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Banking, Commerce and Insurance Committee  
February 05, 2008

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[LB734 LB876 LB1090]

The Committee on Banking, Commerce, and Insurance met at 1:30 p.m. on Tuesday, February 5, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB734, LB876, and LB1090. 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: Good afternoon, appreciate you being here today, February 5, 2008. Just a reminder, it is snowing outside, in case you haven't been outside for a while. I want to welcome you to Banking, Commerce, and Insurance Committee hearing. My name is Rich Pahls, I'm from Omaha and represent the 31st District. I serve as a chair of this committee. The committee will take up the bills in the order posted. Our hearings today is your public part of the process. This is your opportunity to express your position on the proposed legislation before us today. I'm going to ask you to take a look at our chart over here and to hopefully understand some more of our procedures. Turn off your cell phone, and if you plan to testify we'd like to have you eventually move to the first two rows, that way it gives us an idea of how many people are going to be there. We do have an on-deck chair when you're ready to testify. The order of the testimony will be the introducer, the proponents, opponents, neutral, and closing. We're asking the testifiers to sign in and place the sheet up here in this little box, and again we're asking you to spell your name before you testify, that does help when we're trying to analyze the transcripts. And we're going to ask you to be concise. If you need to give written material out, we need at least 10 copies. If you have material that needs to be copied right now, if you'd let me know by wave of your hand. I will have one of the pages run it off if you do not have enough. Again, I appreciate everybody being pretty well organized. We're going to my immediate right is the committee counsel, Bill Marienau; to my immediate left is committee clerk, Jan Foster. I'm going to begin with having the senators introduce themselves, starting... []

SENATOR CARLSON: Tom Carlson, District 38, home of Harlan County Lake, second largest lake in the state of Nebraska, number one in number of fish per cubic yard. (Laughter) []

SENATOR PIRSCH: I'm State Senator Pete Pirsch from Legislative District 4, Omaha and Douglas County. The 4th District's home of radio personality and former voice of the Huskers, Jim Rose. (Laughter) []

SENATOR LANGEMEIER: Chris Langemeier, District 23, in awe of all these other districts. (Laughter) []

SENATOR PANKONIN: Dave Pankonin, still from District 2. []

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SENATOR GAY: Tim Gay, District 14. []

SENATOR HANSEN: Tom Hansen, District 42, which is the mid-point between Omaha and Denver. []

SENATOR PAHLS: That's good to know. We appreciate all these tidbits of information as our way of helping with economic development because they want you to go to those districts. Our page today is Ryan. Ryan, is here with us? We lost our page, he's looking for a book, right? Okay, we will take the bills up in the following order. We are currently waiting for Senator Fulton, we will take up LB734, then LB876, and LB1090. Senator Fulton, the chair is yours. Good afternoon. [LB734]

SENATOR FULTON: Good afternoon. Thank you, Mr. Chairman, members of the committee. For the record my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent Legislative District 29 and I thank you for allowing me to bring this idea to you in the form of a bill, LB734. Catch my breath. [LB734]

SENATOR PAHLS: I understand. [LB734]

SENATOR FULTON: LB734 amends the Political Subdivisions Self-Funding Benefits Act by allowing any governmental employee benefits plan sponsor to provide an employee benefit plan without requiring the purchase of excess insurance. Current statute only permits Omaha to forgo this statutorily-required excess insurance, while imposing an artificial cap on self-insurance for other cities and counties. As in current statute, LB734 retains the provision that a professional, independent, actuarial determination must be made for a plan sponsor to exceed the 125 percent of claims cap on self-insurance. It stands to reason that any entity saves money by assuming as much risk as is mathematically prudent through self-insurance. This opportunity is presently afforded the city of Omaha and LB734 would allow such determination to be made by other political subdivisions if they so choose. Individual determinations based on sound actuarial study should therefore be the metric by which self-insurance limits are defined, not legislative caps. Concluding, along political subdivisions to bear greater risk based on sound actuarial study promotes sound fiscal policy that may and should ultimately save additional taxpayer dollars. I'll be glad to answer any questions if I can. [LB734]

SENATOR PAHLS: Senator, I just have one question. Do you feel pretty secure that all of these political subdivisions, I don't want to say are capable of, but would make good decisions? [LB734]

SENATOR FULTON: I am sure that the ones who choose to do so would. We would not be requiring, just to be clear...I'll get this into the record. The green copy on page 2, the

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operative word in Line 18 is "may" rather than "shall," and we've been exposed to the rubric of the rhetorical nature of those words. May provide an employee benefit plan, and so it would be at the volition of that political subdivision. And further, there's statutory requirement language indicating that there should be actuarial study to accompany it. So yes, I would be comfortable. [LB734]

SENATOR PAHLS: Okay. Senator Pankonin. [LB734]

SENATOR PANKONIN: Senator Fulton, just curious, are there going to be other testifiers that... [LB734]

SENATOR FULTON: I believe so. [LB734]

SENATOR PAHLS: Yeah, I see a hand. [LB734]

SENATOR PANKONIN: So I'm just curious, as far you know, how this bill came to you and were there some subdivisions interested in this? [LB734]

SENATOR FULTON: Yeah, it was Lancaster County has some interest in this. I have been contacted by other subdivisions, but that's where the genesis of this idea came from. It was brought to me. [LB734]

SENATOR PANKONIN: I think Senator Pahls's question was about the concern of somebody that is way too small to do this right in getting involved with a self-insurance plan. Obviously if there's only 10 employees or something, you have one big catastrophic health claim or something...with small numbers, this thing can get skewed to where it doesn't work then and then even though it might save money up front it could be disastrous. So I think there's concern. [LB734]

SENATOR FULTON: Yeah, that's something that would militate against the bill, but I would argue against that or point out that they may provide an employee benefit plan. And while I'm no actuary, I've not studied actuarial science, I have studied enough numbers to recognize that one wouldn't go forward unless there were an appropriate level of risk buoyed by the amount of money that could be saved by not being required to purchase excess insurance. [LB734]

SENATOR PANKONIN: So is there anybody that verifies that this study is sound? I mean, what kind of level of follow-up is there? I mean someone can just say well I hired this expert and they said...you know it's one thing if it's Omaha, but if it's your hometown or whatever of Auburn, and I mean, who kind of verifies that this...is there a second step to verification, or... [LB734]

SENATOR FULTON: Yeah, short answer statutorily, no. But the verification would occur

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by the competent authority, I mean the city council or the county board or what have you. So those who have been placed in power by the people to make these decisions would have that responsibility, or I should say could have that responsibility. The reality is that responsibility is born already by the political subdivisions. It's just that there's a cap at 125 percent. And so we researched this bill and maybe we didn't go back far enough, but we believe we've researched the bill such that we can say confidently that 125 percent is, it seems to be an arbitrary number. And so I'm saying if that is an arbitrary number, then why not allow the mechanisms of actuarial study and numerical probability and whatnot, allow those to be the arbiter of the decision makers in the political subdivision. [LB734]

SENATOR PANKONIN: Thank you. [LB734]

SENATOR PAHLS: Senator Hansen. [LB734]

SENATOR HANSEN: Thank you. Senator Fulton, you are revising statutes of the state. When did the original statute take effect? [LB734]

SENATOR FULTON: I think that I know, but I need to check to be certain. I believe this was last looked at in the late 1990s, but I'm not positive about that so I'd need to... [LB734]

SENATOR HANSEN: Okay, what class of a city is Lincoln if it's not the metro class? [LB734]

SENATOR FULTON: I believe it's statutory, this is second class. I'm not positive about that language either, but...primary, that's right. [LB734]

SENATOR HANSEN: But you're not asking for just Lincoln to be added, you want to make it a whole state policy no matter what size? [LB734]

SENATOR FULTON: Right and this is, you know obviously I will be open to any type of suggestion if it's not prudent to move in such a wide...opening this up wide. I'd be willing to consider that, but the fact that this is permissive. The way that the language is spelled out now it's permissive, so it's not a shall, it's a may, it just seemed to me that a good first step or a good offering would be if it's good for Lincoln then it could be good for other political subdivisions. And the fact that it's permissive as opposed to statutorily defined that's why I went forward with it in this way. [LB734]

SENATOR HANSEN: Thank you. [LB734]

SENATOR PAHLS: Senator Gay. [LB734]

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SENATOR GAY: You said you went back and looked at history and 125. Did you think this just pulled out of the air? I mean there has to be some kind of standard in the industry of why that was arrived at years ago. [LB734]

SENATOR FULTON: If there is, I don't know what it is. [LB734]

SENATOR GAY: So is there a standard then that, I mean, what is the current standard then if you're going to self-insure and you weren't a governmental entity? I'm self-insuring, what do I have to keep for reserve. Do you know that? [LB734]

SENATOR FULTON: I don't know for certain and I don't know for certain, there could be testifiers that come after me, but it's going to be depend on the size... [LB734]

SENATOR GAY: Of the group. [LB734]

SENATOR FULTON: ...yeah, of the pool. [LB734]

SENATOR GAY: So would that be what the actuary basis? So it would be different than basically is what you think. [LB734]

SENATOR FULTON: Yeah, it could be different. It could well be that an actuarial study for any particular political subdivision determines that 125 percent of those claims that will be made is the appropriate level. I don't know for certain that's the case, but I do know that the way it exists now if a subdivision were to choose to move above 125 percent, then there is a requirement that they have to spend money to buy excess insurance. That's what I know that exists by way of statute. As far as what is industry standard, I'm not positive on that, but I know the industry standard isn't set by statute. At least in the private sector. [LB734]

SENATOR GAY: Flexibility. [LB734]

SENATOR FULTON: Yeah. [LB734]

