursed at the Blue Cross/Blue Shield rate for the services that are provided under CHIP, that people that are eligible for Medicaid that these providers would subsidize the premium. In other words, pay the premium to enable them to get a better return, better remuneration for the services that they provide than are available under the Medicaid or Medicare programs. The third thing is basically a belts and suspenders issue, whereas it give the administrator explicit authority to collect information to determine applicant eligibility. We have considered that authority to be implicit, however the administrator is somewhat uncomfortable with that, and that being the case, I urge you to support, move this proposal forward, this bill forward, but also to consider a true study so we can make sure that we don't run out of money to pay for the obligations of the policyholders that we owe under the CHIP plan. And I would entertain any questions. [LB118]

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SENATOR PAHLS: Senator Christensen. [LB118]

SENATOR CHRISTENSEN: Thank you. It's on page 5, I guess, lines 3, 4, and 5 there it talks about "including the collection of information may be necessary to determine an eligibility of pool coverage. State agencies may release such information to the administrating insurer". Is there any limitations on what questions they can ask? [LB118]

TIM WAGNER: The questions that could be asked, Senator, would be only those relating to the eligibility issue. So do you have coverage, is there access, do you have the availability of insurance elsewhere under a group policy? They certainly aren't able to ask certain...I mean, that are not eligibility under this provision. [LB118]

SENATOR CHRISTENSEN: Okay. Thank you. [LB118]

TIM WAGNER: Thank you. [LB118]

SENATOR PAHLS: Senator Carlson. [LB118]

SENATOR CARLSON: Senator Pahls. Mr. Wagner, on the eligibility, individuals should "not be eligible for coverage under a group health plan", so this would take into account dependants, wouldn't it? An employee's dependants. [LB118]

TIM WAGNER: I'm not sure that I would under...if the employee has a husband and spouse and they both were eligible and they were both employed, and the CHIP policyholder or the individual is eligible under the wife's plan. Because on the dependant I don't know how dependants could be eligible for coverage under a group plan without the individual, the parent being eligible. Is that...I'm trying to understand the question. [LB118]

SENATOR CARLSON: Well, I know a situation or two that the employer may not encourage the employee to put the dependants on, and that could enter here. [LB118]

TIM WAGNER: Yes, I see exactly what you're saying now. I think that would be a violation, I mean, if they're offering group coverage to everyone else, but you have a dependant that has a medical condition, it would be my opinion that that child would be eligible under the group policy. And I guess, I don't know how they're doing that. [LB118]

SENATOR CARLSON: Okay. Another situation that could arise is an employer might encourage an employee to waive the coverage. [LB118]

TIM WAGNER: That is exactly what happens and we refer to that as dumping... [LB118]

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SENATOR CARLSON: Right. [LB118]

TIM WAGNER: ...where the employer will encourage the employee to not participate. But under our statutes, if there is group coverage offered and the eligibility is there, there is a right for that individual to purchase insurance. But I know it's a very difficult thing because, you know, employers could, theoretically, even terminate an employee, I suppose, rather than have them in the group program, which is a very ugly scenario indeed. [LB118]

SENATOR PAHLS: Senator Pirsch. [LB118]

SENATOR PIRSCH: When did we initiate CHIP? What year was that? [LB118]

TIM WAGNER: We were one of the first states in the country to initiate CHIP, and I believe it was 1984 or 1985. Our program has been a good program and has provided benefits since that time. It has changed, however. When I became director, we had 3,000 people in CHIP and the subsidy was running about \$7 million a year, as I recall. And today we have roughly 54,000 in the CHIP program, and as I indicated the subsidy is running about \$24 million a year. [LB118]

SENATOR PIRSCH: I take it growing by a pretty good percentage each year? [LB118]

TIM WAGNER: The actual population in CHIP two years ago did get up to 6,100 or right at or a little over 6,000 and has actually come down a little bit, and people would debate...there's a supposition that because of rate increases, people are unable to afford CHIP, and that would be one of the heavy issues that we would like to tackle in a legislative interim study. [LB118]

