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Banking, Commerce and Insurance Committee
February 13, 2007

[LB188 LB378 LB379 LB383]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 13, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB379, LB383, LB188, and LB378. Senators present: Rich Pahls, Chairperson; Chris Langemeier, Vice Chairperson; Tom Carlson; Mark Christensen; Tom Hansen; Dave Pankonin; and Pete Pirsch. Senators absent: Tim Gay.

SENATOR PAHLS: Good afternoon. The senators are coming. They have been at another meeting. I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls. I am from Omaha and I represent District 31. The committee will take up the bills in the order posted on the door. Our hearing today is your public part. I will just go over the order, LB379, LB383, LB188, and LB378. You see the little white board on the side, I am asking you to take a look at that, to turn off your phone. There is an on-deck chair. We have the box for the testifier's sheet and I am asking you also the very last thing, be concise. If you have followed somebody else, we would appreciate that you would get to the meat of your comments. Following the introduction of the bills we will take proponents, opponents, and the neutral testifiers and we will try to give equal time to all sides of the issue. We are asking you to begin your testimony by spelling your first and last name. Even though I know some of you come here on a routine basis try to get that get that pattern for those who do not come on a routine basis. If you have written material we need ten copies. If you do not have ten copies hold your hand up and we will have the pages go run it for you. Nothing like a prepared group. I appreciate that. To my immediate right is committee counsel, who many of you know, Bill Marienau, and to my left is committee clerk, Jan Foster. Now I am going to start asking the senators to give us your name and where you are at and a little history.

SENATOR CARLSON: Tom Carlson, District 38.

SENATOR PIRSCH: Pete Pirsch from District 4 and I haven't figured out a nice little shtick like Tom Hansen over there, yet, but I will come up with something for the fighting fourth maybe.

SENATOR PAHLS: That is good.

SENATOR LANGEMEIER: Chris Langemeier, District 23 and I can say I used mine all the first year.

SENATOR PAHLS: And we don't want to keep him repeating it, okay. Thank you, Chris.

SENATOR CHRISTENSEN: Mark Christensen, Imperial, District 44.

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

Banking, Commerce and Insurance Committee
February 13, 2007

SENATOR HANSEN: Tom Hansen, District 42, Lincoln County, Home of Senator Carol Hudkins.

SENATOR PAHLS: Oh, right and we do have our pages Kristine Kubik from Prague, Nebraska and Cora Micek from Hastings, Nebraska. We will start the proceedings today with LB379, and I will turn it over to you, Senator Langemeier.

SENATOR LANGEMEIER: Good afternoon and well Senator Pahls. When you are ready.

SENATOR PAHLS: Well I have been ready like 15-20... [LB379]

SENATOR LANGEMEIER: Yeah we noticed your absence, by the way. [LB379]

SENATOR PAHLS: Obsessed with getting it done today. Good afternoon. My name is Rich Pahls, spelled P-a-h-l-s, and as I said earlier, from District 31, the Millard of Omaha. Today I am bringing forth LB379 is proposed legislation requested by the Secretary of State's office. The Secretary of State's office is asking for the following changes to several existing statutory provisions in regard to corporation. Number one, to provide for and promote electronic filing of domestic and foreign corporation occupation tax reports and nonprofit corporation reports. In addition to this requirement of providing a physical street address for a registered agent for service of process, that inclusion of a post office box, if any, also be allowed because the post office requires use of a post office box for business establishment delivery of mail in many locations in the state of Nebraska. And thirdly, they would like to remove the language describing the limited liability company as a professional limited liability company. And I do have somebody from the Secretary of State's office to answer any questions if you have any. [LB379]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. Are there any questions for Senator Pahls? Seeing none, thank you. Next proponent. Good afternoon and welcome to the committee. [LB379]

RON MORAVEC: Good afternoon, Senator. Thank you. My name is Ron Moravec, R-o-n M-o-r-a-v-e-c, chief deputy Secretary of State. On behalf of Secretary of State, John Gale, I would like to thank Senator Pahls for introducing LB379 on the secretary's behalf. The basic purpose of LB379 is twofold. One, as discussed at a committee hearing last week we are proposing to add for registered agents of all of the corporations involved the ability to list, in addition to a street address of that registered agent, a post office box number. The office has in a business services division usually an annual return for nondeliverable mailings someplace in between 2 and 2.5 percent. The majority of those are because the last address of the registered agent is no longer

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

Banking, Commerce and Insurance Committee
February 13, 2007

that address. They have moved or may have for some reason changed a physical address. Therefore we believe that if there was the chance for a post office address to be included at the option of the corporation or the registered agent. This is not a mandatory requirement that they obtain a post office address. But if they have one it would be beneficial, we believe, in trying to locate that registered agent on behalf of the corporation involved. The other purpose of LB379 is last year Senator Brashear was kind enough to, in LB647 to include some language that the Secretary of State had requested and unfortunately it slipped into the language a definition of a professional limited liability corporation. There is not such an act or a creature in the state of Nebraska so therefore we are asking that that definition be removed from the current statute. This legislation will not cause an increase in filing fees of corporations or registered agents, nor do we anticipate it to be a cost to the Secretary of State's office for implementation of this. If you have any questions I would be glad to try to answer them. [LB379]

SENATOR LANGEMEIER: Thank you very much. Senator Pirsch. [LB379]

SENATOR PIRSCH: Just a quick question. The PO Box would be in addition to listing the physical street address then, correct? [LB379]

RON MORAVEC: That is correct. [LB379]

SENATOR PIRSCH: What happens, and this is borne out of the unknown, what happens when you become aware that the physical street address is incorrect at that address there? [LB379]

RON MORAVEC: The initial mailing that went out and was returned to us for nondeliverable address, business services will search all of it's records to see if it can come up with another address, whether it is for the registered agent or a corporate officer that may be listed in those filings. If such is located then a second mailing will go out to the new individual and/or new address. [LB379]

SENATOR PIRSCH: To the new individual. When you contact that new individual and/or new address is there any effort undertaken to urge them to update their address then so that, I guess that is the wonderment? [LB379]

RON MORAVEC: Yes. In the correspondence with the agent and/or the corporation we do remind them that they are required to file with the business services division a change of registered agent and/or a change of address, sort of as a reminder that they are required to do that. Of course if that is unsuccessful well then the next on the occupation tax on April 16 the following year they will be administratively dissolved. [LB379]

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

Banking, Commerce and Insurance Committee
February 13, 2007

SENATOR PIRSCH: I see. Okay. I take it that is part of the reason why the requirement to list a physical street address so that they can be located, that those individuals who have a legitimate purpose in locating them physically can. [LB379]

RON MORAVEC: Yes. That is correct. [LB379]

SENATOR PIRSCH: So I think that pretty well answers that question. And then just briefly with respect to the third point, the removing the language, is there a need to redefine anything or is it you just want it stricken? [LB379]

RON MORAVEC: We would just ask that it be stricken. There is, as I have indicated, there is no professional limited liability act. So it should be just stricken. [LB379]

SENATOR PIRSCH: Okay. Thank you. [LB379]

SENATOR LANGEMEIER: Thank you. Are there any other questions for Mr. Moravec? Seeing none, thank you for your testimony. Are there any other proponents to LB379? Opponents? Neutral testimony? Seeing none, Senator Pahls waives closing. That will conclude the hearing on LB379. Now we will move to LB383. Senator Pahls, you are recognized to open on your bill, (LB)383. [LB379]

SENATOR PAHLS: Thank you. Again, my name is Rich Pahls, P-a-h-l-s. I represent District 31, the Millard of Omaha. As you can see you can see a little bit of similarities, so some of the same questions maybe already have been answered. We talked about addresses and post offices and that dealt with, as I read (LB)379, dealt with corporations. In LB383 they are asking for the same to change some in the existing statutory provision in Nebraska Uniform Limited Partnership Act. That is what they are asking in addition to the requirement of providing a physical street address for a registered agent for the service of process, the inclusion of a post office box also be allowed, because the post office requires the use of a post office box for business establishments delivery of mail in many locations in the state of Nebraska. It sounds like I am repeating myself. [LB383]