SENATOR PAHLS: Senator Pirsch. [LB734]

SENATOR PIRSCH: Thank you very much, Senator Fulton, for bringing forward this very intriguing...and just kind of musing...could you...and having been an employee of the city of Omaha, I'm not sure that I can even fully explain this as well as you can. Could you tell me, how does it work right now in the city of Omaha, if you know, as far as do they have an outside...who administers the plan, this employee benefits plan? Or is it done in-house internally? Or... [LB734]

SENATOR FULTON: I am not, I can't answer certainly. I'm not positive. [LB734]

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SENATOR PIRSCH: And I didn't expect you to necessarily know. I'm just wondering, I guess some of the concern that was brought out with respect to some of this. Perhaps Lincoln and Omaha and some other towns have some additional resources and city employees and whatnot. But when you're talking about the 300-person cities or towns and whatnot, would they be able to outsource that such that they had an administrator of the plan who's used to dealing with that and can integrate small groups of government employees into their system (inaudible) routine? Or is it each town will be recreating the wheel and run in-house which may lead to taking on a bigger project than these small towns? So... [LB734]

SENATOR FULTON: Well, again, I'm not positive what would be done in the future. What I would anticipate if this were to move forward is let's say a small town, like Auburn, land of milk and honey, they choose to go forward with something like this. It would seem to me that they're not forced to utilize an actuarial study, or firm, or outside service, they're not forced, but it would seem to me that that would be the prudent way to go if there is a group that specializes in this type of group risk assessment or what have you. But I point out only that's not a requirement now. That's at the volition of the...in a sense we're granting a further respect to the independent nature of the political subdivisions granted of course it operates under the statutes of Nebraska, but along the lines of the principle of subsidiarity (phonetic) that's where a certain amount of volition should be exercised. We have afforded this to Omaha and so I'm saying we should afford the same permissive nature of the statute to the other divisions. [LB734]

SENATOR PIRSCH: Well, that's a good point. [LB734]

SENATOR PAHLS: Senator, did you say you have some people following you that can maybe give us some more detail? [LB734]

SENATOR FULTON: Yes. [LB734]

SENATOR PAHLS: And maybe then on closing, if there's anything we can get back to you. [LB734]

SENATOR FULTON: Yeah, if I need to close I will come back, but at this point I don't plan on closing. [LB734]

SENATOR PAHLS: Okay, thank you. Proponents? Just a waive of hands, how many proponents? I see two and just for my curiosity, opponents? Neutral? Okay, looks like we have two people. Thank you, Senator. [LB734]

DON TAUTE: Good afternoon Senator Pahls and members of the Banking, Commerce and Insurance Committee, my name is Don Taute, it's D-o-n T-a-u-t-e, and I'm the

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personnel director for the city of Lincoln and Lancaster County. I represent both entities and I'm here today representing those entities and in support of LB734. I believe what Senator Fulton has offered in his synopsis as well as his opening testimony today is, you know, a good statement of intent and the synopsis of the bill. In response to some of the committee questions, I think that what I'll offer is will maybe answer some of those or at least help clarify some things. By way of background, both the city of Lincoln and Lancaster County contract with an independent firm, Milliman Inc., they're actuaries and consultants to provide benefit consulting services for our self-funded health plans. Both entities have a self-funded health plan. The city recently went from a fully insured health plan back to a self-funded plan beginning in, I believe it was November of 2006. But we have sometimes been self-funded and sometimes fully insured depending on how the health insurance premiums were trending and your experience. Annually, Milliman prepares a separate report for each of the entities, both the city and the county, which addresses claims history, annual premium trend rates, appropriate reserve funding for the self-funded benefit plans maintained by the entities. And these reports are used in determining what are the appropriate levels of premiums that need to be charged in the coming plan year. As a part of the reports, Milliman does a separate analysis for each entity analyzing individual claim variability as well as aggregate claim variability to determine the appropriate levels of individual stop-loss insurance as well as aggregate. Or in the language of the current statute (section) 13-1622, the excess coverage, your aggregate coverage, that needs to be provided as a part of the benefit plans. Each of the entities has a specific stop-loss deductible if you will, a self-retention of \$150,000 for individual claims for the respective plans. Each of the plans also provides aggregate stop-loss coverage or excess insurance coverage as currently required by (section) 13-1622. For the current plan year, Milliman's actuarial analysis of the city self-funded plan indicated that there was only a .2 percent chance of exceeding 125 percent of the aggregate claims if we had the \$150,000 individual stop-loss in place. For the county's plan, Milliman's analysis provided that there would only be a .4 percent chance of exceeding the 125 percent of the aggregate average claims. Based upon this analysis, Milliman suggested to each of the entities that they not provide the aggregate coverage. And again this is an actuarial analysis done by them, that the city not pay the extra cost nor the county pay the extra cost for that excess insurance as required in the current plan years because of that analysis, the .2 and .4 percent chance of exceeding that aggregate. As Senator Fulton pointed out, as it currently exists the statute requires all governmental entities that have a self-funded plan to have that coverage, except metropolitan-class cities, of which Omaha is the only such city. And if adopted, then LB734 would amend that to allow governmental entities such as the city of Lincoln and Lancaster County to not have to provide that when they have obtained the actuarial analysis that the entities have obtained in this particular case. The cost of that, you know in the grand scheme of things it may not sound like a lot of money, but as we all know health insurance premiums are continuing to rise at a pretty significant rate. The city would've save \$43,000 in aggregate, excess insurance premiums if it did not have to provide that as part of its plan for the coming year, or the current plan year. The

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county would have saved approximately \$32,000 by not having to purchase the excess insurance coverage. By way of, if I may, in response to a couple of the questions that were asked, I'll go ahead and maybe address those points. As I would see this, you have to make a determination as an entity of whether or not going self-funding makes any sense at all. And the smaller the entity, the less likely that's going to happen because if you've got 10 employees in your city, if you're a small second class city or a village, well, one claim of \$125,000 is going to just turn everything upside down. And for example, the city of Lincoln, we have 2,022 employees that are essentially analyzed as a part of the actuarial analysis, lives that are subject to that insurance plan constitute about 4,500. Conversely, the county has about 1,100 employees and insurable lives of about 2,800, I believe it is, or 3,000. So those are very large self-funded plans and both entities have gone back and forth depending on their claims experience from having a self-funded plan or a fully-insured plan. If you have a good claims year, experience-wise, you build up a reserve and you can keep your premiums relatively level under a self-funded plan, you're the one making that determination. We contract as a third party administrator for the county with Blue Cross/Blue Shield, and then is the provider of the excess or stop loss, individual-specific stop loss insurance, and with the city with Coventry. Senator Pirsch, Omaha recently contracted with Coventry, I believe, as their third party, TPA, third party administrator after years and years and years of being with Blue Cross. The legislation's been in place, I believe, was initially passed in 1991, Senator Hansen. And the city first went self-funded in 1992, did that for a while, had a very good experience a couple years and then went back when things...we had a couple of real significant claims, we went back to fully-insured plan and then we have recently gone back to self-funding to try and contain some of the costs that you're seeing under a fully insured plan. As you well know, they're continuing to rise. So with that I think it is as Senator Fulton pointed out, it is something that's not mandatorily required for a governmental entity. It only makes sense to do if you have a large enough employee pool that you can absorb larger claims. Smaller employee pool is not going to be able to do that. Auburn, for example, or smaller entities I'm sure would have a fully-insured plan because they couldn't absorb that hit. But even with a fully-insured plan that provider's going to come back the next year and say well, you had five significant claims out of your 10 or 15 employees, your insurance premiums are going to go up 100 percent. That's kind of how it works, unfortunately. But with that, I would thank you for your time and would urge you to move this to the full Legislature for its consideration. Any questions? [LB734]

SENATOR PAHLS: Do I...Senator Carlson. [LB734]

SENATOR CARLSON: Senator Pahls. Don, you mentioned going to the self-funded plan in the early 1990s and being on it for several years and having some good experience then a couple bad. And then you go to a full-insured plan after a couple of bad years experience, you didn't get a very good premium, did you? When you go to a fully-insured plan? [LB734]

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DON TAUTE: No, you don't. And you try to make changes, Senator Carlson, that you can to try and contain those costs. I mean we had, for example, what we do also periodically to try and look at getting the best rate we can is that we will go out for a request for proposals at different times to see if we maybe will have another insurer come in and we did that in the Fall, late Summer of 2005, having been with United Healthcare for a number of years, even as part of our self-funded plan. And then they became our fully-insured carrier, but we started to see some significant increases and we thought well we're going to go back out into the market to see what we might have. Coventry made a very favorable quote to us for a fully-insured plan, which we did for just one year and then we decided that we needed to really seriously look at going self-funding. So that's another way that we try and deal with that, too, as well as making changes to plan design because unless you are able to take care of some of those elements with higher copays, higher co-insurance, or deductibles and things like that, that's a way to try and contain some of those premium costs, too. [LB734]

SENATOR CARLSON: So you might even, if you were having decent experience on the self-funded, look for a proposal to see whether or not you're properly accounting for your own premiums. [LB734]

DON TAUTE: Certainly [LB734]

SENATOR CARLSON: Okay. [LB734]

DON TAUTE: Certainly, and you know, I mean Lancaster County has about \$11 million total premiums shared between the governmental entity and the employees, and conversely the city has about \$21.5 million. So we're talking significant dollars. [LB734]

SENATOR CARLSON: Thank you. [LB734]

SENATOR PAHLS: Senator Pirsch. [LB734]

SENATOR PIRSCH: What do you reckon is the size of the political subdivision that kind of a trigger point or where it makes sense to self-insure that you have enough employees to self-insure? You said Auburn, Lincoln, and Omaha would be large enough... [LB734]