SENATOR PAHLS: Senator Pankonin. [LB118]

SENATOR PANKONIN: Thanks, Senator Pahls. Director Wagner, I'm sure you will agree, like we might hear of it from the President of the State of the Union that this healthcare issue has finally come into the forefront of. And so hopefully there will be some national and further state policies that will help to alleviate this. But I think it's a sound policy on your part to propose this because of, you know, people have a chance to have it otherwise, and we already know the difficulties. We also know it's costing the state a lot of money. So I think it's sound policy and I'm just hopeful that we will be getting some help from national level to help us see ourselves out of this predicament. [LB118]

TIM WAGNER: Senator, we do get a little bit of help from the federal government. They did last year give us roughly \$750,000 and we expect to get that stipend this year, but

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it's a small... [LB118]

SENATOR PANKONIN: Drop in the bucket. [LB118]

TIM WAGNER: ...amount in comparison to the total. [LB118]

SENATOR PAHLS: No more questions? Thank you, Tim. [LB118]

TIM WAGNER: Thank you. [LB118]

SENATOR PAHLS: Proponents? [LB118]

VICTOR KENSLER: Senator Pahls, committee members, my name is Victor Kensler, V-i-c-t-o-r K-e-n-s-l-e-r. I am the chairman of the CHIP board of directors, and I think most of you know what the CHIP board of directors does, but I'll just tell you briefly that we have four members that represent insurance companies. We have a member representing health agencies. We have a member that represents the general public, and a member that represents the policyholders, totaling seven members. The increasing costs of the annual subsidy is primarily what I would like to look at. We formed a task force on the board of directors to look at this, to address it. We worked on a series of recommendations for fixing this and three of those are in front of you today. You heard the director talk about those three, and so in keeping with your request not to be redundant, Senator, I will not repeat those three. We are also in support of the interim study, that the director mentioned, to review the recommendations to increase the child rate from an artificially 67.5 percent, an artificially set rate, and to increase the CHIP policyholder premium over time from the current 135 percent of the prevailing market rate to a possible 150 percent rate. I will answer any questions at this time. [LB118]

SENATOR PAHLS: Do I see hands? Thank you, Victor. It looks like you answered our questions to this point. Thank you. [LB118]

VICTOR KENSLER: Thank you. [LB118]

SENATOR PAHLS: Any other proponents? [LB118]

JAN MCKENZIE: Senator Pahls and members of the committee, again, for the record, my name is Jan McKenzie, M-c-K-e-n-z-i-e, executive director and lobbyist for Nebraska Insurance Federation. We are testifying in support of LB118, both the proposed changes in amendment and the interim study, and would be interested in working with the committee and other interested groups in addressing this issue over the interim. [LB118]

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SENATOR PAHLS: Seeing no questions, thank you, Jan, appreciate it. Any other proponents? Opponents? [LB118]

DICK NETLEY: (Exhibit 1) Mr. Chairman, members of the committee, my name is Dick Netley. I serve on the board of directors of CHIP. [LB118]

SENATOR PAHLS: Could I have you spell your name? [LB118]