SENATOR LANGEMEIER: And you are doing a fine job, too. Thank you, Senator Pahls. Are there any questions for Senator Pahls? Seeing none, I recognize a member of our committee joined us, Senator Pankonin. Thank you. Proponents to LB383. Welcome back, Mr. Moravec. [LB383]

RON MORAVEC: Thank you, Senator Langemeier. Again, my name is Ron Moravec, R-o-n M-o-r-a-v-e-c, chief deputy of Secretary of State. Again, like to thank Senator Pahls for offering this legislation on behalf of the Secretary of State, and I could almost say ditto to the Senator's comments. Again, the purpose of LB383 is in reference to limited partnerships and general partnerships and all limited liability companies that in

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

Banking, Commerce and Insurance Committee
February 13, 2007

addition to a physical street address that they are required to provide in their filing documents that this would give them the option if they have a post office box whether the corporation, or the entity, or the agent could also list that. Again, it would not be required as a street address is, but it would be an option for the Secretary of State or interested parties to further attempt to locate the agent and/or the entity involved. As indicated, we have an annual return for bad addresses in the business services division of someplace between 2 and 2.5 percent. Limited liability corporation notices were sent out for biennial reports in January of this year and today we received approximately 9-10 percent of those back for bad address. We just feel that this would be another possibility in locating the entity and/or the agent for that entity. Again, this would be at no additional cost to the agent or the entity, nor would it cost additional funding for the Secretary of State's office. Thank you. [LB383]

SENATOR LANGEMEIER: Thank you. Are there any questions? I have one I would ask then. Mr. Moravec, this is our third bill that addresses this post office box issue. Is there a reason these aren't all together in one? Is there something you thought we would pass some and not others? What is the thought behind separating all of these out? [LB383]

RON MORAVEC: That was the suggestion of the drafting officer. [LB383]

SENATOR LANGEMEIER: Okay. Thank you. Are there any other questions? Seeing none, thank you for your testimony, Mr. Moravec. Any other proponents? Opponents? Neutral testimony? Seeing none, Chairman Pahls waives closing. That concludes the hearing on LB383. Senator Mines, he is on his way. We will stand at ease here for a minute until Senator Mines gets here for the next bill, LB188, and I will turn it back to Chairman Pahls. [LB383]

SENATOR PAHLS: Thank you. We will let you stretch your minds for a little bit because we are waiting on Mines. I guess you had to have been there to enjoy that. Senator Mines. [LB188]

SENATOR MINES: I sincerely apologize. [LB188]

SENATOR PAHLS: That didn't look too sincere to me. [LB188]

SENATOR MINES: Your committee gets their work done quickly. [LB188]

SENATOR LANGEMEIER: We will take that into consideration later. [LB188]

SENATOR MINES: Thank you. Chairman Pahls, members of the committee, my name is Mick Mines. I represent the Legislative District 18 and I am the principle introducer today of LB188. This, in my mind, is cleanup from a bill last year, and let me talk about LB652. This bill is a result of issues raised after language was amended into the

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

Banking, Commerce and Insurance Committee
February 13, 2007

Department of Insurance bill last year during floor debate. As an accommodation to Senator Beutler last year, he had a bill in committee, LB652, and prepared it as an amendment to our, I think it was our committee bill, LB875. The amendment was given to parties with little time to review and was adopted over some concerns and opposition by industry members who I am sure you will hear from today. However, we all got together, time was of the essence and we didn't want to jeopardize the Department of Insurance bill so we agreed to work with industry members and others during the interim to work with their concerns. We had concerns over the adoption of the language that were brought to me by a number of parties and they revolve around whether the language adopted was constitutional due to the disparate treatment of domestic and foreign reinsurers of vehicle motor service contracts. I agree that the language may be constitutional suspect and requested an Attorney General's opinion. Because the Attorney General may be called on to defend the state in an action regarding the constitutionality of a law, he would not specifically answer my request. I understand that. But rather he stated that it could be argued, and I say could be argued, that requiring notice of risk could unconstitutionally discriminate against foreign insurers. Remember, we don't...or maybe you don't remember, we do not have any of these insurers that are domiciled in the state of Nebraska. So we are talking about only foreign insurers. Some may argue that simply removing the language that exempts Nebraska domiciled companies would be sufficient. In my opinion, this doesn't solve the problem because there are no Nebraska domiciled companies and therefore the equal protection argument must stand. you will hear testimony behind me. I don't know if anyone will testify in support. You may have those testifying in a neutral or opposition. But this was a result of an accommodation to last year's bill, LB652, and I think this is the right thing to do this year is to finally get it right. With that, Mr. Chair, I will answer any questions. [LB188]

SENATOR PAHLS: Senator Langemeier. [LB188]

SENATOR LANGEMEIER: Thank you, Chairman Pahls and Senator Mines. Thank you. I remember this fight back in committee and on the floor that day. If Senator Beutler was here today would he be approving this or would he be in opposition? [LB188]

SENATOR MINES: No, I think Senator Beutler might oppose it if he were here. Again, you can argue either side, but after the accommodation was made to the Senator and after we asked the Attorney General for an opinion, I believe that there is room for concern that if it were to be left the same it may prove unconstitutional. [LB188]

SENATOR LANGEMEIER: Thank you. [LB188]

SENATOR PAHLS: Senator Pirsch. [LB188]

SENATOR PIRSCH: Oh, I am sorry. Is the concern or fear here that it...could you touch

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

Banking, Commerce and Insurance Committee
February 13, 2007

upon that? The requirement of this amendment as it was added to the bill was that as the service contract would contain a notice, is that right? [LB188]

SENATOR MINES: It is the notice. Right. [LB188]

SENATOR MINES: Okay. And so this bill would operate to strike that, correct? [LB188]

SENATOR PIRSCH: Strike the notice. [LB188]

SENATOR PIRSCH: The requirement of notice. [LB188]

SENATOR MINES: Yes. [LB188]

SENATOR PIRSCH: And the concern and the reason it is motivating you of doing that is you have constitutional fears that it may violate the constitution? [LB188]

SENATOR MINES: Yes, primarily. There are some administrative issues as well. To put yourself in the place of trying to explain to service contract, you get a television set and they say do you want a service contract. Well, what Senator Beutler's request was that they should have to note and sign that they understand that this is not guaranteed by the state of Nebraska agency, that there is no guarantee that the company may not be around when it is time for you to get your service done. [LB188]

SENATOR PIRSCH: Was this done in response to a specific incident that occurred in the National Warranty? [LB188]

SENATOR MINES: No. Senator Beutler, that was...and I hate to speak for him, but we spoke enough last year I understand his position and he has an arguable position. But he has long been very concerned that for consumers that they understand that they are protected if they enter into an agreement. So the accommodation was he wants them to sign stating that they know that they have been told that this company is domiciled in Nebraska and may not be able to own up to whatever it is. [LB188]

SENATOR PIRSCH: And if you could touch upon the concern from a constitutional perspective. Is it that, again, it had to do with instate versus out-of-state, is that correct? Will you just touch upon it? [LB188]

SENATOR MINES: We have no service contract companies domiciled in the state of Nebraska. So as I understand it, and please, I am far from a lawyer, I am a marketing guy, but as I understand it because we don't have companies domiciled in Nebraska, we only have foreign companies that it may be unfair to those that are not domiciled here, if that makes sense. I think you are going to have folks behind me that understand better and I did a lousy job of explaining. I apologize. [LB188]

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

Banking, Commerce and Insurance Committee
February 13, 2007

SENATOR PIRSCH: Okay. Thank you. Sure. No, thank you very much. [LB188]