DON TAUTE: Well, I don't know about Auburn. [LB734]

SENATOR PIRSCH: I'm sorry, you said Auburn wouldn't... [LB734]

DON TAUTE: Probably would not be, Senator Pirsch, again but I don't know how, you know Auburn is 1,500 people. I don't know how many employees they have. You know

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I'm not certainly an actuary either. I am attorney by trade, I don't know if that's necessarily a good thing but nevertheless, that's what it is. And but I have worked in the personnel area for a number of years and offered legal advice to personnel for both entities for a number of years as well. Probably a first-class city or above would have enough employees and I think that you're talking the Bellevues, the Grand Islands, and the Hastings of the world. Second-class, I'm not sure if that's what...is that between 5,000 and 10,000? I'm trying to think of what the break down is in less than 1,000. You know, you start...you get into your villages. I believe that first-class cities are anything above 10 and less than...I'm not sure, I'd have to look at the specific breakdown...again in Nebraska, by how, the distribution of population is generally in a few larger communities, and depending on the size of their workforce is really going to make a difference on how easily they could absorb those larger claims. [LB734]

SENATOR PIRSCH: I'm just trying to get a sense of is this even within the realm of a possibility for some of these smaller... [LB734]

DON TAUTE: Probably not. I mean realistically I would say that, but again it is "may" and I think that right now the statute allows them to decide whether they want to do that or not. This bill only addresses the issue of whether those entities that choose to have to have that excess insurance and in the case of both the city of Lincoln and the Lancaster County, we were advised by our actuarial benefit consultant that there was such a small margin of your hitting that, that it didn't make any sense. So... [LB734]

SENATOR PIRSCH: And I guess the margin you said which is less than half of 1 percent, if that for some odd reason, that 1 in 200 or 1 in 300 chance were to come...it's backed by the city of Lincoln, right? [LB734]

DON TAUTE: Correct. [LB734]

SENATOR PIRSCH: The city of Lincoln isn't going away. I guess, is it a different paradigm with some of these, if it is ventured upon by a smaller town that may be not as familiar with it or doesn't have the resources to dedicate it, doesn't have necessarily a town that can stand behind it the way Lincoln can stand behind it? Is that an actual threat or is that so theoretical that it's not possible really? [LB734]

DON TAUTE: I would think that those smaller communities seriously are not in a position whereby they would even consider going self-funding because of that risk. I mean it literally, you know some significant...I mean the city of Lincoln's plan had five large claims that we were looking at and our proposed premium increase for the current plan year that we're in was about 14 percent. Well you take 14 percent, and largely driven by those large 5 claims. [LB734]

SENATOR PIRSCH: So you don't see much risk from that? [LB734]

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DON TAUTE: I don't. [LB734]

SENATOR PIRSCH: Thank you. I appreciate it. [LB734]

SENATOR PAHLS: Senator Gay. [LB734]

SENATOR GAY: Thanks, Don. I've got a question. So if I understand this right, you pay the actuary. How much do you pay your actuary? [LB734]

DON TAUTE: We have a contract with the actuary, I know. I think the city's contract with them is about \$30,000 and I think for the county it's about \$20,000 a year and they do a lot of different things for us, Senator Gay. [LB734]

SENATOR GAY: Yeah, this is one thing. [LB734]

DON TAUTE: This is one thing. All right. [LB734]

SENATOR GAY: One thing...so you're paying a professional actuary to get this done. But I guess what they're saying, they're telling you you paid them, they're telling you don't need this, but you still got to go out and pay the \$43,000 and the \$23,000 because we're requiring that. [LB734]

DON TAUTE: Because that is required by, you know, because of the way the statute...they actually did say don't get it. [LB734]

SENATOR GAY: Right, but you're asking a professional for their advice. They're telling you you don't need it... [LB734]

DON TAUTE: Right. [LB734]

SENATOR GAY: So with that in Douglas, and I can see the bigger communities being able to self-insure, so yeah, I mean...to me the option topped out. Another question I had, Senator Carlson asked you about going from self-insured to fully-insured, back and forth, back and forth. I've never seen that, is that kind of standard? I thought once you were kind of self-insured, you wanted to usually...that you can go back and forth (inaudible) [LB734]

DON TAUTE: This allows for us to do that. We were fully insured, obviously as everybody was as a governmental entity up until the passage of this statutory provision in the early 1990s and then we looked at that as a possibility to...because you know you were starting to see an escalation in premium rates from...you save an administrative cost to a great extent because every time you're fully-insuring, you know, the insurance

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companies aren't exactly going broke. [LB734]

SENATOR GAY: Yeah, so yeah but we're just giving you more additional savings is the way you're looking at this, so... [LB734]

DON TAUTE: Correct. That's how we're viewing it and I think that was as Senator Fulton indicated, Lancaster County and both the city and the county were very much in favor of moving forward with this legislation because of what our consultant was telling us. [LB734]

SENATOR GAY: Yeah. All right, thank you. [LB734]

DON TAUTE: Thank you. [LB734]

SENATOR PAHLS: I just have a question. I know it says right now that a metropolitan-size city can do this. If we limit to the primary, would that...what would be the downside to that? [LB734]

DON TAUTE: The down side, it still would not encompass the county. We would still have to deal with the county because, see, you know when you're dealing with just a municipality that the statutes...and then you know the language under chapter 23 is more geared to your counties. And again, there's a differentiation in the county size and how you can have your...Lancaster's the only county, but...so, that would be the downside on that. [LB734]

SENATOR PAHLS: Yeah, okay. Senator Langemeier. [LB734]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. But if we went to a primary city class with the counties and limited it down that much, we could do that. [LB734]

DON TAUTE: Yeah, depending on how you define, you know, what the...limit it to primary class...okay, metropolitan class city because, I think, in subsection 1 of 13-1622 it talks in terms of, except for, subsection 4, all cities have this. And then in subsection 4 it says that except metropolitan-class cities upon a showing by an actuary, you know if you were to say primary class cities, metropolitan primary, and counties of put in the population numbers so that Lancaster...that would be a thought. You know, just sitting here thinking out loud as to how potentially you would encompass that because I think Lancaster again is defined as...counties are broken down by population level somewhat, too. [LB734]

SENATOR LANGEMEIER: We could work that as long as we kept Lancaster and Lincoln in it. Right? [LB734]

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DON TAUTE: We're the ones that are certainly in favor of it. I'm not here to speak on behalf of any of the other counties. I certainly don't want to preclude them from the committee's consideration or the Legislature's consideration either, but honestly I do not know how many entities, other governmental entities out there are self-funded. Obviously I know that the city of Omaha has been for many years as well as the city of Lincoln and Lancaster County have been either one or the other over a period of time as well. [LB734]

SENATOR LANGEMEIER: Thank you. [LB734]

SENATOR PAHLS: Have not school districts been self...? [LB734]

DON TAUTE: Oh yes, I'm sure that school districts would be, too. And again that's probably going to be your larger school districts as well, Senator Pahls. [LB734]

SENATOR PAHLS: But to protect somebody from making an error, if we would squeeze this down to a primary class as Senator Langemeier, plus the county, that would eliminate that concern about people making some errors. [LB734]

DON TAUTE: Yeah, and though that possibility of making that error I think still is in place in the current legislation because it does say "may". You know, if for some silly reason, you know, a community of only 1,000 with a very small workforce said, wow, we're going to take this self-funding thing and see if we can run with it. Then get hit with a premature baby or a terminal cancer case, then they're going to be in a lot of trouble. [LB734]

SENATOR PAHLS: Okay, any other questions? See none, thank you, Don. [LB734]

DON TAUTE: Thank you very much for your time. [LB734]

SENATOR PAHLS: Additional proponents? [LB734]

JOHN EDWARDS: Good afternoon, Senator Pahls and members of the committee, my name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I'm with the Nebraska Association of County Officials. We are here today in support of LB734 and certainly I don't have any technical expertise in this area other than to lend support based on the testimony you just heard, and that's predominantly when you're looking at Douglas County and Lancaster County which are currently shielded from this provision within statute based on the language that only applies to Omaha. So I think the number of entities that you're talking about here that have (a) first gone self-insured, and then would (b) have to meet this second requirement--you're talking about a pretty limited number of political subdivisions. And again, like as was stated previously you have to have a pretty large pool in order to make this beneficial to your political subdivision. So this language here

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merely provides that opportunity to Douglas and Lancaster, primarily, to be able to take advantage this such as Omaha currently is. So with that, I'll conclude and I'll try to answer some questions. [LB734]

SENATOR PAHLS: Thank you, Jon. Senator Pirsch. [LB734]

SENATOR PIRSCH: Just a question with respect to the breadth of applicability. Do you think that Hall County, or Grand Island, or Sarpy, Bellevue might be interested in partaking given the size of their... [LB734]

JOHN EDWARDS: Right, Senator. It's my understanding and I tried to determine the number of counties that are actually self-insured, self-funded and I think Hall fits into that. It's certainly less than 10 counties in the state. And I think Hall is one that is self-funded and so certainly this would provide an opportunity for them if they are to look at this excess insurance provision, but that would be based then upon whatever the actuarial study finds as to whether it's prudent for them to forgo this or to not forgo this. [LB734]

SENATOR PIRSCH: So you'd like to see a broad...I guess that's why I'm saying this as far as limitations or nonlimitations... [LB734]

JOHN EDWARDS: Right. [LB734]

SENATOR PIRSCH: Would you like to see a broad, open application such that if you want to entertain this whether you have two employers or you're Lincoln, you should be able to...is that how you'd like to see it? [LB734]