DICK NETLEY: I am sorry, N-e-t-l-e-y. I serve on the CHIP board as the public representative. I am here today not as a representative of the CHIP board, but as an advocate and a concerned citizen speaking in opposition to LB118. LB118, specifically page 2, line 18, makes it illegal for a high risk individual to access CHIP coverage if they are eligible for coverage under a so-called group health plan. This provision may be in conflict with the legislative intent of the original CHIP act which states, "it is the intent of the legislature that adequate levels of health insurance coverage be made available to residents of Nebraska who are otherwise considered uninsurable or who are under insured due to a medical condition creating a high risk". LB118 provides no definition of the so-called group health plan, nor does it provide an exemption for a group health plan that has inadequate coverage causing an individual to be underinsured. As it stands now, this bill could put some high risk individuals into a Catch-22 situation, i.e. choosing between a job with inferior coverage and CHIP coverage that they can't afford without the job. A similar language appears in section (b) immediately following the proposed revision. While this is a separate set of requirements for those opting into CHIP under HIPAA, it also presents the same potential conflict that I previously mentioned. I ask that you amend this bill with a definition of a group health plan, and provide provisions for voluntary access to CHIP coverage by the employee if comparable levels are not available through the group plan. In response to some testimony that was provided previously, the CHIP board did have considerable in-depth conversations and discussions and debates about a variety of issues, and all I can do is pass out a copy of the minutes that represent my understanding of what the CHIP board agreed to and passed on to the Department of Insurance. And you will take notice of the paragraph that I have marked with a star that there is no mention of this particular provision on page 2 of line 18. That's not to say that the board would not consider this, but the fact is that after considerable debate, this is what was proposed and advanced to the Department of Insurance for consideration of recommendations for legislative action. I will entertain any questions at this time. [LB118]

SENATOR PAHLS: Seeing none, thank you. Any other opponents? Neutral? We will close the hearing on LB118. Our next bill is LB120 by the Banking, Commerce and Insurance Committee. We will let the director... [LB118]

TIM WAGNER: Good afternoon, Senator Pahls, members of the committee. My name is Tim Wagner, W-a-g-n-e-r, and I'm here in support of LB120. What we have is this is the

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Nebraska Senior Protection in Annuity Transactions Act, and what we propose to do is something that it was too late in the session last year to do, and that was to amend that act to make it applicable to all of our citizens. At the current time, it's applicable only to those 65 and over, but the standards make sense in that they should be applied across the board, and these protections granted to everyone. The other point you will hear is an amendment that will be offered by a representative, the ACLI. We had in our original bill which was based on the model bill and we did some minor tweaking within the department to clarify a couple of items. It has become apparent that there is a need for an absolute uniform standard nationally, and as a result of our tweaking, there's concerns that have been voiced on the part of one insurer that we may have created a problem, and as a result of that we would be in support of that amendment that will be offered. With that, I would take any questions. [LB120]

SENATOR PAHLS: Seeing no questions, sir. [LB120]

TIM WAGNER: Okay. Thank you. [LB120]

SENATOR PAHLS: Thank you, Tim. Proponents? [LB120]

JIM HALL: (Exhibit 1) Thank you, Mr. Chairman. My name is Jim Hall, J-i-m H-a-l-l. I'm a regional vice president with the American Council of Life Insurers, that's the national trade association, representing the life insurance industry. We have 373 member companies who hold 91 percent of the life insurance enforce in America, and 95 percent of the annuities enforce in America. I'm here before the committee today for two purposes. First to appear as a proponent and in support of the amendments offered by the division of insurance in LB120. We agree with the division's purpose in expending the applicability of the law to all ages and we support that 100 percent. The second purpose I have in appearing today is to offer some supplemental amendments, which we have discussed with the division of insurance, and as you heard director Wagner say they are in agreement. The amendments that we are offering would, on page 5 of the bill, delete provisions that were placed in there when the bill was originally enacted. To take out those two sentences would harmonize Nebraska's law with the NAIC model law from which is was enacted, and also make Nebraska's law uniform with the other states that have enacted this model law from the NAIC. And if you want me to explain specifically what it does, I'm happy to do so, or I can take questions. [LB120]

SENATOR PAHLS: Well, let's see if we have any... [LB120]

BILL MARIENAU: We should have him explain a little bit more in detail. [LB120]

JIM HALL: All right. Very well. On page 5 of the bill there at the top are several items that...let me back up and say that the purpose of this law when enacted, and indeed when drafted by the National Association of Insurance Commissioners, was to provide a