SENATOR PAHLS: Senator Christensen. [LB188]

SENATOR CHRISTENSEN: Thank you, Senator Pahls. Senator Mines, what protection does a consumer have if it is an out-of-state company, does something wrong? [LB188]

SENATOR MINES: If they sign a service contract? [LB188]

SENATOR CHRISTENSEN: Well, by removing this language, you know, it says if it is an out-of-state company and Nebraska may not be able to do anything, so what kind of protections do you have if you are working with one of these companies? [LB188]

SENATOR MINES: Well, you don't have the protection of the state of Nebraska nor the Department of Insurance that is obligated and I think that was the original intent, just to let the buyer beware and understand that you are signing a service agreement with a foreign company that may not be able to service your account. The Department of Insurance and the state of Nebraska does not stand behind these contracts. [LB188]

SENATOR CHRISTENSEN: So if we pull this out people could do this unknowingly? [LB188]

SENATOR MINES: Well they are going to do it either way. If a foreign service contract writer defaults, they default, and the language merely says before you sign it you understand that if they default that you are not protected. And what the argument is that you buy a television and somebody wants to sell you a \$30 service contract to insure your TV for 3 years. Frankly, the person on the floor that is doing that, that is trying to sell you, they don't know. They are just going to say sign here and you will sign there. I think there are more legitimate arguments from the folks back here that deal with service contracts and their concerns. They could probably explain a lot better. [LB188]

SENATOR PAHLS: Senator Hansen. [LB188]

SENATOR HANSEN: Go ahead. Did you have a follow-up? [LB188]

SENATOR CHRISTENSEN: It is all right. I will wait. [LB188]

SENATOR HANSEN: Thank you, Senator Pahls. Senator Mines, the foreign service contract, now let's get this straight. The foreign means that they are not in Nebraska, it doesn't mean they are foreign to the United States. [LB188]

SENATOR MINES: That is exactly right. [LB188]

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

Banking, Commerce and Insurance Committee
February 13, 2007

SENATOR HANSEN: Do those contract providers have agents in the state? [LB188]

SENATOR MINES: Well, and I will let the folks behind me respond, but if you as selling the television you are acting as an agent, I would imagine, on their behalf. Or are you asking do they have offices in Nebraska? [LB188]

SENATOR HANSEN: No, not the offices I mean but the agents, the people who actually do the servicing of the contract as an agent. So that is a generic question because we have other insurance companies that don't reside in Nebraska, but they have agents. [LB188]

SENATOR MINES: Right. Agent may be the wrong word and I will defer to the lawyers behind me. That's a good question. [LB188]

SENATOR HANSEN: Okay. All right. Okay. [LB188]

SENATOR PAHLS: Senator Christensen. [LB188]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. [LB188]

SENATOR MINES: You are not going to give up, are you? [LB188]

SENATOR CHRISTENSEN: No. If the language were to include the notice that Nebraska do something for companies that were based in Nebraska would that make it constitutional, just turning that around? [LB188]

SENATOR MINES: I don't know that. But we do not have any I think is the point. We do not have any service contract writers domiciled in Nebraska. [LB188]

SENATOR CHRISTENSEN: So it is kind of a moot point anyway. [LB188]

SENATOR MINES: It might be a mute point. [LB188]

SENATOR CHRISTENSEN: Okay. [LB188]

SENATOR PAHLS: Senator Langemeier. [LB188]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. Senator Mines, we are going to ask you all the questions and then everyone else will be prepared to answer at the end. [LB188]

SENATOR MINES: To make the right answers behind me. [LB188]

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

Banking, Commerce and Insurance Committee
February 13, 2007

SENATOR LANGEMEIER: To correct you. Okay. In the language that you are striking, and I am trying to refresh my memory because I remember this was kind of a hot topic last time, but one lines stricken on page 3 it says the Department of Insurance can get, and this is part of that notice, the Department of Insurance can give no assurance that the insurer has adequate reserves to cover potential leases. That is because they do not domicile in Nebraska, is that correct? [LB188]

SENATOR MINES: That is what I understand. [LB188]

SENATOR LANGEMEIER: We could mandate what they have for reserves to sell these products in Nebraska? [LB188]

SENATOR MINES: I don't believe you can. I am sorry to interrupt. I don't know that you can but the Department of Insurance can tell you that. [LB188]

SENATOR LANGEMEIER: Everybody behind you, their heads going up and down and back and forth just kind of... [LB188]

SENATOR MINES: Are they going yeah, no, yeah. [LB188]

SENATOR LANGEMEIER: Just kind of to let you know just drop it for the next one. Thank you. [LB188]

SENATOR MINES: Thank you. [LB188]

SENATOR PAHLS: Anymore questions? We did welcome you when you came in, you realize that (laughter). [LB188]

SENATOR MINES: Yeah. Thank you. I feel loved. I will stay for closing. Thank you. [LB188]

SENATOR PAHLS: Okay. Thank you. Proponents please? How many proponents do we have by a show of hands? Three proponents? Opponents? No opponents. We have a total of four proponents. Any neutral? No neutral. Okay. Four proponents. [LB188]

KORBY GILBERTSON: (Exhibit 1) Good afternoon, Chairman Pahls, members of the committee. For the record, my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I am appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in support of LB188. I have a copy of an Attorney General's opinion to provide to the committee and I will attempt to answer all of the various questions. First of all, this issue was the subject of a bill, LB652, which was introduced by Senator Beutler in this committee two years ago, was opposed by the insurance

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

Banking, Commerce and Insurance Committee
February 13, 2007

industry, by the car dealers, by the Department of Insurance and was in committee, had not been advanced from committee and, as Senator Mines said, this was brought on the floor of the Legislature. The amendment was actually never printed so that anyone could see it until the day that it was being presented. We then voiced concerns with the amendment but obviously we did not want to hold up the movement of the department's bill, which was very important and we agreed to work on this issue and address our concerns during the interim. Our primary concern is that under the notice provision included in (LB)652, (LB)875, and that you can see in (LB)188 required that said that this service contract provider is an out-of-state entity and that the state of Nebraska does not provide an assurance. To answer Senator Christensen's question, it doesn't matter if you would add that notice. The state doesn't guarantee anybody, not instate, not out-of-state. So that is part of the problem is that our fear was that a consumer could easily assume that well, they must guarantee them if they are instate insurers, which I think was, I am guessing might have been your guess based on the way you asked the question. And that is part of the concern with this bill, that it treats instate and out-of-state reinsurers of these products which are sold not through agents, but this is just motor vehicle service contracts. These are sold through your motor vehicle dealers or some of them are available on the Internet, and actually Mr. Tim Meenan from the SCIC, the Service Contract Industry Council, is here and can answer some specific questions if you have them about how all of those work. But primarily the issue was that because the notice provisions specifically stated this is an out-of-state insurer, that can cause problems under equal protection because obviously you are having a disparate treatment of an out-of-state insurer versus anybody who would be domestic, whether or not there are any. So I would be happy to try to answer any questions, any other questions that I had missed. [LB188]

SENATOR PAHLS: Senator Pirsch. [LB188]

SENATOR PIRSCH: Thanks. Is the reason for your objection solely based upon constitutional problems or perceived constitutional problems, or even if that was cured do you in addition to that have some kind of policy type of objections to it from an economic development or competitive disadvantage type of view point? [LB188]

KORBY GILBERTSON: I think the answer is yes we have other concerns other than the constitutional issues and those were addressed in LB652 and why we were opposed to that bill under that underlying legislation. Obviously these companies do business in a number of states. To have notice provision that has to appear in a contract means they are going to have to have separate contracts printed for Nebraska, which obviously Nebraska isn't a gigantic business for anyone. That is one of the underlying issues that I had heard from people, that it kind of detracts from the issue. We think it is misleading to consumers overall to say these aren't covered because it infers that some are. [LB188]

