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Floor Debate
March 10, 2008

[LB18 LB88 LB123 LB268 LB279 LB386 LB500 LB586 LB620 LB623 LB624 LB668
LB715 LB744 LB747 LB750 LB752 LB758 LB768 LB782 LB784 LB790 LB791 LB823
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LB962 LB973 LB988 LB988A LB1014A LB1014 LB1019 LB1055 LB1056 LB1082
LB1092 LB1094 LB1157A LB1157 LR4CA LR252 LR253 LR254 LR267 LR268 LR269
LR270]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-eighth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Pastor Jack Sample from Wood River, Nebraska, guest of Senator Kruse. Would you all please stand.

PASTOR SAMPLE: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Pastor Sample. I call to order the thirty-eighth day of the One Hundredth Legislature, Second Session. Senators please record your presence through roll call. Please record, Mr. Clerk.

CLERK: I have a quorum present, Mr. President.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Enrollment and Review reports LB973, LR4CA, and LB1055 to Select File. A communication from the Governor to the Clerk. (Read re LB123, LB268, LB279, LB386, LB500, LB586, LB620, LB623, LB624, LB668, LB715, LB744, LB747, LB750, LB752, LB782, LB790, LB791, LB823, LB856, LB857, LB896, LB915, and LB925.) That's all that I have, Mr. President. (Legislative Journal pages 871-881.) [LB973 LR4CA LB1055 LB123 LB268 LB279 LB386 LB500 LB586 LB620 LB623 LB624 LB668 LB715 LB744 LB747 LB750 LB752 LB782 LB790 LB791 LB823 LB856 LB857 LB896 LB915 LB925]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Doctor of the day and visitors introduced.) Mr. Clerk, we'll move to first item under legislative confirmation report.

CLERK: Mr. President, the first report by Health and Human Services involves the appointment of Dale Michels to the State Board of Health.

PRESIDENT SHEEHY: Senator Johnson, you're recognized to open on the

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confirmation report from the Health and Human Services Committee.

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. Fellow members, the Health and Human Services Committee reports favorably on the appointment of Dr. Dale Michels to the State Board of Health. The committee held a public hearing on Wednesday, February 6, 2008, to consider the appointment. Dr. Michels appeared in person before the committee and answered questions of the committee. His appointment was approved unanimously by the committee. Dr. Dale Michels is a new appointment to the board. He is a family physician here in Lincoln and past president of the Nebraska Medical Association. Of particular interest to this group, of course, is he is instrumental in starting the Legislature's family doctor of the day program, of which we just had Dr. Stuart Embury introduced. Dr. Dale Michels has a long list of voluntary involvement and accomplishments. Wherever Dale Michels goes, good things happen. I would ask for the confirmation of Dr. Dale Michels to the State Board of Health. Thank you, Mr. Lieutenant Governor.

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the opening of the first legislative confirmation report from the Health and Human Services Committee. Members wishing to speak are Senator White and Senator Lathrop. Senator White.

SENATOR WHITE: Thank you, Mr. President. I rise because of recent news events relating to matters within the jurisdiction of Health and Human Services, specifically the situation that the state faces with the Beatrice Home. I am deeply concerned. First of all, I don't know if all of the members were aware, but in December the federal government, after a year of trying to work with the administration to create and fix the problem, terminated federal funds to this state for those services. That was appealed, so we have a state of grace while we're on appeal. And that is \$28.6 million. So as we move through the rest of this session, I ask you to consider how we are going to replace \$28.6 million because of the manner in which the administration responded to legitimate federal complaints. If you look at the press reports in which the administration responded to the federal government's order, they stated that for the last 90 days, basically since they were told they were going to terminate their funds for not working with them, they've taken the matter very seriously. Why weren't they taking it seriously for the year before that? Forget the fact that the federal standards involve the humane treatment of mentally ill. Just focus on the money. What are we going to do to replace the money, poor administration of an incredibly important program will cost this state? I ask you to also look at what their plan is. The plan, as announced in the press releases, is to cut 100 people out of that facility so it's right-sized. I want everyone in the Unicameral to recognize what the people of Omaha recognize, the homeless, and the problem is overwhelmingly driven by people with mental problems. "Right-sizing" these folks means many of them are going to hit the street, and if they're lucky they'll live in a cardboard box. And they've talked about the ongoing problems. And we had a series of hearings. We had a hearing in Business and Labor Committee over forced overtime,

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regular forced overtime for the employees of the Beatrice State Home. Single mothers being told at the last minute, you can't go home and pick your child up from day care; you have to work a forced 8-hour shift over and over again. And they're faced with either losing their job, losing their day care, destroying their children's lives in the sense of any kind of meaningful communication with their only parent. And we asked the administration about that, and they said, well, we're having trouble recruiting. And we found out that this body had, a long time ago, given them additional money for better salaries, for signing bonuses, for new employees--and the administration won't employ them. And their stated goal in their press release is, even though they are grossly understaffed and everybody knows it, and that's at the root of the problem, their admitted...their plan: We're going to reduce patients to the level of staffing. And they're literally driving staffers away in droves and not using existing appropriations to fix the problem.

PRESIDENT SHEEHY: One minute.

SENATOR WHITE: This is not just a moral crisis, it's also a fiscal crisis. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator White. Senator Lathrop, followed by Senator Avery, Senator Rogert, and Senator Howard. Senator Lathrop.

SENATOR LATHROP: Thank you, Mr. President and colleagues. I stand, taking the opportunity afforded me by this confirmation report, not to stand in opposition or even necessarily in support of the appointment, but to follow up on some remarks of Senator White. I, too, read with dismay the report in the paper on Saturday that the Beatrice Home failed again. They have been given chance after chance, and now we're going to see \$28.6 million in funding, that we knew we were going to lose, we've now lost it, subject only to an appeal. We've lost that. And we could stand here and say, where are we going to find that? Because there are people that we need to provide care for. I've had people in my district talk to me about the importance of the Beatrice center. It is not enough to say we cannot take people with this level of disability and put them into the community. We have to have a place like Beatrice, and we have to pay for it, and now we have \$28.5 million less to do it, so we can consider now where we're going to come up with that \$28 million as we proceed through the balance of this session. And we can talk about it in terms of the money. But I'd like to talk about it for a moment in terms of the souls that are entrusted to our care. We have people who were brought into this world by their parents, who had significant disabilities. And we have folks that stand on this floor, folks that stand outside of this Unicameral to talk about the importance of allowing these people to come into this world, and to have the care, the compassion of the state, and the resources of all of us to provide for these people, and here we are today trying to cut corners in their care. And it is wrong, it is wrong, it is wrong. We must measure our success at the end of the session, not just by how many economic

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development bills we've passed, not by whether we have provided the top end of the income or the corporations tax breaks, but we have to measure our success at the end of this session by whether we've taken care of the most vulnerable people that are entrusted to our care. And they are found at the 24-hour facilities. We have been told, we have been warned, we have seen this day coming, and the changes aren't being made. They're not being made and we need to do something about it in this body. We need to do something about it in the legislative branch. We cannot wait for the executive branch to do it. We will find a way with bills that will come up, people's priority bills, we're going to take care of the Beatrice center and the people in it. It is very clear from a hearing we had in the Business and Labor Committee that a very significant part of this problem is the way we treat the people that work there. We make them work mandatory overtime. These are mothers, single mothers that work there. It's not high-skilled labor jobs. These are low-end pay jobs. We won't give them raises. We fight with them over raises, and now we make them work overtime--mandate it. And we wonder why we have a problem with the people that deal with the folks that are found in these facilities. It is wrong. It is wrong, and we are going to make...I am going to make a change in the way they run that place before we end this session. And it's going to happen on somebody's priority bill, and we're going to provide for...we're going to provide for an end to this mandatory overtime where these poor people have to work...

PRESIDENT SHEEHY: One minute.

SENATOR LATHROP: ...down there until they can't see straight, until they have an attitude about the people they work with and work for. It is wrong. We are going to come up with a solution in the legislative branch to fix the problem. I don't know if it will help us get back the \$28.5 million worth of federal funding we're going to lose, but we are going to do something before the end of this session. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Avery.

SENATOR AVERY: Thank you, Mr. President. I'm not going to address the issue that's currently under discussion. I want to address the confirmation report. I have known Dr. Michels for a long time. He has my unequivocal support for this nomination. He has practiced family medicine in Lincoln for more than 30 years. In fact, I was one of his first patients, and he's been my family physician for most of those 30 years. I know Dr. Michels and I know him well. He's a physician of great skill, a person with caring, a person with good training, a person of moral character and deep faith. His commitment to his community has been demonstrated over and over again by the number of committees on which he has served, the number of hours he has devoted to the community on a volunteer capacity. His commitment to the community, to the state, and to this institution is deep and it is genuine. Many of you know that he started the physician of the day program in this Chamber, and you all know that recently that program demonstrated its value in a recent medical emergency in the hallway. He has

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demonstrated his foresight. He has demonstrated that his vision is of value. He is exceptionally well-qualified for this appointment, and I am proud to cast my vote in support of this nomination. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Avery. (Visitors introduced.) Members wishing to speak are Senator Rogert, followed by Senator Howard, Senator Wallman, Senator Nantkes, and others. Senator Rogert.

SENATOR ROGERT: Thank you, Mr. President. Members, I rise in no opposition to the confirmation report today, but also to take issue with recent developments at the Beatrice Development Center over the weekend. As you know, sitting on the Business and Labor Committee we are afforded the opportunity to address claims against the state. And two bills in the last biennium, LB88 and LB1019, have come to us with many claims against the state regarding the Health and Human Services Department. Senator Lathrop talked about the differences between the money and the people. He talked about the people. I'll talk about the money. Three hundred and forty-eight thousand dollars, \$6,000, \$722,000, all write-offs against the Health and Human Services Department for failure to collect money correctly; \$385,000 for tort claims against the Department of Health and Human Services for sexual assault and other instances that happened on those properties while those people are in our care. I have a region...a developmental region in my area, Region IV. They have a nice facility and they are not full, but it is their intention to grow the business, in my opinion. They have come forth with nearly \$1 million in asking for money to buy two new...buy and build new buildings to increase their budget, increase their property. The board recommended and voted that they did not. They're going around their people and trying to buy it anyway. It is my opinion that the Health and Human Services Department needs to be reined in and reined in now. They are spending money foolishly and doing things that cost us money every day in an inefficient manner. And I stand with Senator Lathrop and White, in our terms, of changing things that go on at those facilities today. Thank you, Mr. President. [LB88 LB1019]

PRESIDENT SHEEHY: Thank you, Senator Rogert. Senator Howard.

SENATOR HOWARD: Thank you, Mr. President, members of the body. I want to thank Senator White for speaking the truth. Mandatory overtime due to chronic staff shortages led to the breakdown of the staff's ability to care for residents. Health and Human Services has simply worn out their staff. It's unrealistic, and I can't tell you how much I dislike that phrase: Do more with less. Health and Human Services has got to be honest about the problem. The need for adequate staff to do the job is essential and can't be avoided. When I was doing direct services, when I was doing case management with Health and Human Services, I had a caseload of 50 children--50 state wards. The recommended caseload size was 12 to 15. It was triage, continual triage. I understand caseloads have gone down, it's gotten a bit better, but we have to be vigilant about this.

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We have a responsibility, a responsibility to those people who are vulnerable, who are dependent upon this state and who count on us to care for them. An extended emergency, quote, emergency condition that mandates disruption of people's lives to address staff shortages is not being honest to the residents, to the staff, or to the public. I urge this body to continue looking at this situation. I appreciate the help that you've given me in the past to work on it, and I'm going to continue, continue to be there to call them into account. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Wallman.

SENATOR WALLMAN: Thank you, Mr. President, members of the body. This BSDC is in my district, and it's a good institution, it has good employees. I think Chris Peterson has only been there a year and she inherited something that was in trouble. And I agree, I don't know how to solve this problem, the so-called right-sizing. I met with parents groups and, do we want to put these kids out, or adults, young adults, old adults? They...some we cannot find a place for them. We closed the hospital down, they did, which saved some money for the state. But this is an issue we have to take care. The people can't take care of themselves. And I really appreciate the support on the floor here this morning. And I am not against this confirmation. I appreciate this confirmation. And thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Nantkes, followed by Senator Gay, Senator Chambers, and Senator Erdman. Senator Nantkes.

SENATOR NANTKES: Thank you, Mr. President. Good morning, colleagues. I rise not in opposition to the appointment that is before us this morning, but rather to add some additional information to this dialogue that has been started by Senator White. From an Appropriations Committee perspective, I thought it might be helpful for the body to have a little bit more information before them. If you look at Agency 25, Program 421, which is the Beatrice State Development Center, you can see that on average our General Fund appropriations hover from around \$16 million to \$19 million a year. There is a few million dollars in cash funds that help to operate that program, and about \$20 million in federal funds come down to help with those operations. So when you're looking at the amount that we're contemplating in a loss of federal funds, upwards to about \$28 million to \$30 million, I want to point out the significance of that number and the dramatic, negative impacts that would have on this program. Additionally, I wanted to point out as a reminder to my colleagues, I had a chance this weekend to go back and review not only some of our committee's work in terms of this issue, but also to look at the Governor's mid-biennium budget adjustments that he presented to this body at the beginning of this session. Colleagues, take a moment, go back, look through this document. There's not one mention of additional resources needed for this serious, serious problem. And knowing the time line, knowing the factors that were at play, why wouldn't this issue rise to at least a mention within the Governor's budget this year? It

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doesn't even deserve one mention, according to Governor Heineman's proposed budget. Overall, I love serving on the Appropriations Committee. I feel that it's a chance to be able to influence so many different areas of public policy. But the most rewarding thing about that service is that I believe our state budget is a moral document. And the priorities that we choose to invest resources within, point to our moral framework as a state and as a body. And when you look at the lack of resources that have been devoted to our most vulnerable Nebraskans, I think you'll all join with Senator White and join with Senator Lathrop, Senator Rogert, Senator Wallman, and the rest of us, and decide it's time to check our moral compass. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Nantkes. Senator Gay.

SENATOR GAY: Thank you, Mr. President. I rise...I hear the problems, we read about the problems in Beatrice, of course. What I'd like to ask is, have you been down there to look at it? Have you offered to help? There are many major issues that need to be corrected, we're all aware of that. But everyone in this body has an opportunity to help out and look into the problem. Things are being done to correct it. And, of course, we don't want to lose that federal funding. These are most vulnerable Nebraskans there are. So, you know, I guess we're looking at this. And I'm just going to take this as an opportunity. If it's something we need to look at on mandatory overtime, then let's all look at that and let's help solve that problem. Beatrice is a small community. It's tough to get employees down there. They've raised the pay. They're trying to do the best they can. And I'm not saying maybe their best isn't good enough right now. It needs to be improved. They're working to do that. But, I guess, what I'd say is the challenge of this, we're all elected to solve problems, not just point them out. I think there are certainly...absolutely, there are things that we need to improve and we need to do it quickly. And that is being worked on. If anyone wants to be updated on this, I'm sure we can get a briefing going and let's get updated on it and get together or work together on this thing. But I understand. Senator Nantkes made an excellent point. Of course, this is...much of the funds we use in human services is federal funds. So we're working closely with them and trying to do a good job, you know. I do believe the current administration they have, the current staff, Chris Peterson is doing a fine job, John Wyvill was recently brought on. He's only been here, I think, six months. So they walked into a mess. Many of us are new here and we don't know all the situation yet. And, I guess, the point I'm trying to make is instead of...we can point it out, but also let's get involved and help out, too. Because I did take...I took time this summer. I went down there with Senator Wallman's invitation, and a group of others, and toured the facility. And absolutely, it could be a better facility. And it will be a better facility, and hopefully soon, of course, for all of us as we talk about the fiscal impact. But you look at all these situations. I guess I'd just say, also this summer and early the end of last year, we're doing a children and family services review right now, which is a very, very important review. People have been invited, senators have been invited, and very few have taken the time to show up to these meetings and help out. That invitation will be coming again,

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and I'd encourage anybody who has an interest in children and family services to be involved in that review. It's going to happen this summer. And I know many of you have taken the time to attend those events, and I appreciate it. But I'd just say there's opportunities here for all of us. You may not be on the committee, but we'd welcome any help at all to help solve these situations. So I guess as we look at this, I don't mind, and I think constructive criticism is a good thing in government. I think it's important we look at these issues and we try to improve them. If it's mandatory overtime that we're spending too much on overtime, then we need to find a solution--I agree. But I guess the point I'm trying to make here is we've got a good group of people in place. I feel confident they're heading in the right direction. I do not think you can change Health and Human Services overnight, but I do believe there's good people working hard to try to do that. And I'm not going to always defend them and saying they're always doing the right thing, because no one does the right thing all the time, but I do think on this case we need to all pull together and...

PRESIDENT SHEEHY: One minute.

SENATOR GAY: ...correct this situation. So if you have concerns or anything, I'd talk to Senator Johnson or I'd talk to any member on the committee. We've all had updates and maybe we didn't do a good job informing you of what's happening. But I guess the offer here is a standing offer of anyone that wants to help. No one is going to turn down help. We appreciate everyone's opinion. And like I say, I guess I'm learning, as a senator you need to get involved. If you've got a problem, go...go talk to that committee and get involved in it. So with that, I'd welcome any further discussion, and I'm interested to hear more about how we can improve the situation in Beatrice which definitely needs to be improved. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Chambers.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I also have no objection to the person whose nomination we are considering this morning. I agree with what has been stated, but I'm somewhat nonplussed at the way people are tap-dancing around the one whose responsibility this is. The constitution places the responsibility directly on the Governor to see that the laws are appropriately enforced. People mentioned the mess at Beatrice. The mess occurred on this Governor's watch. To pretend that this is not scandalous, I think, is a tendency that exists because too many people on this floor are of the same political party as the Governor. The Governor does not see this as a priority, has never seen it as a priority. What was his priority this year? Anti-immigrant. He came and testified before the committee. He heard those people making the outlandish, rude, and even racist outbursts during the hearing--said nothing about it. He called a press conference to further whip up that mobocratic spirit against Latinos. That's the group we primarily are looking at. There was a report on the radio this morning about an upsurge in the number of hate groups and hate crimes

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against Latinos. And it is fueled by the anti-immigration rhetoric utilized and engaged in by various irresponsible politicians. If this were a priority, the Governor would have made it clear. So he didn't call a press conference about this, or if he did I missed any of the media covering it. He has not indicated that Beatrice is in a crisis mode. If the money goes, so what. But all of us who have been here any period of time have seen the Governor talk very strongly about supporting a certain program which was punitive or certain federal funds would be taken. And I don't see that concern about this. The problem, Senator Gay, has been known by the Governor and his administration. I am not prepared to blame those who have just taken the reins for not being able to turn this monstrous problem around overnight. But based on the papers, they have gotten a year, in addition to what others had been given, to solve these problems. I had the former director in my office laying down the law about things happening at Beatrice that ought not to happen. I have been receiving complaints from parents about the way their children were not properly treated, were not properly cleansed. They were left in rooms with people who were doing physically harmful things to them. So I didn't just sit back. But I will never say that I'm going to personally visit all of these institutions where there are problems. That is not our job. We don't have the time to do that, plus our senatorial duties. But if a person, for humanitarian reasons, is going to make time to visit, that is always good. And there should not be an announcement in advance that you're coming. These tours, whether they're at the penitentiary, or any other facility, will give time for everything to be put in order. What you want to observe is the activity that goes on when nobody is going to be watching.

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: Then you have a clear picture. This is supposedly a prolife state, antiabortion. People are told, bring a child into the world, no matter what the condition of that child. So how in the world are we going to allow a facility like this, which deals with the most vulnerable among us, to go begging in the way that this situation has developed. That's why I talk about the hypocrisy of all the talk about embryos and fetuses, but when the full-fledged human beings come into the world, all these prayers in the morning mean nothing. All of the indignation expressed about abortions will mean nothing. We've come to this crisis, and I think that's what it is, and it's ho-hum. All that people want to say, some of them: This is not a time to point fingers. Well, yes, it is. Somebody is responsible and it's the Governor. If things were going well, he would take credit for it.

PRESIDENT SHEEHY: Senator, your time has expired, but you're next in the queue. You may continue.

SENATOR CHAMBERS: Thank you, Mr. President. I was at the Governor's press conference, his anti-immigrant press conference, and I have never seen him manifest publicly such anger and indignation. He said that he doesn't want the taxpayers of

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Nebraska underwriting benefits to which people are not entitled. Well, why isn't he up there with a press conference for these vulnerable people? They're not getting what they are entitled to. So when you put the two positions together, he is so anti-immigrant, which is a federal issue, but he is not tending to what is a state issue, what is a state responsibility. And for this body to shilly-shally, to temporize, to be apologists for a Governor who has failed in his responsibility, I think is inexcusable. And somebody has to focus attention on where the problem is. Now if Beatrice is one of those institutions which is to be put on automatic pilot and let it just lumber and stumble and fumble along, that's different. But we've not been told that that's the nature of this institution. We've been told that there are certain duties, responsibilities, and obligations that the state has to these very vulnerable people and to their families, and I would say to all of society. The cliché, the axiom has taken various forms because a different group will be inserted, but the axiom goes that the way to properly judge the level of civilization or morality of a society is how it deals with its most vulnerable citizens, some people say the most neglected, the most hated, and so forth. But the idea is that the strong are to bear the infirmities of the weak. These are not people who have done something wrong. They are not being punished for inappropriate behavior. And even if they were in a facility where punishment is a part of the regimen, what is happening to these people would be inexcusable, it would be unconscionable. The humanity of these people is being swept aside. The basic human dignity in which every person born of a man and a woman automatically has, by virtue of coming into this world, whether that person is blind, deaf, unable to speak, unable to reason, they have that human dignity attached to them by virtue of being members of the human family. And those of us who are not so afflicted should be considerate enough to...should be concerned enough to make sure that they are not going to be considered throwaways. And no matter what anybody says on this floor as they try to exonerate the Governor, it is on his doorstep that this problem should rest. And there should be pressure brought during this session to get him to do something on this, instead of sniffing around trying to get various members of his party to say we need a special session on the death penalty. Those are his priorities--anti-immigrant, the state killing--but not providing the duty of care to these people. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Members wishing to speak: Senator Synowiecki, followed by Senator Dubas, Senator Chambers, and Senator Erdman. Senator Synowiecki. Senator Synowiecki waives. Senator Dubas.