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foundation for a suitability of the sales of annuities, and they tried to pattern this off of the NASD requirements for the sale of securities. It is a document that is meant to provide this guidance and yet be flexible because it's recognized that there are a variety of types of annuities and a variety of purchasers that are going to be involved in these transactions. And so in general, what they wanted to make sure of is with the proper information was obtained, the types of discussions that needed to be had between the seller and the buyer would take place. And in the model law, the language reads beginning with letter a on line 3 at the top of page 5, the model law says one of the things you inquire into is "the consumers financial status". Then you drop down to (c), and you inquire about the "consumers tax status," and finally...well, under the next line, (d), "the consumers investment objectives," and then (e), which is the important catchall phrase, "such other information used or considered to be reasonable in making recommendations to the consumer". I'm omitting the word "senior" because that's what the division is wanting to omit as well. What we are proposing to remove is the extra language that is not in the model, and that language is beginning on line 3, "including investments held by the senior consumer", and the next line, "other insurance products owned by the senior consumer". The reason why those types of questions were not put in the original model law was when the regulatory community that was helping to develop the model law at the NAIC, along with input from the industry began to take a look at it, they went down the road a little way and then they thought, well, why don't we ask this, why don't we ask that, and then they realized there's no way to get an exhaustive list to try to encompass all the different possible consumer situations that we're going to run into. We will end up creating a list that will include some things and exclude others, and people using the list will think that's the exclusive list and things won't get asked that, perhaps, should be asked. They also, as I say, took a cue from the NASD's language and their suitability rule, and it did not go into this type of specific questioning. And it was agreed between the regulators and the industry that were developing this model that that final provision, which is letter (e) on line 8, "such other information used or considered to be reasonable in making a recommendation to the consumer." That's a wide requirement, and the judging of what's going to be reasonable will be left to the jurisdiction of the division of insurance, and it will be they who look at the situations if there's a complaint made. If a consumer says, geez, I don't know if I really should have bought this. I don't think it works for me. It probably wasn't a suitable sale. It will be the division of insurance that will look at that and decide what information should have been asked for, whether it was asked for, and if it wasn't, they will ascertain why not and determine what action to take from there. So they are the enforcer of this law. And as I say, we've discussed the removal of this language to put Nebraska in compliance with...not compliance, but in harmony with the model law, and they were in agreement with that. [LB120]

SENATOR PAHLS: Do I see any questions? Thank you. [LB120]

JIM HALL: Thank you. [LB120]

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SENATOR PAHLS: Oh, I'm sorry. Senator Carlson. [LB120]

SENATOR CARLSON: Okay, Senator Pahls, Now go back and help me out on line 3. [LB120]

JIM HALL: Right. [LB120]

SENATOR CARLSON: You recommending an addition as an amendment? [LB120]

JIM HALL: An additional amendment, if you will. We would strike everything after the word "status", so the line after the amendment would simply read, "you inquire in to the consumer's financial status and you remove including investments held by the senior consumer". And then the next line, "other insurance products owned by the senior consumer", and then you would rejoin the existing law and the model language, where the "consumer's tax status", etcetera. [LB120]

SENATOR CARLSON: Okay. Thank you. [LB120]

JIM HALL: You're welcome. [LB120]

SENATOR PAHLS: Seeing none, thank you, Jim. [LB120]

JIM HALL: Thank you, Mr. Chairman. [LB120]

TERRY HEADLEY: (Exhibit 2) Chairman Pahls and members of the Banking, Commerce and Insurance Committee, my name is Terry Headley, first name is T-e-r-r-y, last name Headley, H-e-a-d-l-e-y, president of Headley Financial Services in Omaha and a national trustee on the board of the National Association of Insurance and Financial Advisors. I am here today representing the Nebraska Association of Insurance and Financial Advisors, which is comprised of 1,200 insurance professionals, agents, and financial advisors across our state who market a wide range of insurance and financial products to Nebraska consumers helping our citizens plan for their financial security needs and goals by providing solutions in the event of death, disability, illness, and retirement. Our organization is wholeheartedly in support of LB120 to expand the Senior Protection in Annuities Transaction Act to Nebraska consumers of all ages and would urge the committees unanimous vote to move the bill forward at the earliest opportunity. The annuity products, which include fixed, index and variable annuities, are unique financial instruments designed to provide tax advantage, savings accumulations, as well as guaranteed streams of income. In fact, an annuity is the only financial vehicle whereby it's possible to guarantee lifetime income. However, because annuities are tax deferred in the accumulation phase and their unique design is long-term financial security products, the liquidity and accessibility of the annuity contracts value is