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

Banking, Commerce and Insurance Committee
February 13, 2007

SENATOR PIRSCH: Sure. But even if you were to cure that problem thereby requiring, say for instance, there is one possible cure requiring everyone to provide, whether they be domestic or foreign, such a warning than so there is no disparate treatment there. First of all, would that be a remedy, would that then eliminate the constitutional problems in your estimation? [LB188]

KORBY GILBERTSON: In my estimation, I think there are potential was to eliminate the constitutional issues. We worked on language with Senator Beutler last year and did not come to a conclusion and that is why the bill was not being advanced. We said that we would continue to work on the language with him. Instead this amendment was put on the floor at the last minute, and that is why we have had no choice but to fight it. [LB188]

SENATOR PIRSCH: Yeah. But the constitutional aspect aside, if that were aside you would still oppose it, correct? Because of policy that it does put Nebraska business at a competitive disadvantage then? [LB188]

KORBY GILBERTSON: I don't know if that is necessarily the case. I think if there was language that could be agreed upon the parties could agree to it. Now, I can't speak for all of the other parties that are involved. But certainly last year I know I was called to more than two or three meetings in Beutler's office to try to work out some language and prepared some language to talk with him to try to come up with some type of notice that would be clear to consumers that wasn't misleading or giving them the wrong impression, because part of the problem is even if this notice is in there does it really send the correct message to people? Yes, there may be a risk but there always it. No one guarantees any of these. And so is it a necessary notice or are we doing that as a reaction to something that this would have no impact on? [LB188]

SENATOR PIRSCH: Well I guess these type of policies, if I am correct, are usually sold at perhaps a dealership. Is that correct? [LB188]

KORBY GILBERTSON: Right. I have bought one with the last two cars I have bought. [LB188]

SENATOR PIRSCH: And so, and I don't want to speak for Senator Beutler, obviously I wasn't here, it falls in the wake of the National Warranty, a particular company that had an experience in the state whereby... [LB188]

KORBY GILBERTSON: Right, and they were a Cayman based company that had no reserve requirements and things like that which the reinsurers that are reinsuring these types of service contracts do have minimum reserve requirements and things like that, and just because they are not guaranteed by the Nebraska act does not mean they do not have minimum reserves. So it is a misleading statement, we feel, to give that blanket statement to consumers. [LB188]

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

Banking, Commerce and Insurance Committee
February 13, 2007

SENATOR PIRSCH: Yeah. Are there extra federal protections that have gone into effect after? Obviously you said it was a Cayman based company that defaulted on the service agreement. [LB188]

KORBY GILBERTSON: That is my understanding that National Warranty was, and people behind me are going like this and they can correct me when they get up. [LB188]

SENATOR PIRSCH: Yeah. But are there now other protections in place that would keep, say Cayman based operations... [LB188]

KORBY GILBERTSON: That I don't know. [LB188]

SENATOR PIRSCH: Thank you. [LB188]

SENATOR PAHLS: Seeing no more questions, thank you Korby. [LB188]

KORBY GILBERTSON: Thank you. [LB188]

SENATOR PAHLS: Welcome. [LB188]

LOY TODD: Senator Pahls, members of the committee, my name is Loy Todd, that is L-o-y T-o-d-d. I am the president and general counsel for the Nebraska New Car and Truck Dealers Association speaking in favor of LB188. And much of the history has been brought out here already from the questioning. I can tell you that this did happen in the wake of the National Warranty situation. National Warranty being a risk retention group that no state could do anything about under the federal preemption for those types of organizations, and oddly enough while they had an office and a headquarters in Lincoln, Nebraska they were a Hawaii corporation regulated by the Cayman Islands. And so they were sort of...we got blamed a lot for them and very few of my dealers did any business with them. Besides the constitutional argument that is being made, I would say that we have quite a few problems in dealing with this situation because it is my dealers who primarily sell the service contracts, and this notice, for one this it is not being complied with. The Internet sellers certainly are not bothering with it, they are not bothering to tell anybody anything about the companies they are working with, and you will be amazed at how often I get a call from one of my dealers being approached by some company wanting them to handle their service contracts or they are handling some for someone, and I ask if they are complying with the notice and they say well, no, we don't have to. Well, then I assure them that there are no Nebraska domiciled companies that are involved with this so I keep telling them no, you have got to give the notice, and the notice is really an unfortunate piece of work anyhow. Because one of the things it does is a real negative in a consumer transaction is it draws away from the actual important things about a contract. Because I can tell you in the 19 years that I

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

Banking, Commerce and Insurance Committee
February 13, 2007

have been representing the car dealers there has been one company that we have been involved with in any way that went broke and we weren't involved with then other than a handful of my dealers. I warned a lot of people don't do business with these people for a lot of obvious reasons. But what happens is if you are sitting down, this notice requires a signature or an initialling of that information. I don't know of anything else that does that. Some of the truth in lending disclosures require you to check whether or not you want the credit insurance or some other things like that. So what happens is you are drawn away from the important things about the contract like does it cover the power train, how many years is it, what is it going to cost, all those kinds of things. Instead draws it over to say the company we are doing business with might go broke. Another unfortunate piece of language about this is it says the department can give no assurance that this company will have adequate reserves. Well, guess what. The department doesn't give anybody any assurance at all about any insurance product that there will be adequate reserves. There are other products like other types of insurance that come under the state guaranty fund. But no service contract anywhere or no service contract company has access to the state guaranty fund. So the notice in itself is misleading. It implies something that doesn't exist and as part of the (LB)652 process we sought regulation. We said well, come on department, regulate somebody. We have even as a dealer organization tried to get a Nebraska domiciled company going. Haven't had much luck on that and a great part of that is because the department really doesn't like it. So it is a tough spot we are all in and we do have this unique to Nebraska notice that we are fighting. These are not companies that are just...they are not fly by night companies. These are very responsible organizations. There was one headquartered...well, the fact that they were headquartered out of the Cayman Islands and regulated by the Cayman Islands tells you a lot about them. I don't think there are any other companies and Mr. Meenan with the SCIC can address that, I don't think there are any other companies out there that are regulated by the offshore, by the Caymans or anything anymore. There may be some captives owned by an individual dealer or something. The other thing I would inform the group is the Department of Insurance testified last year, my dealers all stood up and honored the warranties even though they were from the ones who were doing this. And Nebraska is pretty well protected and this notice is just unfortunate. It came on at the last minute. We certainly didn't agree to it and we think it is troublesome. Thank you. [LB188]

SENATOR PAHLS: Any questions? Senator Pirsch. [LB188]

SENATOR PIRSCH: I guess that is right and that is a tribute to the dealers in Nebraska that they did stand up and honor, I think, those even though they, perhaps, weren't legally on the hook for that, so very nice. Is that something though that concerns you that when someone purchases one of these warranties, they go and they buy the vehicle, and then they purchase in the, perhaps, consumers mind at the same time in a single transaction this additional warranty, but in reality in a separate transaction this warranty that not from the same seller of the car. Are the dealers concerned that that

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

Banking, Commerce and Insurance Committee
February 13, 2007

may give in the future the perception that they are purchasing or covered by the dealers themselves? [LB188]

LOY TODD: I think our customers have a reasonable expectation that if they buy it from us we are going to honor it no matter what happens and that is what we did, stood up to it. Surprising enough most of the people who came in and testified that they had been victimized were the ones who found a cheaper way to buy it, the Internet or some other type of provider. So I think that you are accurate in the public perception is the dealer is going to stand behind it and the dealers do. The one thing I will clear up, the way the dealers can cut their losses on that is they immediately contacted their customers and said if you have a problem come to us with it, let us fix your car, don't take it to somebody else, please, because the company has defaulted, we are going to take care of you but don't go someplace else. So they did some things like that. They called people and said we will trade you out of it. We will buy the contract back from you. They did a lot of creative things to solve the problem. But they did it voluntarily as you might expect them to do. But I can assure you this warning is not being complied with by anybody but my dealers. They are just not. [LB188]