JOHN EDWARDS: Sure. Well, I think practically speaking on its face, that could apply, but if you look at whether actually...well, first of all you'd have to study whether or not you could self-fund. If you meet that criteria, then you next have to have the study to determine whether you could actually forgo the excess insurance provision that is in this current language in this statute. So that's kind of a two-hurdle, two-tier proposition there and then those small entities being self-funded, is something that is practically speaking, is probably not going to happen. Just simply because they don't have the numbers. [LB734]

SENATOR PIRSCH: And, but what about the more middle cases where it's maybe, maybe not, but somebody decides to give it a shot. Because maybe there's some cost savings there. [LB734]

JOHN EDWARDS: Right, sure. Right. [LB734]

SENATOR PIRSCH: And maybe you know, obviously they don't have the tax by the city

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of Lincoln as government to (inaudible), but and can absorb probably larger types of miscalculations. But with respect to that, I guess, it says from an independent actuary or insurer, and that's right now the system that Omaha is using. But in looking at that, does it require...who provides those actuary or insurance services? Do you have to be certified or is it a tough process to gather that type of a certification? [LB734]

JOHN EDWARDS: I would imagine that's the case, Senator. And you're looking at what I'm looking at in terms of what the guidelines are as it pertains to Omaha right now, which is the only entity that this particular language pertains to. So dependent upon how they go about developing that study and what sort of guidelines they use there in place in order to get an independent idea of that reliability. [LB734]

SENATOR PIRSCH: When that says independent insurer, could that be the same entity that would then later solicit the town to provide the employee benefits program? Could it be, or... [LB734]

JOHN EDWARDS: I would certainly think you'd be running into some conflict there. You know, I mean, by definition is that going to be an independent insurer? I certainly wouldn't think so but you know, not being an expert in that field, I can't tell you for sure. [LB734]

SENATOR PIRSCH: And I don't...that's what I was saying. But I appreciate, I think there is a lot to this proposal about ways to look at saving monies that don't have to be spent. [LB734]

JOHN EDWARDS: Right, well I think Lancaster and Lincoln is a prime example of that. [LB734]

SENATOR PIRSCH: Yeah, so just having, I guess, an idea of is this a good thing to apply broadly throughout, or not, so thank you. [LB734]

JOHN EDWARDS: Sure. [LB734]

SENATOR PAHLS: Seeing no more questions. Thank you, Jon. Any more proponents? Opponents? Neutral. I think Senator Fulton waived closing. That concludes this LB734, the hearing on LB734. [LB734]

SENATOR LANGEMEIER: Senator Pahls, you're recognized to open on LB876. [LB876]

SENATOR PAHLS: Thank you, Senator Langemeier and members of the committee. The intent of this bill is to plug a potential gap in uninsured and underinsured motorist insurance coverages for certain passengers in motor vehicles involved in an accident

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with an uninsured or underinsured motor vehicle. The main part of this bill would amend the Uninsured and Underinsured Motorist Insurance Coverage Act to provide that uninsured and underinsured motorist coverage shall extend to persons occupying the insured motor vehicle as a passenger at the time of the accident with the consent of the injured, and who is not entitled to uninsured or underinsured motorist coverage under any policy motor vehicle liability insurance. This bill would address issues arising out of the case Jones v. Shelter Mutual Insurance Companies decided by the Nebraska Supreme Court this past August. According to the court, persons insured for purposes of uninsured and underinsured motorist coverage are only those persons insured under the liability provisions of a motor vehicle policy. Thus, passengers who are not, for example, relatives, related household members, or additional listed insured may not have uninsured or underinsured motorist coverage unless they have it under another motor vehicle liability policy. In the Jones case it was a question of whose uninsured coverage applied to Mr. Jones, not whether he had uninsured coverage. But the case did reveal that under the right set of circumstances a passenger might have no uninsured coverage at all. I introduce this bill with the expectation that there will be different conclusions drawn from the case and different suggestions for or how the legislation should respond. I look forward to today's testimony. [LB876]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Are there any questions? Seeing no questions... [LB876]

SENATOR PAHLS: Thank you. [LB876]

SENATOR LANGEMEIER: Are you going to waive closing? [LB876]

SENATOR PAHLS: No, I won't waive closing. [LB876]

SENATOR LANGEMEIER: Proponents? Mr. Cavanaugh, you're recognized. [LB876]

JIM CAVANAUGH: Senator Langemeier, members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh. I'm an attorney and registered lobbyist for the Independent Insurance Agents of Nebraska, and we appear here today in support of LB876 for pretty much the reasons outlined by Senator Pahls in his introduction--plugs a gap in coverage. We've historically worked on this issue relative to let's make the insurance that we sell actually cover the problems that we can anticipate. And this goes another step towards doing that in these situations as outlined by Senator Pahls and cited in the Jones case. I'd be happy to answer any questions you might have. [LB876]

SENATOR LANGEMEIER: Are there any questions? Seeing none, you're off the hook. Next proponent. Opponents? [LB876]

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ROBERT R. MOODIE: Senator Langemeier, members of the committee, my name is Robert R. Moodie, M-o-o-d-i-e. I'm testifying on behalf of the Nebraska Association of Trial Attorneys. This is a situation where it'd be nice if we had a third category or something other than proponent, opponent or neutral because we agree that this is a hole that needs to be plugged. And we are very appreciative that Senator Pahls has introduced the bill to bring this subject to discussion. The only reason that I am appearing as an opponent is merely because I'm not sure that the bill, the way it's written, does exactly what it needs to be done. And I would welcome the opportunity to work with all those concerned to perhaps bring the bill into a form that we think would actually accomplish the goals. I have two points specifically to make. And one point is that if you look at the Jones v. Shelter decision and both the majority opinion and the concurring opinion, it becomes clear that the Supreme Court basically says that insurance policies under the law which governs uninsured and underinsured motorist coverage, must provide the same coverage as policies which are essentially governed by the omnibus statute dealing with automobile liability coverage, that being section 60-310. And it is our belief that in order to fully accomplish what the Supreme Court has identified as a hole, we need to insert the language addressing who is covered under (section) 60-310, as opposed to the underinsured motorist provision, which is (section) 44-6408. Now I'm not sure that inserting it in (section) 44-6408 is wrong. I'm not sure that it's bad. I'm not sure that it's counterproductive. I'm just not particularly sure that it's really going to take place or fill in the gap that the Supreme Court has identified unless we also address the same questions in (section) 60-310. The only other concern regarding the way the bill is drafted at this point, is in the portion that appears at the top of page 3 lines 1 through 3 where basically it indicates that the coverage under that section shall extend to any person occupying the motor vehicle who is not entitled to uninsured or underinsured coverage otherwise. And there is a well established principle of law that the courts have adopted in circumstances where multiple coverage applies. And if the occupant has his own uninsured or underinsured coverage, the basic stepping stone or ladder that the courts acknowledge is that the policy that covers the car that we are riding in is going to be primary; other policies they have are going to be secondary, and this provision is going to muddy the water on that particular line of thought and line of cases. And I don't believe that this particular section is necessary. We are in complete agreement that there's a problem and the problem needs to be fixed. And I think that with a little bit of tweaking of the bill, we can accomplish that. [LB876]

SENATOR LANGEMEIER: Thank you. Are there any questions? Seeing none, thank you for your testimony. [LB876]

ROBERT R. MOODIE: Thank you. [LB876]

SENATOR LANGEMEIER: Further opponents? Go ahead. [LB876]

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JIM DOBLER: (Exhibit 1) Members of the committee, my name is Jim Dobler. I'm executive vice president and general counsel, Farmers Mutual Insurance Company of Nebraska. The last name is spelled D-o-b-l-e-r, appear today in opposition to LB876. But I want to comment initially that I agree with the concern that has been raised in this bill, and the insurance industry supports the concept of looking at the result in Jones v. Shelter and making changes to the outcome of that case. I also want to mention that today as a registered lobbyist I am appearing, too, on behalf of Nebraska Insurance Information Service. This is an organization of property and casualty insurance companies licensed to do business in the state of Nebraska. As a group, our members companies write in excess of 50 percent of the personal lines automobile insurance. And again I want to emphasize that our entire group has looked at this and we support the concept that Senator Pahls wishes to address. The bill amends the section of the UM/UIM law that mandates that that kind of benefit be offered. When you amend a mandated benefit statute and you insert something that says you need to offer something to additional people, there is always the fear from our perspective that when that's mandated all the other conditions and provisions of the policy can't apply. It's been mandated. You've got to give it. If the person fails to pay the premium or some other exclusion might come into play, there's an argument that says it's mandated, we can't do anything about that. So we were a little hesitant to approach this issue by amending that particular statute. We also agree with the comment of Mr. Moodie that the last part of the amendatory language suggests that a passenger should first look to their own coverage, rather than looking to the coverage that might apply to the vehicle. And as was pointed out, Nebraska law really is very clear that coverage on the automobile applies first, and then you go to your own coverage as excess. So we thought there was a bit of an issue there. I prepared for the committee one alternate way to approach the issue, and it's not amending section 60-310, which essentially gets into the compulsory auto liability insurance concept. Instead what I've done is I've tried to approach it by just addressing the definition of who's an insured. In the Jones/Shelter case, that's kind of where I think the problem occurred, is they set up the definition of insured in a way that it simply didn't extend to occupants of the vehicle. So I've tried to approach it that way. It would be something that would just fit in the UM/UIM law at a different location other than that statute that mandates that benefit. I shared it with some of our member companies, not all of them, but it's something that I would submit to the committee to consider as you talk about this issue amongst yourselves. With that, I don't have any other comments, would be glad to answer any questions. [LB876]

SENATOR LANGEMEIER: Thank you, Mr. Dobler. Are there any questions? Seeing none, thank you for your testimony. [LB876]