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor, members of the body. I appreciate the opportunity for us to discuss this issue this morning. I think Beatrice is an extreme example of what is happening with mental health services and issues across our entire state. Community-based mental health services are struggling. I hear from providers across my district on a regular basis, trying to provide the services, trying to take care of the people that they're responsible for without the adequate funding, without the adequate staff. And how do you get people to take these jobs and stay with

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these jobs if we aren't willing to compensate them for the responsibilities we're asking them to carry? These aren't jobs like flipping burgers or anything like that. These are jobs that have a high degree of responsibility and that we need to maintain. We can't afford the turnover that mental health workers are dealing with at this point in time. The responsibilities that these workers carry on a regular basis is just not held in high esteem or regard. We're asking them to take care of the most vulnerable among us, but yet we aren't willing to step up to the plate and provide them the compensation that they so richly deserve. I hear from my providers constantly about how they can't recruit workers, and if they can recruit them, they'll get them trained and they'll be with them for a little while. And then because they can't pay them appropriately, they're off to a job with a lot less stress and a lot more pay. I think these jobs should be held in high esteem. I think these jobs should be paid according to their responsibility and the expectations that we have with them. Money is always an issue. Money is always a struggle, and we have to ask ourselves where our priorities are and where they should go. But I think it's been stated over and over on the floor this morning that we are judged by our record and by how we take care of the least among us. And I think this situation in Beatrice is, as I said, is an extreme example of what's going on. And I hope it's caught our attention as a legislative body, I hope it's caught the executive branch's attention, and I hope it's caught the public's attention. And I hope that everyone will be willing to step up and say this is what we need to do. We need to support these institutions, we need to support the people who are employed by these institutions, and ultimately we need to support the people who are served by these institutions. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Chambers, this is your third time.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I don't see Senator Heidemann. He is the Chair of the Appropriations Committee. I'd like to ask Senator Synowiecki a question.

PRESIDENT SHEEHY: Senator Synowiecki, would you respond to a question?

SENATOR SYNOWIECKI: Yes, of course.

SENATOR CHAMBERS: Senator Synowiecki, are you on the Appropriations Committee?

SENATOR SYNOWIECKI: Yes, Senator, I have been for six years now.

SENATOR CHAMBERS: Was there some money for developmental disabilities and related programs which was vetoed by the Governor?

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SENATOR SYNOWIECKI: Senator, precisely what Senator Dubas was speaking of, that we have some very serious issues in our community-based providers, both with developmental disabilities and in the area of mental health and substance abuse service delivery, both these issues. And, yes, the Governor did veto a portion of the appropriation from the appropriations package...

SENATOR CHAMBERS: Thank you, Senator.

SENATOR SYNOWIECKI: ...of those funds.

SENATOR CHAMBERS: Thank you, Senator Synowiecki. Members of the Legislature, the Governor has known about this problem. They've been given 18 months. The Governor has known; he's been vetoing. He's talking about tax cuts when we have this problem. People are talking about building roads when we have this problem. Senator Dubas is right when she says money is important. It is one thing for us to give lip service to the importance of a job. In this society, the value of something, unfortunately but it's true, is largely determined by the compensation that attaches. I was able to get increases in salary for all of the constitutional officers by making that type of argument--that the value placed on the work is determined to some extent, in the minds of the public at least, by the compensation attached to the job. It's one thing to say we will give people ribbons, we will give them plaques if they work in this very difficult, crying-out area. But they need to be adequately compensated for the work that they do, and the compensation should reflect the attitude that society, through its legislature, indicates is the case. I haven't looked at the Governor's budget. There are too many other issues that I've been involved in, but others have been working with that budget. And I've been waiting for somebody to stand and tell us that the Governor, through his budgeting process, has taken note of a problem that he has known is ongoing and can result in millions of dollars being lost in federal funds, which millions are not going to be made up by this Legislature. But we'll have him trying to twist people's arms on tax cuts and a death penalty special session. That is what this legislative session will be known for. That is more paramount than any other thing. I'm telling you, I've never seen the Governor so angry and blustery as at that press conference over there. And I had pointed out, all he has to do if he thinks there are agencies not complying with the federal law, just call a press conference. All the reporters come and he points them out. There were not members on the floor who heard me question the director of the Department of Labor who gave a bogus \$220,000 figure of money that these people, the 78, would have received.

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: He did not point out how they got that figure. The ones who were involved would have had to make \$11.60 an hour, and yet the testimony had been that these people are taking low-paying jobs and the Attorney General said such as

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cleaning up rooms and washing dishes in a hotel. So he has created bogus figures, accepted them, is whipping up this anti-immigrant hatred when he ought to be trying to appeal to a...I meant to a stratum of compassion that should be in every member of the Legislature. So I'm going to see if there's some way we can find to get some money this session. Maybe it will fail, maybe it will succeed, but something concrete has to at least be attempted. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I rise in support of Mr. Michels' appointment. I think there is at least one individual here today that probably would also overwhelmingly rise in his being alive. Because of Mr. Michels' efforts that the Speaker had pointed out and I think most of us are aware of, one of the individuals that frequents the Capitol is with us today and that's because of his insight in creating the program that we have today, the family physicians program and I think that...or the physician of the day program. And I think that's a fantastic testament of his foresight and vision. The issue that we're talking about independent of his appointment, however, I think is an important one. It's so important that I know for sure that in the last three months the Health Committee has had two briefings with the department on it. We are, too, interested in solutions. We have met with them. They have given us updates on their progress. The Chairman of the Health Committee, Senator Johnson, has worked to ensure that those times were available to us as members, and we have gone through a lot of the issues that were pointed out. We've had briefings not only on Beatrice, but we've had briefings on Hastings. Based on some recent federal censuses or requirements that were handed down that we weren't up to snuff on all 348, we were up on 337 and so we have to make up those 11 deficiencies. But there is a renewed interest, at least from my experience as being a member of the Health Committee, on the staff and the folks responsible for administering these programs. Senator Chambers is right. Ultimately this buck stops at the top. When we reorganized HHS last year, that was one of the driving proposals or rationales for doing it--that there would be accountability, not only within the agency but directly to the Governor. He asked for the accountability and now he's going to get it. But the standpoint I think follows with what Senator Gay has also said. Nobody that's stood up here today has defended anything that's going on there, in my opinion. Quite the contrary. Everybody wants a solution. The reality is, is that we want it to be more than words. And the conversations that the committee, at least, the Health Committee has been having with the department gets us closer to those solutions, and they are difficult tasks to solve. They potentially have impacts on us financially. They potentially have impacts on our public policy in general. And Senator Howard has attended those briefings and expressed her concerns in those briefings. So from the standpoint of what we're doing here, I think the words are great. But I think all of us expect action. I think the action team that the department has put in place, they've brought in experts from outside the state that have experience in these areas to make sure that the citizens and the residents of those facilities have their

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interests and their protections first and foremost at the front of the conversation. They are the ones advising the department on how to go forward, and I think that's a responsible move by the department. I'd have no idea who made that decision, but I think it was a wise one. The issue also that Senator Rogert brought up I think is a valid one. If you go back and look at some of the claims that were brought forth by the department under the reorganization scheme last year that came to light, some of them dated back to 1994. Some of those were unclaimed issues that went back as far as then. Some of the ones that he specifically mentioned were a part of the Beatrice facility, but they dated back beyond this administration, the previous administration, and even administrations before that. So there are global problems here, and there need to be global solutions. There are folks that are looking at this. And as Senator Gay pointed out, members of the committee have heard their proposals, but again, let's solve the problem by empowering them to make the solutions that they need. Actions will speak louder than words. And I think those of us on the committee are beyond the words that we've heard, and we're looking for the actions to resolve the problem. And I'm hopeful that whether it's through the legislative body or whether it's through the committee and through working with the department directly, or whether it's through the individuals that Senator Wallman has met with, and Senator Wallman and the department...

PRESIDENT SHEEHY: One minute.

SENATOR ERDMAN: ...have actually gone to Beatrice and met with the family members of those that are currently at Beatrice facility to make sure that they're aware of what the conditions and the situations are and to allow for feedback and dialogue. That's new, but that's essential to a solution. And so while it's great to get up and talk about it, again, we need to see actions and I think that's appropriate. And if there is an interest, I hope there will be follow-through, not only with us, but with the department and with the Governor. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Howard.

SENATOR HOWARD: Thank you, Mr. President, members of the body. I offer my time to Senator Chambers.

PRESIDENT SHEEHY: Senator Chambers, you are yielded five minutes.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I have some favorite passages, some favorite stories from the Bible. One of my favorites involves a Roman centurion coming to Jesus and telling him--and I paraphrase a lot when I tell these stories--he knew the work that Jesus had done in healing people, raising dead people. And he told Jesus, I have a servant who is sick and I want you to heal him. So Jesus said, well, take me to your house. And this centurion said, that won't be necessary. He said, I am a man set under authority. I say to this one, come and he

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comes. I say to that one, go and he goes. I say to the other one, do this and he does it. You don't have to come to my house. You just say the word and the job is done. In other words, he was recognizing a certain authority that Jesus had. The Governor is not a member of the Legislature. The Governor does not need 24 other people to vote with him to succeed in having legislation enacted into law. The Governor is not the head of an agency, code or otherwise. The Governor is the one set under authority. He says to this one go, and he or she goes. To this one come, he or she comes. I want that done and it will be done. If it's not done, it's because the Governor does not want it done. And when I say does not want it done, I don't mean he has consciously said, I want this neglect to occur. But what I'm saying, since he knows and has known that the problem exists and has chosen to take no gubernatorial action that could get some action underway of the kind Senator Erdman touched on, it indicates to me that you can ascribe to him an intent not to do the right thing. The law, from circumstances, will attribute to a person an intent to kill without proving an actual intent, will attribute knowledge without establishing there was actual knowledge. When it comes to an issue as serious as this that has been going on so long that some people in the Governor's administration have tried to address it and still nothing from the Governor's Office except deafening silence, something is wrong with the captain of the ship. In The Caine Mutiny, Captain Queeg was a man who had lost his way mentally. Is there a Captain Queeg captaining this ship of state? What Captain Queeg allowed to do was his ship to go in a circle and cut a cable that was pulling a target that was to be a part of some kind of exercise. Has the Governor guided this ship in a circle and it has cut a cable which could be considered a lifeline to Beatrice? He simply has not cared. He has been too busy, as was Captain Queeg, trying to find out who stole some strawberries. Anti-immigration. Is that the equivalent of the strawberries? Special session on the death penalty. Is that the strawberries? While the main duties of the captain go begging.

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: I would make a deal with the Governor. Let him not appoint me acting Governor--he can't do that--authorize me to exercise the powers of his office and tell him what I think he ought to do and he'll carry it out and you will see some of these problems solved. His office can cut through these problems like a hot knife through butter. He can move through these problems in the same way that Sherman marched to the sea. And Senator Pankonin can help you all with that if you are not sure what I am referring to. I say again, we as a Legislature should assume some responsibility and do something this session. Thank you, Mr. President. Thank you, Senator Howard.

PRESIDENT SHEEHY: Thank you, Senator Chambers. (Visitors introduced.) Seeing no additional lights on, Senator Johnson, you're recognized to close on your first confirmation report.

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SENATOR JOHNSON: Thank you, Mr. President. And you may have announced this as well, but I didn't hear it, we were going to have a Health Committee Executive Session at 11:00, and we will have that this afternoon. At any rate, this has really been a great discussion and I think the members of the Legislature are to be commended for this discussion. It is our duty. One of the things is this, and the Beatrice situation illustrates it as well as anything, is that we are going from the traditional institutional setting, similar to what we had with the mental health process in Nebraska. And so as we make this change, we have had problems with our mental health system as we have reoriented, and we are having the same problem here. I think the most encouraging thing that we have in this whole situation is Chris Peterson, who, of course, is the head of HHS, working with the other officials. The attitude that they have taken in working with our federal officials is one of cooperation, not confrontation. And so hopefully this will result in accomplishing what all of us want to accomplish. One last thing, and that's this, is I think if nothing else that we've seen here this morning it is imperative that we, as a Legislature, not this year but for years to come, remember that we are a separate but equal branch of government, and we must demand that things be done correctly as well. With that, I think that there's no question that Dr. Dale Michels is a wonderful addition to the State Board of Health and would highly recommend him to the body. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the closing. The question before the body is on the adoption of the first legislative confirmation report from the Health and Human Services Committee. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 881-882.) 46 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

PRESIDENT SHEEHY: The first confirmation report is adopted. Next report, Mr. Clerk.

CLERK: Mr. President, the Health and Human Services Committee reports on two appointments to the Commission for the Blind and Visually Impaired.

PRESIDENT SHEEHY: Senator Johnson, you're recognized to open on your second confirmation report.

SENATOR JOHNSON: Thank you, sir. The Health and Human Services Committee reports favorably on the appointment of two persons to the Commission for the Blind and Visually Impaired. The committee had a public hearing on Thursday, February 7, to consider these appointments. The appointees appeared via telephone or in person before the committee and answered the questions responsibly. The appointments were unanimously approved by the committee. The nominees are Julie Johnson, a new appointment for a four-year term. She is from York, Nebraska. She is self-employed

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business owner who specializes in the equipment for guide and service dogs. She has been a mentor through the Nebraskans Empowering the Blind program, a member of the National Association of Guide Dog Users, and a member of the National Federation of the Blind-Nebraska. The second person is Wesley Majerus. He is a new appointment, four-year term. He is from Lincoln. He is employed by the state of Nebraska in the Office of Chief Information Officer. He is a member of the National Federation of the Blind-Nebraska and was recently elected the second vice president for that organization. Mr. President, I would strongly urge that the body approve these nominations.

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the opening to the second Health and Human Services Committee confirmation report. Are there members wishing to speak on these confirmations? Seeing none, Senator Johnson, you're recognized to close. Senator Johnson waives closing. The question before the body is on the adoption of the second confirmation report. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 882.) 38 ayes, 0 nays, Mr. President, on adoption of the report.

PRESIDENT SHEEHY: The second confirmation report is adopted. Next report, Mr. Clerk.

CLERK: Mr. President, Health and Human Services reports on a series of appointments to the Child Abuse Prevention Fund Board.

PRESIDENT SHEEHY: Senator Johnson, you're recognized to open on your third confirmation report from the Health and Human Services Committee.

SENATOR JOHNSON: Again, thank you, Mr. President. Yes, indeed, we did have five appointments to the Child Abuse Prevention Fund Board. The committee held their meetings, the public hearings on February 6 and February 20 to consider these appointments, and again all appointees either were heard by telephone or directly at the committee. Again, all of the appointments were approved unanimously. These are the appointments: Tawanna Black, a new appointment to a three-year term. She is from Omaha where she serves as the director of diversity for Cox Communications. She has served as a foster home recruiter in Kansas and a local foster care review board in Nebraska, is an active volunteer in her community. Rebecca Brown, a new appointment for a three-year term. She is from Lincoln. She is also a pastor of the East Lincoln Christian Church. She is a graduate of Benson High School; Lexington, Kentucky, Theological Seminary; and she is a board member of the Child Savings Institute in Omaha. Patricia Madsen, a reappointment for a two-year term. She is from Stuart, Nebraska; a former teacher; now is a field trainer for Nebraska Career Connections;

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born in Lincoln; did graduate from Spencer-Naper High School and the University of Nebraska-Lincoln. Fourth, Sandra Markley, a new appointment, three-year term. She is from Omaha. She's a Deputy Sarpy County Attorney; lead attorney for juvenile court diversion there...or the division there. She is a graduate of Wayne State College; University of Nebraska College of Law; currently serves on the Douglas-Sarpy Truancy Task Force; and she is a local team secretary and advisory board member for the Through the Eyes of a Child Initiative of the Nebraska Supreme Court. And lastly, Parrish McDonald, a new appointment, three-year term. She is an elementary school teacher in Lincoln; court appointed special advocate; she's a volunteer in Girl Scouts and many other community activities. Mr. President, I would ask that the Legislature confirm all five of these appointments: Tawanna Black, Rebecca Brown, Patricia Madsen, Sandra Markley, and Parrish McDonald. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Johnson. You've heard the opening to the third legislative confirmation report from the Health and Human Services Committee. Are there members wishing to speak on this report? Seeing none, Senator Johnson, you're recognized to close. Senator Johnson waives closing. The question before the body is on the adoption of the third confirmation report. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 882-883.) 33 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

PRESIDENT SHEEHY: The third confirmation report is adopted. (Visitors introduced.) Mr. Clerk, we will move to the next confirmation report.

CLERK: Mr. President, the Education Committee reports on three appointments to the Coordinating Commission for Postsecondary Education.

PRESIDENT SHEEHY: Senator Raikes, you're recognized to open on your first Education Committee confirmation report.

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. The Education Committee encourages the confirmation of reappointments of Timothy Hodges, Mary Lauritzen, and Richard Uhing to the Commission for Postsecondary Education. If confirmed, the terms of each of these members would extend through January 1, 2014. Mr. Hodges hails from Gretna and he's the director of research and graduate credit for the Gallup Organization in Omaha, a position he has held since 2003. He was the director of human resources at Gallup from 2002-2003. Mr. Hodges has earned a bachelor's and a master's degree and is currently working toward a doctorate degree from the University of Nebraska-Lincoln. His resume' lists a number of academic publications as well as a variety of public service experiences. He currently serves as a member of the entrepreneur advisory council at Metropolitan Community

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College and on the board of the Gallup Federal Credit Union. Ms. Lauritzen is from West Point. She's the office manager at the Family Vision Center, P.C., in West Point, a position she has held for the past 22 years. Prior to that she was the marketing director for six years at the First National Bank of West Point. Ms. Lauritzen holds an associate's degree from the Ray-Vogue schools in Chicago. She has been involved in a number of professional and community organizations, including the Auxiliary to the American Optometric Association, the Nebraska Foundation for Children's Vision, and the American Cancer Society. She has also been active in conducting vision screenings for the West Point Public Schools as well as the Head Start Programs in Dodge and Cuming counties. The committee's final appointee is Richard Uhing from Norfolk. He is president of Norfolk Beverage, a company he has worked for since 1982. Mr. Uhing earned an associate's degree from Northeast Community College, along with a bachelor of science degree from Chadron State College, and an M.B.A. from Wayne State College. He, too, has been involved in a number of organizations including Nebraska Beer Wholesalers, the Norfolk Area Chamber of Commerce, and as a volunteer for the Norfolk Family YMCA. In the way of background, the Coordinating Commission is the constitutional entity charged with coordinating Nebraska's higher education system. The commission consists of 11 members, six of whom are chosen from districts of relatively equal population with the other five appointed from the state at large. Mr. Hodges is the representative for District 4; Mr. Uhing is the District 3 representative; and Ms. Lauritzen is an at-large member of the commission. I encourage the support of these confirmations. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Raikes. You have heard the opening to the first confirmation report from the Education Committee. Are there members wishing to speak on this confirmation? Seeing none, Senator Raikes, you're recognized to close. Senator Raikes waives closing. The question before the body is on the adoption of the first confirmation report. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 883-884.) 35 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

PRESIDENT SHEEHY: The confirmation report is adopted. Next report, Mr. Clerk.

CLERK: Mr. President, Education Committee reports on the appointment of Michelle Suarez to the Board of Trustees of the Nebraska State Colleges.

PRESIDENT SHEEHY: Senator Raikes, you're recognized to open on your second Education Committee confirmation report.

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. The Education Committee encourages the confirmation of the appointment of Michelle

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Suarez to the Board of Trustees of the Nebraska State Colleges. If confirmed, Ms. Suarez's term on the board would extend through January 1, 2009. Ms. Suarez is from Lincoln. She is the principal at Calvert Elementary School, having served in that position since 1997. Prior to becoming principal at Calvert, she was a coordinator at the Beattie Elementary School which is also in Lincoln. She began her teaching career as an instructor in the Nebraska Summer Migrant Schools Program in her hometown of Scottsbluff, which was followed by stints as a first grade teacher at Wilber-Clatonia and an elementary teacher at Beattie prior to beginning her role as a coordinator there. Ms. Suarez earned her bachelor's degree in elementary education from the University of Nebraska-Lincoln, graduating with distinction. She also holds a master's degree from UNL in educational administration. She is active in a number of community organizations, including the Lincoln Public Schools Foundation and the Friendship Home. In the way of background, the Nebraska State College System is comprised of three colleges: Chadron State, Peru State, and Wayne State. Collectively, these colleges serve approximately 8,000 students. The board of trustees is charged with the general governance of the State College System. The board consists of seven members, six of which are appointed by the Governor for six-year terms. The Commissioner of Education serves on the board in an ex officio capacity. With that, I'll close and encourage confirmation. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Raikes. You've heard the opening to the second confirmation report from the Education Committee. Are there members wishing to speak on this report? Seeing none, Senator Raikes, you're recognized to close. Senator Raikes waives closing. The question before the body is on the adoption of the second confirmation report. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 884.) 35 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

PRESIDENT SHEEHY: The second confirmation report is adopted. Mr. Clerk, do you have items for the record?

CLERK: Mr. President, your Committee on Revenue, chaired by Senator Janssen, reports LB784 to General File with amendments and LB758 as indefinitely postponed. Senator Howard would offer LR267, Mr. President, and that will be laid over. That's all that I have at this time. (Legislative Journal pages 884-885.) [LB784 LB758 LR267]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to the first item under General File.