SENATOR PAHLS: Senator Langemeier. [LB188]

SENATOR LANGEMEIER: Chairman Pahls, thank you and thank you for your testimony. You talked about other things that you have to sign in the purchase of a car. I like to trade cars and every dealership I have ever been to has pulled that little no warning left, that little sticker that is in your window, pulled it out and made me sign that. Is that a mandate? [LB188]

LOY TODD: It is a federal mandate. [LB188]

SENATOR LANGEMEIER: So if we federally mandate you sign a piece of paper that really says nothing, why is this such an inconvenience when you are spending more money, there is more involved, it is more expensive, it is more risk, why not have them sign a piece of paper when we are making you sign basically a blank piece of white paper that a lot of times might not even be in the vehicle? [LB188]

LOY TODD: Sure. Senator, first of all, the FTC if they heard you say that it meant nothing they would be all over both of us, but the used car sticker and those kind of things that you have to sign, the as is no warranty, those kinds of...but as far as the other one, the main difficulty with it is one, of course, the forms themselves. It is having a unique form to Nebraska. But the other thing is it really does detract from the whole sale process. It isn't that it has such a chilling effect that we don't make a sale. But you sit there spending your time talking about whether the service contract company is going to go broke, which it is so counter productive and it is so distracting from the process. We ought to be talking with you about how many years this warranty lasts, and

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

Banking, Commerce and Insurance Committee
February 13, 2007

about how many miles, and whether you are going to get a new transmission or a used transmission when your transmission dies, or whether you are going to get a new power train, or a new engine, or whatever you are going to get. That is what we ought to be talking about and that is what we are suppose to talk about. Instead we're talking about marginal risk that the service contract provider, the company that is reserving and doing other things, will go broke. Now some of the companies are regulated by other states, some have very heavy regulation and Mr. Meenan can address that better. Nebraska doesn't regulate these risk retention groups and it makes no assurance about anybody. And so we spend our time talking about an absolutely meaningless notice that didn't help anybody in the first place. Even if we did that, okay, we get you signature so the company might go broke, now how much better are you off having been through that experience if the company does go broke? In fact, I would say that you as a consumer are worse off with that notice because if we didn't tell you at least can say that we didn't tell you. But now if the service contract provider goes broke they get to say King's X, we told you and you signed right here, we told you they might go broke, weren't you paying attention? And I hate that my guys could make that argument. I just thought of that and it is awful. There is an even better reason to repeal this goofy law because the consumer lost his excuse. And you will win every time if you come in and say in a swearing contest against a used car dealer or new car dealer they didn't tell me something that they ought to have told me, you are going to win. Put it in the bank. Okay. But if I got it in writing that I warned you, game played. [LB188]

SENATOR LANGEMEIER: Thank you. [LB188]

SENATOR PAHLS: Thank you, Loy. [LB188]

LOY TODD: Thank you. [LB188]

SENATOR PAHLS: Welcome. [LB188]

TIM MEENAN: Thank you, Mr. Chairman. Tim Meenan, M-e-e-n-a-n, representing the Service Contract Industry Council, fresh in from Florida, appreciate the weather. Tough to follow Loy Todd, I might also add. I do represent the National Trade Association for companies that are insurers, manufactures, administrators and providers of auto, home and consumer goods service contracts throughout the United States, and Senator Langemeier sadly heard me testify several times in the past few years. We, too, rise in support of this legislation. From a national perspective there is no other state that requires, at the point of closing, a signature on a specific notice of this kind and I think we would start there that that does create a pattern or precedent that if other states looked at would be troublesome from us from a business perspective. I am an attorney and I can tell you when I am signing up a new client in my office, from a business perspective I would hate to have to have them sign a piece of paper saying the Florida Bar can make no promises that this guy is a good attorney or worth a darn. I mean, you

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

Banking, Commerce and Insurance Committee
February 13, 2007

can appreciate that it does interrupt the sales flow and you have to ask what you are getting for it. The reality is that nationally insurance companies that stand behind these service contracts receive varying levels of regulation on a state-by-state basis, and most states actually require more surplus than Nebraska. I can tell you, you need \$5 million to start a property insurance company in Florida, you need \$7 million in Michigan. The average is probably \$3 or \$4 million. Nebraska is less than \$2 million. So the idea that you are giving an inference that somehow Nebraska regulated is stronger is probably actually not accurate and it doesn't speak to the quality of the regulators at all. It just speaks to the levels of set in the statutes as far as reserves, and surplus, and those dollar amounts. We worry, too, that the car dealers if they fail to collect that signature, and of course we are the companies that provide the forms and provide the direction, but if you have a dealer that fails to do that consistently that creates liability in and of itself, the failure to have those signatures on all of those contracts, and in this day and age with class action lawsuits simply failing to get that probably wouldn't create any harm to a customer, but it certainly would create a class action lawsuit. So from that perspective it is a problem for us. I don't want to repeat things that others have said. So I think I would just end by saying we appreciate Senator Mines filing this bill and we think that it levels the playing field a little bit and allows companies that are in this business, the substantial majority of which have tens of million, hundreds of millions, and even billions of surplus, companies like AIG, and Aon, and Assurant, Ford, GM, Toyota. The substantial number of auto service contracts sold in Nebraska are by companies like that that have significantly strong A-plus rated companies. To have a notice that actually dominates and overshadows that, and actually casts an inference that maybe a company with \$2 billion in surplus because it is out-of-state is somewhat problematic, I think, is not a good thing for the consumer. So we appreciate you support of this fine legislation. [LB188]

SENATOR PAHLS: Tim, I am just curious, should I buy a contract if I buy a new car? [LB188]

TIM MEENAN: Absolutely. [LB188]

SENATOR PAHLS: Does research bear that out? [LB188]

TIM MEENAN: Well, here is the issue, there is a number of things about service contracts. They provide coverages, in many cases, that you don't get from you manufactures warranty, road side assistance, towing, rental cars for the time your car is out, parts that are excluded from a manufacturers warranty. So we believe that not only do they provide value but they provide convenience, the ability to get toll free 24 hour assistance, those kinds of things. So generally, obviously, we think it is a very good product, as you might imagine, I would say. [LB188]

SENATOR PAHLS: I was hoping you would. Thank you, Tim. Senator Pirsch. [LB188]

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

Banking, Commerce and Insurance Committee
February 13, 2007

SENATOR PIRSCH: Could you comment a little bit about the industry? Is this a fragmented industry or is this pretty concentrated? [LB188]

TIM MEENAN: Pretty concentrated. We have probably 40 members in the Service Contract Industry Council. They probably provide 80-85 percent of all the service contracts in the country and that is also in consumer goods like you might get at Best Buy on a TV set or something like that. There are these risk retention groups which have been a controversial issue and then within risk retention groups you get the one that is offshore which is even worse than the rest who happen to at least be regulated by one state somewhere. I can tell you that we have taken legislation that is a model act by the National Association of Insurance Commissioners and taken it around the company and actually gotten that adopted in a lot of states that probably has a heightened level of regulation above what Nebraska has, and we have even amended it with some things that the NAIC didn't put in. One of which is that we would like insurers that back these products to have at least \$10 million in surplus. Now that is not reserves, that is what you would consider to be net worth if you shut the company down and paid all the claims, you would still have \$10 million left. Risk retention group can go to Hawaii or South Carolina and put up \$400,000 and they are "in the insurance business." And so you can't under federal law exclude risk retention groups. That is the problem. If so, I think we would have passed that one sentence bill two years ago and we would have been done with it. But you can raise everybody's standard equally, both risk retention groups and admitted and foreign insurers meeting from other states. And so that has been our idea is to try to raise that minimum threshold. [LB188]

SENATOR PIRSCH: Would that have solved the problem, just kind of looking in the rear view mirror with National Warranty? Would that have solved the problem or was their problem more based upon fraud? [LB188]