JIM DOBLER: Thank you. [LB876]

SENATOR LANGEMEIER: Are there any other opponents? Neutral? Anyone testify in neutral? Senator Pahls, do you wish to close? [LB876]

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SENATOR PAHLS: Yeah. Just a short statement. I agree, we would work with the individuals who had some concerns. The one thing I do want to point out that we did find this out, under the right circumstances a passenger may have no uninsured coverage at all. And that's where we're trying to fill that gap. That's the name of the game, what we're trying to do. But like I say we will work with people. Thank you. [LB876]

SENATOR LANGEMEIER: Thank you, Senator Pahls. That concludes the hearing today for LB876. We're ready for LB1090, maybe. [LB876]

SENATOR PAHLS: It's good to see you, Senator Lathrop. We are ready for you, Senator. The chair is yours. [LB1090]

SENATOR LATHROP: Okay. This is...okay. (LB)1090? [LB1090]

SENATOR PAHLS: Yes, (LB)1090. [LB1090]

SENATOR LATHROP: You ready? [LB1090]

SENATOR PAHLS: We are ready. [LB1090]

SENATOR LATHROP: All right. Thank you, Mr. Chairman and members of the Banking, Commerce and Insurance Committee. My name is Steve Lathrop. I'm the state senator in District 12. It's L-a-t-h-r-o-p. I'm here to introduce LB1090 and this is a pretty simple bill. Basically what LB1090 would do would be to amend the underinsured motorist statute to remove the requirement that before an underinsured motorist claim can be made, the underlying liability policy must be exhausted. In Nebraska the current rule is that before you can make an underinsured motorist claim, and I should say we're talking about auto liability coverages here. Before you can make an underinsured motorist claim you have to exhaust or go through the responsible party's liability coverage. So if they have a \$100,000 policy, you have to secure from the liability carrier for the responsible party a settlement for the entire \$100,000. You settle up for \$99,000. You cannot proceed or make a claim against the underinsured motorist coverage. What this bill would do would be to allow you to settle with a liability carrier for something short of the liability limits and still be able to pursue an underinsured motorist claim. Where the equity is in this is that the underinsured motorist carrier would be given credit for an amount equal to the full amount of the liability policy. So in effect in my example, the underinsured motorist carrier would only be responsible for damages to the extent those damages exceed \$100,000 and not the difference between the full value of an injury and the amount of the settlement. It would, in my judgment, result in less litigation. Too many times it's necessary for us to go to trial and have a...litigate and try cases because we can't get the liability limits out of a liability carrier. You have to go to trial until you get

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those. This would encourage settlements, reduce litigation, and overall I think be better policy for the state of Nebraska. And with that, I'd be happy to answer any questions. [LB1090]

SENATOR PAHLS: Senator Christensen. [LB1090]

SENATOR CHRISTENSEN: Chairman Pahls, thank you. Senator Lathrop, I guess I don't understand if you can't get it all here why you would need more from the other. Can you explain a situation or help me understand this? [LB1090]

SENATOR LATHROP: Sure. There's a lot of instances, Senator Christensen, in which a person will have a claim that's worth more than the policy limits. And I'll just use \$100,000. The minimum in Nebraska is \$25,000. We oftentimes see \$100,000 policies. So if the policy limit for the guy who caused an accident is \$100,000, and I make a claim against that company and say it's State Farm. State Farm may say, well, you know what, Lathrop, we're not going to pay \$100,000 because your person had a similar injury before. Maybe they have a question about whether my client was partially responsible for the accident. They may have a variety of reasons that they don't want to pay the \$100,000. And if I want to make an underinsured motorist claim, the only thing I can do at that point is sue and go to trial. Then I have to get \$100,000 before I can make an underinsured motorist claim. What this bill does by not requiring that I get the full \$100,000, I may settle with State Farm in my example for \$95,000. Maybe they just need to save a little bit of money for whatever reason or maybe that's how they have the case evaluated. But we settle up for \$95,000 and I can still make my claim for underinsured motorist and that's my own policy. That's a policy I bought. It's a policy I paid the premium on. It's coverage I purchased for myself for these very circumstances and I can make that claim now. And if the full value of my case is \$125,000, underinsured motorist carrier gets credit for \$100,000, not the \$95,000 that I settled it for. So the underinsured motorist remains as it is today a claim for the difference between the policy limits and the full value of the injured claim. I hope that answered your question. [LB1090]

SENATOR CHRISTENSEN: Okay. That helps. I'd like a little further. How can they...if say it's \$120,000, how can they not pay up to that \$100,000 that it's insured for and be liable for that? [LB1090]

SENATOR LATHROP: Well, I think in a lot of instances we have ways of making them do that. And as a practical matter we've...oftentimes that happens. If you have a case where it's clear cut and the person is standing at a red light and they get rear-ended by a drunk driver and they break their neck, they're going to pay the \$100,000. This isn't the situation that this bill will address. It is the case where who's at fault is at issue. It's the case where the person may have had two back surgeries, and then they get in a car accident and have a third back injury, and the liability carrier disputes whether or not

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they're insured cause the injury. There are an infinite variety of ways that a case can become clouded and disputed so that the liability carrier is unwilling to pay the policy on it. And when they don't if a case, in my judgment, is worth more than the policy limits the only way to get it out of them right now is to sue. And if that doesn't get it out of them, then the next thing you have to do is take it to trial and go get a judgment for something greater than the policy on it. I hope that helps. [LB1090]

SENATOR CHRISTENSEN: Thank you. Yes. Thank you, Senator Lathrop. [LB1090]

SENATOR LATHROP: Sometimes I take the long way around the barn when I'm explaining things. [LB1090]

SENATOR PAHLS: Senator Pankonin. [LB1090]

SENATOR PANKONIN: Thank you, Senator Pahls. Senator Lathrop, I understand from a public policy standpoint might be less litigation. And maybe I'm not seeing this right, but I can see where this would be more costly for...might make is easier for you being the skilled trial attorney you are to settle here, and then be able to go under the uninsured. And it's overall the system pays more so insurance goes up. I'm just speculating here. Do you think this would cause insurance rates to go up in general because these settlement may be more and...? [LB1090]

SENATOR LATHROP: I sure don't think so. There's a lot of different considerations that go on when you get to this place, and one would be whether they can collect back their subro and whether you've settled it for the policy limits. That's a different question. But when it comes to this, I think, I don't see it raising insurance premiums because you're going to make that claim regardless. You just don't force me to go to trial over...with somebody that's offering \$95,000 on a \$100,000 claim. I mean, at some point it costs and awful lot of money to bring the doctors in and I'm not talking about lawyer fees. I'm talking about paying doctors and expert witnesses to come in. At some point you can say, okay, we can take a little bit less today than the policy limits because if there's a certain amount of uncertainty and there is expense associated with it, so you might find yourself willing to take \$5,000 or \$10,000 less than the limits. But remember what we're talking about today is the policy that you paid for. Okay? When we talk about underinsured motorist coverage, that isn't the other guys coverage. It's mine. I bought it. [LB1090]

SENATOR PANKONIN: Yeah. I understand that, but I mean if I see that the whole system though is going to be paying out more if I...you know, then in the future then we're all going to pay more is what my concern is. [LB1090]

SENATOR LATHROP: Well, I'd suggest to you that it may be paying out less because the liability carrier isn't paying the policy limits. So you know, you could argue this thing

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both ways. The one way is is that if you leave it the way it is, then we'll hold the liability carrier's feet to the fire. And if you give them an opportunity to settle without requiring that the policy be exhausted, you know, they may look to us to try to get us to trim settlements by some amount every time we have a limits claim. I think on balance though that it's good policy. [LB1090]

SENATOR PANKONIN: Explain this one more time. The credit, and using your example again, if there was a \$95,000 settlement, that \$5,000. That \$5,000...how's that credit work? [LB1090]

SENATOR LATHROP: I'll tell you exactly how it works. If you could be certain exactly that you have a case worth \$125,000. With the medical expenses, lost wages, what the person went through, it's now worth \$125,000. Under the current law we can't go after the underinsured until we settle up for the \$100,000. Then we'd have a claim for \$25,000. With this change and with this amendment, we could be allowed to make...we could settle up for \$95,000, for example. This person doesn't now have to pay \$30,000. The underinsured motorist carrier still only has to pay \$25,000. So effectively is given credit against the full value of the claim, \$125,000, he's given \$100,000 worth of credit even though the plaintiff only received \$95,000. [LB1090]

SENATOR PANKONIN: Thank you. [LB1090]

SENATOR PAHLS: Senator Carlson. [LB1090]

SENATOR CARLSON: Senator Pahls. Senator Lathrop, I am having trouble figuring out how this saves money because it sounds good, but I can't...I'm not grasping that very well. And it seems to me like it's going to raise premiums. You said, no, but in my mind it does. And then this isn't a smart aleck question, but why do you care about less litigation? [LB1090]

SENATOR LATHROP: Ah, heck. (Laughter) I spend all my time trying to avoid it. We go to law school, learn how to do it, and we spend a lot of our time engaged in litigation, but I don't get paid by the hour. I mean, I'm not looking to generate more litigation while I'm down here serving in the Legislature. I think what I'm looking for is if there's a way to improve the civil liability system that will result in more settlements...I've supported mediation bills, (LB)544 last year, Senator Flood's bill that really was encouraged mediation. You know, I want to see things resolve. But going back to your question, how is this going to save money? I think if you look at the...well, let me tell you and start out by telling you I'm not an underwriter. I don't know if it will save money. People ask me that all the time. What's going to happen to my premiums if I make a med pay claim. I go, I don't know, call your agent because I'm not sure. But it seems to me that some of those liability carriers are going to be paying out a little bit less than they might otherwise. [LB1090]