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somewhat more limited than other financial products. It is for this very reason that appropriate suitability and disclosure requirements be instituted as consumer protections and safeguards. And these are measures that are appropriate for purchasers of annuity contracts at all ages. This is no different than the suitability information that is normally attained for other investment products, such as investment objective, risk tolerance, estimated annual income, federal tax bracket net worth, years in investment experience, and time horizon. We applaud the intent of the bill and at this time I would be happy to address any specific questions that the committee may have. [LB120]

SENATOR PAHLS: Senator Gay. [LB120]

SENATOR GAY: Yeah. I have got a question just reading through this and I want your opinion. Define reasonable efforts. I understand when you're, you know, you're visiting with a client and you're getting financial background, how would you describe reasonable efforts? And I know invariable annuities this has to be done anyway, fixed it should be. I mean, the enforcement mechanism...I was looking at the enforcement, it looks like there are ways to...what's your view of reasonable efforts in this bill? [LB120]

TERRY HEADLEY: Well, I think that most of us that are insurance professionals and investment advisors make every effort to ascertain all information that is pertinent and relevant to the purchase of any financial product, and, again, that goes along the lines of being knowledgeable in terms of their risk tolerance is absolutely critical. The time horizon that they are looking at to use that financial vehicle to accomplish specific needs and objectives. In addition, tax bracket, net worth, estimated annual income, and then, of course, other liquidity sources, so that might be added to the list that I read off earlier which are primarily the NASD, the National Association of Securities Dealers suitability requirements. And basically it's a matter of know thy customer. [LB120]

SENATOR PAHLS: Senator Pirsch. [LB120]

SENATOR PIRSCH: You listened to Mr. Hall's testimony just prior to your testimony and I think he had indicated that in a sense, he felt that subsection (b) and the part of subsection (a) that was struck...that he proposes to strike rather was redundant, to a certain extent. Encapsulated, rather, in subsection (e) that catchall provision. Is that your interpretation as well? [LB120]

TERRY HEADLEY: Well, I did not have an opportunity to review the omitted language. [LB120]

SENATOR PIRSCH: I'm sorry. I apologize. [LB120]

TERRY HEADLEY: No, that's fine. [LB120]

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SENATOR PIRSCH: The portion that he recommended be struck, as I understood it, included the language in part a, which...well, let me read all of part a, "the consumer's financial status" and then this part he was recommending strike, "including investments held by the senior consumer", and in subsection (b) "other insurance products owned by the senior" or in this case it would be consumer. And my perception was that he was indicating that those type of factors would be considered through subsection (e) and therefore redundant. Subsection (e) reading, "such other information used or considered to be reasonable in making recommendations to the consumer". [LB120]

TERRY HEADLEY: As a financial advisor, Senator, I would be hesitant to have these characterized as warranties as opposed to representations. [LB120]

SENATOR PIRSCH: Sure. [LB120]

TERRY HEADLEY: As long as they're representations and a good faith effort to acquire knowledge about what other insurance or investment products. My concern, would be however that, to the extent that there was an omission, inadvertently or otherwise, and that disclosure was not provided by the customer. I would hate to think that a financial advisor or insurance agent would be held liable under that. [LB120]

SENATOR PIRSCH: Thank you. [LB120]

TERRY HEADLEY: Thank you. [LB120]

SENATOR PAHLS: Senator Gay. [LB120]

SENATOR GAY: When you're making reasonable efforts to do this, would there be...I didn't see anything in here, but would there be a actual sign-off sheet the client signs? We do that in several...I agree the questions are correct. It's becoming more prevalent that you need that anyway. Not everyone is doing that. [LB120]