TIM MEENAN: Well, one of my other clients is the Florida Insurance Guaranty Association. You all have a property and liability guaranty association here in Nebraska. That is the entities that pay the claims of insolvent insurers. And look the two reasons are either fraud or mismanagement why insurance companies go under. Although, in Florida we have a third one, they are called hurricanes. But the reality is that \$10 million may not have been high enough for them. It would have certainly rung the bell and shut them down sooner and you know with an insolvency what happens is that the companies that are going under, of course, sort of gain a head of steam and anything you can do to detect that early and stop it would have prevented less unpaid claims from occurring. Although as Mr. Todd pointed out, there were no unpaid claims in Nebraska. [LB188]

SENATOR PIRSCH: You don't have any concern about those that are incorporated in any of the other states though? The 50 states, you said, are regulated and you think

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

Banking, Commerce and Insurance Committee
February 13, 2007

those can at least afford minimum protections. [LB188]

TIM MEENAN: Yeah. That would be correct. And I would say, look, these are guesstimates, but if you take the universe of auto service contracts sold, maybe less than 5 percent are backed by risk retention groups. So 95 percent or better are backed by fully regulated insurance companies that must submit not just to their own state of domicile, but if they come into Nebraska they have to also go through Tim Wagner's office, and get admitted, and be regulated, and file statements here as well. [LB188]

SENATOR PIRSCH: And why would risk retention groups then, being that they compose 5 percent of it, why would they be utilized? Do they typically turn out a product at a cheaper rate off a less costly product? [LB188]

TIM MEENAN: Well, in 1986 Congress got involved in the insurance business by creating these risk retention groups. What is attractive about them is that you can go to one state, get licensed by that state and then you can automatically basically sell in the other 49 with very little or limited regulation. You almost have to file just a notice that you are coming in but no form regulation, no rate regulation, no solvency regulation. Whereas companies like Allstate or companies that we all know and do business with, those companies have a state of domicile that heavily regulates them. But then every time they want to go into another state they have to go through an entire process to get admitted, fingerprinted, post deposits here in Nebraska and submit to regulations. So when you do all 50 states, it is a huge regulatory burden to do so, but I think it is added protection. [LB188]

SENATOR PIRSCH: Okay. Thanks so much. [LB188]

SENATOR PAHLS: Seeing no more questions, thank you, Tim. [LB188]

TIM MEENAN: Thank you, Mr. Chairman, members of the committee. [LB188]

SENATOR PAHLS: Good afternoon. [LB188]

PAUL O'HARA: Good afternoon, Mr. Chairman, members of the Banking, Commerce and Insurance Committee. My name is Paul O'Hara, that is O-'-H-a-r-a. I am a registered lobbyist appearing today on behalf of the Alliance of Automobile Manufacturers. We appeared in opposition to LB652 last year. Director Wagner said at the time that the General Motors Acceptance Corporations and the Ford Motor Credit Corporations were not the targets of the original act when Senator Beutler was promoting his notice of risk and we spoke with him. He said General Motors Acceptance Corporation and Ford Motor are not the targets of this notice of risk. But, as it was mentioned earlier, this moved very quickly and the notice of risk legislation was put into the director's bill and passed. Mr. Meenan mentioned the requirements imposed upon a

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

Banking, Commerce and Insurance Committee
February 13, 2007

nondomestic service contract provider where they have to register with the department. There are requirements that the policies that they sell or the contracts that they sell be backed with insurance by an insurance provider authorized to do business in the state of Nebraska. And so the only ones who would file the notice of risk, ironically, are those who really don't need to be filing a notice of risk. They are the ones who are already insured. They are the ones who have already registered and it would be the Internet providers and how do you do anything with Internet providers or those that are truly foreign, the Cayman Islands, someplace out of the country, they are not going file a notice of risk. So we would ask the committee to repeal this, what has become a somewhat insulting piece of requirement that is imposed upon companies that are trying to comply with every other statute that the Department of Insurance requires of service contract providers. I would be happy to answer any questions. [LB188]

SENATOR PAHLS: I see none, thank you, Paul. [LB188]

PAUL O'HARA: Thank you. [LB188]

SENATOR PAHLS: Any opponents? Any people in the neutral? [LB188]

SENATOR MINES: I will waive closing, Mr. Chairman. [LB188]

SENATOR PAHLS: I was counting on you to come up. I thought maybe we may have requested for you. Do we have any questions for Senator Mines? [LB188]

SENATOR MINES: Well, don't I get to close? [LB188]

SENATOR PAHLS: Oh, I am sorry. I apologize. I am so used to asking if there are questions. [LB188]

SENATOR MINES: Thank you Chairman Pahls, members of the committee. I think you got a feel for what happened last year, and by the way what hasn't been discussed is there are many elements of that bill that were incorporated and are a good idea. It is the service contracts that are problematic to the industry and, frankly, because the insurance department isn't here I think that sends a message as well. It is problematic for our system. It is problematic for the dealers and it is a good thing if we repeal what we did last year. So I will answer any questions. [LB188]

SENATOR PAHLS: Do I see any questions? Thank you. [LB188]

SENATOR MINES: I thank you. [LB188]

SENATOR LANGEMEIER: I got to ask a question. [LB188]

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

Banking, Commerce and Insurance Committee
February 13, 2007

SENATOR PAHLS: Senator Langemeier. [LB188]

SENATOR LANGEMEIER: Okay. Thank you Chairman Pahls and Senator Mines. As you have seen today in our session we have kind of maybe hit a little roadblock today on the floor. How do you perceive this actually moving if we put it out today? [LB188]

SENATOR MINES: Well, I would hope this could become a consent calendar agenda item, but that is certainly up to this committee and up to counsel and the Chair. [LB188]

SENATOR LANGEMEIER: Thank you. [LB188]

SENATOR MINES: Thanks. [LB188]

SENATOR PAHLS: That concludes LB188. [LB188]

SENATOR LANGEMEIER: Chairman Pahls, welcome. When you are ready to open on LB378. [LB378]

SENATOR PAHLS: Thank you. Good afternoon again. My name is Rich Pahls. I represent District 31. It is a good thing it is getting to be late in the day. Legislative Bill 378 would provide that small employer health insurance carriers do not have to offer insurance plans that are specifically tailored for bona fide associations to any small employer who is not a member of such an association. A bona fide association would be defined as an association that has been in existence for five years, been formed for purposes other than obtaining insurance, does not condition membership on any health status related factor, offers health insurance to all members regardless of any health status related factor, and offers health insurance only to members of the association. Some examples of the bona fide associations are the Chamber of Commerce and the Nebraska Restaurant Association. The purpose for offering this bill is to provide associations with the ability to negotiate insurance contract terms that are of special interest to the membership without concern that these plans will be available to outside of the membership. Often an association may be able to negotiate a better rate for association members in recognition of reduced marketing or administrative expenses. The reasons that I have introduced bill LB378, with that being said, it has come to my attention that there are some concerns with this bill. Right now I would ask the committee to place a hold so that interested parties may work on language for the next session. We may want to consider doing an interim study on this. I do have experts in this area that will follow me and can answer any technical questions that you may have. [LB378]

SENATOR LANGEMEIER: Are there any questions for Chairman Pahls? I do have one. [LB378]

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

Banking, Commerce and Insurance Committee
February 13, 2007

SENATOR PAHLS: Yes. [LB378]

SENATOR LANGEMEIER: For example, you used the Chamber of Commerce, and could there be exclusionary rights to join the Chamber of Commerce if you were to be a high risk health issue? If my Chamber of Commerce, the state Chamber of Commerce, offers this health plan and I want to join because I am high risk, I can't go anywhere else, but I could join this plan and then I would automatically be on it. Would that be a risk? [LB378]