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SENATOR CARLSON: Okay. [LB1090]

SENATOR LATHROP: My feeling is that this is probably good policy, but I'm going to insist on the policy limits anyway. If they should have paid them, they should pay them. But you'll probably see more cases settle for a shade less than the policy limits and to the extent they do, it becomes a savings to a liability carrier, in my judgment. [LB1090]

SENATOR CARLSON: Okay. Thank you. [LB1090]

SENATOR LATHROP: Did I answer your question? [LB1090]

SENATOR CARLSON: (inaudible) [LB1090]

SENATOR LATHROP: All right, good. [LB1090]

SENATOR PAHLS: Any other questions for the senator? Are you going to stick around for closing? [LB1090]

SENATOR LATHROP: You know what, I better waive it. [LB1090]

SENATOR PAHLS: Okay. [LB1090]

SENATOR LATHROP: Because I have to get back to...we're having kind of an exciting moment over in... [LB1090]

SENATOR PAHLS: And we're not exciting? Okay. (Laughter) You don't have to respond to that. Do not respond. [LB1090]

SENATOR LATHROP: I've been in Urban Affairs for a while. It doesn't happen very often over there. [LB1090]

SENATOR PAHLS: Okay. Yeah. Thank you. Thank you, Senator. [LB1090]

SENATOR LATHROP: Ah, it has to do with some volunteer fire departments. [LB1090]

SENATOR PAHLS: Thank you. Thank you, Senator. Proponents? Do I see two people? Two individuals? Thank you. [LB1090]

JIM CAVANAUGH: Mr. Chairman, members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh. I'm an attorney and registered lobbyist for the Independent Insurance Agents of Nebraska appearing today in favor of LB1090 for the reasons that Senator Lathrop outlined. But also to give you some idea of where

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we're coming from consumerwise, the examples he was giving as somebody who sustained \$125,000 worth of damages. And under the current system if you settle for \$95,000 on the primary, you get nothing from the underinsured and you're short \$30,000 worth of damages that the person suffered. No question about it. Under this, you get the \$95,000 and then you could get the \$25,000 from the underinsured. You'd still be short \$5,000, but it's, you know, better solution. And I think that what you avoid in terms of the litigation costs are primarily on the company's side. As Senator Lathrop pointed out, the trial attorneys who would be the plaintiff's attorneys in this scenario would only recover their fee, if any, if they were to succeed in getting a judgment against the insurance company after a long and expensive litigation. This is expensive for them, but more importantly it's expensive for the state which has to provide courts and judges and personnel to try those cases. And it's expensive for the insurance committees (sic: companies) who have to provide attorneys to defend themselves against these and these attorneys cost money. Most defense attorneys are retained on an hourly, and so there's something paid out win, lose or draw in terms of defending the case. And that comes out of the company's bottom line. Those costs are sustained by the companies and in the course of doing business, you know, passed onto the consumer. So for, you know, kind of both of those reasons, one, somebody who has \$130,000 worth of damages, you know, should be compensated for those. That's why we have insurance and that's why we sell insurance is to give somebody something of value for the day when things go wrong. And secondly, to encourage settlements of these prior to courthouse. Courthouse is an expensive solution for both sides, and those solutions on the insurance company's sides are translated back into cost of doing business for the insurance company. Those are translated back into premiums for the consumer. Be happy to answer any questions you might have. [LB1090]

SENATOR PAHLS: Senator Langemeier. [LB1090]

SENATOR LANGEMEIER: Chairman Pahls, thank you. Thank you, Mr. Cavanaugh for your testimony. You're testifying on behalf of who again? [LB1090]

JIM CAVANAUGH: The Independent Insurance Agents of Nebraska. [LB1090]

SENATOR LANGEMEIER: Okay. Okay. I'm trying to figure out how they would have relevance in this, but that's beside the point. It would be my interpretation that if I'm an insurance company and I'm calculating how I'm going to come up with premium for uninsured motorists, I calculate in the fact that there's some limitation to actually getting to a point where I would have to pay. So if we do this where we remove that barrier, don't I as an insurance company now re-evaluate my risk level which just got a whole lot greater? And doesn't that skyrocket the price of underinsured motorists? [LB1090]

JIM CAVANAUGH: Well, I don't know if it skyrockets it, but let me put it in context. The reason that we're here is because we're representing the people who buy the insurance.

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And those people are buying insurance because they're involved in accidents, you know, as we're all liable to be, in the real world. And what we want to provide them with is real coverage in the case of real losses. So if our clients suffer \$130,000 worth of real losses, that's our primary concern is how do we take care of those people? What product can we sell them that will take care of \$130,000 worth of losses? And if the product costs whatever it costs, well, you know, the insurance companies have a perfect right to a fair return on their investment. Their in the business of selling insurance and making money off of the sale of insurance. And that's going to be passed onto us, the agents, in the sale of that product to our clients. But the benefit that they are going to reap is, in the scenario that you heard, if they're hurt \$130,000 worth, they're going to get pretty much made whole or at least \$125,000 in the example that Senator Lathrop used. That's what we want to sell our clients. We want to sell them, you know, if this happens to you, we'll try to take care of you 100 percent or as close to 100 percent as we can. And here are the products that you need to buy in order to get there. So that's our relevance to this argument and that's why we see it's good public policy. Give them something that they can buy in the event of the accident happening. [LB1090]

SENATOR LANGEMEIER: One more question. In my med pay policy that I buy for my own personal car, would that cover me in this instance at all? If I got hit by somebody else and I recoup \$95,000. We're using that example I recouped just \$95,000 of the \$100,000, would my med pay kick in at all? I don't know. [LB1090]

JIM CAVANAUGH: I don't know. I don't know. [LB1090]

SENATOR LANGEMEIER: Okay. Thank you. [LB1090]

SENATOR PAHLS: Senator Gay. [LB1090]

SENATOR GAY: How many other states have adopted this type of program? [LB1090]

JIM CAVANAUGH: I don't know, but I could find out for you. [LB1090]

SENATOR GAY: Okay. [LB1090]

SENATOR PAHLS: Senator Carlson. [LB1090]

SENATOR CARLSON: Senator Pahls. Mr. Cavanaugh, is this...I don't really know the answer to this, but for many of us this is the first time we've heard this. Has this bill come forward before here? [LB1090]

JIM CAVANAUGH: You know, I've heard something like this. I'll tell you, there's been legislation and committee counsel would certainly know exhaustively. Going over at

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least the last 20-some years that I've been here that I'm aware of relative to--there seems to be some answers possibly--this field of insurance. And it's really made it a lot better than it was 30 years ago. I mean, in term of getting hit by an uninsured or underinsured motorist, I have been twice and you have but a 9 percent chance in Nebraska of somebody running into you being uninsured or underinsured, and getting something back for your money. So you know, it's a lot better than it was and we just think this makes it a little better than it is now. [LB1090]

SENATOR CARLSON: Okay. Thank you. [LB1090]

SENATOR PAHLS: I see no more questions. Thank you, Jim, appreciate it. Next proponent. [LB1090]

ROBERT R. MOODIE: Thank you, Mr. Chairman, members of the committee. My name is Robert R. Moodie, M-o-o-d-i-e, testifying on behalf of the Nebraska Association of Trial Attorneys. I'm going to suggest to you a different scenario. Let me, I guess, start off by saying that I'm a little intimidated by testifying on a bill where the introducing senator probably knows quite a bit more about it than I do. But I'm going to suggest to you a different scenario to show how I believe this change actually produces efficiencies, not merely for the claimants, but for the insurance companies involved, as well as the courts. Let's assume the situation in which Joe Jones, the injured driver, is hit in a car accident by somebody who has ABC Insurance with a \$50,000 policy limit. Mr. Jones has an underinsured policy limit of \$100,000 with XYZ Insurance. You look at these damages, you look at the full extent of his injuries, and you conclude that his case ought to be a full-value case of \$100,000. However, there are disputes over the liability. Maybe there are disputes over who had the red light. Maybe there are disputes over whether Mr. Jones was paying enough attention on his own or is in some what contributorily negligent. But there are some disputes on the case and because of the disputes on the case, it would be appropriate for the parties to compromise. Rather, and I'm not talking about disputes regarding the extent of his injuries. I'm talking about disputes that affect the liability, whether he can recover or not. And everybody looks at it and recognizes there's enough dispute here that the parties ought to be prepared to compromise on this. And so the \$100,000 full value of his case ought to be compromised for \$75,000 because there's risks on both sides. In that situation, Mr. Jones makes a claim against ABC Insurance company for the policy limits of \$50,000 because he figures his case ought to be worth the \$75,000 compromise value. ABC Insurance company looks at the case and sees the same problems that everybody else does and sees there are liability issues in this case and there should be compromises. So instead of offering their \$50,000, ABC Insurance wants to share in that compromise and they offer 75 percent of their policy limits. At that point, Mr. Jones is either forced to accept a compromised settlement, which is in fact far more of a compromise than the circumstances of his case actually justify, or he has to file the lawsuit in order to get the full amount of the underlying primary coverage, liability coverage, so that he can then