CLERK: Mr. President, LB1014A by Senator Ashford. (Read title.) [LB1014A]

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PRESIDENT SHEEHY: Senator Ashford, you're recognized to open on LB1014A.
[LB1014A]

SENATOR ASHFORD: Thank you, Mr. President and members. Last week, we advanced LB1014, which is for the most part a judges' bill, and this is the A bill that accompanies LB1014. The A bill appropriates from the General Fund \$34,724 in FY '08 and '09, and \$31,724 in '09-10, to the Supreme Court for hiring and equipping part-time administrative staff to review and administer the mediation portion of LB1014. There is also a one-time Cash Fund appropriation of \$7,500 to make computer programming changes to allow for the tracking of court referrals to mediation and alternative dispute resolution...for alternative dispute resolution. AM2216 to LB1014A also had an A bill, has an A bill. It was due to the adoption of AM2107. The amendment appropriates from the Public Advocacy Operations Cash Fund \$6,000 for fiscal 2008-09, and \$1,000 for 2009-10 to the Commission on Public Advocacy. The commission estimates \$6,000 in one-time start-up costs for the Legal Education for Public Service Loan Repayment Board to develop rules and regulations. And the operating costs are estimated at a very small amount, \$1,000 per year. And just to refresh the memory of the body, this fund would be a privately funded fund set up in the commission to help defray the costs of legal education for individuals who go in to work in nonprofit agencies. So with that, Mr. President, I would urge the adoption of the A bill and AM2216. Oh, I guess AM2216 to the A bill, sorry. [LB1014A LB1014]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the opening to LB1014A. As noted, there is an amendment. Mr. Clerk. [LB1014A]

CLERK: Mr. President, Senator Ashford, AM2216, it's your amendment, Senator. (Legislative Journal pages 885-886.) [LB1014A]

PRESIDENT SHEEHY: Senator Ashford, you are recognized to open on AM2216.
[LB1014A]

SENATOR ASHFORD: I'm sorry, Mr. President. I did include both in my opening so thanks. I would just urge the adoption of AM2216. [LB1014A]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the opening to AM2216. Are there members wishing to speak on this amendment? Seeing none, Senator Ashford, you are recognized to close. [LB1014A]

SENATOR ASHFORD: I'd waive closing. [LB1014A]

PRESIDENT SHEEHY: Senator Ashford waives closing. The question before the body is on the adoption of AM2216 to LB1014A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1014A]

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CLERK: 30 ayes, 0 nays, Mr. President, on adoption of the amendment. [LB1014A]

PRESIDENT SHEEHY: AM2216 is adopted. We will return to discussion on LB1014A. Seeing none, Senator Ashford, you're recognized to close. Senator Ashford waives closing. The question before the body is, shall LB1014A advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1014A]

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB1014A. [LB1014A]

PRESIDENT SHEEHY: LB1014A does advance. We'll move to next item under General File. [LB1014A]

CLERK: LB853 introduced by the Banking, Commerce and Insurance Committee and signed by its members. (Read title.) The bill was introduced on January 11, referred to the Banking, Commerce and Insurance Committee, advanced to General File. I do have Banking Committee amendments pending, Mr. President. (AM1780, Legislative Journal page 530.) [LB853]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Pahls, you're recognized to open on LB853. [LB853]

SENATOR PAHLS: Good morning, Lieutenant Governor and members of the body. LB853 was introduced by the Banking, Commerce and Insurance Committee at the request of the director of the Department of Insurance. As introduced, LB853 proposed a number of changes in Nebraska's insurance statutes. LB853 would update Nebraska's version of the National Association of Insurance Commissioners Viatical Settlement Model Act. The model and these updates have been developed with extensive input from the viatical settlement industry and the life insurance industry. The bill would amend our act to add important new consumer disclosure requirements for viatical settlement brokers and providers. The bill would extend the time within which a viator has the right to rescind a viatical settlement contract from 15 calendar days to 30 calendar days. The bill would require viatical settlement providers to submit advertising materials through the Department of Insurance to allow for enforcement of the prohibition against advertising that refers to free insurance. But most significantly, the bill would increase the amount of time before a policy can be viaticated from two years to five years, but with some very important exceptions in place. This particular change is intended to counteract an emerging and disturbing business practice called stranger-originated life insurance called STOLI. Generally speaking, STOLI is a life insurance arrangement in which speculators who have no relationship to the individual, usually an older individual, initiate an insurance policy on the life of the individual and fund the premium payments for investment purposes and circumvent the intent behind our state's insurable interest laws. STOLIs transactions are traditionally defined as life

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insurance policies manufactured for the purpose of selling in the secondary market. It is important to note that the bill contains a series of exceptions which would allow a person to enter into a viatical settlement contract within the five years after issuance for legitimate traditional reasons that do not involve manufactured transactions. The bill doesn't ban viatical settlement contracts. This can still happen as always. The bill only provides viatical settlement contracts involving manufactured transactions which are subject to a five-year waiting period with some exceptions. So the claim by opponents that the bill interferes with property rights is designed to distract us from what really is going on in the marketplace and why the bill is necessary to address it. I want you to consider some of the supporters of the bill. Consider who is actually in support of this bill--well, life insurance companies and life insurance agents. Those are the people who sell life insurance policies for traditional legitimate purposes. Why would those individuals oppose insurance transactions unless those transactions threaten the health of the life insurance market? I'll give you one example--Pacific Life. We have received support for LB853 from Pacific Life Insurance Company, which is a major life insurer domiciled in Nebraska. Tom Mays, a vice president of Pacific Life, sums up why LB853 is an important bill and deserves your support. He writes in part: The model act effectively addresses viatical settlements while protecting life insurance taken out to benefit individuals, families, business, employees as well as legitimate life settlements. Pacific Life recognizes and supports the right of our policyholders to sell legitimate life insurance policies in the secondary market. Policyholders often have compelling reasons to sell their life insurance programs. Our concern is not with the settlements involving the insurance policies that were purchased consistent with the intent of insurable interest laws. Rather, we strongly oppose those who want to corrupt the legitimate settlement market with contrived arrangements that circumvent these laws. The NAIC Viatical Settlement Model Act represents a balance of interest between allowing policyholders to settle for legitimate reasons and preserving the integrity of state insurable interest laws. It also allows for state uniformity. The industry is currently working to enact an NAIC model in all states in order to have a uniform law. Another group that backed this: LB853 received strong support at the public hearing from Jim Hall, who represents the American Council of Life Insurance, ACLI. Here is some of what he had to say: A fundamentally important principle of life insurance since the eighteenth century is insurable interest. Insurable interest stands for the proposition that at the time that a life insurance policy is issued, the person who buys the policy must have a lawful and substantial economic interest in having the life of the individual insured to continue. Unfortunately, the insurable interest doctrine is being turned on its head by the third-party investors today. These schemes are increasing in number and sophistication, and they require immediate action on the part of public policymakers to protect our senior citizens from the real and hidden perils of such transaction. For example, seniors may face unexpected taxes and fees, loss of insurance capacity, and loss of privacy. In addition, promoters of these schemes may induce seniors to mislead insurers on policy applications. A stranger-originated life insurance transaction, or STOLI, is a transaction where an investor, a life settlement company or their agent

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approaches a consumer and convinces the consumer to purchase life insurance on himself with the promise of free insurance and money to be made. The insured is often paid a fee up front in order to participate in the transaction. The insurer may also be promised that his or her beneficiaries may receive a small portion of the policy proceeds. The elderly consumer obtains a nonrecourse loan that is arranged by the life settlement company. The loan usually carries a very high interest rate and is usually scheduled to mature very soon after the current law's two-years life settlements moratorium in the state's viatical settlement laws. The life settlement company then assists the individual in selling their policy to financial investors, who repay the loan in exchange for ownership of the policy. A STOLI transaction is in effect in an arrangement where an investor, a stranger to the insured, owns the right to receive the death proceeds. The only way to recover the investor's money is for the insured to die. The ACLI is opposed to STOLI transactions because of their potential negative impact on the Nebraska life insurance market and on the availability and affordability of life insurance for older Nebraskans. One of the most important provisions of LB853 is the proposed addition of a strictly five-year moratorium on life insurance settlements such as these that are initiated by investors, ultimately for their own profit, not for the benefit of the insured and their beneficiaries. The bill targets these transactions without adversely impacting consumers' ability to sell policies that were purchased for legitimate financial protections purposes but are no longer wanted or needed. For example, the bill allows policyholders to sell their policies at any time if they experience a change in life circumstances, such as an illness, loss of employment, divorce, or death of the intended beneficiary. Additionally, the two-year settlement moratorium found in existing law would be preserved for most policies purchased; that is, those where the policyholders who use their own assets or traditional premium financing to purchase. Another group that supported this was the National Association of Insurance and Financial Advisors of Nebraska. This is some of their comments. Terry Headley, representing the National Association of Insurance and Financial Advisors, with 1,200 members in Nebraska, part of his testimony was as follows: These arrangements erode principles designed that life insurance is used to protect the long-term interests of parties associated with the insured, such as family, business, business associates and/or charities. NAIFA, in conjunction with the life insurance... [LB853]

PRESIDENT SHEEHY: One minute. [LB853]

SENATOR PAHLS: ...thank you...industry has consistently opposed the loosening or circumventing of state insurable interest laws to permit those who do not or should not enjoy such an interest to take out insurance on the insured, directly or indirectly. It is becoming common practice to take out life insurance policy with resources provided or guaranteed by those who have no interest in the insured and who expect to control the ownership of these policies in the future. In conclusion, this bill has received a broad range of support with regard to stranger-originated life insurance. It targets only manufactured transactions designed to circumvent long-established insurable interest

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principles in the state of Nebraska. I urge you to advance and pass LB853. [LB853]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Mr. Clerk, you have items for the record. [LB853]

CLERK: Mr. President, just an announcement. Appropriations Committee will have a brief Exec Session in Room 2022 now; Appropriations in 2022 immediately. Thank you. [LB853]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Visitors introduced.) You have heard the opening to LB853. At noted, there is a Banking, Commerce and Insurance Committee amendment. Senator Pahls, you're recognized to open on AM1780. [LB853]

SENATOR PAHLS: Thank you, Lieutenant Governor and members of the body. The committee amendments to LB853, is AM1780, are actually very short. The committee amendments would simply strike from the bill all of the sections which do not deal with viatical settlements. Those other sections have been combined with the provisions of two other bills, LB854 and LB855, which were introduced by all of the members of the Banking, Commerce and Insurance Committee at the request of the Director of Insurance. Those combined provisions are in LB855. So, as amended by the committee amendments, LB853 would contain only its provisions regarding viatical settlements. There are a couple of pieces of information I'd like to address you to. On your desk you should have received four pieces of information from me. I'm asking that you do take the opportunity to read those, but right now I want to draw your attention to one. At the very top in broad print is "LB853." If you now have the opportunity to take a look at that, please, I want to explain to you, because basically this is a very, very simple law in some ways. And just the point of contention with a lot of people, I think we can be...be cleared up here a little bit. Current law says, two years after any life insurance policy is issued, you can sell it to an investor who will collect upon your death. Right now it says that, and below that it shows the exceptions: terminal or chronic illness, death of a spouse, divorce, retirement, disability, bankruptcy. That's in law right now. Now under LB853, if you can follow along, that two years still stays there. The part that we are interested in is to stop some of the problems that we see possibly, if not now, in the future, is the five year. After any policy is issued, you can sell it to an investor who will collect upon your death unless one of the exceptions above applies. So those same exceptions: terminal or chronic illness, death of a spouse, divorce, retirement, disability, and bankruptcy. The problem with some of the people on the other side is they don't want to see that move from two years to five years. Well, the reason why we want to move it from two years to five years is because they know they can't make any money on it if you die. It's that simple. They want to sell you the policy and hope you die before two years. If we say, no, we're going to have it five years, that means they lose. They don't want to invest in it. It's that simple, people. They want you to die. Our current laws state that we want you to live. There's a reason why we have insurance. So that's one

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reason why we're probably very concerned about this. And one thing I want to point out is the Director of Insurance is standing outside, so if you have any questions that really get in deep detail, she's willing to provide those answers. She sees this as a very important piece of legislation. Her role is to protect the consumer, and she has worked for quite some time on this legislation. She has worked with the past director, and currently is the director. And if you read, she also provided some information, questions and answers, and her responses. Very good information here. With that, I will conclude my remarks. [LB853 LB854 LB855]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You have heard the opening to the Banking, Commerce and Insurance Committee amendment, AM1780. Members wishing to speak: Senator Lathrop, Senator Carlson, Senator Pirsch, Senator Louden, Senator Langemeier, and Senator McDonald. Senator Lathrop. [LB853]

SENATOR LATHROP: Thank you, Mr. President, colleagues. I'm wondering if Senator Pahls would yield to a few questions. [LB853]

PRESIDENT SHEEHY: Senator Pahls, would you respond to questions? [LB853]

SENATOR PAHLS: Yes, I would, Senator Lathrop. [LB853]

SENATOR LATHROP: Senator Pahls, I'd like to begin our conversation on this bill by clarifying exactly what we're regulating here. We have an industry that has grown up sort of related to the life insurance business, have we not? [LB853]

SENATOR PAHLS: Yes, life settlement. [LB853]

SENATOR LATHROP: And we have obviously everybody understands life insurance. You go to a State Farm or Mutual of Omaha or Pacific Life and you buy a policy, and they insure and customarily pay your family upon your death, and that's the protection you get primarily while you're raising your family. Is that right? [LB853]

SENATOR PAHLS: Yes, the insure (inaudible). [LB853]

SENATOR LATHROP: Okay. All good so far. The viatical settlements which you want to regulate with this bill is grown up actually since the AIDS epidemic. Am I right? [LB853]

SENATOR PAHLS: It's true. That's where it all originated. [LB853]

SENATOR LATHROP: And so what happened during the AIDS epidemic is that these viatical companies began to buy up the life insurance policies from people that had AIDS who essentially and typically were middle-aged men who said, I don't have anybody to leave it to, I need the money for healthcare, I'm going to sell my policy to a

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viatical company to pay for my AIDS medication. Would that be kind of the history of the viatical settlements? [LB853]

SENATOR PAHLS: That would be the history and even in our current law that could still happen, with the exceptions. [LB853]

SENATOR LATHROP: Yeah, I'm not after the...I'm just trying to give a little bit of history here... [LB853]

SENATOR PAHLS: Okay. Okay. [LB853]

SENATOR LATHROP: ...so we have some context for your bill. So what, of course, what happened is this expanded beyond AIDS patients and there is now a market for people to sell their life insurance policies and it's to viatical settlement companies. Is that right? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LATHROP: And if I own a health...if I own a life insurance policy, I have two alternatives. If I buy it, I want to protect my family in the event of my untimely death. While my kids are young I buy a policy, it's a whole life policy and it's going to generate some cash value, is it not? [LB853]

SENATOR PAHLS: Yes, it is. [LB853]

SENATOR LATHROP: And the cash value is customarily, almost universally, a lot less than the death benefit. Am I right? [LB853]

SENATOR PAHLS: I would say significantly. The cash surrender would be significantly less than the death benefit. [LB853]

SENATOR LATHROP: Okay. So if I reach the age at which I'm now an empty nester, my kids are gone, and let's say that I'm divorced and I don't have anybody to leave this money to and I have a need. Say I'm sick or I want to travel the world and I want to turn this life insurance policy I've been paying all these years to protect my kids, I want to turn it into cash. I have two choices. One is to turn it back to the life insurance company for the cash surrender value,... [LB853]

SENATOR PAHLS: Right. [LB853]

SENATOR LATHROP: And the other is to sell it to a viatical company. [LB853]

SENATOR PAHLS: Yes. [LB853]

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SENATOR LATHROP: And generally, I'm going to make more trying to sell my policy to a viatical company than the life insurance company is going to pay me for my cash surrender value. [LB853]

SENATOR PAHLS: And I would encourage you to do that. [LB853]

SENATOR LATHROP: Okay. Yeah, I'm not...haven't...I'm not arguing with you about it. I'm just trying to... [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LATHROP: ...trying to explain the...maybe the economic realities of how the viaticals came into existence. Because the life insurance companies pay the cash surrender value, if you want, out of one of these things after you've been paying on it awhile, but the viaticals essentially say we're going to do the actuarial math backwards and figure out when we expect you to die. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LATHROP: True? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LATHROP: Yes? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LATHROP: Okay. And so they're doing the same math that the life insurance company is, except they're saying I'm going to buy these policies... [LB853]

PRESIDENT SHEEHY: One minute. [LB853]

SENATOR LATHROP: ...and pay the owners, pay the owners some amount of money so that they get more money instead of the cash surrender value and these people then wait for, essentially, for someone to die. [LB853]

SENATOR PAHLS: Right. But if you can recall Pacific Life, they said they have no problem with the secondary market. [LB853]

SENATOR LATHROP: Oh, I'm just trying to explain what the secondary market is. I'm not going to get this done in 5 minutes. [LB853]

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SENATOR PAHLS: I hear you. [LB853]

SENATOR LATHROP: (Laugh) It's a little more complicated than that. But I wanted to try to at least...at least on my first attempt at the mike, to give a little background on the secondary market. So far, so fine, and Pacific Life is okay until we get into something called a STOLI. Is that right? [LB853]

SENATOR PAHLS: Correct. [LB853]

SENATOR LATHROP: Okay. And maybe what I'll do is next time I have an opportunity to speak, you and I can talk about the STOLI and what makes that different than simply selling my policy in the open market as Pacific Life and Mutual of Omaha are perfectly happy with. [LB853]

SENATOR PAHLS: Thank you. I appreciate that. [LB853]

SENATOR LATHROP: Okay. Thank you. [LB853]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Carlson. [LB853]

SENATOR CARLSON: Mr. President and members of the Legislature, I rise in full support of LB853 and AM1780. Life insurance is a wonderful product. It serves the public good. It's done this for many, many decades. I have been in the business as an advisor and an agent in the life insurance business for over 30 years. The life insurance industry was built on the premise of insurability and insurable interest. And in insurable interest, an owner and beneficiary must have an insurable interest in the insured, the person that's covered by the life insurance policy. I think it's good to reflect on why we have life insurance, and I think basically there are three reasons. The first one is the love of family and wanting to take care of family if something happens to me, and this manifests itself in some areas of estate planning. It might involve covering debt so that if I die the debts can be paid. It might involve creating wealth because I don't have a lot of assets but my life insurance will create some wealth for my family. It may be used to preserve wealth that I've accumulated because of possible taxation when I die. The second area of good use of life insurance is in the area of charitable giving, and that may be a way that I can provide for charities that I have a near and dear interest in, sincere interest in, so that when I die they receive money and it still leaves the balance of my accumulations and my estate to be distributed to my family. The third reason is for business purposes, to cover the owner or an employee that's important to the success of a business. Now any of these reasons all encompass insurable interest, and also the idea that the death benefit of life insurance only covers a portion of the human life value of the individual that's covered. I'm better off to my family being alive than dead. Owners and employees of businesses are better off for that business to be alive than dead. The best feature about life insurance is that the proceeds are generally income tax-free

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because life insurance proceeds cover damages at the death of the insured. The Nebraska Insurance Department is a very reputable, respected department amongst our states. The department has requested and fully supports passage of LB853. The Nebraska Insurance Department has helped create a good atmosphere and a good climate for insurance companies to locate in Nebraska, and these are domiciled companies that have their headquarters in the state. I'm going to mention several of them: Ameritas, Assurity Life, Central States, Lincoln Benefit, Pacific Life, National Indemnity, West Coast Life, Woodmen of the World, Mutual of Omaha, United of Omaha. All these domiciled companies support LB853. These companies bring good business to our state. We want more like them to come here. In a study completed by Dr. Ernie Goss of Creighton University, he found, in terms of exports per dollar of gross domestic product, Nebraska is fourth behind Connecticut, Rhode Island, and Iowa in the export of insurance coverage to other states and countries. [LB853]

PRESIDENT SHEEHY: One minute. [LB853]

SENATOR CARLSON: In only three states--Connecticut, Iowa, and Rhode Island--does the insurance industry exert more of an economic force than that in Nebraska. This is good business. These are good companies. They support LB853. I support it as well, and would ask for your support. Thank you. [LB853]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Pirsch. [LB853]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I appreciate the dialogue that's gone on before. Just to resummarize, this is a rather recent development, the development of the secondary market in life insurance policies. It used to be that it was a matter just between the two parties, the life insurance company and the person who was taking out the policy. The advance...the point in time was reached just in the recent past whereby individuals who had...needed expensive modes of medical treatment wanted to get at the cash value of the policies and during their lifetime, and that was what triggered the development of this secondary market--individuals who weren't a party to the original contract paying cash value to the individual who had taken out the life insurance and then redeeming that policy. I guess for greater clarification, I'd yield the balance of my time to Senator Pahls. [LB853]

PRESIDENT SHEEHY: Senator Pahls, would you respond? [LB853]

SENATOR PAHLS: Yes, please. Thank you, Senator Pirsch. I'd like to continue my dialogue with Senator Lathrop, if he wouldn't mind, so we can...my intent is to make this as clean and clear to everyone sitting here. Senator Lathrop. [LB853]

PRESIDENT SHEEHY: Senator Lathrop, would you respond? [LB853]

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SENATOR LATHROP: I'd be happy to. How much time do we have? Time? [LB853]

PRESIDENT SHEEHY: Three minutes. [LB853]

SENATOR LATHROP: Okay. Maybe we can. I think we have an idea of the secondary market, we have an idea of the viaticals. All of those people just listed by Senator Carlson don't have a problem with a secondary market. They have a problem with something called a STOLI. Is that right? [LB853]

SENATOR PAHLS: Yes. Yes. [LB853]

SENATOR LATHROP: Okay. Okay. And a STOLI is an acronym for...sometimes it's called stranger-owned life insurance, but it's more accurate to say it's stranger-originated life insurance. Is that right? [LB853]

SENATOR PAHLS: That's correct. [LB853]

SENATOR LATHROP: Okay. And what makes that different than the examples that we talked about the first time I stood at the mike was with a STOLI, with a true STOLI, what happens is somebody, a viatical company, will go out and find somebody to buy life insurance, and there is a bit of an agreement with the insured that the STOLI will advance the money, buy the life insurance, and ultimately be the beneficiary of the policy. Is that right? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LATHROP: And this is causing some concern to the life insurance industry because...I mean, they're in the business of insuring lives. The problem is they count on a lot of these policies lapsing, don't they? [LB853]

SENATOR PAHLS: That is true. [LB853]