SENATOR PAHLS: Yeah, that would be a risk. That is why there are some questions about this bill and that is why I think if we listen to some of the people who will be following me. To me the bill, if you really think about it, it is pretty good for the small business man or woman, and we are always trying to find a solution to the health issues. But I think by listening to some of the people following you will see what some of the issue are. [LB378]

SENATOR LANGEMEIER: Okay. Thank you. Any other questions? Seeing none, next proponent. [LB378]

TOM JENKINS: (Exhibit 1) Good afternoon. I am Tom Jenkins. I am vice president and general counsel of Blue Cross and Blue Shield of Nebraska. In my opinion, this bill was really a technical correction bill. I agree with what Senator Pahls has said. We have had some discussion with our regulator of the insurance department and I think their concerns as I understand them, I am really hesitant to speak for them, but their concerns are to make sure that we have the right wording and that they know how to regulate the referenced entity, that is this bona fide association. Again, this is a technical issue. I think I can go pretty far in making it reasonably simply for you. I can't make it exciting because it is kind of technical. It is kind of the plumbing of government, the things that have to be done every once in a while, and I have heard you have had a few of those earlier today with the LLC fix up that you heard about. LB378 would accomplish a technical correction to align one section of Nebraska law with another and I will show you some of those. Specifically the bill clarifies that an insurance company is not required to add nonassociation members to a policy that has been issued to an association, such as the Restaurant Association, a Chamber of Commerce, or something like that. Since at least 1947, this state as well as almost all others, has authorized the issuance of group insurance policies to associations or covered members of the associations. There actually is a section in the state insurance laws that says here are the kinds of groups you can issue to and, of course, the one you are most familiar with is an employer group. That is okay. You can issue to that. You can issue to a labor union. You can issue to an association. So those statutes are very longstanding. In fact this item that I handed you here and I put a number one in the foot of that document, these are two different sections. One from the health, one from the life. The item I highlighted in blue, you can see that the section starts out that policies can be

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

Banking, Commerce and Insurance Committee
February 13, 2007

issued upon the following basis: "under a policy issued to an association, including a labor union, which has a constitution and bylaws" and created for purposes other than just the purchase of insurance. And if you look at the second page of that you would see something very similar to that and, again, that is just from the life insurance section, and notice that section was first passed in 1957. I haven't claimed to have tracked through and see what the changes over the years was, but '47 and '57. So association insurance policies are really nothing new. Now fast forward to about 40 years to the mid nineties and this state, as well as many other states, adopted a small employer health insurance act that was modeled on one put together by the National Association of Insurance Commissioners. It applies to employers with 2-50 employees and the act came at a time following the eighties when small employers were experiencing increasing difficulty in obtaining group insurance policies to cover the health of their employees or in keeping them covered after the coverage wasn't obtained. For example, you would buy a policy at a certain rate and certain companies would if you got sick, the owner or the employees got sick in particular, they might raise the rate without having any restriction. The small employer act of the NAIC was a response to that. The act put restrictions on the rates that can be offered and for the first time it adopted the requirement of guaranteed issue. That is that an insurer that sells in the small group market cannot decline to issue a policy based on the health status of the group or its members. I hesitate to confess I have been around long enough, that was a very, very big deal to have the concept of guaranteed issue to say that you could not refuse coverage to a small group, and they were predictions that it would kill the small employer market. There just wouldn't be anything available anymore. That turned out to be wrong but there was a lot of upheaval. It was a big deal. Anyway the state passed it. We have small group market continues and the language that did that, if you would look at your item two, this is an excerpt from LB378 but the item I have highlighted in yellow is existing law, and let's just take a look at that. "Every small employer carrier shall, as a condition of transacting business in this state with small employers, actively offer to small employers all health benefit plans it actively markets to small employers in this state, including at least two health benefit plans." In other words, if we sell five policies to your small business we have got to sell them to your small business. That is what the 1994 law said. Now if you read that literally that section would amount to the abolishment of the longstanding permission to issue a policy to an association group because, what, you would have to sell the Restaurant Association coverage to a plumbing or contractor. It is a round peg in a square hole. I can tell you that, at that time, if you checked the history of that act you will find not one shred of discussion suggesting that abolishment of association coverage was an intended result. See no amendments to the 1947 statute, nothing in that regard. In over time association coverages have been part of the solution, not part of the problem. So what is needed is language that clarifies that continued permissibility of the association coverages is permissible and that is what LB378 would do. At least 25 states have already adopted clarifying language, in that regard, and I think I will just give to counsel. I will give it to you later, Mr. Marienau. At least 25 states have taken some step in this regard over the years.

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

Banking, Commerce and Insurance Committee
February 13, 2007

The federal regulators adopted the concept. When they came along they basically, for change, copied the state law concept, maybe it is not a change, but state laws passed in the early nineties, '94 or so. In 1996, the federal Congress passed the Health Insurance Portability and Accountability Act, had a lot of provisions in it, but that which dealt with small employer group was pretty much plagiarized straight from the state and that is the third item you will have in the packet that I gave you, and there you will see language very similar, on the first page highlighted, saying that an insurance carrier that is going to sell in small group market has to offer to any small employer carrier all the business it has. Now flip to page 2 and you will see an exception very much like we are suggesting should be in Nebraska law now. On page 2 the highlighted blue item states the exception for bona fide association coverages. So that is what we are doing here. Again, not exciting but you just got to slog through it sometimes and that is what I have tried to do. I forgot who asked the question before, but there was a question. I think it was Senator Langemeier, about discrimination. Is that an extra front door that somebody could have to get through. I can't join that Chamber of Commerce if they know I am sick. If they did that, first that would not be a bona fide association. That is why there is a definition of a bona fide association in the bill which states that it cannot have as a condition of membership any sort of screen on health. In practice I will tell you the associations are not up to that. They don't have any staff that could do any kind of that preunderwriting in my experience. So it is not done there and once it is presented to the insurer though the rules are pretty much the same. These protections that were adopted by the state, it is like a microcosm and within that association you get guarantee issue, you get the guaranteed renewability that you would have if you bought directly from the insurer and the rating protections are there. It would be a long story if I started to tell you what the rating protection was. But it is pretty much the same as for the larger mainline product of the insurer in that regard. [LB378]

SENATOR LANGEMEIER: Questions? Senator Pankonin. [LB378]

SENATOR PANKONIN: Senator Langemeier, thank you. I have heard all the technical, but why doesn't the industry want to do this? What is the underwriting reasons why they want to have people make sure that they are bona fide association members? [LB378]

TOM JENKINS: For instance, why wouldn't we sell the plumbing company the restaurant coverage? [LB378]

SENATOR PANKONIN: Well, as I read it though, let's say you are in the plumbing industry but you are not a part of their association. But you are saying you don't want to have them be eligible for this coverage. [LB378]

TOM JENKINS: Right. If you think it through you would really be abolishing the association coverages. In other words, if everybody could really buy everything why wouldn't we go back to what we do, and to be honest with you it might be just as well for

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Banking, Commerce and Insurance Committee
February 13, 2007

us if we just had one big pool. One size fits all. You get Blue Cross coverage, you don't get Restaurant Association, you don't get Chamber of Commerce. But if you are going to have an association, what makes the associations work is a genuine affinity of the association members a persistence. I am sticking with my association over the years. I know their rates are going to go and going to go down, but if I stay with it rather than bail at the first sign, that association has a chance to continue. But if you were to sell to nonassociation members, you as the director of that association would say what is the point if people don't have to be in the association to get this anyway? Why is it a member benefit? That is what they want is a member benefit that they can show to their members. But if you can get the same benefit without being a member there just wouldn't be any point to continuing that. It would just be a lot of different buckets without meaning. [LB378]

SENATOR PANKONIN: In your experience is there different underwriting for different associations? Do you look at associations as the whole, take the examples you gave with the restaurant versus plumbing, is that an overall? For example, plumbers may smoke more so it would be higher. [LB378]