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access some additional coverage from his own underinsured motorist carrier. In this situation if we were to apply the provisions of LB1090, ABC Insurance would be able to share in the compromise of the case. They would not be stuck into a situation where they either stick to their compromise, stick to the position that they feel like they shouldn't have to pay full value on a case that ought to be settled on a liability question or go to court. And it essentially spreads out the risk. It spreads out the risk on the case between both ABC Insurance and XYZ Insurance, and also saves the court time, judicial economy, and efficiency of judicial resources. Now, will it save premiums for the underinsured motorist carrier? Well, the underinsured motorist carrier, in this case, is going to have to reserve and underwrite similar claims at full value. The underinsured motorist carrier is going to have to be prepared to pay a \$100,000 claim because if they go to court and lose on the issues of liability, that's what they're going to pay. So I don't think that it's going to increase the premium rates for the underinsured motorist carrier, and it's going to save money for the underlying carrier, whether that is State Farm in this case and Farmers Insurance on the next case. Well, the next time it might be Farmers Insurance on the first case and Allstate on the second case and it's going to even out. So those are my thoughts on the issue. [LB1090]

SENATOR PAHLS: Senator Langemeier. [LB1090]

SENATOR LANGEMEIER: Chairman Pahls, thank you. And thank you for your testimony and sitting here all day. I appreciate that. Using your Vic Jones and your ABC coverage of the other guy, using your example there, what I can see happening is as ABC Company starts to look at that \$50,000 policy. And now I have this option out there that, yeah, we can negotiate these out for 75 percent. That's good. If I'm ABC, that's really good. So in theoretic if it's good, that policy's premiums should go down. [LB1090]

ROBERT R. MOODIE: Right, presumably. [LB1090]

SENATOR LANGEMEIER: Okay. So now... [LB1090]

ROBERT R. MOODIE: Or the overall cost of insurance, yes. [LB1090]

SENATOR LANGEMEIER: In that category, yes. [LB1090]

ROBERT R. MOODIE: Right. [LB1090]

SENATOR LANGEMEIER: Okay. But now, back to my other thing is this now XYZ company, they had written this policy based on this fact that if they couldn't get if figured out with ABC over there, it may never ever get to me. So in my calculating of my premium, I take into account the chance that I'm going to pay out; kind of like a casino, I have to consider that. So we remove this barrier. So now I see XYZ has got to go up because the opportunity or the possibility that they're going to pay is much, much

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higher. Now with that said, poor Mr. Vic Jones...the guy that hit him's premium went down, but me as a victim, I just got hurt in this deal and now my premium is going up. So not only did I get hurt, now my premium is going up for my underinsured and overinsured. And the guy that hit me's premium is going down because we've taken this barrier out in the policy. Does that make sense? [LB1090]

ROBERT R. MOODIE: Well, it makes sense. I don't think it necessarily follows, and I don't think it follows because the...at least in my scenario the XYZ Insurance company had to underwrite, had to plan for at some type of a claim because the scenario I presented was a claim that could be worth \$100,000, but reasonably ought to be settled for \$75,000. So their having to plan for \$100,000 case because if it doesn't settle...and I would present to you it probably isn't going to settle if the first insurance company is only going to offer \$37,500 or 75 percent. It's not going to settle and then everybody is going to start incurring litigation expenses. Likewise, I would point out that when you took...and I'm not an expert in underwriting premiums, but it's my understanding that insurance companies don't calculate their premiums based just on one claim here and one claim there. In this particular scenario, the cost to ABC Insurance is going down and the cost to XYZ Insurance may be going up. But in the next case XYZ Insurance company is going to have the underlying coverage and ABC Insurance company is going to have the underinsured motorist coverage. And while in the case of Joe Jones or Vic Jones or whatever name we assign to him, it may be that XYZ Insurance company pays more money than it would have if the law is not changed. The next time the tables very well could be and probably will be turned, and they will then save money because they're be in the other end of the equation. [LB1090]

SENATOR LANGEMEIER: Thank you. [LB1090]

SENATOR PAHLS: Senator Pirsch. [LB1090]

SENATOR PIRSCH: Just as a follow up, as between the insurance companies themselves it'll average out. But just following up, not focused from an insurance company aspect, but just from the individuals who are behind it. I think you're right. The insurance companies may end up even. But would it...before it was the bad driver who would have to when he would bad drive incur the brunt of it, and thus his insurance rate would go up. But he was the one who exhibited arguably the bad driving. But would this by saying that you would turn first to the victim's insurance, the one whose not displaying this bad driving, would that then tend to...not between the insurance company, but as between the individuals, would that cause individuals who are not causing the accidents in the majority to have their insurance go up? [LB1090]

ROBERT R. MOODIE: Well, I don't set insurance rates and I'm not involved in that process. I do have, from time to time in my practice, people ask me what is going to happen? Are my rates going to go up from this? And my understanding and my answer

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to them is if you're a bad driver and you cause accidents, your insurance rates are going to go up. Whether the accident you caused is going to cost your insurance company \$10,000 or \$100,000 because you're more of a bad risk. And I have a tendency to think that it's the driving, it's the people who make the mistakes will factor into the underwriting of the premiums more than exactly how much gets paid out in the case. Although I mean obviously they have to pay attention to global figures on income and loss. But those who know more about that can possibly answer those questions. But I really think it's...the rates are going to be affected by who the bad driver is and how many accidents you cause. [LB1090]

SENATOR PIRSCH: Okay. Thank you. I appreciate it. [LB1090]

SENATOR PAHLS: Seeing no more questions, appreciate your testimony today. [LB1090]

ROBERT R. MOODIE: Thank you. [LB1090]

SENATOR PAHLS: Anymore proponents? Opponents? [LB1090]

JIM DOBLER: (Exhibit 1) Senator Pahls, members of the committee, my name is Jim Dobler, D-o-b-l-e-r, executive vice president and general counsel Farmers Mutual of Nebraska. I'm also a registered lobbyist and appear today on behalf of Nebraska Insurance Information Service, which is an organization of property and casualty insurance companies licensed to do business in the state of Nebraska. And as a group, our member companies write in excess of 50 percent of the personal auto insurance in the state. Appear today in opposition to LB1090. Begin first by just noting that if you remove the exhaustion clause you essentially open up the possibility of an underinsured motorist claim all the time. It is that exhaustion provision that makes underinsured motorist coverage operate as excess and not primary. The minute you take that out, it's out there for any policyholder in any accident to make a claim, a first party contract claim with their insurer if they want to. Now, if you settle at some level below the liability limits, it's been suggested that that is efficient. Well, if you do have that settlement and it's below policy liability limits, that individual still has a right to make an underinsured motorist coverage claim, which you wouldn't have the right to do now. Well, that claim, if it's not settled, will produce another lawsuit; a lawsuit against the insurance company to collect benefits. Even after that lawsuit for underinsured motorist benefits is finished, if the underinsured motorist carrier has to pay money, then that carrier has another claim back against the person that caused the accident to recover for the money they paid to their own policyholder. So you've got two ways of going. Under the current law, they have a claim with the liability carrier and somebody that ran into them. If it's worth only \$75,000 and not the \$100,000 liability limit, they're done. On the other hand, if you leave it open for them to pursue additional recoveries from their own policy, it's not done. You have the possibility of a UIM lawsuit and you have the possibility of another suit for

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subrogation against the person that caused the accident. Putting that aside, just a couple of things about the coverage. Insurers started writing underinsured motorist coverage in Nebraska in the early 80s. And at that time when started, it was written in a form that's called difference in limits. And what that means is that if I have underinsured motorist coverage of \$100,000 and I get hit by someone who has a minimum liability limits of only \$25,000, the amount of money I can get from my underinsured motorist coverage is \$75,000, not \$100,000. The concept of it then was all it's designed to do is put you in the same place you would have been in had the person that ran into you had the same underinsured motorist limit that you have. In 1990, the Legislature changed that process, and at that point underinsured motorist coverage applied as excess coverage to the underlying liability coverage. So at one point it was different at difference in limits. Now it applies as excess. And the excess version, for lack of a better term, I would say to you that's probably a more expansive or liberal form of underinsured motorist coverage. It was a big step when auto insurers started writing this because you think about it, the coverage is something that you can't underwrite. What we're doing, in essence, is taking an amount of money and agreeing that it will apply to whoever might run into you and hurt you. So it's money that sits there and is triggered when any driver in Nebraska happens to be negligent and runs into you as our policyholder. So there's no underwriting of it. From an underwriters standpoint, it creates a lot of heartburn. But on the other hand, it is a good form of coverage to have and it does fill a very important public policy need. This same bill was heard in 1999 before this committee. It was heard again in 2000 before this committee. And a third time in 2001. The first two bills were identical to this one. The one in 2001 introduced by Senator Chris Beutler worked a little bit differently than the first two. But we welcome the opportunity to visit with you about this coverage here again today. It's very complicated in my opinion. There are a ton of seminars on how this stuff works, but it is good coverage. But I would say to you that the concept and the way we look at it is it's excess coverage and that's how it's underwritten. That's what it's intended to be there for and if you start making it primary coverage or insurance of first resort, it changes how it works and that will change the premium. Is there a question? I'd be happy to... [LB1090]

SENATOR PAHLS: Senator Pankonin. [LB1090]

SENATOR PANKONIN: Thanks, Chairman Pahls. So I'm going to ask the same basic question. I think I know the answer. Do you think overall on the macro that premiums would go up in Nebraska if this was in the law? [LB1090]

JIM DOBLER: Yes, I do, Senator, and here's my take on it. Uninsured motorists claims and underinsured motorist claims are first party claims on your insurance contract against your insurer. Now, when you take a claim like that and you go to trial, you're sitting there as the plaintiff, the policyholder, and you're suing your insurance company as the defendant. And you have 12 people, a jury, sitting there hearing the evidence