SENATOR LATHROP: And so when they don't lapse, that means that they pay on more of these claims, more of these policies than they ever meant to when they've figured out what they're going to charge people for the coverage. [LB853]

SENATOR PAHLS: That is true. That would indicate that in the future they'd have to charge higher premiums to...for other people to make that up. [LB853]

SENATOR LATHROP: Okay. There's a lot of different ways that they do this. They do it through loans. They do it through payments and a lot of different ways. But your bill does two things, I think, as I read it. It addresses the issue by essentially saying we don't have a problem with a secondary market, we do have a problem with the STOLIs,

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the stranger-originated life insurance. Is that right? [LB853]

SENATOR PAHLS: Correct. We are trying not to have a manufactured agreement. [LB853]

PRESIDENT SHEEHY: One minute. [LB853]

SENATOR LATHROP: Okay. And in fact, in Section 15 is really where we find the heart of this, do we not? [LB853]

SENATOR PAHLS: Go ahead. Go ahead. [LB853]

SENATOR LATHROP: And maybe by way of a little bit of background, this is a uniform statute that has been created by the insurance commissioners of the United States. Is that right? [LB853]

SENATOR PAHLS: Right. The director has been working with a number of commissioners. [LB853]

SENATOR LATHROP: Okay. And while it's uniform, it's not fair to call it like the Uniform Commercial Code, where we can go from state to state and find out that it's the same in every state, but the principles are uniform from state to state, at least that's the plan of the directors of the various departments of insurance. [LB853]

SENATOR PAHLS: Right, and the model that we've been using since 2001 is the model that we're talking about, so this model is not new to the state of Nebraska. [LB853]

SENATOR LATHROP: And that's a good point. We have, if I can ask this question, in 2001 we tried to fix the problem and we set a two-year limit on selling these policies... [LB853]

PRESIDENT SHEEHY: Time, Senator. Senator Louden. [LB853]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. I guess I would just have some questions for Senator Pahls, if he would answer, please. [LB853]

PRESIDENT SHEEHY: Senator Pahls, would you respond to some questions? [LB853]

SENATOR PAHLS: Yes, I would. [LB853]

SENATOR LOUDEN: On these type of life insurance, now does it make any difference whether they're term life insurance or whole life insurance when they were buying a

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STOLI? [LB853]

SENATOR PAHLS: It's my understanding it's whole life. [LB853]

SENATOR LOUDEN: Okay, term... [LB853]

SENATOR PAHLS: I could double-check on the term. We discussed that. I can't give you that but I can...the director is right outside. I will... [LB853]

SENATOR LOUDEN: Okay. [LB853]

SENATOR PAHLS: But go ahead with your question. [LB853]

SENATOR LOUDEN: But anyway, I was just curious about, you know, if there was a certain type of life insurance policy that was more used for this. Also, what about when you...well, you can probably buy a car, you can buy a tractor, you can buy real estate, you can buy anything and take mortgage insurance on it. In fact, most of your car finances nowadays require some type of life insurance on there and, of course, that's owned by somebody else. Does that have any effect on those kind of insurance policies that go with those finance agreements? [LB853]

SENATOR PAHLS: To be honest with you, I do not have the answer for that, but if it's a life insurance policy I think it's probably under a different...would fall under a different statute, but I can get that for you. [LB853]

SENATOR LOUDEN: Okay. That was one of my questions. And then the way with mortgage insurance, I've known of ranchers that were bought and there was a mortgage insurance, and at one time when...in the '80s, farm credit services and some of them different companies required that you have some kind of a life insurance to cover your debt or cover the mortgage on the land or real estate to pay it off. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LOUDEN: How does that affect that? Because the one that would receive that money wasn't a relative or anything. It would...is that going to be under your business arrangements, or how would that...is that addressed in your bill? [LB853]

SENATOR PAHLS: Let me respond. That business actually wants you to live; STOLI wants you to die. So those businesses are not buying that or having you buy that insurance hoping you die. [LB853]

SENATOR LOUDEN: Well, the deal is, when they take that insurance, they don't care whether you live or die, because they're going to get paid either way when it gets down

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to the bottom line. It's a cruel thing to say, but that's the reason they have that insurance. It's either way. [LB853]

SENATOR PAHLS: I think indirectly though the insurability laws sort of states that, for the most part, they want you to live. I don't think they're counting on your to die. [LB853]

SENATOR LOUDEN: I just wondered if that's addressed in the bill so we don't infringe on some of that, because there's a lot of business done that way. That would be my question. [LB853]

SENATOR PAHLS: Yes. Okay. I'm told that we do...that is not part of this bill... [LB853]

SENATOR LOUDEN: Yeah. [LB853]

SENATOR PAHLS: But I can assure you I will find that out for you. [LB853]

SENATOR LOUDEN: Okay. Thank you, Senator Pahls. As I looked it over, when we get into this insurance like this, we have to be very careful on where we're going on this, and I'm sure the bill is probably all right. I usually trusted the Department of Insurance in Nebraska. I was on the Insurance and Banking Committee at one time and the people on there are quite capable. With that, Mr. President, I'll give the rest of my time to Senator Langemeier, if he so desires. [LB853]

PRESIDENT SHEEHY: Senator Langemeier, you're yielded 1 minute, 20 seconds. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Louden. The one thing I want to get on the record in this opportunity to talk, before we go to noon, is if you look at this bill, it is a committee bill, and the committee amendment strikes a lot of sections. Just for the record, those sections were amended into another bill earlier and have gone down the road. We've narrowed this bill down to this issue, because we think it's that important of an issue to talk about and it's...talk about it... [LB853]

PRESIDENT SHEEHY: One minute. [LB853]

SENATOR LANGEMEIER: ...in its single subject. And so I think it's very important that we get on the record of why this bill was narrowed down to this one bill. It was because of the importance of the nature of the subject. And we appreciate all the discussion that's happened so far. So thank you, Mr. President. Thank you, Senator Louden. [LB853]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. Mr. Clerk, do you have items for the record or announcements? [LB853]

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CLERK: Mr. President, your Committee on Business and Labor, chaired by Senator Cornett, reports LB1082 to General File with amendments. (Legislative Journal pages 886-888.) [LB1082]

And I have a priority motion. Senator Pirsch would move to recess until 1:30 p.m., Mr. President.

PRESIDENT SHEEHY: You have heard the motion to recess until 1:30 p.m. All those in favor say aye. Opposed, nay. We stand at recess.

RECESS

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber, for the afternoon session is about to reconvene. Senators, please record your presence. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there any items for the record?

CLERK: I do. Your Committee on Enrollment and Review reports LB768, LB914, LB939, LB962, LB1056 as correctly engrossed. New resolutions: Senator Burling, LR268; Senator Wallman, LR269; and both those will be laid over. That's all that I have at this time, Mr. President. (Legislative Journal page 889-890.) [LB768 LB914 LB939 LB962 LB1056 LR268 LR269]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll return now to this afternoon's agenda where we were discussing LB853 and the committee amendments, AM1780. We'll return to floor discussion. Senator Lathrop, your light is on. You're recognized. [LB853]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. I'd like to visit with Senator Pahls, if I might. [LB853]

SENATOR LANGEMEIER: Senator Pahls, would you yield? [LB853]

SENATOR PAHLS: Yes, I would. [LB853]

SENATOR LATHROP: Senator Pahls, we were talking about the STOLIs when we broke for lunch or right before we broke for lunch. And basically the bill as...and the law

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as it exists today is that you can sell one of these policies after two years. If there is some kind of a life-changing event like terminal illness, death, you can sell it before two years. Is that... [LB853]

SENATOR PAHLS: Yes, though...yes. [LB853]

SENATOR LATHROP: That's...that's kind of the current law and where we're at today. [LB853]

SENATOR PAHLS: Right. [LB853]

SENATOR LATHROP: Okay. And now what you want to try to do with this bill, or what this bill does, I should say, is to change the law to say essentially this, that if you buy the policy you can sell it after two years, but if you...if somebody else is involved in the purchase of the policy, that is a stranger-originated policy, that you have to wait five years. [LB853]

SENATOR PAHLS: Right. What you're trying to do is add on three years to...instead of the two, add on three, which would make it five. [LB853]

SENATOR LATHROP: Okay. And as I understand this industry, the adding three more years essentially makes these things unprofitable and it takes the viatical settlement folks out of the picture. [LB853]

SENATOR PAHLS: Well, they would probably be taking more of a gamble if they would...the five year would...they'd have to really be very on top of it because they'd have to figure out if this was going to make money for them or not. [LB853]

SENATOR LATHROP: Okay. And now I want to focus, if I can, on the two years. And the two-year exception which you have currently is...and what we're okay with, as I understand, is the secondary market, which is if I buy the policy myself I ought to be able to sell it and choose between either taking the cash surrender value or selling it to one of these secondary market folks and getting a little bit more money than my life insurance company would pay me on the cash surrender value. Would that be true? [LB853]

SENATOR PAHLS: Yes. The surrender value would be, I'm assuming, would be much less than if I would put it on the open market. If it were me, what I would do is I would let the secondary market know I have this available and they...I'm probably going to get competing amounts, so it would be a very good thing for me in that direction. [LB853]

SENATOR LATHROP: Okay. The distinction really, if I can, you have...you've referred to them as the legitimate and the STOLIs, and the legitimate is if I buy the policy I ought

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to be able to sell it in the secondary market. Would you agree with that? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LATHROP: Okay. But under this bill and your amendment, you essentially provide limitations even in the first two years. If I am not working with a viatical, but if I originate a life insurance plan, develop some cash surrender value, and decide within two years, for example, that I want to sell it, I can't. Is that right? [LB853]

SENATOR PAHLS: No, it's my understanding that with these exceptions you could. [LB853]

SENATOR LATHROP: Well, one of these life-changing things would have to happen. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LATHROP: But what if I just decide that I don't like it? [LB853]

SENATOR PAHLS: No. [LB853]

SENATOR LATHROP: I can't sell it. That would be against the law, actually, wouldn't it? [LB853]

SENATOR PAHLS: I don't know. Be against the law? I can't answer that. [LB853]

SENATOR LATHROP: Isn't that what Section 15(c) says, that essentially you have to wait until after two years from the time the policy was issued before you can sell it? [LB853]

SENATOR PAHLS: Yeah, to an investor. [LB853]

SENATOR LATHROP: Well, that's the secondary market, right? [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR PAHLS: Unless these exceptions. [LB853]

SENATOR LATHROP: That's the secondary market. [LB853]

SENATOR PAHLS: Yes. Unless these, as I read it, unless...if these exceptions are not there, you cannot. [LB853]

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SENATOR LATHROP: Okay. So... [LB853]

SENATOR PAHLS: But there is sort of a wildcard in here. I'm assuming the Director of Insurance could make that decision if it were not STOLI. That's how I read it. [LB853]

SENATOR LATHROP: Well, we really don't need the director of insurance getting involved in a single transaction between a policyholder and somebody in a secondary market, do we? [LB853]

SENATOR PAHLS: If she is a protector of the consumer, I don't know. It seems to me that's one of her roles. [LB853]

SENATOR LATHROP: Okay. Well, maybe we can go back to the point I'd like to try to make if I can, and that is, first, so that people understand, what we're doing is placing a limitation on the ability of somebody who buys a policy on their own, like me, not intending to sell it when I buy it, but... [LB853]

SENATOR LANGEMEIER: Time. Senator Lathrop, you are re-recognized. Your light is next. [LB853]

SENATOR LATHROP: Thank you. Can we continue, Senator Pahls? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LATHROP: Okay. The limitations this bill places on me as a policyholder is, in the first two years, the only thing I can do with that is turn it over for whatever cash surrender value it might have. Otherwise, I have to wait until after two years. [LB853]

SENATOR PAHLS: No, you could...with those exceptions, after the two years...as I see it, LB853 is the same thing as the current law is right now. You can sell that with these exceptions if it's your own money. See, I think the problem is when there's somebody else is paying for it. That's my understanding. [LB853]

SENATOR LATHROP: Well, if I buy it myself are you saying that I can sell it any time I want? Because the way I'm reading in one of these exceptions, like terminal or chronic illness, death of a spouse, divorce, that has to happen if I'm going to sell it in the first two years, or is that wrong? [LB853]

SENATOR PAHLS: Yes. Yes. Just let me read that. Two years after a policy is issued and is paid with your own money, you can sell it. Before that, you need to have those exceptions. That's the way the law is written right now. [LB853]

SENATOR LATHROP: All right. Well, so there is a limitation in the first two years,

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unless one of these situations happened to be...exist in your life, like a divorce or retirement. [LB853]

SENATOR PAHLS: That is right now. [LB853]

SENATOR LATHROP: Okay. [LB853]

SENATOR PAHLS: That's the law right now. [LB853]

SENATOR LATHROP: Okay. That is not where you're trying to regulate with this bill, am I right? Isn't it the five-year people, the five-year...the STOLIs that you're trying to go after here... [LB853]

SENATOR PAHLS: Right. [LB853]

SENATOR LATHROP: ...and not my right as the policyholder who bought the thing without the intention of selling it. [LB853]

SENATOR PAHLS: Yes. We are trying to make...to be honest with you, if you're interested in my life, I hope you would be interested in my life for at least five years instead of just two. We're finding out they're preying on older people. And the way it's set up that makes it profitable for them, if they pick on a person in their late sixties, seventies, they're counting on that person dying in two years. [LB853]

SENATOR LATHROP: Well, so is the guy that sells the annuity though, isn't he? I mean they're both making the same bet. The guy that sells the annuity is kind of hoping he doesn't have to pay it any longer than he needs to. [LB853]

SENATOR PAHLS: Yeah. [LB853]

SENATOR LATHROP: I just wonder if the idea of whether somebody is rooting for you to die or rooting for you to live is sort of a red herring here. The question, to me at least, seems to be in this is whether or not I, not if there's somebody I'm working with, a viatical settlement guy, but if I, on my own, if I go out and buy a policy, why can't I sell that any time I want? What's the bad policy that's involved? [LB853]

SENATOR PAHLS: Okay, so you're in disagreement with the current law, because the current law says two years. [LB853]

SENATOR LATHROP: Well, I don't know if I'm in disagreement. I guess I'm asking you, because you're on that committee and you've worked on this subject matter,... [LB853]

SENATOR PAHLS: Right. Yes. [LB853]

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SENATOR LATHROP: ...what's the harm, if I'm not working with some viatical guy and not doing a STOLI, but I buy a policy and now I want to go sell it for some reason other than the enumerated reasons, why shouldn't I be able to do that? [LB853]

SENATOR PAHLS: Well, current law says you can unless you deal with those exceptions. And my answer to that, we're not changing that part of the current law. Seems like you're moving off of that to give more credibility for those people who want to be the investors. Sounds like to me that you're setting up some type of a format that says that the confusing of the two year with the five years, that's how I'm interpreting the questions. [LB853]

SENATOR LATHROP: Well, maybe I am and maybe I'm not. I might just be trying to better understand the STOLI and the public policy behind the two-year restriction, but let's move to the two-year restriction in your bill. [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR LATHROP: You handed out this form and it says, if I can, under the new law there's two years after the policy is issued and it is paid for by your own money, you can sell it. But actually, under 14(c)...pardon me, 15(c)...we have more limitations on selling it than just whether I bought it or not. Let me give an example. It says you can't sell it if, within the first two years, you had somebody evaluate what the settlement value of the policy is. Right? In other words, if I... [LB853]

SENATOR PAHLS: Yes. Yes. [LB853]

SENATOR LATHROP: ...if I bought it myself, not on a STOLI, I buy it myself, but a year and 11 months after I buy it I have somebody tell me what it might be worth after two years to sell. I'm all of a sudden pushed over in the five-year category and I can't sell it within two years or right after two years and before five. Would that be true? [LB853]

SENATOR LANGEMEIER: Time. Thank you, Senator Lathrop and Senator Pahls. Senator Pirsch, you're recognized. [LB853]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I appreciate the dialogue that's occurring here on the bill thus far. I guess just a few comments here. The particular concern, I think, here is one of taking a product, life insurance, that has existed and I think everyone feels is a legitimate and good product, and the recent development of the utilization of this product in a way that was not anticipated through this STOLI, stranger-originated life insurance mechanism. And I guess that the potential harm is that there might be companies out there that would collude or entice an individual who would ordinarily not be interested in purchasing life insurance with the

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agreement, hey, if you go and you obtain a policy, because we can't do that, if you obtain a policy we will agree to pay for that policy for you and you can keep it in your own name, so you get a certain slight benefit there for a two-year period, after which point in time that policy becomes ours. Now there's a slight benefit to you. There's no detriment to you by agreeing to take it out as far as these individuals understand, and so that is the potential harm that the underlying original intent for the creation of these instruments, these life insurance policies, are not...they're no longer being used for that purpose. And so the potential harm that comes with that unintended use is that it throws off the actuarial tables, the original underwriting dangers that the underwriters originally anticipated; that it...during the committee there was some testimony that the long-term tax-preferred status of life insurance may be endangered in some manner over the long term if these do become investment vehicles or viewed as investment vehicles by the Congress; and, of course, the moral hazards I think that Senator Pahls spoke of earlier. So I think that there's generally an agreement that STOLI does present pitfalls and danger, and so I think that both sides are attempting to...or don't have any interest in having that practice continued. I think what's at issue or stake here today, properly framed, is the best remedy to address this potential harm and whether that...the most proper way to address that is with the...I guess the NCOIL approach--a two-year prohibition against selling your life insurance policy, coupled with a...essentially having the person who's taking the life insurance out at the time originated, signing a certification that it's with the intent not to, at the time taken out, sell this on the secondary market--that approach, as opposed to the NAIC or Insurance Commissioners' approach, which is encapsulated in this bill that was approved by the...sent forward here by the Banking Committee and that is this five-year approach. And so... [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR PIRSCH: ...and so I think that, you know, that in looking at the two approaches, which are what we should be looking at is what is the potential harm and looking at the difference in terms of years, does the five years...does that better capture those type of potentially dangerous STOLI transactions and weed them out? And so I think that's the filter that we're looking at here today and I do appreciate the dialogue that's going back and forth. And I'll yield the balance of my time. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Those wishing to speak, we have Senator Karpisek and Senator Fulton. Senator Karpisek, you're recognized. [LB853]

SENATOR KARPISEK: Thank you, Mr. President. I'd like to yield my time to Senator Lathrop. [LB853]

SENATOR LANGEMEIER: Senator Lathrop, 4:55. [LB853]

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SENATOR LATHROP: Thank you, Senator Karpisek. And if I may, Mr. President, I'd like to continue my conversation with Senator Pahls, if he'll yield. [LB853]

SENATOR LANGEMEIER: Senator Pahls, will you yield? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LATHROP: Senator Pahls, maybe I can try to put a little finer point on the question that I have, and that goes back to Section 15(c), which deals with my ability as a person who purchased a legitimate policy of life insurance, to sell that policy before five years. Section (c) addresses that question or that issue and my right to sell my policy to the secondary market before five years, does it not? Did you respond or do you agree with that? [LB853]

SENATOR PAHLS: Continue. Continue. [LB853]

SENATOR LATHROP: Okay. [LB853]

SENATOR PAHLS: I'm just listening for right now. [LB853]

SENATOR LATHROP: Okay. That's the way...that's the way it looks to me. Well, here's my point perhaps, and that is, under the handout that you handed out and the summary, you say, about the two years, you say two years after a policy is issued and it's paid for with your own money, you can sell it. But when I look at section (c), there seems to be more limitations than that summary would suggest. Would you agree that there's more limitations than if I bought it myself, I can sell it any time after two years? [LB853]

SENATOR PAHLS: Yes, there is more language. My staff informed me there's more language in there. [LB853]

SENATOR LATHROP: Okay. And if I told you that I have some problem...I mean, the summary makes perfect sense. I would agree with that as a policy perhaps, but in this model act that the commissioners came up with, they put more limitations in. I'm wondering, you've made a number of offers to meet with the director of the Department of Insurance, is that the person we might talk to between General and Select about the language in Section 15(c)? [LB853]

SENATOR PAHLS: Senator, I'm just curious. Give me some examples that you think that are not clarified. [LB853]

SENATOR LATHROP: Well, I'll give you, it seems to me, a fairly obvious one. If you look at one of the considerations is that neither the insured nor the policy has been

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evaluated for settlement, when would it be...? First of all, it's got to be evaluated for a settlement before it can be sold, am I right? [LB853]

SENATOR PAHLS: Yes. Yes. [LB853]

SENATOR LATHROP: So is that a limitation on it being evaluated before it's sold? In effect, you can't have it evaluated before you sell it, so you'd never sell it. [LB853]

SENATOR PAHLS: That makes sense. [LB853]

SENATOR LATHROP: Well, (laugh) but is that what you intended? [LB853]

SENATOR PAHLS: No. No. [LB853]

SENATOR LATHROP: Because if your intent is... [LB853]

SENATOR PAHLS: Yeah. [LB853]

SENATOR LATHROP: ...to allow me to sell my policy on the secondary market, I'm going to have to have it evaluated before I do that, won't I? [LB853]

SENATOR PAHLS: Yeah. Let me...let me be very honest with you. My intent is to make something very good for the consumer. If you found something that is not good for the consumer, I would listen to you. [LB853]

SENATOR LATHROP: Okay. [LB853]

SENATOR PAHLS: I mean, that's not an issue. [LB853]

SENATOR LATHROP: Okay. Do you think I pointed...made a legitimate concern by pointing to the limitations in paragraph (iii) of section (c)? [LB853]

SENATOR PAHLS: Right now, in this short reading, no. [LB853]

SENATOR LATHROP: Okay. [LB853]

SENATOR PAHLS: That's my...that's my interpretation. [LB853]

SENATOR LATHROP: All right. We may not agree on that. How about the requirement that it have been purchased with unencumbered assets? What difference does it make to you whether I borrowed money to buy my life insurance policy or bought it with cash that I have left over from...sitting in my checking account? [LB853]

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SENATOR PAHLS: Yes. This as been brought to my attention, it's my own money. [LB853]

SENATOR LATHROP: Yeah, I can borrow money to buy something or I can have it in my checking account. What difference does it make, if I'm buying it with my own money, whether I borrow that money or had it laying around? [LB853]