TERRY HEADLEY: Yes, it is. Most companies have amended their application packages to incorporate a suitability form along these lines. [LB120]

SENATOR GAY: Okay. And maybe I shouldn't ask you this question, but I'm going to anyway. Is there a certain...again, on the forms, should we have a form, another form that we have to go through and sign and say, hey, I agree, these reasonable efforts were made, I sign my name as the client? [LB120]

TERRY HEADLEY: Well, again, as it relates to those annuity purchasers age 65 and over, that is already being done, so this would be... [LB120]

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SENATOR GAY: But would the form just include that? [LB120]

TERRY HEADLEY: Yes, but again, I think that kind of language is a little bit problematic as to what is reasonable versus unreasonable, good faith efforts to obtain that information. I know our members are dedicated to knowing as much about their clients and prospective clients as they possibly can before they make any kind of a recommendation. Good questions. [LB120]

SENATOR PAHLS: Seeing no more questions, thank you, Terry. [LB120]

TERRY HEADLEY: Thank you, Mr. Chairman. [LB120]

SENATOR PAHLS: Little did I realize when you said we would be seeing you quite a bit this session it would be so fast. [LB120]

JAN MCKENZIE: You didn't know quite that many times in one day, right? [LB120]

SENATOR PAHLS: Yes, yes, right. We will ask you to spell your name though. [LB120]

JAN MCKENZIE: Senator Pahls and members of the committee, again, my name is Jan McKenzie, M-c-K-e-n-z-i-e, representing the Nebraska Insurance Federation, here in support of LB120 in it's efforts to remove the age limit from the protection act, and also in support of the amendment, and Senator Gay, don't ask me any of those very specific questions, because I don't know the answers to it. But we did support the bill that was passed last year as a Federation, and were aware at the time that there was some discrepancy between the model legislation and Nebraska's legislation, and are happy that we can revisit it, I guess, this session. We try very hard to keep all of our statutes as uniform as possible to those of other states, as many of my member companies do business in all 50 states. And the more uniform the language is for those companies to do business, the more cost effective it is and certainly helps in terms of overall paperwork and dealing with different regulations in different states. I would just add that as a bit of additional support to striking those two lines in the bill. Any questions? [LB120]

SENATOR PAHLS: Seeing none, thank you Jan. [LB120]

JAN MCKENZIE: Thank you. [LB120]

SENATOR PAHLS: Any additional proponents? Opponents? Neutral? Okay, we will close on LB120. One thing, while Senator Langemeier's going...I do want to send the message to those of you who are proponents or opponents in the industry, we need your comments. So I do appreciate when you do come forth, because when we're looking at all this legislation that's passing our table or our desks, I should say, we do

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need to know where the industry or where people stand on both sides of the issue. It will just make...in ten years, it will make good legislation. It's that simple. So I appreciate when you do help with that. Senator Langemeier. [LB120]

SENATOR LANGEMEIER: (Exhibit 1) Good afternoon, Chairman Pahls and members of the Banking, Commerce Committee (sic: Banking, Commerce and Insurance Committee). I bring today LB186. It's being introduced for the purpose of creating consistency throughout the Real Estate Appraiser Act, and with requirements of the real appraiser criteria mandated by the Appraisal (sic: Appraiser) Qualifications Board. The focus of the is legislation is purely technical in nature with the exception of one addition. As of January 1, 2008, each level of appraiser credentialing has a scope of practice to which the appraiser must adhere. Since Nebraska is the only state that has a registered credentialing that is not recognized at a federal level, the scope of the practice for the registered credentialing needs to be implemented into statute to stay in compliance with the federal banking agency guidelines. With the implementation of LB186, registered appraisers shall be limited to the appraisal practice of noncomplex properties having one, two, or three, or four resident units having a transaction value of less than \$250,000. It also states in there, and the transaction is a nonlending transaction, and I have offered you an amendment to strike the "and transactions is nonlending", which in on page 10, line 24. After the word "dollars" it would strike the balance of that line in that amendment you have before you. And with that, I have a number of people to testify. Are there any questions to this point? [LB186]