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and deciding what your award should be. Now, our experience is that those kinds of cases and bodily injury claims out of accidents that arise in that context simply have higher value than a auto accident trial where it's Jim Dobler versus Senator Pankonin because there it's two individuals. There isn't anything in that trial to suggest insurance. Rules of evidence say you can't introduce anything about insurance. It's just a different animal. Now, I want to emphasize and please don't misunderstand. I'm not being critical of that process, and I'm not critical of juries and how they look at suits against an insurance company. It's natural. I don't think it should be any other way than that. Of course you're going to have a lot of empathy towards an individual versus a big insurance company. But that's just a fact of life and it's fine. And the fact that those cases are more expensive, I still think even that is good public policy from the standpoint that uninsured situations you need to provide some benefit for people that have no one to collect from. Even in underinsured situations. If someone doesn't have enough coverage, you should provide something additional to help make that person whole. But it's a whole different ball game when you say, well, not only will the underinsured motorist coverage apply in an excess situation, but we're going to have it apply just all the time. And I think because of the nature of the coverage and how those things play themselves out in court, yes, if there are more of them, there will be more claims costs. [LB1090]

SENATOR PAHLS: Senator Hansen. [LB1090]

SENATOR HANSEN: Thank you, Senator Pahls. Jim, I'm glad you're with the insurance information because I need some more information. When I went into my insurance agent just before the session started and we talked about our fleet insurance, you know, we took old vehicles off and we put new and a few recent ones on. And then when we got all done talking about the insurance that we wanted on each individual vehicle and we said that just a blanket thing that we wanted uninsured and underinsured coverage, too. So is that going to come from two different companies or is that the same company selling two different policies? And how are you going to sue...go ahead and answer that question if you would, please. [LB1090]

JIM DOBLER: On that question I think it would be just one insurer. Typically an auto policy will provide the liability coverage, med pay, physical damage on your cars, and uninsured and underinsured motorist coverage all in one policy by one insurer. [LB1090]

SENATOR HANSEN: So if this goes to court, it's going to be the insurance company suing itself for the underinsured policy? Because it sounded like it was two separate policies, isn't that correct? [LB1090]

JIM DOBLER: No. Well... [LB1090]

SENATOR HANSEN: Okay. Now, when Senator Lathrop introduced the bill when he

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was talking about this is a...the uninsured policy is one that you bought and one that you should be able to collect from. [LB1090]

JIM DOBLER: Yes. [LB1090]

SENATOR HANSEN: That sounded like it was two different policies. [LB1090]

JIM DOBLER: Well, my understanding is that your underinsured motorist coverage is a coverage you do buy with your policy. [LB1090]

SENATOR HANSEN: Same company? [LB1090]

JIM DOBLER: Yes, same company. But when someone runs into you, the person that runs into you will be insured by someone else another insurance company. That other insurance company will have their own liability policy to protect that individual, but if the limit of that policy is say, \$25,000 and your injuries are \$50,000, then they would pay their \$25,000 to you and then you would go to your own insurance company to collect your \$25,000 in underinsured motorist benefits. [LB1090]

SENATOR HANSEN: But there are uninsured motorist driving? [LB1090]

JIM DOBLER: Oh, for an uninsured motorist, that... [LB1090]

SENATOR HANSEN: You know, I understand where I need this insurance in North Platte, but when I come to Lincoln I think I really need that insurance (laugh). [LB1090]

JIM DOBLER: Yes. [LB1090]

SENATOR HANSEN: Because there's got to be more of them. [LB1090]

JIM DOBLER: Yeah. No doubt. But for uninsured motorists, the person that runs into you has no policy at all, and so then you go to your own insurer to collect all of your damages from your own insurer, and there is no other insurance company involved, it's just one company. And you're correct, you would make your claim with your own company. Now, when you make that claim, and let's assume your claim is worth \$50,000, and your company writes you a check for \$50,000, that insurance company still has the right to pursue the uninsured driver and recover the \$50,000 that they paid to you. That won't necessarily always happen, but in theory that's out there to do, too. [LB1090]

SENATOR HANSEN: Thank you. [LB1090]

SENATOR PAHLS: Senator Pirsch. [LB1090]

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SENATOR PIRSCH: And this just is a clarifying question and I appreciate if you're able to shed light just on the general process to help my understanding. So Senator Hansen is driving the car and gets into a collision with me and so under this bill the way it's envisioned, I would not have to...Senator Carlson provides my underinsured policy. And so I believe that the claim is worth, you know, \$25,000 and Senator Hansen over there says that he'll, I guess, give me a far less number. So I go to Senator Carlson and the policy would allow me to get all \$25,000 from Senator Carlson here. Now, in the act of subrogation as Senator Carlson then would have a claim, correct, against Senator Hansen? Is that correct? [LB1090]

JIM DOBLER: That's correct. [LB1090]

SENATOR PIRSCH: And that \$25,000, the number that I put on my claim, correct? [LB1090]

JIM DOBLER: Um-hum. [LB1090]

SENATOR PIRSCH: And obviously Senator Hansen never agreed with the \$25,000 to begin with, but even assuming we settled with Hansen for a smaller number, \$10,000, \$15,000... [LB1090]

JIM DOBLER: Yes. [LB1090]

SENATOR HANSEN: If he believes that it's a larger number than \$25,000, is he allowed to go after that than the amount that I put on my own case, the \$25,000? [LB1090]

JIM DOBLER: No. Senator Carlson as the insurer would pay only the damages that you're entitled to. [LB1090]

SENATOR PIRSCH: It would be only the amount of the total. Okay. But if I settle...and understood, if I settled for a lesser amount, say \$10,000, thus requiring him to pay the \$15,000. You see where there's this split. Would that in cases where there's a split, he paid some and I accepted that, the \$10,000, would he only be allowed then to...the \$25,000 I guess is what I'm asking. Isn't that the amount that I valued on it? And so...well, I guess it would be capped by the maximum amount of his out pay then, is that correct? [LB1090]

JIM DOBLER: No, it wouldn't. Let's assume Senator Hansen pays...well, let's assume his liability carrier pays you his limit of \$25,000. And assume that Senator Carlson has underinsured motorist coverage for you of \$50,000. Well, once this money has been paid to you, you have \$25,000 and you think you're claim is worth say another \$10,000, \$35,000, and Senator Carlson says, no, I don't think it's worth anymore than \$25,000.

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Well, eventually that will have to be tried and when it's tried, if the jury awards you a grand total of \$75,000, Senator Carlson is going to pay you the \$50,000 because you've already got \$25,000. And even though that's above his limit, that's what he's going to have to pay. He can subrogate, but he can only subrogate for the amount that he's out in terms of his coverage, which would be \$25,000. [LB1090]

SENATOR PIRSCH: Okay. You've answered my question. Thank you very much. [LB1090]

SENATOR PAHLS: Anymore questions for Jim? Thank you. Good afternoon. [LB1090]

TAD FRAIZER: Afternoon, Mr. Chairman, members of the committee. My name is Tad Fraizer, T-a-d F-r-a-i-z-e-r. I'm appearing as a registered lobbyist here for the American Insurance Association, an organization of property casualty insurers. I think Mr. Dobler has already covered most of the points, the problems with LB1090. And I think some of the questions that the committee has asked him have also brought out some of the other aspects. We'd just kind of like to echo the points he has made. While the proponents claim this will reduce litigation or reduce disputes, I think what this really does is more shift the form of disputes. You're moving it from a dispute with the bad guy, the allegedly negligent driver, over probably more towards, at least potentially, a dispute with your own insurance carrier. Again, removing the barrier of the requirement that you exhaust the bad guy's insurance limits opens the door to more claims in the view of AIA, and will just have people have more claims going against their own insurance, and that can only exert upward pressure on insurance premiums. I think someone said, well, you've paid for your underinsured coverage. Well, you've paid for it in the sense that you've bought it as part of the policy, but you have not paid for it in terms of paying a rate that reflects the increased claims that LB1090 would bring along. Obviously if there are going to be more payouts under underinsured motorist coverage that is going to put upward pressure on the insurance, that particular line of insurance. And while possibly it may even out on a global scale on the individual level of the drivers involved, I think it puts more pressure on the injured drivers making the claim and relieves pressure on the bad guy, the negligent driver. And really one would think that the focus should be at least on recovering from the negligent driver to the maximum extent possible so that if anyone incurs the pain of increased insurance rates, it should be the bad guy rather than the injured driver, which to a certain extent kind of adds insult to injury. And on that basis, just kind of making those points, I'd entertain any questions you might have. [LB1090]

SENATOR PAHLS: I have a question here. It almost sounds like that when the senator, when he explained it to me it seemed like a legitimate way of doing business. By listening to the last couple of opponents, it seems like it's a smoke screen. [LB1090]

TAD FRAIZER: Well, I'd hate to characterize the proponent as raising a smoke screen

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and in some ways I'm sure it makes it easier for the claimants side, the plaintiff side to reach settlements. But it then from our point of view does shift the dispute over to the injured party's insurance. So I think what you possibly, at least from our point of view, what you gain in possible reductions of litigation or costs on one side, you probably shift over to the other. So I'm not sure it does, at least from our point of view, solve the problem to any great extent. And again, as I said before, it kind of takes some of the pressure off the real bad guy or at least who most would perceive as the real bad guy, the negligent driver against who the claim is made in the first place. [LB1090]

SENATOR PAHLS: Well, would you go along with the idea of reducing litigation is good? That part is good. [LB1090]

TAD FRAIZER: As a general rule, yes. [LB1090]

SENATOR PAHLS: Okay. Seeing no more questions, thank you. [LB1090]

TAD FRAIZER: Thank you. [LB1090]

SENATOR PAHLS: Any more opponents? Neutral? That will close the hearing. [LB1090]

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

Banking, Commerce and Insurance Committee  
February 05, 2008

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Disposition of Bills:

LB734 - Advanced to General File, as amended.

LB876 - Held in committee.

LB1090 - Held in committee.

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Chairperson

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Committee Clerk