SENATOR PAHLS: If it's...if it's my own money...yeah, if it's my own money? [LB853]

SENATOR LATHROP: Yeah. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LATHROP: Okay, but you have a limitation in section (c) that it can't be...essentially can't be encumbered or borrowed. Am I right? [LB853]

SENATOR PAHLS: Well, see, to me, now it seems like you're trying to open the door for the STOLI. It's exactly where you're going with this, Senator. You are trying to open the door for STOLI... [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR PAHLS: ...and I'd like to have the rest of the body understand that. [LB853]

SENATOR LATHROP: Well, no. (Laugh) [LB853]

SENATOR PAHLS: He is looking for a loophole, is what he's looking for. I think we need to take a look at some of this, but, as I see it, you're implying that I need to go now to have somebody loan me the money, etcetera, etcetera. I understand where you're going. Thank you. [LB853]

SENATOR LATHROP: I...well, Senator Pahls, I'm going to suggest that you might be getting a little nervous for no reason. All I wanted to do was to talk... [LB853]

SENATOR PAHLS: No, I'm not. To be honest with you, I'm not nervous. [LB853]

SENATOR LATHROP: ...all I wanted to do was to talk to you about my ability or a person's ability to sell a policy if they bought it without any intent of creating these STOLIs. So I'm running out of time. Can I just talk to you and the director between General and Select about those issues? [LB853]

SENATOR PAHLS: Yes. Yes, of course you may talk to us. [LB853]

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SENATOR LATHROP: Okay. [LB853]

SENATOR PAHLS: That's not an issue at all. [LB853]

SENATOR LATHROP: Hey, listen, I'm not trying to trick you, I promise you. I'd tell you if I was. I wouldn't sneak up on you like that. I appreciate you taking the time to answer my questions and your help on this bill. Thank you. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Fulton, you're recognized. [LB853]

SENATOR FULTON: Thank you, Mr. President. Senator Pahls, if I were trying to trick you, I wouldn't tell you. (Laugh) I just...I'm going to...I'm inclined to support the amendment and the bill. I did have a question, though, if Senator Pahls would yield to a question. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR LANGEMEIER: Senator Pahls, would you yield? [LB853]

SENATOR PAHLS: Yes, I would. [LB853]

SENATOR FULTON: And what I'll do, I'll just put the question out here, Senator Pahls. We talked a little bit off the mike. I'll give you the opportunity to address the question and then, in yielding my time, you can have any...you can talk about anything else you want to. Like I said, I have...I will probably support it. I'm inclined to support the amendment and the bill. My question, though, has to do with individual property rights. If we move this bill forward, are there any concerns with regard to individual property rights? Could you address that? And with that, I'll yield the remainder of my time to Senator Pahls. [LB853]

SENATOR PAHLS: Yes, thank... [LB853]

SENATOR LANGEMEIER: Senator Pahls, 4 minutes. [LB853]

SENATOR PAHLS: Thank you for that question. What I'm going to do is I'm going to depend on the Director of Insurance, her statement. If I could get you to take a look at the article that I gave you, she has outlined, on the back page, the second page, what LB853 does not do. And I'm just going to read this because this does apparently...is an issue: Does not interfere with a property right. There is no property right for STOLI. It is a contractual right between an insured and an investor that can be shaped statutorily by public policy. Under this legislation, the Director of Insurance can review and allow any transaction that is not a STOLI during the five-year waiting period. This proposal is

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narrowly tailored to address the problem posed by a STOLI. Now if that does not answer your...when several of us are sitting down with the Director of Insurance, I can assure you that will be cleared up. Currently within the law, then we're doing something wrong now, because the current law, if we're interfering with your property rights, we're doing it right now because we have two years. And if we would change the law into five years for the investor, if we were interfering with the owner's property rights, it looks like we're doing that right now, because right now it says you cannot do that without those exceptions. So I'm willing to, like I say, I will take that up with the director and make sure that is cleared up, if that would meet with your concerns. Since I still have your time, I will...a couple questions that Senator Louden had this morning and I want to make sure that it gets on the record. Says, does LB853 include both term and whole life products? It does, yes. Does the bill impact insurance bought to cover debt, such as mortgage and credit insurance? No. So those are the two answers that I promised you that I would answer. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Pahls... [LB853]

SENATOR PAHLS: Thank you. [LB853]

SENATOR LANGEMEIER: ...and Senator Fulton. Those wishing to speak, we have Senators Kruse, Pankonin, Engel, and Pirsch. Senator Kruse, you're recognized. [LB853]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the amendment and the bill. As a certified geezer, the oldest soul on this floor, I certainly feel like I'm being talked about here, and I have strong feelings about anybody here or in the lobby or any place around that's watching me walk to see if I can walk without stumbling and then guess whether or not I might live a couple years or even just a little bit longer, which would make them gain a great profit. I do understand, as from the dialogue before and before that, that I can sell my own policy if that becomes necessary in my particular situation. But I guess I'd just like to serve notice that my mother was a stubborn Dane. Danes are as stubborn as they get. And if somebody is out there taking odds on when I shuffle off, I shall refuse to shuffle off. Thank you. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Pankonin, you're recognized. [LB853]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. I just want to weigh in for a few minutes here on the amendment and the bill. I sit on the Banking, Commerce and Insurance Committee. And as we considered this, brought it out of the committee and we split this part of the bill out of the committee bill because we thought it was such an important public policy item that needed to be discussed, and it has today. I want to give you more of a macro view, and I think we'll have some discussions

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about the micro view between people having property rights or an opportunity to sell their policy, but here's what concerns me when you look at the big picture. The market economy in this country has provided a lot of benefits and a lot of opportunities for people, but sometimes it runs amuck. And I'm going to use the example of the subprime mortgage market--good purpose, to have people get into their own homes. But in this case, what happened is that people were promoting it so strongly, they were getting people in over their heads, making a lot of fees to do it, and having properties loaned up way past what the value was. We had a hiccup in the economy and now people are losing their homes and it's a mess, and I think we could have the same thing in this situation. I want to quote from a BusinessWeek article that we had at the committee meeting, and this article is dated July 30, 2007, and it's titled, "Profiting From Mortality."--"In May, as the subprime mortgage market was cracking, many of the biggest players in finance gathered at a conference in New York to talk about the next exotic investment coming down the pike: death bonds....Death bond is a shorthand for a gentler term the industry prefers: life settlement-backed securities....For the investors it's a ghoulish actuarial gamble. ...the settlement providers, which in the past have typically sold the policies to hedge funds. Now, Wall Street sees huge profits in buying policies, throwing them into a pool, dividing the pool into bonds, and selling the bonds to pension funds, college endowments, and other professional investors. If the market develops as Wall Street expects, ordinary mutual funds will soon be able to get in on the action, too....The life settlements industry increasingly finds itself in the grip of dubious characters devising audacious and in some cases illegal schemes to make money. Many are targeting elderly people with deceptive sales pitches--so many that the National Association of Security Dealers has issued a warning about abusive practices. Others are promising investors unrealistic returns or misleading them about the risks. Some are doing both." That's the macro view. I don't think we want to promote, as a public policy in Nebraska, death bonds and people taking advantage of other people, especially our senior citizens, with deceptive practices. That's why I think the amendment is important, the bill is important. If we need to discuss property rights or some opportunities for individuals to have a market, I think we can do that between now and Select, but I think it's important to move this ahead. And I think we don't want to promote people making unwise decisions, much like happened in the subprime mortgage market, and now its come to grief for our entire country. Thank you. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Pankonin. (Visitors introduced.) Returning now to discussion on AM1780 offered to LB853. Those wishing to speak, we have Senator Engel and Senator Pirsch. Senator Engel, you're recognized. [LB853]

SENATOR ENGEL: Mr. President, first of all, I support the amendment and the bill, but I used to sell life insurance and you had to have an insurable interest to buy a policy on someone else, you know, for a family member or a mortgage or a partnership or something like that. You had to have an insurable interest to buy a policy on another person. And you've always had that two-year contestability period. For the first two

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years, the insurance company could contest the application, whether you applied for it fraudulently or whatever, and then...but after the two years it was yours to do with, with what you pleased. But we've never been in this situation with viatical. It's been talked about before, but to me I think it's just a system...I think what you might do in the long run, or you might be hurting yourself, and I'm not positive of this, but right now life insurance proceeds themselves are not taxable and I believe if you start utilizing this as an investment, I think down the road all life insurance proceeds might be taxable and that would destroy a lot of the benefit of life insurance itself as far as the principal itself. So I just wanted to add that to the mix here and for whatever it's worth. Thank you. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Pirsch, you're recognized. [LB853]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I would just like to say I also support the amendment with...and the underlying bill. I urge you to move it ahead today. We can always carry out discussions in the interim. Just quick, I wanted to touch upon the question that Senator Lathrop had raised with regards to the provision that touched upon those who borrowed funds to pay for the insurance policy and the underlying rationale why that may...why that was included. I think that the reason for that is, that with those individuals in the aggregate, it may be a hint or portend that those individuals would be more likely to be engaged in the STOLI type of practice. That's, I believe, at least the underlying rationale for that. Having said that, I would ask the body to vote yes for the amendment and yes to the underlying bill. Thank you. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Senator Chambers, you're recognized. [LB853]

SENATOR CHAMBERS: Mr. President, members of the Legislature, there seems to be something unsavory about this arrangement, but as I have listened to the discussion, I've become less sure that I want to support the bill. Sometimes people argue too much and they argue the wrong things. I'm not interested in protecting the insurance industry. I think the insurance industry is one of the most corrupt operations which is allowed to be within the law of any that operate in this country. Insurance companies are allowed to discriminate against black people and poor people by charging different automobile rates because of where you live, not on the basis of accidents or payouts or anything else but strictly where you live, and they know where black people live. So I'm not a friend of the insurance companies. The insurance industry is so powerful they control Congress. They get just about anything they want from Congress and they certainly get whatever they want from the state. And by getting a letter from the largest insurer in the state, or whatever Pacific Life said they are, raises an interest and concern in my mind. So I'd like to ask Senator Pahls a question or two. [LB853]

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SENATOR LANGEMEIER: Senator Pahls, would you yield? [LB853]

SENATOR PAHLS: Yes, I would. [LB853]

SENATOR CHAMBERS: Senator Pahls, if I buy an insurance policy and it develops a cash value, how long do I have to have it before I can cash this thing in and get the amount that the company will give me? [LB853]

SENATOR PAHLS: This is my understanding, Senator. Your cash surrender of that policy, if you would do it too early in the game, the cash surrender would be a very insignificant amount. However, you would be able to put that policy out on the secondary market and you would be able to negotiate with two or three of the secondary markets. I don't have the exact (inaudible). [LB853]

SENATOR CHAMBERS: In other words, though, as a poor man, I'd be in a position to try to improve my financial benefit, like rich people are allowed to do on the stock market and every other type of speculation that's out there. Isn't that true? [LB853]

SENATOR PAHLS: Yes. But you... [LB853]

SENATOR CHAMBERS: I'd be allowed to speculate. And is it my life or the insurance company's life that we're talking about? [LB853]

SENATOR PAHLS: Your life. [LB853]

SENATOR CHAMBERS: Am I free to do with my life what I please? [LB853]

SENATOR PAHLS: Yes, Senator, but the... [LB853]

SENATOR CHAMBERS: Now, please, so my time won't run out, and I'm not trying to trick you, if there's a policy which is sold to this computer on my desk, the computer buys the policy and the premiums are paid, what interest is it to the insurance company who gets the benefit if the premiums charged are being paid? What difference does it make to the insurance company? [LB853]

SENATOR PAHLS: Well, after so many...well, to be honest with you, they count on some policies to lapse. That keeps the price of insurance at a lower premium, is my understanding. [LB853]

SENATOR CHAMBERS: But here's what I'm asking. What concern is it to the insurance company who gets the benefit of that policy if the premiums are paid? If the premiums are paid...if Donald Duck gets the benefit when I croak, what business is it of the insurance company? [LB853]

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SENATOR PAHLS: The issue I see here is the two-year and the five-year. I don't know if I'm making myself clear. [LB853]

SENATOR CHAMBERS: Yes, on that, but in this letter from the person who is the Nebraska Director of Insurance, there is talk about societal and other types of interests. That has nothing to do with my relationship to an insurance company, because if society really had an interest and that interest were to be reflected through the actions of legislatures, the insurance companies would not have such a free hand to gouge and take advantage of the public as they have right now. So... [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: So I would like to ask the questions individually and in manageable amounts, and I would like you to not think in terms of defending the bill, because I'm just after information right now. And I'm going to have to put my light on again, which it is, and wait until I'm recognized again. But the question I'd like you to meditate on is this: What difference and of what concern is it to the insurance company who gets the benefits? Because I had some documents from Creighton several years ago, and if you saw the number of life insurance policies they had on the director of Boys Town, you would have seen that they were investing and speculating on his life and they would have gotten over \$500,000 easily, and I forget the exact amount, but all this multiplicity of life insurance policies, because it was in this financial statement. And Creighton and Boys Town were counting on that. They had interlocking directorates. They were counting on that money. [LB853]

SENATOR LANGEMEIER: Time, and you... [LB853]

SENATOR CHAMBERS: Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: You may continue. [LB853]

SENATOR CHAMBERS: Senator, do you think that it was a part of the original philosophy, if you can call it that, behind insurance to allow a multiplicity of insurance policies to be taken out on the life of one person and the premiums are not paid by that person? Was that the original intent of insurance do you think? [LB853]

SENATOR PAHLS: No. To me, the original intent of insurance is what I think of when I buy insurance, for protection of myself. [LB853]

SENATOR CHAMBERS: Okay. So we're in a situation where businesses can take out insurance policies, as Senator Carlson pointed out, on employees, can't they, life insurance policies? They can do that, can't they? [LB853]

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SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: And when I buy an automobile, they will sell me an insurance policy and not call it that, but that insurance policy is on my life so if I croak they can recover on that policy to pay the amount that I still owe on the car. Isn't that the way that operates? [LB853]

SENATOR PAHLS: That insurance, right, on your automobile, mortgage, right, that's a (inaudible). [LB853]

SENATOR CHAMBERS: So it's allowed to these big shots who have the money and want to protect their money, but a little guy like me, with run-over shoes, threadbare jeans, a shirt that may or may not match my ensemble, I cannot negotiate for a better price on the one thing that I have, and I'm not negotiating so that a lesser amount will be paid for the premium or a greater amount will be paid in a benefit than when the contract was originally taken. If I buy a car...let's say if I buy a house and I get a mortgage, can the company that holds my mortgage sell that mortgage to any other company it chooses? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: All right. If I buy stock, can I sell the stock to somebody, or do I have to go through a stockbroker? [LB853]

SENATOR PAHLS: I'm assuming you could sell it to anybody. [LB853]

SENATOR CHAMBERS: I could? Could I give it to somebody if I wanted to? If I have an insurance policy, can I, in my will, leave that policy...the proceeds of that policy to whomever I choose? [LB853]

SENATOR PAHLS: Well, in fact, a number of people do it. That's how they move their money on. [LB853]

SENATOR CHAMBERS: So you can answer that yes or no, correct? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: And by using a will, I can give the benefits of that policy to whomever I choose, right? [LB853]

SENATOR PAHLS: Yes. [LB853]

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SENATOR CHAMBERS: So it's not the idea of transferring that benefit from myself to somebody else. It's the issue of whether you're going to do it in a way that the insurance industry doesn't like. Isn't that really what we're looking at? [LB853]

SENATOR PAHLS: The insurance industry... [LB853]

SENATOR CHAMBERS: They're the ones pushing this, aren't they? [LB853]

SENATOR PAHLS: They do not have a...the secondary market, they're okay with the secondary market. That's who you would sell your policy to, to the secondary market. [LB853]

SENATOR CHAMBERS: So what difference does it make to the insurance industry when I make that sale? How long does a company have to hold my mortgage before it can sell it to another company? [LB853]

SENATOR PAHLS: Probably... [LB853]

SENATOR CHAMBERS: As soon as I...I can sign the mortgage paper here and the other person can be sitting right there and they can sign it over to that person and get their money in the same...at the same sitting, can't they? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: And if I win some money on a lottery and they're going to pay it to me in increments of so many years, am I able to sell that right to somebody else in exchange for a lump sum of money? [LB853]

SENATOR PAHLS: I'm assuming. [LB853]

SENATOR CHAMBERS: If I get benefits on an incremental basis for workers' comp, can I agree with somebody that they give me a lump sum, then when those individual payments come in, it goes over to them? [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: Can I do that? [LB853]

SENATOR PAHLS: I'm assuming. [LB853]

SENATOR CHAMBERS: So then this that we're talking about is out of step with everything else that's allowed, isn't it, by putting these restrictions on it. [LB853]

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SENATOR PAHLS: I... [LB853]

SENATOR CHAMBERS: Just don't think about defending the bill. Think about improving my education and correcting my ignorance of this esoteric, complex area about which you know far more than I do. [LB853]

SENATOR PAHLS: For this insurance to work, certain things have to happen actuarially. [LB853]

SENATOR CHAMBERS: Well, not really. When you talk about insurance, you have a whole lot of people putting money in the pot and you hope that more people are going to put in the pot, then few will be taking out. And the insurance companies make investments of money in areas other than insurance, don't they? Do they invest in real estate? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: Do they invest in the stockmarket? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: They invest wherever they want to, don't they? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: But I, the poor little guy cannot invest as I'm able to do and make money. Isn't that correct? [LB853]

SENATOR PAHLS: See, I think you can invest. [LB853]

SENATOR LANGEMEIER: Time. [LB853]

SENATOR CHAMBERS: Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: And you're recognized again, Senator Chambers. [LB853]

SENATOR CHAMBERS: Thank you. And I'm not going to ask Senator Pahls more questions, but I wanted that to kind of lay the groundwork. This is my third time. Members of the Legislature, there is something, as I stated earlier, unsavory about this activity, but it's no more unsavory or ghoulish than the work of undertakers who have differing prices for the coffins, for the services, for the automobiles made available. In other words, they are salespersons and they do pressure individuals. They will tell people, when they are going to purchase an inexpensive coffin, you're going to put your

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loved one away in that soup can, if it's one of those metal coffins, in that piece of wood? Well, I would ask, well, what are you selling it for if there's something unethical or immoral? When members of my family have died, they have wanted me to go with them to the undertaker because I'm very unemotional when I'm dealing with salespeople. Undertakers are salespeople. They sell products. They are dealing with people who are emotionally unstable, who may feel guilt about various things because the one is gone now and they are going to make it right by putting a lot of money into the hands of the undertaker who's going to sell them a product which is going into the ground. And I'm able to resist that. When my sister died, and I don't talk about personal things unless it's very necessary, she was one of my younger sisters. Two of my younger sisters died. The better part of the family is now underground, as is the same that can be said about certain plants--the better part is underground. The least worthy part, myself, still am around and kicking. But nevertheless, her daughters wanted me to go with them. And we're looking at these concrete vaults, and I explained to them, the only reason they have these vaults is so that when they put them in the ground then the ground won't sink and they can now run the lawn mower right over the ground without worrying about it sinking or...I said, that's all it serves, so when they spray paint it silver or gold, that means nothing. And I asked the undertaker, which is the cheapest, one that's spray painted or one that's just plain concrete? Well, just plain concrete? That's what we want. Now, where's the least expensive coffin that you have? And when she showed us, I said that's the one we're going to get. And when it was over, my nieces said, Ernie, we're really glad you were with us because we couldn't have done that. There are people who know how to take advantage of others. And we, as a Legislature, should ask all these questions and we should get direct answers. The answers I'm looking for are not in this piece of paper handed out by the "whale" insurance company. I don't even know if they look out for whales and what happens to them while they're using the whale as their emblem. And as for this letter from the insurance industry spokesperson, well, I meant the Director of Insurance--they're always go into a job mostly in the insurance industry after they leave this position--it's not persuasive. These arguments in favor of are the ones that raised questions in my mind about the appropriateness of what we're doing or the necessity. If we are talking about fraud, then I am with you 100 percent. I don't want anybody defrauded. But if it's not illegal for me to let my life insurance policy lapse, if it's not illegal... [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: ...for me to get the cash surrender value and the company gains from that, why is this wrong? I'd like to ask Senator Pahls another question, if I may. [LB853]

SENATOR LANGEMEIER: Senator Pahls, would you yield? [LB853]

SENATOR PAHLS: Yes, I would. [LB853]

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SENATOR CHAMBERS: Senator Pahls, if I borrow money on my insurance policy, will they charge me interest on my own money, the insurance company? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: So they make money from me off my money, right? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: I couldn't hear you. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: Okay. Thank you. That's all I will ask you. Members of the Legislature, I'm talking about this industry. They are worse than used car dealers. They are worse than these people on the corner who say, give us a postdated check and we'll take all the money you got from now until you die. Because the insurance company does it behind the cloak of legitimacy and legality, but they have practices that are as unsavory as any that you'll find on the margins of this society. Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no other lights on, Senator Pahls, you are recognized to close on AM1780. [LB853]

SENATOR PAHLS: Thank you. There's one item that I do want to talk about when we talk about fraud. This problem has become so pervasive that it is right now you must, on the document you sign, you must say that this is your money. You have to make it clear enough that nobody else is paying your premium, they're that concerned about it. There were a number of questions that were asked. They're good ones. They're making me think. I must say this. The past and current Director of Insurance have worked hard on this. They've involved a number of people, not only in the state of Nebraska, outside the state, other commissioners. They came to a consensus, this is the way we should go. I could tell you some of the war stories of some groups of people that have been tagged because their longevity...but I won't go into that right now. As I see it, this is sort of a balancing act. We have what the state of Nebraska is offering, as opposed to an organization from the state of Pennsylvania that is coming here and trying to influence our vote. With that, I would express the need that we pass this amendment. Thank you. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Pahls. You have heard the closing on AM1780. The question is, shall AM1780 be adopted to LB853? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk.