TOM JENKINS: Well again, typically when we say underwriting we are talking about issue or non. Maybe I am showing my age, but on the individual products sites you can decline the risk, not so in small group. Yeah, there are variations. [LB378]

SENATOR PANKONIN: Factors that you look at in associations. [LB378]

TOM JENKINS: Well, really over time you can simplify. The actuaries would like you to think this is really hard, but the way I always think of it is last years claims are next years premiums. The insurance company has to cover at least the claims plus add on some for administration and profit. So, yeah, if you have got a bunch of people who smoke and drink a lot in that trade they are going to see that flow through. I don't know. It is pretty mixed though. It probably doesn't carry through that all plumbers smoke more or less than all restaurant owners. [LB378]

SENATOR PANKONIN: I should have used the other example, restaurant workers with secondhand smoke. [LB378]

TOM JENKINS: But we do see some of the associations have varying views about the extent to which they are one for all or all for one, and this rating bands you can have actually some variation based on the health condition up to 25 percent up or down. But we actually have some associations say well, we don't want to do that, we want everybody to have the same rate. It is good for some. It is bad for others. But it is more communal. [LB378]

SENATOR PANKONIN: So in other words the groups that were interested in having this

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 13, 2007

passed were more for the association side, to protect the associations? [LB378]

TOM JENKINS: Yes. [LB378]

SENATOR PANKONIN: Okay. Thank you. [LB378]

SENATOR LANGEMEIER: Are there any other questions? Senator Carlson. [LB378]

SENATOR CARLSON: Senator Langemeier. Tom, I am listening to this and listening to Senator Pankonin's question. There is some concern in here from Blue Cross and Blue Shield on the quality of underwriting and who you are offering insurance to, I would think. If it is the Nebraska Chamber of Commerce that wants an association plan, that is entirely different than and that plan is a good one and if some member of the PBR, the Professional Bull Riders Association, knows about that good plan and their group would like to get the same plan and same rates, you aren't going to let them have it. [LB378]

TOM JENKINS: If they join the Chamber of Commerce. But, again, just to remind you, this glitch in the statute only exists within the universe of small employers. I thought just to clarify that because if you are just a rancher, I shouldn't say just a rancher/farmer, if you are a rancher, farmer, or a bull rider if you are not an employer with at least two employees you are not in this market you are in the individual market. But basically you can get a Blue Cross policy, if you are a employer, you can get a policy from some of our competitors. If you are a small employer you are guaranteed the coverage and the only thing that varies is the rate. [LB378]

SENATOR CARLSON: Which that is the big deal. Of course, yeah, it is guaranteed coverage but the illustration for the proposal that we looked at is just ink on paper until we see what those risks are. [LB378]

TOM JENKINS: You must be a small business person, Senator. [LB378]

SENATOR CARLSON: Well, I am in the insurance business. [LB378]

TOM JENKINS: Okay. [LB378]

SENATOR CARLSON: And I understand why you look at an association and can say well this looks like a pretty good risk group, we would kind of like to do business with them. But you look at another one and say well, we better be careful over here and we really don't want to mix the two. And I understand why there should be a benefit of membership in an association, but not that being the sole reason why somebody joins an association. A health plan that is available is just a side benefit, but it is not an reason to join the association. [LB378]

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

Banking, Commerce and Insurance Committee
February 13, 2007

TOM JENKINS: I am sure that is true. [LB378]

SENATOR CARLSON: And if it became that the rates are going to show eventually I think. [LB378]

TOM JENKINS: Again, show me the group, you know, healthy or not. The healthy group is usually going to get a pretty good rate whether within the association market or without. So I think you are right. Things other than just the health plan are driving whether they are joining that association. [LB378]

SENATOR LANGEMEIER: Thank you. Any other question? Senator Carlson is done. Senator Hansen, excuse me. [LB378]

SENATOR HANSEN: Thank you. Just a follow up on Senator Pankonin's question. Wouldn't it be a very large group if a group came to you as secondhand smokers? That includes almost everyone. Could you deny that group? [LB378]

TOM JENKINS: Are you saying like an association of secondhand smokers? [LB378]

SENATOR HANSEN: Yes. I would assume so. That is a very large group. [LB378]

TOM JENKINS: Right. We don't have to write an association. There is nothing to require us to do that. [LB378]

SENATOR HANSEN: I hope we don't have to have that association. [LB378]

TOM JENKINS: Right. And we are selective in the associations we choose, but, again, if those are small employers, I know there is a little tongue in cheek there. I don't know of an employer who purports to be the secondhand smoke person. The tavern owners or something like that. [LB378]

SENATOR LANGEMEIER: One more. Senator Pankonin. [LB378]

SENATOR PANKONIN: Thank you, Senator Langemeier. All humor aside we are talking about a very serious matter on the floor and it looks like we will be for several days about smoking and secondhand smoke. So you work with underwriting and have in that area of your company. [LB378]

TOM JENKINS: No. I am a lawyer. I can't actually do anything. Underwriters know how to do this stuff. I talk to them before I come down. [LB378]

SENATOR PANKONIN: So let me ask you a question, do you think if we had a stronger ban on smoking in public places it would be good public policy for the cost of the

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 13, 2007

insurance industry? [LB378]

TOM JENKINS: Our company has enough to handle with the health insurance matters. We are very strong at our company on nonsmoking. We have got a nonsmoking policy on our whole campus for the first time. We have programs to encourage people, but the secondhand smoke issue is not something we have taken a position on. [LB378]

SENATOR PANKONIN: But the Blue Cross/Blue Shield company is strong against not smoking? [LB378]

TOM JENKINS: We have nonsmoker rates that are more favorable than smoker rates. I think that is one of the many things that encourage people to think otherwise about it. It is what we call a correctable behavior, along with diet and exercise, that we have a lot of programs going that are aimed at...we have employers and other customers that are asking us help us figure this out, how can we preach the gospel either by banning or by other means, how can we get people more interested in healthy behaviors, and you are right, that is a big, big driver of last year's claims which is next years premiums. Sure. [LB378]

SENATOR PANKONIN: Thank you for your testimony. [LB378]

TOM JENKINS: Okay. [LB378]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you for your testimony. [LB378]

TOM JENKINS: Thank you all. [LB378]

SENATOR LANGEMEIER: It is similar to bull riding. It is the luck of the draw what you have to follow off the floor discussion. Next proponent. Welcome to the Banking, Insurance and Commerce Committee (sic: Banking, Commerce and Insurance Committee). [LB378]

JAN MCKENZIE: Thank you, Senator Langemeier, members of the committee. For the record, my name is Jan McKenzie, spelled J-a-n M-c-K-e-n-z-i-e, capitals in all of the appropriate places. I am here today testifying in favor of LB378 on behalf of the Nebraska Insurance Federation. While not all of the companies who are members of the federation are in the small group market, the members of the committee on the legislative side wanted us to be on the record in support of this bill as well. Please don't ask me any of those technical questions or anything about bull riding. [LB378]

SENATOR LANGEMEIER: With that said, are there any questions? Seeing none, they are going to let you off the hook. [LB378]

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Banking, Commerce and Insurance Committee
February 13, 2007

JAN MCKENZIE: Thank you. [LB378]

SENATOR LANGEMEIER: Thank you. Any other proponents? Opponents? Neutral testimony? Seeing none, Senator Pahls for closing. [LB378]

SENATOR PAHLS: I think earlier when I indicated that there was interest, there were a few questions about the bill that if we would sit down and I think we could work this out, and it does seem like it has some potential. With that... [LB378]

SENATOR LANGEMEIER: Thank you. That concludes the hearing on LB378 and it concludes all our hearings for the day. Thank you for being a part of today. Thank you. [LB378]

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February 13, 2007

Disposition of Bills:

LB188 - Advanced to General File.
LB378 - Held in committee.
LB379 - Advanced to General File.
LB383 - Advanced to General File.

Chairperson

Committee Clerk