SENATOR PAHLS: Seeing none, thank you. [LB186]

SENATOR LANGEMEIER: I do have one more comment I should make, is I was offered an amendment by an individual that, I think, will testify here today. It's in bill drafting. It's very technical. It's taking out a couple of words within the whole concept of this act, which we passed into law that I introduced last year. It was not drafted, we'll bring that at a later time to clean up the word "national" and an number of other little fine technical...but this is what we have for today. [LB186]

SENATOR PAHLS: Basically just clean up. [LB186]

SENATOR LANGEMEIER: That is extremely clean up, and we would offer that. We would ask for you to advance this out and we will bring that at a later date. And I have indicated to the individuals that had some interest, including the appraiser board that I would get them a copy, they have a rough, kind of a drawn up version of it. I will get them the actual typed up, official amendment when it's prepared. [LB186]

SENATOR PAHLS: Thank you, Senator. Proponents? Proponents (LB)186? [LB186]

JILL EKSTEIN: Good afternoon, Senator Pahls and members of the committee. My

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name is Jill Ekstein, J-i-l E-k-s-t-e-i-n. I am the director of the Real Property Appraiser Board and appear before you this afternoon in support of LB186. So as not to repeat the things that Senator Langemeier has already offered, I would just tell you that we have been made aware of the additional amendment that the Senator spoke of. And we are aware to the technicalities that he has brought to your attention and to our attention, and, although, we have not seen it in final form or from the bill drafter, I do believe that we would be in support of those changes as well. [LB186]

SENATOR PAHLS: Do I see any questions for Jill? Thank you. [LB186]

ROBERT J HALLSTROM: (Exhibit 2) Chairman Pahls, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB186. Our support is in light of the amendments that have been proposed to the committee by Senator Langemeier as he addressed in his opening comments. Historically, the Bankers Association had been supportive of the qualifications for appraisers that have been set up at the state level. Back in the eighties when the financial institutions industry was having difficulties, federal laws and regulations were adopted to require licensed and certified appraisers to be utilized in connection with loan transactions of greater than \$250,000. At the time that the qualifications for appraisers were established at the state level, we were supportive of having a category of appraiser that would form the so-called new generation of appraisers to take over for those who retired or passed to the great beyond over time. And as a result, we have always been supportive of allowing someone to move up the chain of command, if you will. The registered appraiser category pursuant to the legislation that Senator Langemeier alluded to that was adopted last year by the Legislature is going to do away or phase out the registered appraisers by 2012 and replace them with trainee appraisers, which we were supportive of. One of the issues that we have continued to discuss is the issue of whether or not there ought to be a limitation on the scope of practice over the registered appraiser category. We are supportive of placing those limitations on, where appropriate, as provided in the bill, but we had raised some concerns with Senator Langemeier regarding the fact that it would also apply so that those appraisals could not be performed if a lending transaction was involved. The amendment that he has proposed will remove that language so that now the limitation will only apply or the scope of practice will only be limited to transactions under \$250,000 for noncomplex, one to four residential unit properties, and it will be irrespective of whether a lending transaction is involved or not. So we will still have the flexibility as allowed by the federal regulations to use a registered appraiser, an in-house appraiser, or whatever the case might be for those transactions under the \$250,000 deminimus level. So with that, we would request that the committee advance the bill with Senator Langemeier's amendments. I would be happy to address any questions that you might have. [LB186]

SENATOR PAHLS: Looks peaceful on this side. Thank you, Bob. [LB186]

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ROBERT J HALLSTROM: That's good. Thank you. [LB186]

SENATOR PAHLS: Opponents? Neutral? Senator Langemeier waives closing. [LB186]

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Disposition of Bills:

LB115 - Advanced to General File.

LB118 - Held in committee.

LB120 - Advanced to General File, as amended.

LB186 - Advanced to General File, as amended.

Chairperson

Committee Clerk