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[LB853]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of committee amendments.
[LB853]

SENATOR LANGEMEIER: AM1780 is adopted. We return now to discussion on LB853, the bill itself. Senator Chambers, you're recognized. [LB853]

SENATOR CHAMBERS: Mr. President, members of the Legislature, insurance companies and others talk about an insurable interest. What is an insurable interest? It is whatever the industry says and can get a Legislature to agree to. I'd like to ask Senator Carlson a question or two, because he seems knowledgeable in this area.
[LB853]

SENATOR LANGEMEIER: Senator Carlson, would you yield? [LB853]

SENATOR CARLSON: Yes, I will. [LB853]

SENATOR CHAMBERS: Senator Carlson, what is an insurable interest and on what will you base your response? [LB853]

SENATOR CARLSON: I would say that traditionally insurable interest in life insurance would mean that the person that's applying for the insurance has some kind of either family relationship, business relationship, charitable interest relationship to the insured, so there's a reason for that beneficiary then to receive the proceeds because the dying of the insured has a direct effect on them. [LB853]

SENATOR CHAMBERS: Now, there are enough things that you mentioned in there that would allow the multiple life insurance policies of the kind that I mentioned that Creighton and maybe other entities took out on the life of the then-director of Boys Town. That could be done, couldn't it, under the existing state of the law and they could be said to have an insurable interest by virtue of the fact that they were taking out these policies and they were issued. [LB853]

SENATOR CARLSON: Okay. Can I have a little time to answer this? [LB853]

SENATOR CHAMBERS: You going to put your light on and give me some back?
[LB853]

SENATOR CARLSON: Sure. [LB853]

SENATOR CHAMBERS: Fire away then. [LB853]

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SENATOR CARLSON: I know that there are instances where a director of Boys Town, a director of a charity and so forth probably have multiple life insurance policies on them, and they can be for different reasons. But it may relate to the salary that person has paid. It may relate to the duties that that person does. Boys Town, for example, director, those are huge responsibilities, and if all of a sudden they're not there, that has a direct impact on the function of Boys Town. So it makes sense that Boys Town would own insurance on that individual. [LB853]

SENATOR CHAMBERS: But the fact is that individual is not paying the premiums. Isn't that true? [LB853]

SENATOR CARLSON: Well, there's a double possibility here, probability, because Boys Town is a charitable organization and laws are fairly lenient on charities owning life insurance on individuals, and this bill doesn't address that. It continues to allow that. [LB853]

SENATOR CHAMBERS: But here's what I'm looking at. A statement was made about somebody having to sign a paper saying that he or she was paying the premiums, which might not be true. Why don't we just remove the necessity to lie and let whoever wants to pay the premium pay it, as we do with these other entities which are well-off and well-heeled? Now back to the question. Not everybody on whose life there is a policy and the benefits will go to somebody else other than a family member, not every such person pays the premiums himself or herself. Isn't that true? Well, like the example we've been talking about. [LB853]

SENATOR CARLSON: That could be. That could be. It's certainly not the general rule. [LB853]

SENATOR CHAMBERS: But it happens. It would happen in the example I gave. That person wouldn't have been able to pay the premiums on all those policies. [LB853]

SENATOR CARLSON: No, but there's a different reason for them being covered, because it related to their position. [LB853]

SENATOR CHAMBERS: But here's the point I'm getting to. Policies exist now where the one whose life is insured is not paying the premiums but somebody else is, and that somebody else is going to realize the proceeds from that policy. Doesn't that happen right now? [LB853]

SENATOR CARLSON: Yes, it does, and hopefully it's within the law. [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

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SENATOR CHAMBERS: So there's nothing in and of itself immoral about this situation. It is not allowed because the insurance industry has persuaded legislatures to not allow that, where viaticals are concerned. Isn't that true? [LB853]

SENATOR CARLSON: It's true, but it enters...there's another factor that enters here and that's the law. And I read in a book someplace that we're supposed to obey the laws. [LB853]

SENATOR CHAMBERS: But the law is influenced by these insurance companies as the "whale" company is trying to influence on this bill. Don't they influence legislatures? [LB853]

SENATOR CARLSON: Sure, they do, and that's a right that we have as Americans. You influence the Legislature. [LB853]

SENATOR CHAMBERS: Now if we're going to talk about the rights of Americans and I'm an American, shouldn't I have the right to get the same consideration for my automobile insurance that you as a white American would have, and they not charge me more just because I live in a black neighborhood? [LB853]

SENATOR CARLSON: Absolutely, but we're not talking about automobile insurance. [LB853]

SENATOR LANGEMEIER: Time. Thank you, Senator Chambers. Senator Carlson, you are recognized. Your light is on. [LB853]

SENATOR CARLSON: Senator Chambers, we're talking about life insurance, and the rules are different and the laws are different. And so we've got to pay attention to the law. Investor-initiated life insurance is fraud, according to law, and we can't get away from that. [LB853]

SENATOR CHAMBERS: We can change that. Here's the thing, Senator Carlson. We have a large mansion. The mansion is owned by Al Capone. There are 25 rooms and in each room some particular activity is carried on and it cannot be carried on anywhere than in that room. But Al Capone runs the whole operation. So whether we're talking about auto insurance, life insurance, health insurance, these things come into play. There was some consideration of possible legislation about the way, I guess it was BlueCross and BlueShield, had been picking certain zip code numbers and charging a different rate of insurance. Now how about that? But you don't have to answer here because I'm on your time and I don't want to take it all, and you may have turned on your light because you have issues you want to raise. [LB853]

SENATOR CARLSON: Well, I'm standing here trying to respond to the question that

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you have, and I thought you were going to talk about Al Capone and his insurability. I don't think Al Capone is insurable so probably couldn't write life insurance. His lifestyle wouldn't probably allow an insurance company to write a policy. [LB853]

SENATOR CHAMBERS: But people paid him for insurance so that they wouldn't meet an unexpected, premature demise. [LB853]

SENATOR CARLSON: Well, that is true. That is correct. [LB853]

SENATOR CHAMBERS: So he was one of the insurers. [LB853]

SENATOR CARLSON: Okay. Now, Senator Chambers, have you had what you want? Do you want to ask me something more? [LB853]

SENATOR CHAMBERS: Yes. First of all, I want to tell you something. This is a little something I put together and it's based on a comment that really was made. More can be done with a kind word and a gun than with a kind word alone, quote, Al Capone. Now do you think that that is true, you can get more done with a kind word and a gun than with a kind word alone? Do you agree with that? [LB853]

SENATOR CARLSON: In some instances. [LB853]

SENATOR CHAMBERS: Okay. Now to get right to what we're talking about here, when we mention that something is fraudulent, it's that only because the Legislature says so. Do you agree? [LB853]

SENATOR CARLSON: I do in part. However, we're talking about insurance law here that some of it is federal law and couldn't disregard that. In this particular instance, we're talking about making a law that I believe is protecting the people in our society, from the wealthiest to the poorest, from being taking advantage of on something. And the worst thing that might happen with this law passed is that somebody could have someone else pay their insurance for five years instead of two. [LB853]

SENATOR CHAMBERS: Well, tell me how it would hurt me. I purchase an insurance policy with the intent of selling it tomorrow, and I can get far more for that from whoever I'm going to sell it to than what I can get from it if I turn it into my company and get a cash value. How does that hurt me? [LB853]

SENATOR CARLSON: And you're talking about your purchasing a policy with the intent to sell. [LB853]

SENATOR CHAMBERS: Yes, a life insurance policy. [LB853]

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SENATOR CARLSON: So you're paying for it with your dollars. [LB853]

SENATOR CHAMBERS: Yes. [LB853]

SENATOR CARLSON: Under current law, you've got to wait two years to sell it unless one of these exceptions occur. And...but there's another reason for the two years in our discussion that hasn't been asked or heard, and it's different in life insurance than automobile insurance or mortgages or other forms of contracts. There's a contestability period. [LB853]

SENATOR CHAMBERS: Uh-huh. [LB853]

SENATOR CARLSON: You apply for life insurance and fraudulently or you commit suicide, after two years death is death, but in those first two years it's not, and that has something to do with the relationship of some of these rules... [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CARLSON: ...and what we can do. Thank you. [LB853]

SENATOR CHAMBERS: Now if I purchase this policy and I sell it tomorrow, and I use the proceeds to then purchase an insurance policy that I intend to keep, I can make payments in advance on that policy, can't I, with the money that I got from selling this other policy cheap? Can't I do that? [LB853]

SENATOR CARLSON: Yes, you could. [LB853]

SENATOR CHAMBERS: But you don't want me to be able to do that. [LB853]

SENATOR CARLSON: I don't want you to break the law. [LB853]

SENATOR CHAMBERS: But you don't want... [LB853]

SENATOR CARLSON: So you'd have to lie that you did not break the law, and if that were found out, you're in trouble. I don't want you to get in trouble. [LB853]

SENATOR CHAMBERS: But we can change...we can change the law while we're working on this bill, can't we? We can change that. [LB853]

SENATOR CARLSON: We probably can, but I'm not in favor of that. [LB853]

SENATOR CHAMBERS: Thank you for letting me have some of your time. [LB853]

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SENATOR CARLSON: Okay. Thank you. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Chambers, you're recognized. [LB853]

SENATOR CHAMBERS: Mr. President, members of the Legislature, principle is discussed when it doesn't get in the way of a particular special interest group making money. When it gets in the way, then we stop talking principle and start talking about compartmentalization. If there is something inherently wrong with Mr. A or Ms. A having an insurance policy and the premiums are paid by Mr. B or Ms. B, if there is something inherently wrong with that, it should not be allowed anywhere under any circumstances. But there is nothing inherently wrong with it. It would create an inconvenience to the insurance industry, so they've persuaded legislatures to put things into the law that benefit the insurance industry. Then they try to tell the poor suckers, such as myself, that it's done for my best interest; that if I am willing to let somebody purchase an insurance policy on my life and they'll give me \$5,000 for that, it's in my best interest not to be able to get that \$5,000. And I can't afford to buy life insurance anyway, so the only thing that I, the poor rube, the lummo, the yokel, the only circumstances under which I have a chance to gain anything in this complex realm of insurance is to agree to let somebody take out a policy on my life in the way that Creighton and Boys Town's interlocking directorate can take out an insurance policy on somebody whom they want to insure. And they tell me that it's in my best interest that I not be allowed to realize that \$5,000. If the person kills me to get the money, that goes into another area. We're not talking about people insuring an individual, then committing murder to recover on the policy, because family members can do that and have done it, so that's not what we're talking about. We're talking about the process itself being criminalized under certain circumstances because the insurance industry wants it that way. Senator Carlson mentioned this two-year contestability period. That's put in by the insurance companies. If you're talking about making an actuarial study, they can determine how many people commit suicide and what the likelihood is of enough people committing suicide that you have to say within the first two years of a policy if somebody commits suicide that voids the policy. That protects them. They don't want to have to pay. But if they did away with that provision, it's not going to break the insurance companies. But every place they can cut a corner so that they can receive premiums but not have to pay benefits, that is what they're going to do. They have always done it. They make it clear. And these people who wrote us one of these letters, I think it's the "whale" insurance company that did it, talked about trying to get a uniform or model law in all of the states so that all the laws are uniform, and all of those uniform provisions will benefit the insurance industry. I don't like to have investors and hustlers and speculators in ethanol coming to the Legislature to get bills that facilitate what they're doing, but they get those bills. [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

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SENATOR CHAMBERS: They speculate. Farmers invest and lose, but the big companies, the national companies, the multinational companies are never going to lose, because if they need something else they go to Congress and say, up the federal subsidy. But you don't see anybody saying, let's put some money out there so poor people can have health coverage for their children. No, not there, but subsidies to ensure that these big speculating companies will not go under and they'll realize a profit. That's what we're looking at here. If you have a dispute against Al Capone and "Legs" Diamond, of what concern is that to honest people? You've got two cutthroats, two mobsters, two gangsters fighting each other. Well, let them fight and let Eliot Ness get involved, but don't pretend... [LB853]

SENATOR LANGEMEIER: Time. [LB853]

SENATOR CHAMBERS: Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Chambers, you're recognized. [LB853]

SENATOR CHAMBERS: Thank you, Mr. President. To continue, don't pretend that that fight involves ordinary people. When Al Capone is going to extort protection money, Al Capone and his minions don't stop people on the street and say, empty your pockets. They go to those who are going to have a steady income. They're business people too. Calvin Coolidge said the number one business of the American people is business. Well, mobsters are business people too. Gangsters are business people, and the business of a gangster is business. The gangster is an honest underworld operator. The insurance companies are dishonest above-the-world operators, but they use tactics just like, and in some cases worse than, those used in the underworld. But if the discussion can be framed outside of the lines of what I'm talking about, then it can be put on a high level and it can be made to appear that it's a terrible thing to speculate or gamble on when somebody else is going to die. That happens all the time. That's what so-called life insurance is based on. They should call it death insurance. That's when the insurance payout comes. So if there's something inherently wrong, which there isn't, with a third party getting involved in one of these transactions, then these companies, these societies and others should not be allowed to speculate on and make a windfall profit from the death of a person who is not related by family or anything else other than that he or she is walking around with enough life for an insurance company to allow a policy to be purchased on that individual. That person could be homeless, that person could have no relative in the world, but here is a chance to get some money without sticking a gun in somebody's nose, without snatching, grabbing, and running. And the Legislature and the "whale" insurance company and their fellows are going to say you cannot do that. The insurance companies can. They can cut any and every corner, and that's all right. They will stay within the law because when they do something that is outside the current law they'll get the Legislature to bend that law so that it goes out,

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around, and embraces that action by the insurance company which would be unlawful but for the fact that they got the Legislature to accommodate them. Everybody on this floor knows the power of these insurance companies and the drug industry. I'm on Medicare. They cannot even negotiate to try to get a better price for drugs. You get a little increase in your Social Security payout; then the premiums that you have to pay rise also. You continue to pay premiums on the Medicare benefits that are supposed to be available to you, but if you're healthy like me, you never make a claim on them. If you're of my complexion, not as many of us are going to live long enough to get any Social Security benefits, so we're subsidizing white people. We pay in, but we're not expected to live long enough to realize any payout. So there are a lot of things that are skewed in this society but they are never discussed. [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: This operation ought to be banned completely or you ought to leave it alone. Nobody has shown me where the one on whose life the policy is taken out loses anything. That person may not have been able to afford a policy anyway. Next time around I'm going to ask Senator Pahls a question, and maybe one or two of "Parson" Carlson. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Chambers, and that was your third time. Thank you. Seeing no other lights on, Senator Wallman, you're recognized. [LB853]

SENATOR WALLMAN: I yield my time to Senator Chambers. [LB853]

SENATOR LANGEMEIER: Senator Chambers, five minutes. [LB853]

SENATOR CHAMBERS: Thank you. And, Mr. President--and, Senator Pahls, don't panic, but I've got to find a way to make sure that I can talk until I say what I have on my mind. Members of the Legislature, I'd like to ask Senator Pahls a question. [LB853]

SENATOR LANGEMEIER: Senator Pahls, would you yield? [LB853]

SENATOR PAHLS: Yes, I will. [LB853]

SENATOR CHAMBERS: Senator Pahls, let's say that we have a person who is homeless and has no relatives. How is that person harmed if a policy is going to be taken out on his or her life and sold to one of these investors tomorrow, and the person realizes what, for that person, is a substantial amount of money? Say it's enough money to buy some clothes, to buy some shoes, to buy some articles for personal hygiene and maybe even to pay rent for a few months. Is that evil? Senator Pahls, if the person that I described were to be the party in this transaction, why should not that person be allowed to do this, in your view? [LB853]

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SENATOR PAHLS: Thank you, Senator. You know, one on one that sounds okay, but if you continue to compound that, after awhile you've actually knocked the legs out from under the insurance world. [LB853]

SENATOR CHAMBERS: Senator Pahls, are you telling me that if this happened then the insurance companies would charge higher premiums? [LB853]

SENATOR PAHLS: The way it is moving and how fast this is moving, that is projected. [LB853]

SENATOR CHAMBERS: And, Senator Pahls, if the insurance companies charge higher premiums they have more money with which to invest, don't they? [LB853]

SENATOR PAHLS: That could be, but they'd also be paying out higher. [LB853]

SENATOR CHAMBERS: But they don't pay out all their money in benefits or they wouldn't have money to invest, would they? [LB853]

SENATOR PAHLS: Yes. Right. [LB853]

SENATOR CHAMBERS: Do you think they pay out more than they invest in a year? [LB853]

SENATOR PAHLS: If they do, they probably would be insolvent after awhile. [LB853]

SENATOR CHAMBERS: So then they have more to invest in a year than the amount they pay out in a year, correct? [LB853]

SENATOR PAHLS: I would...yes, I would assume that. [LB853]

SENATOR CHAMBERS: So that means they make a substantial profit every year, correct? [LB853]

SENATOR PAHLS: Yeah, they would make a profit (inaudible). [LB853]

SENATOR CHAMBERS: And it could be on premiums, the realizing whatever they're going to make on their investments and so forth. But in that pot is more at the end of the year than was in it at the beginning, even with the payouts. So how many individuals--and this may be rhetorical--do you think would have to...? Strike that. Are there any statistics on how many people are taking advantage of this situation now, I mean the ones on whose lives the policy is taken out, and those policies, in turn, are sold on what you all are calling the secondary market? How many people...how many of

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those transactions have occurred last year, if you know? [LB853]

SENATOR PAHLS: You know, I do not have that information at hand. I'm sure we could get that for you. But I also want, and I do not have it here, where they have actually targeted certain areas, the second market have; they have targeted certain areas and groups trying to make this work for them. [LB853]

SENATOR CHAMBERS: And they target those where they think they can get the biggest realization or biggest profit on the money that they put out there. In other words, the biggest bang for their buck. Correct? [LB853]

SENATOR PAHLS: I would assume that would be their... [LB853]

SENATOR CHAMBERS: Now when the "Wizard of West Omaha," otherwise known as Warren Buffett, does he invest money whether he's going to purchase a company, an interest in a company or whatever else, on the basis of targeting his money to make the most he can from his investment? [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: Is that what he does? [LB853]

SENATOR PAHLS: I'm assuming he does. [LB853]

SENATOR CHAMBERS: So these investors would do the same thing, wouldn't they? They would target... [LB853]

SENATOR PAHLS: (Inaudible) at the expense of some people, but I guess Buffett does that also, if you'd look at that. [LB853]

SENATOR CHAMBERS: At the expense of whom? Certainly not the one whose life is insured, because that person gets some money right now. [LB853]

SENATOR PAHLS: Well, if you were...and we're talking about those people in extreme need, it probably would not affect them as much as it would be for somebody else who has probably a few more dollars because it could cause them some problems. [LB853]

SENATOR CHAMBERS: How? Because they're not going to...whatever money they spend on the premium is not going to help them deal with their situation of extreme need, because the benefits don't pay until that person croaks. So as long as that person is alive, the policy is not benefiting him or her... [LB853]

SENATOR PAHLS: Right. [LB853]

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SENATOR CHAMBERS: ...to any substantial degree. Isn't that true? [LB853]

SENATOR PAHLS: But I think some people look at it as passing their money on to their children. [LB853]

SENATOR CHAMBERS: Well, if they have no family. [LB853]

SENATOR LANGEMEIER: Time. [LB853]

SENATOR CHAMBERS: Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Mr. Clerk, for a motion. [LB853]

CLERK: Mr. President, Senator Chambers would move to indefinitely postpone. Senator Pahls, you'd have the option to lay the bill over or take it up at this time. [LB853]

SENATOR LANGEMEIER: Would you like to take it up or lay it over? [LB853]

SENATOR PAHLS: I would like to take it up. [LB853]

SENATOR LANGEMEIER: Thank you. Senator Chambers, you are recognized to open on your motion to indefinitely postpone. [LB853]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I'm going to continue along this track with Senator Pahls. Senator Pahls, did anybody... [LB853]

SENATOR LANGEMEIER: Senator Pahls, would you yield? [LB853]

SENATOR PAHLS: Yes, I would. [LB853]

SENATOR CHAMBERS: Did anybody from the insurance industry--and I'm not interested who the person was or the connection--anybody point out that this is such a large problem that in the foreseeable future it's going to make the premiums that millions of people pay on their life insurance policies increase? And how many people did they tell you it would take to affect the industry to such an extent that it's going to raise premiums, or didn't they discuss that? [LB853]

SENATOR PAHLS: They did not give me a number, but I'd like to just read a statement that I think Senator Pankonin read from. [LB853]

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SENATOR CHAMBERS: Okay. [LB853]

SENATOR PAHLS: Okay. "In May, as the subprime mortgage market was cracking, many of the biggest players in finance gathered at the conference in New York City to talk about the next exotic instrument coming down the pike: death bonds." And that's what they're doing. They're buying these plans up and making them into bonds and selling them. So that, in itself, could cause a collapse, as we know it's happening right now in the mortgage. This could be an offshoot of that, not the individual you're talking about but the larger picture. And I don't...I do not have that information in front of me to... [LB853]

SENATOR CHAMBERS: Senator Pahls, I know less about mortgages than anybody in the world, but these people who got in trouble were allowed to purchase houses with no down payment. Isn't that true? [LB853]

SENATOR PAHLS: That is my understanding. [LB853]

SENATOR CHAMBERS: Can I purchase a life insurance policy without paying anything? Even if they're going to hustle me and there's a come-on, I got to at least pay \$1 and then they give me coverage for a month, but they don't give me anything, any coverage for nothing. So why do people keep using that subprime example, other than the fact that everybody is afraid of it and they don't really know the ins and outs of that? But we're talking about something entirely different from that. This is where you must be out-of-pocket money to the insurance company, and if you don't pay your premiums and your policy lapses, they keep...let me ask you a question. If my policy lapses, do they give me a refund, since I didn't die, an insurance company? If I've had insurance for five years and my policy absolutely lapses, if there was a grace period, that lapses too. [LB853]

SENATOR PAHLS: Well, it's my understanding... [LB853]

SENATOR CHAMBERS: (Inaudible) give me any refund? [LB853]

SENATOR PAHLS: This is how it works. I'm sure they would give you several opportunities, and then if there's a cash value in that plan, I'm assuming that cash value in that plan could continue making those premiums. [LB853]

SENATOR CHAMBERS: And then if that's exhausted, they didn't pay me any benefits. They were making money without ever having to deliver anything to me. Isn't that true? [LB853]

SENATOR PAHLS: Yes. [LB853]

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SENATOR CHAMBERS: Okay. Now as big as the insurance industry is, I think it would take a very, very large disturbance in the force to cause an increase in life insurance premiums. Do you disagree with that, or you agree with it? [LB853]

SENATOR PAHLS: I think it would take a number of individuals. [LB853]

SENATOR CHAMBERS: So are they trying--when I say "they," the insurance industry--are they trying to head something off before it becomes what they would consider to be unmanageable? [LB853]

SENATOR PAHLS: That is my understanding. [LB853]

SENATOR CHAMBERS: Now this secondary market is really developing into a competitor, albeit not a serious one yet, a competitor to the insurance industry. Isn't that what we're seeing? [LB853]

SENATOR PAHLS: That would be right. There is a secondary market out there. [LB853]

SENATOR CHAMBERS: And the insurance companies don't care what happens to you, me or anybody else. So when they look at the possibility of competition, they become concerned. Then, if that competition seems to be taking advantage of something that the insurance companies thought only they could take advantage of, then they become alarmed. There is...I'll ask you this question, Senator Pahls. Is there any way the insurance industry can restructure itself so that it's not going to be harmed by this viatical activity? Or is it even necessary that they consider restructuring themselves? [LB853]

SENATOR PAHLS: I'm assuming they could, themselves, go into a secondary market. You know, they could...that could be one avenue. [LB853]

SENATOR CHAMBERS: But here's the thing, and I'm getting back to it now. Whoever holds that policy, when the one insured croaks, the only amount that will be paid is what the policy called for. Is that correct? [LB853]

SENATOR PAHLS: That is my understanding. [LB853]

SENATOR CHAMBERS: So whether Mr. A, whose life was insured, or Mr. B, who paid the premiums, the insurance company is going to pay out no additional money from that which was agreed to in the insurance contract. Isn't that right? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: So the insurance company is not harmed, whether the money

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is spent wisely or set afire to light Cuban cigars. It's not going to impact the insurance company one way or the other, is it? [LB853]

SENATOR PAHLS: Probably not. [LB853]

SENATOR CHAMBERS: So let's say we have 3,000 policies and each of these policies was purchased by...their premiums will be paid by the ones on whose life the policies are issued. Next to them we have 3,000 people who entered into one of these arrangements where a policy is purchased and somebody else pays the premiums. Each of the 3,000 policies on my left-hand side are for \$100,000 upon death. Each of the policies on my right-hand side would be for the same amount. Now, the insurance company is not going to pay out any more money regardless of how those policy premiums are paid or regardless of who is the holder at the time the one covered croaks. Isn't that true? [LB853]

SENATOR PAHLS: I don't have all of the attributes of the arguments. I think age would be a factor, but I'm assuming if you have 3,000 of 70-year-olds on either side... [LB853]

SENATOR CHAMBERS: Yes. [LB853]

SENATOR PAHLS: ...you know... [LB853]

SENATOR CHAMBERS: We just have people who are going to croak, and when they croak a certain amount of money is going to be paid. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: Okay. So I don't see where the insurance has a dog in this hunt. Is it that they think more policies will be purchased than otherwise would be the case and their exposure might be greater because these people are going to die and the insurance company will have to pay benefits, whereas if all those people had not purchased policies they wouldn't have had to pay out benefits? Is that what they're arguing? [LB853]

SENATOR PAHLS: One of the issues here, they're going after a certain age group, (inaudible). [LB853]

SENATOR CHAMBERS: Yes, people like me. If they got one tooth missing in front, when they talk they drool and dribble and they forget what they ate for breakfast this morning so how are they going to remember what happened 20 years ago? So what? The insurance companies will insure me. So what difference does it make if I pay the premium or Senator Wallman pays it for me? I still drool and dribble, I still have a bad memory, and I'm going to croak pretty soon, people hope. What difference is that to the

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insurance company if they're going to sell a policy on somebody in my condition?
[LB853]

SENATOR PAHLS: I think they would be suspect if they thought a...I'm using the word "stranger," was...would happen to be buying a policy on you. And don't ask me why, but I just think that they would be suspect of that decision. [LB853]

SENATOR CHAMBERS: (Speaking with an older person's voice.) Well, you think, Sonny, that they expect that this person is going to kill me? [LB853]

SENATOR PAHLS: Well, (laugh) you know, they can sell you a policy and somebody else may have your policy and they would probably prefer you dead. [LB853]

SENATOR CHAMBERS: Now, have you see anything in any of the arguments of the insurance companies that they fear more people are winding up dead under suspicious circumstances under these viatical agreements than would ordinarily be the case for somebody in that age group? [LB853]

SENATOR PAHLS: That was a little levity on my part. [LB853]

SENATOR CHAMBERS: I know, but it... [LB853]

SENATOR PAHLS: No, I don't. [LB853]

SENATOR CHAMBERS: ...raises a legitimate point. Okay. So we're not talking about them buying these...getting into these arrangements and killing people. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: I still have not had an answer, so let me ask Senator Carlson, if you don't mind. How much time do I have on this time, Mr. President? [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: Senator Carlson, what difference does it make to the insurance company to whom it pays the \$100,000 benefit on a particular life insurance policy? [LB853]

SENATOR LANGEMEIER: Senator Carlson, would you yield? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: What difference does it make to the insurance company?

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[LB853]

SENATOR CARLSON: Well, it falls in, I think, to the requirements for insurability. Amongst those are financial requirements, health requirements, and an orderly way of doing business. And several of the things that you're talking about here, Senator Chambers, the secondary market is geared to take advantage of wealthy people and wealthy people only, and maybe that's okay with you, but that's the only people that are going to be involved in this process. [LB853]

SENATOR CHAMBERS: How are they...how will it take advantage of a wealthy person? [LB853]

SENATOR CARLSON: Because they want big policies and a person that doesn't have assets or wealth can't qualify for a big policy. [LB853]

SENATOR CHAMBERS: Well, how does that hurt the person who is going to get into this arrangement who is wealthy? How is the wealthy person hurt? [LB853]

SENATOR LANGEMEIER: Time. [LB853]

SENATOR CHAMBERS: Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on the motion to indefinitely postpone LB853. The floor is now open for discussion. Senator Chambers, you're recognized. [LB853]

SENATOR CHAMBERS: Thank you. I would like to continue with "Parson" Carlson. [LB853]

SENATOR CARLSON: Okay. [LB853]

SENATOR CHAMBERS: Parson, we have Daddy Warbucks over here on my left, with more money than he can count, more bags of money than he can count. His money is not counted, it is weighed. Now he enters one of these viatical agreements. He has taken out a policy for \$5 million, and the beneficiary is Little Orphan Annie when he takes it out. Then I come along and I say, I will give you \$200,000 for it now. And he says, sold. So I become the beneficiary and I make the payments on the premiums, and I'm not expecting him to live long enough to exhaust the difference between what I gave him and what the policy will be. How is Daddy Warbucks hurt by that arrangement? Is it true that I who purchased this policy may be the one undergoing the greatest risk? [LB853]

SENATOR CARLSON: You've risked tying up your money, and you've risked how long

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he might live. [LB853]

SENATOR CHAMBERS: Yes. [LB853]

SENATOR CARLSON: But I'm convinced the insurance industry is really concerned about fraud here, because the way this is used, then, you're not going to keep that policy. You're going to put it in, probably...you're going to sell it to somebody else. So you're going to put it into a fund, and so there's a pretty good possibility for \$5 million. There's nobody liked Daddy Warbucks anyway. Somebody is going to do him in, and you may contract with somebody, and that's hard to trace, and then the insurance company is out \$5 million in rather short order. [LB853]

SENATOR CHAMBERS: So the harm you think will come to a wealthy person is that somebody may be encouraged to bump that person off. [LB853]

SENATOR CARLSON: Absolutely. [LB853]

SENATOR CHAMBERS: Over than that, there is no harm that would come to that wealthy person who got money while living, which would not be of any value to that person after croaking. [LB853]

SENATOR CARLSON: Well, some of this dialogue is a little bit humorous, but there are some serious aspects here that I'd like to touch on, for the wealthy person. [LB853]

SENATOR CHAMBERS: And that's what I'm asking you. [LB853]

SENATOR CARLSON: Okay. [LB853]

SENATOR CHAMBERS: How is the...because you said the only ones who would be harmed are wealthy people. [LB853]

SENATOR CARLSON: Well, they have to have assets, and they have to have money, and... [LB853]

SENATOR CHAMBERS: But their assets are not implicated in the life insurance policy. They're not going to lose their assets. [LB853]

SENATOR CARLSON: I'm going to...my mother is gone, but if I my mother was thinking about investing in one of these policies because somebody had approached her, and she asked me what I thought she ought to do, there may be reasons for charitable giving or for estate planning, where additional insurance on my mother would be appropriate, maybe for me and my family. And she takes out this big policy because you're talking her into it, she's used up some of her insurability. And then if the

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agreement is after two years you're going to get the policy, so for two years she has the coverage, we want to make it five years before she can give up this coverage, and you have it. But whether it's two years or whether it's five years, when that time is up, there could be a lot that's happened to her health in that period of time, and she may not be able to get additional insurance that's appropriate for our family, or appropriate for her needs. [LB853]

SENATOR CHAMBERS: Now you introduced something a little further back--you said her insurability might be used up. Is there only a certain amount for which a person's life can be insured? Is that what you're saying? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: And what would that amount be? [LB853]

SENATOR CARLSON: It depends on a lot of factors. It depends on assets that a person owns, income, these financial questions, and an insurance company has the right to look into those things and then determine whether they'll issue a given amount of insurance or not. So she could use up her insurability, amount of insurance, with you, and there's none left for her family. That's one of the things... [LB853]

SENATOR CHAMBERS: But if she needed some money right now and her family hasn't given it to her, because that's apparently why she would accept this money, that would be a benefit to her right then, if she chose to get it that way, because the insurance benefit is not going to help her while she's alive, is it? It will accrue only when she's dead, and it will go to somebody else. To benefit her from this insurance policy, the only way she can do that is through one of these arrangements; isn't that true? There's no other way she can collect on a policy on her life before she dies. This is the only way, isn't it? [LB853]

SENATOR CARLSON: No. She can go through the legitimate process of purchasing an insurance policy, paying for it herself, waiting two years and then she's free to do whatever she wants to with it. [LB853]

SENATOR CHAMBERS: But she could then sell it, in the way we're talking about now. [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: But the same problems could exist after two years that exists right now, huh? Her insurability could be used up. [LB853]

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SENATOR CARLSON: Yes, but then she's in control of whether she sells it or not, not you. [LB853]

SENATOR CHAMBERS: But she's in control in the first two years, too, not me. [LB853]

SENATOR LANGEMEIER: Time. [LB853]

SENATOR CARLSON: But not beyond that. [LB853]

SENATOR CHAMBERS: Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Chambers, you're recognized. [LB853]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm going to try to chew up what I heard Senator Carlson say. If--and I'm going to take it away from the example he gave, because I don't want to seem disrespectful, but my mother has died, too, so I understand, but I don't want to bring anybody's relative in. If we have a person who takes a \$100,000 policy on her own and is going to pay the premiums, then she needs some money right now. She may be on Medicare, but Medicare is not going to pay for this particular procedure, because it's considered to be experimental or unnecessary. Large amounts of drugs are needed to maintain life, so she needs some money to copay or pay for drugs. So she's going to go where she can to get some money, and she can get a substantial amount of money by selling this policy to me, and I give her cash right now, an amount of cash that she will not realize, no matter what she does with that policy. If she surrenders it for the cash value she's not going to get that much money, not even close, because the insurance companies are going to make sure that doesn't happen. Now if the insurance companies were willing to buy back the policy, then I'd say let the insurance companies do it, but they don't want to do that because that would cost them money, and they're not in the business of being cost money. So what Senator Carlson has said, if within those first two years this arrangement is made, then I who am making the purchase will have control and not the one who is covered. But if it's after the two years, then I no longer am in control, even though I'm offering the same amount of money to the same person whose in the same circumstances--does not compute. People who will do this want some money now for whatever reason. Maybe they want to see a sunset over Waikiki. Maybe they want to see how it feels to be sailing, sailing, over the bounding main. Maybe they just want to travel until their money runs out or their life runs out, whichever comes sooner. Nobody can tell how a person who is older wants to end his life or her life. A lot of older people have many regrets. A lot of them develop bitterness, and a lot of older people feel very alone, neglected, and in the way. Many old people who have means will see a lean and hungry look whenever relatives who may realize something

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upon that person's demise will observe that old person. So let these people do what they will with what is theirs. If that old person wants to get \$200,000 by selling a policy that's worth \$500,000 and put it in an urn and set it afire and spread the ashes to the wind, it's theirs to do with as they please! Even Solomon or somebody said, if you accumulate a lot, how do you know that what you leave will be left to a wise man or to a fool? You don't control it after you're gone. People may want to give something to their relatives while they're alive. They might want to see the joy in little children's eyes,...

[LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: ...in other people's eyes, while they are alive. Maybe that's what they want to purchase with their money, and they should be able to do that. I haven't heard any compelling arguments in support of this bill. But I'm not going to try to kill it. Do you think I want the "whale" company coming after me, Senator Carlson? If somebody is going to put a contract out on an old fellow because he sold a life insurance policy, you know what the "whale" company will do to try to get me out of the way, if I'm opposing something they want. They got a whale performing for them so they can make a commercial. What am I, so much less significant, so much smaller than a whale, Senator Carlson? The comments that have been made, the arguments in support of this bill, are not persuasive to me at all,...

[LB853]

SENATOR LANGEMEIER: Time. [LB853]

SENATOR CHAMBERS: ...and if this were one of the areas...thank you, Mr. President.

[LB853]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no other lights, Senator Chambers, you are recognized to close on your motion to indefinitely postpone.

[LB853]

SENATOR CHAMBERS: And not only will I close on my motion, I'll close out on what I'm saying about this bill. If this were one of the areas where I have a great amount of interest, I would dig my heels in on it. But it appears that everybody thinks this is good. If the bill were designed to protect people from coercion, overreaching, fraud, in the same way that other programs are set up to protect the elderly, that's one thing. But these agreements don't involve only the elderly. I'd like to ask Senator Pahls a question.

[LB853]

SENATOR LANGEMEIER: Senator Pahls, would you yield? [LB853]

SENATOR PAHLS: Yes, I will. [LB853]

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SENATOR CHAMBERS: Senator Pahls, these viatical agreements can involve people who are critically ill but not aged, isn't that true? [LB853]

SENATOR PAHLS: That's how it originated, with the AIDS in the... [LB853]

SENATOR CHAMBERS: So we're not just talking about old people, are we? [LB853]

SENATOR PAHLS: No. [LB853]

SENATOR CHAMBERS: And we're not just talking about people whose minds may not be clear, and fuzzy, and not understand what they're doing, are we? [LB853]

SENATOR PAHLS: But with the exceptions, that person could...I think could qualify. [LB853]

SENATOR CHAMBERS: We could be talking about somebody who belongs to that elite intelligent group who give tests and say they're smarter than everybody in the world, that Mensa group. It could be somebody from Mensa who would look at all of the factors and decide to enter into one of these arrangements. That could happen, couldn't it? [LB853]

SENATOR PAHLS: Yes, it could. [LB853]

SENATOR CHAMBERS: Okay. I just want to be sure that we're not giving the impression that only those who in the old days were referred to as feeble-minded or those who are aged or those who are starting to experience dementia, they're not the only ones who get involved. There are people who can be strapped financially to such an extent that a policy they have may be on the verge of lapsing because they cannot pay the premiums. So let it lapse, get nothing, and let the insurance company get everything--keep what you've paid them. Or sell it to somebody and get some money. You all don't want to put these little neighborhood cutthroat operations who will get you to write a post-dated check--you don't want to put them out of business, and you don't get free money like you get under these viaticals. When they give you that money, you don't have to give them any more money. They give you money! They give you money which you will never otherwise realize. Where can you find a deal like that? Free money! You can't get this money anywhere. You get it now with no strings attached. Even if you live out a long life, when you die you're not going to realize any benefits from that policy. But if you enter this agreement now, you will not only realize the total amount that you paid in premiums, but a substantial amount above and beyond it, and you can do something with it to help yourself, to help others, or just to throw away, if you want to. But you now have some control in your life, which you may never have had before, and for people who have never been in that situation of not being able to control anything, this may seem not very significant or important. But the more I think about this

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and the more I look at the arguments that are given in support of it, the less persuaded I am. There are other arguments that I thought I was going to hear with reference to this. I haven't heard them. So on General File, I'm not going to do any more against this bill than I've done. But when Select File comes, I cannot predict with exactitude what the future holds. I don't even know what I'm going to do in the future. I don't know what I'm going to do tomorrow. I may not even be here tomorrow. Stop clapping and laughing, because I plan to be here! But plans often go a-gley, aft gang a-gley. Why don't you want these people to be able to gain some of the types of benefits that I've mentioned? There are now things called reverse mortgages, where the one who gives the money gives it only because they expect to get that person's house. That's why they do it, and nobody says anything is wrong with that, and they make it so alluring. You're old, you have trouble making payments? Well, here's what we do. We're going to give you some money, and here's what's so nice about it. The amount that you owe--you're not making payments, there will be interest accrued, but it never reach an amount greater than the value of the house,... [LB853]

SENATOR LANGEMEIER: Time. [LB853]

SENATOR CHAMBERS: ...and you can stay in that house until you croak. Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the closing on the motion to indefinitely postpone LB853. Senator Chambers, for what purpose do you rise? [LB853]

SENATOR CHAMBERS: Withdraw that motion. [LB853]

SENATOR LANGEMEIER: It is withdrawn. We return now to discussion on LB853, the bill itself. Senator Hudkins, you are recognized. [LB853]

SENATOR HUDKINS: Thank you, Mr. President, members of the body. Senator Pahls, I'll be asking you a few questions in a minute, based upon what I say. I have been trying very hard to follow the discussion on this bill, and frankly, I was very, very confused. I did not understand it, I didn't see what the purpose of the bill was nor the amendment. Senator Chambers has said some things that made sense. Senator Pahls has said things that make sense. I went out into the lobby and I asked some people out there. I said, okay, I have a very small life insurance policy purchased for me by my parents when I was just a little girl, and after a number of years, the cash value of that policy is almost up to the face value of that policy. Now can I sell it? And I was told, yes, you can go back to the original insurance company and you can sell it to them, or you can go to another entity entirely and you can get much more than that. And I didn't ask why--I thought, ooh, money! So Senator Pahls, do I have this about right? [LB853]

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SENATOR PAHLS: Yes. It's my understanding if you have a policy, you could go to the open market and there competing companies would take a look at your policy and offer you different values. [LB853]

SENATOR HUDKINS: So what is wrong with that? [LB853]

SENATOR PAHLS: Nothing. I'm not saying you can't do that. [LB853]

SENATOR HUDKINS: So you're just changing the time. Now it's two years. You're increasing that to five years before this can be done? [LB853]

SENATOR PAHLS: Right. That's if somebody else would buy your policy. [LB853]

SENATOR HUDKINS: Why? Why do we need to do this? Going from two years to five years? [LB853]

SENATOR PAHLS: Because they found out that this will probably make the market from the secondary insurance...they can't make as much money on it. So they don't want to do it. [LB853]

SENATOR HUDKINS: They couldn't make as much money on it, because...why? Let's go back to Insurance 101. [LB853]

SENATOR PAHLS: Because they're counting on you to die...the sooner you die, the more money they make. [LB853]

SENATOR HUDKINS: And if they have to wait for at least five years in order to buy this policy, they have...there have been more premiums paid and therefore they won't be getting as much back if I would die? [LB853]

SENATOR PAHLS: Right. They're counting on people to die. To be honest with you, the sooner the better, because they don't make the payments, so they're just saving themselves money. It's a business transaction. [LB853]

SENATOR HUDKINS: All right. And I think that I agree with Senator Chambers, and I agree with you, Senator Pahls, that it is a business transaction, and therefore, I think that I won't be supporting the bill. And if I'm wrong, somebody please tell me. Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. Seeing no other lights...Senator Nelson, you're recognized. [LB853]

SENATOR NELSON: Thank you, Mr. Speaker (sic). May I ask Senator Pahls a

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question? [LB853]

SENATOR LANGEMEIER: Senator Pahls, would you yield? [LB853]

SENATOR NELSON: Senator Pahls, Senator Hudkins has asked a question. Would this really apply in her situation, where that's an existing policy that was purchased years ago? [LB853]

SENATOR PAHLS: No [LB853]

SENATOR NELSON: She wouldn't be prohibited from doing anything at this time, is that correct? [LB853]

SENATOR PAHLS: No. If you have a policy, if I have a policy, anybody sitting on this have had a policy, it does not affect them. I mean it's the... [LB853]

SENATOR NELSON: Thank you very much. Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Seeing no other lights on, Senator Pahls, you're recognized to close on LB853. [LB853]

SENATOR PAHLS: Thank you. We've had what I call somewhat of a lively discussion today, and I'm asking you to move this bill forward. Thank you. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Pahls. You have heard the closing on LB853. The question before the body is, shall LB853 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB853]

CLERK: 28 ayes, 2 nays, Mr. President, on the advancement of the bill. [LB853]

SENATOR LANGEMEIER: LB853 does advance. Mr. Clerk, items? [LB853]

CLERK: Mr. President, new resolutions: Senator Synowiecki offers LR270. That will be laid over. That's all that I have. [LR270]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Continuing on General File, 2008 senator priority bills, LB878. [LB878]

CLERK: LB878, a bill by Senator Engel and others. (Read title.) The bill was introduced on January 11, referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM2041, Legislative Journal page 707.) [LB878]

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SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Engel, you are recognized to open on LB878. [LB878]

SENATOR ENGEL: Mr. President, members of the body, it's a pleasure for me to bring before you today LB878, and this would change the provisions relating to the recall of elected officials. This was advanced from the Government Committee, 7-0 vote. Currently, elected officials can be recalled for any reason, and the law simply requires that the principal circulators submit an affidavit that includes a reason for which the recall is sought, in 60 words or less. Under LB878 the registered voters seeking the recall would be required to submit a statement 60 words or less alleging facts, which if true, would establish one of three grounds for which recall of the official is sought: malfeasance in office, misfeasance in office, or nonfeasance in office. The definition of these terms are on page 2 of the bill. The committee amendments add a fourth ground for recall and that is, is of a conviction of a crime involving an act of dishonesty or a false statement. LB878 would create a process for the official to respond to such statement. He would have the option of submitting a defense statement that would be printed on the petition papers currently allowed, or the official could file an action in the district court to challenge the sufficiency of the allegations in the statement. There would not be a hearing nor would there be a cost to either party. The court would presume the allegations in the statement to be true and would determine whether the allegations in the statement establish the existence of malfeasance in office, misfeasance in office, or nonfeasance in office, or a conviction of a crime involving an act of dishonesty or a false statement. Now if the allegations were found to be sufficient to establish the existence of one of these grounds, the individual whose removal is sought could then submit the aforementioned defense statement to be printed on the petition papers. However, if the allegation was found not to be sufficient, the filing clerk would not issue petition papers, and the recall effort would be concluded. LB878 also establishes a reporting requirement for filing clerks to notify the Secretary of State when initial petition papers are issued. When the recall petition is found to be sufficient, an election will be held and with the results of that election. And the Secretary of State will compile such records. As I was doing some research prior to introducing LB878, I found that no one keeps statistics on the number of recall efforts initiated or carried out, and I think it is wise to have such statistics, and that is why I added language pertaining to the reporting requirement. It will not be an undue burden on local officials to carry out this particular requirement. Now the original bill included a requirement that petition papers include a statement of the estimated cost of the recall election, which was to be filled out by the filing clerk. Now this portion was removed by the committee amendments. Therefore, under LB878 and the committee amendments, elected officials could be recalled only for--again, I repeat--malfeasance in office, misfeasance in office, nonfeasance in office, or a conviction of a crime involving an act of dishonesty or a false statement. As you may recall, LB18 was introduced by Senator Mick Mines last year, and it remains in the Government Committee. Now, as amended by the committee amendments, LB878 is

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similar to LB18, but it adds the reporting requirements and the fourth grounds for recall. In 2006, LB786, also similar to LB878, was introduced and designated as a priority by Senator Mines. It received first-round approval and it was debated on Select File. Therefore, this is not a new subject matter but has been debated for several years now. So...at the public hearing we had on this, the mayor of Nebraska City testified in support of LB878. She told of her personal experience with the recall process. The recall efforts were aimed at her decision to hire a city administrator based upon a unanimous vote of the city council, which had taken place three years earlier. The city administrator position was part of her platform when she successfully ran for reelection. The recall effort was not successful, but she explained emotionally what she and her family went through during these three months. She related that much misinformation and untruth was circulated during the petition process and that she felt that she had to respond to every false accusation. The Nebraska City mayor also explained how her community was having a difficult time recruiting people to run for the open mayor and city council positions, as they have seen what she went through. And ironically, she was selected as elected official of the year one year after the recall attempt. A county attorney from my area also testified in support of LB878 at my request. He talked of his recent experience going through an unsuccessful recall attempt. He described recall as a vehicle for defamation of public officials. He endorsed the judicial review portion of the LB878, as he felt that it could be used as a filter to weed out frivolous attempts at recall. And earlier this week he informed me that he has submitted his resignation, because job security was a major factor in his decision--one of the best county attorneys we ever had in our area. The city administrator in Blair told Government Committee members about a recent incident with their local airport authority. When one member of the authority found that he couldn't get his way, he took out recall petitions on the members voting the other way, going so far as to taking out one on himself so that an election could be held to replace the majority of the members. I believe that the recall process should only be used for legitimate reasons. The intent of recall was to rid public officials of corruption and misconduct. Therefore, we must tie the recall process to unsatisfactory service in office. The current recall process is being abused. There have been recall efforts for personality conflicts and by those who don't get their way. Some recalls are becoming grudge matches. No elected official will please everyone all the time. An official shouldn't have to worry about being ousted from office for merely doing their job. Recall petitions divide communities, disrupt governmental services, and are very hard on the officials and their family. And even if the official has done nothing wrong, their reputation is blemished, and oftentimes the abuse is also targeted on the family members and their place of business. We cannot let recalls run rampant, or we may find ourselves faced with a lack of qualified candidates willing to commit to public service. Public service is a sacrifice, as we all know, and we must take efforts to not make it more difficult than it is. Therefore, I am not suggesting that we eliminate recall provisions. I am merely trying to limit such efforts to legitimate reasons--improper performance of his or her job, or conviction of a crime involving dishonesty or a false statement. So with that, I urge you to advance LB878 to the second stage of debate.

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Thank you, Mr. President. [LB878 LB18]

SENATOR LANGEMEIER: Thank you, Senator Engel. As the Clerk has stated, there are committee amendments offered by the Government, Military and Veterans Affairs Committee. Senator Aguilar, as Chair, you are recognized to open on the committee amendments. [LB878]

SENATOR AGUILAR: Thank you, Mr. President, members. The committee amendment makes two changes in the bill. The first change expands the list of reasons an elected official may be recalled to include a conviction of a crime involving an act of dishonesty or a false statement. This language was chosen because it is already used in Nebraska's rules of evidence for the purpose of attacking the credibility of a witness. The committee wanted to include this language in order to cover situations where an elected official may be convicted of such a crime, but it still may not fall under the definitions of misfeasance, nonfeasance, or malfeasance in office. The second change removes the language in the bill requiring a statement of estimated cost of the recall election be printed in the petition papers. The bill was advanced from the committee on a 7-0 vote. There were no opponents at the hearing. I urge your support of the committee amendment, as well as the underlying legislation. Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. Mr. Clerk. [LB878]

CLERK: Mr. President, Senator Chambers would move to amend the committee amendments with FA195. (Legislative Journal page 850.) [LB878]

SENATOR LANGEMEIER: Senator Chambers, you are recognized to open on FA195. [LB878]

SENATOR CHAMBERS: Thank you. Thank you, Mr. President. Members of the Legislature, this amendment is very easy to comprehend, and it kind of goes along with what we were talking about the other day, and some of our colleagues were of a mind to have this kind of language put in the constitution. If you look at my amendment, it says that in lines 5, 8, 11, and 13, you would strike the words "dishonesty or false statement" and insert "moral turpitude." I would like to hear any opposition to this language, and I will listen with an open mind. But before we get to that, I need to ask a question of Senator Engel. [LB878]

SENATOR LANGEMEIER: Senator Engel, would you yield? [LB878]

SENATOR ENGEL: Yes, I will. [LB878]

SENATOR CHAMBERS: Senator Engel, is this language that we find in the committee

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amendment in addition to the malfeasance, misfeasance, and nonfeasance mentioned elsewhere in the bill? [LB878]

SENATOR ENGEL: Yes, it is. [LB878]

SENATOR CHAMBERS: That's all I will ask you at this point. I'm trying to get a handle on exactly what we have here, because malfeasance on page 2 of the green copy means the knowing and intentional commission by a public official of an unlawful or wrongful act in the performance of the duties of such public official which infringe on the rights of any person or entity. It doesn't say the person has to be a resident of the county or any other thing. If that person has rights which are infringed, or the person thinks his or her rights are infringed, or any entity is of that opinion, then an attempt to initiate a recall will take place. With the language of the bill, there will not be the petition signed and offered, the one to be recalled given a certain number of days to give a defense against that, and then the circulating of petitions can be initiated. And the petition, if I understand it correctly, will have the text included in the documents that are being circulated along with the statement of defense of the official to be recalled. It is somewhat cumbersome, but you're taking somebody to an additional election who has been legally and lawfully elected. I feel like a piece of lace that has one end in the mouth of a crocodile, the other end in the mouth of an alligator. They're pulling in opposite directions. So what do I feel in common with that piece of lace? I feel torn, Senator Kopplin, I feel torn. Should the public have the right to change its mind about a person who has been elected to office? That for me is the bare-bones question--not whether there was malfeasance, misfeasance, nonfeasance, the conviction for an act of dishonesty, a false statement, or pursuant to the language I'm offering here, an act that involves moral turpitude. Does the public have the right to change its mind? Maybe so and maybe not. But I will tell you what. There is a greater likelihood that somebody for a trifling reason or no reason at all will face recall, than that somebody would be impeached by the Legislature for a light or trivial reason, or a nonreason. These officials are not constitutional officers who will be subject to recall. You cannot recall a constitutional officer. You cannot recall a member of the Legislature. These local positions are entirely different. Counties and cities are for the purpose of carrying out the wishes of the state. They are subordinate to, they are subject to, the direction of the state. Cities can be created by the Legislature. Cities, which some people don't realize, can be abolished by the Legislature. So these positions are not on the same level as the position held by a constitutional officer. The duties, the powers, the prerogatives of a local office, whether county, city, village, or whatever, are not of the same quality as the parallel would be, where a constitutional officer is involved. It should not take as much to get rid of a local official as to get rid of a constitutional officer. If you set the bar too high, there will be no recalls. If you set the bar too low, there may be willy-nilly recall attempts which occur. One is being contemplated, and some kind of paper was filed, to recall Omaha Mayor Mike Fahey. Now maybe I don't think that's such a bad idea. But how I might feel about a specific official cannot be what would determine the way I will

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vote on this bill. My amendment does away with the specific language in the committee's amendment, regardless of where they got it from. Their amendment would say that this person can only be recalled for malfeasance in office, misfeasance in office, nonfeasance in office, or conviction of a crime involving an act of dishonesty or a false statement. Personally, I don't see the difference between that language and malfeasance. Malfeasance includes an unlawful act. Since we're talking about being convicted of a crime, it places a higher standard than malfeasance. Malfeasance doesn't require conviction of an unlawful act. It requires only the commission of an unlawful act. So if the mere commission of the unlawful act constitutes a basis for recall, we don't need the committee amendment. That is already included. If you're going to include, specifically, conviction of a crime involving an act of dishonesty or a false statement, then why not a crime involving theft? Somebody might say, well, theft is included in dishonesty, and I would say dishonesty is included in those listings that already are in the statute. An act of dishonesty is a wrongful act. An act of dishonesty may also be an unlawful act. But whichever it is, it's already covered under malfeasance. So what I'm going to have my colleagues do today, and maybe none... [LB878]

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR CHAMBERS: ...will participate, viatica may have wiped them out. Maybe viatica made them feel sciatica and it's not having the action of Viagra--I'm just trying to get words that sound alike. We should not complicate a statute of this kind any more than is absolutely necessary. I think this should be a minimalist statute, in other words. We should say as little as possible. It should be as simple as possible. So a question that I will ask, after having given all of this background, is one that relates to this appearance in court, so that you have a judge determine if the facts established mal-, mis-, or "mister" feasance. Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on LB878, AM2041, the committee amendments, and FA195, the amendment to the committee amendments. The floor is now open for discussion. Those wishing to speak: We have Senators Wightman, Schimek, Adams, Lautenbaugh, Chambers, and Engel. Senator Wightman, you're recognized. [LB878]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. First of all, to answer what I think Senator Chambers was saying--and I'll ask a question, if I can in a minute, to Senator Aguilar--but it does seem to me that the committee amendment does not necessarily require that the act be an act while the person is in office, or an act that involves the office. So I take it to read that the dishonesty...and if Senator Aguilar will yield to a question, I'll see if I can get the answer to that. [LB878]

SENATOR LANGEMEIER: Senator Aguilar, will you yield? [LB878]

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SENATOR AGUILAR: Yes, I will. [LB878]

SENATOR WIGHTMAN: Now as I read the amendment, it does not ever say that the crime involving a dishonest or false statement necessarily has to be connected with the person's office. Is that correct? [LB878]

SENATOR AGUILAR: I think that's the way we looked at it as well, Senator. [LB878]

SENATOR WIGHTMAN: Okay, and so with regard to some of the statements made by Senator Chambers, and maybe goes to the very meat of FA195, is that this may not be, at least with the interpretation as I understand it of the Government Committee, may not be the same as malfeasance, misfeasance, because it does not require that it necessarily be connected with the holding of office, while I do believe that malfeasance, misfeasance, or nonfeasance does have to do with his position. Would that be correct, Senator? [LB878]

SENATOR AGUILAR: That would be correct, Senator. [LB878]

SENATOR WIGHTMAN: Thank you. This involves a classic situation, it seems to me--that's all I have right now, so thank you--a classic case of taking away probably some of the public's access to officeholders, to seek redress if that might be, because they don't agree with the public official. But by the same token, I think that it's something that is being abused a great deal at the present time. We've had two of these situations that would certainly fit under this act in my district in the past year. One of them involved the...Gibbon had voted on a new bond issue to build a school, and it was a fairly expensive bond issue. And immediately following that, there was a cry by those people who had been opposed to the bond issue to recall the board of education of the Gibbon school district. Well, sometimes it seems to me that it's used no more than a second attempt to take some action, and that one had been voted upon as a bond issue, by the electors of the city of Gibbon, or the Gibbon school district. So it really was a second shot at something that the public had already voted on, so that probably was a little different than a recall of an individual, where there hasn't been a vote of the public. But it does seem to me that this probably constitutes an abuse, just because you don't agree with it. Now I know they had reasons they might well have, under the reasons they gave, have fit into malfeasance in office. They might have made that argument, because I think one of the arguments was that the school board had not fully discussed with the public the options that might have existed to building the school that they voted on. However, I would assume that that might have been fairly completely aired in the discussion prior to the election on that bond issue. So it seems to me that it frequently is used as abuse of discretion, and a way at getting back at somebody that they don't like. Somebody could be elected as mayor or city councilman, and the first time he takes any action it would be very easy just to... [LB878]

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SENATOR ERDMAN PRESIDING [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR WIGHTMAN: ...go out and stir up all the people who voted opposed to it. Did you say one minute? [LB878]

SENATOR ERDMAN: I did say one minute. [LB878]

SENATOR WIGHTMAN: Okay, thank you. And just tried to remove the person from office that had just gotten elected. And so I probably am going to support this bill. I think it's abused. The second instance...and I may have to get some additional time later to do this one. The mayor of Ravenna they had a recall election on, about the same time that the Gibbon school district had the recall on the school board. So as I say, I probably will support the amendment. I'll listen to the debate. Thank you, Mr. President. Thank you, Senator Aguilar. [LB878]

SENATOR ERDMAN: Thank you, Senator Wightman. Senator Schimek, you're recognized to speak, followed by Senator Adams. [LB878]

SENATOR SCHIMEK: Thank you, Mr. President and members. I rise to say I'm very glad that Senator Engel decided to go ahead and take this bill. It's one that I've been interested in for some time and worked with former Senator Mick Mines, who did a lot of work on this particular issue and this particular bill. It's a difficult issue, and over the years we've heard from so many city officials and county officials who are concerned about the fact that recall can be done for any silly reason at all, or any serious reason. But it's...there aren't any boundaries, and I think one of the good things about this bill is that somebody has to have done something wrong--not voted wrong, but done something wrong, as far as carrying out his or her duties in that particular office. So Senator Engel, thank you for bringing this bill, and I think the discussion will be interesting. I did notice--and Senator Aguilar, I'd like to ask you this, if you can remember, and I know sometimes that's difficult, but... [LB878]

SENATOR ERDMAN: Senator Aguilar, would you yield to a question from Senator Schimek? [LB878]

SENATOR AGUILAR: Yes. [LB878]

SENATOR SCHIMEK: Thank you, Senator Aguilar. I notice that the clerks and election commissioners and the Association of County Officials came in, in a neutral capacity.

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Do you remember why they didn't come in, maybe in as proponents, or were they just coming in, more or less, to say what this would do to their particular duties and functions? [LB878]

SENATOR AGUILAR: I don't recall that happening. What I do recall is many people coming in and just being very interested in the bill and wanted to show support to the fact that they were there, but didn't want to commit one way or another as far as where they were, pro or con. So neutral seemed to be the choice mood that day. [LB878]

SENATOR SCHIMEK: Okay. Thank you. Senator Chambers, I don't know whether I would want to support your amendment here or not, because like you and like Senator Wightman, I'm not sure about the committee amendment. No offense at all to the committee, but it seems to me that that amendment is covered perhaps by the definition of malfeasance. It's not, then perhaps it should be even a broader definition that takes in more than just being dishonest in your responses and that kind of thing. So I have some of the same concerns about that and would be interested...I know Senator Adams is coming up next. Maybe he can explain a little bit of the committee thinking on that particular amendment. But then in addition to that, I do have questions about the court, and I remember discussing this and working on this with Senator Mines, the court provision, whereby the person being recalled or being subject to recall, and instead of going ahead and putting his or her statement on the petition, saying why they shouldn't be removed, they can actually go to court. And I had a couple of questions about... [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR SCHIMEK: ...the court, because it says that the court can find whether the allegations are found to be sufficient, and I guess...I think that's okay, but I want to make certain that I understand what "sufficient" means here. Does it mean sufficient...does sufficient mean they find that there are grounds for the petition being circulated, that there's enough evidence, if you want, that it's okay to go ahead with the petition drive, or does it simply mean that there are some allegations being made that meet the definition of malfeasance, misfeasance, nonfeasance,... [LB878]

SENATOR ERDMAN: Time. [LB878]

SENATOR SCHIMEK: ...and my time is up, so Senator Adams, it's up to you. [LB878]

SENATOR ERDMAN: Thank you, Senator Schimek. Senator Adams, you're recognized to speak, followed by Senator Lautenbaugh. [LB878]

SENATOR ADAMS: Thank you, Mr. President. Senator Schimek, I don't know that I can remember all of the questions that you had. My train of thought...I wonder if Senator

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Chambers would yield to a question, first of all. [LB878]

SENATOR ERDMAN: Senator Chambers, would you yield to a question from Senator Adams? [LB878]

SENATOR CHAMBERS: Yes, I will. [LB878]

SENATOR ADAMS: Senator Chambers, last week when we were debating, I believe it was Senator Avery's constitutional amendment dealing with impeachment, and we were considering changes to that, you convinced me not to use the language "moral turpitude" and now we're looking at it again. Can you...maybe I missed it in your opening on the amendment. Could you briefly tell me again why you would want to reconsider it in this case? [LB878]

SENATOR CHAMBERS: I had mentioned that if we were going to put it in the constitution, being as serious a document as it is and how difficult to change, then put it in a statute where you can change it easily. But the arguments I made as to the nondefinite nature of moral turpitude that day would apply here also. But I think the words "malfeasance," "misfeasance," and "nonfeasance" will cover everything that needs to be covered. Because if you're going to specify certain crimes by name, then you should put assault--because some are saying these crimes don't have to be committed in office--then assault, battery, sexual assault, and every crime that can be committed in the criminal code, which may not be their intent. So the term "moral turpitude," as vague as it is, as I say, it covers everything and touches nothing. [LB878]

SENATOR ADAMS: (Laugh) Thank you, Senator Chambers, and that does clear that up for me. And maybe, frankly, Senator Schimek, that in part answers your question about malfeasance, misfeasance, and how a district judge might fit into this. I think my recollection of what we were doing with this, with the language here, we were trying to respect the fact that, as Senator Chambers earlier pointed out, that when it is a civic office, we think that the citizens should have maybe a greater opportunity to recall someone or to have a second chance or a second thought about whether to keep them in office. And we were trying to put some limits to it, yet at the same time make sure that the limits were broad enough that we were not inhibiting too much the citizen's right to be able to recall. The balancing act that Senator Chambers referred to, I know as I was reviewing this legislation and talking with Senator Engel about it and working with the committee on it, I sensed maybe the same kind of a balancing act. At what point do we say to the citizens, wait a minute. There needs to be some limit to when you can bring someone back up for a reelection prior to their term being up, and yet at the same time giving people plenty of latitude to say, we don't like what you're doing and we want to have this opportunity to remove you from office. I think what we're doing in this bill, frankly, is not...is trying to put something in there, because right now you could literally recall someone for anything you wanted to. You could literally come up with anything.

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Now maybe this language isn't exactly right, maybe Senator Chambers is on to something here. But at minimum, I think we need to have some kind of limit, something to say to the citizen that if you want to recall someone, you need to have a reason to do it--malfeasance, misfeasance, nonfeasance, all related to job performance as much as anything else, which to me had credibility. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Adams. Senator Lautenbaugh, you're recognized to speak, followed by Senator Chambers. [LB878]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the Legislature. I rise in support of both the bill and the committee amendment, and I would like to try to clarify some things, if I could. The whole point of the court involvement is not to have a mini trial to prove the allegations. The court involvement was simply to look at the things on its face, if requested, and say, if these things are true, they do rise to the level set forth in the statute. We aren't going to get into the evidence of whether or not these things exist. It's a review of whether or not the allegations, in and of themselves, would constitute malfeasance, misfeasance, etcetera. So that was the thinking--not an actual offering of evidence regarding the proof of the allegations, just an inquiry into whether or not the allegations themselves, if true, are sufficient. And I think the committee did work hard on this, and I think Senator Engel worked hard on it, as well, and I believe this is an attempt to protect the process, protect the recall process, and remove abuse. Already in the law we do provide some limits for recall. I believe a county attorney cannot be recalled for prosecuting a case or failure to prosecute a case. I believe that limit is still in there. This is sort of in the spirit of that, as well, I would argue. Once again, the amendment from the committee also removes the provision that would require a statement of cost, an estimate of cost, and I was a proponent of removing that, and the thinking was that might just be an additional encumbrance, if you will, on the recall process, not related to the underlying concern here. That underlying concern would be addressing frivolous recalls, if you will, recalls without real merit. So I hope that does shed some light on this, and I'd be happy to yield my excess time to Senator Aguilar. [LB878]

SENATOR ERDMAN: Senator Aguilar, you have 3 minutes. [LB878]

SENATOR AGUILAR: Thank you, Mr. President. Thank you, Senator Lautenbaugh. And I'm going to follow up on something Senator Lautenbaugh just said, because I've been reminded that in answer to Senator Schimek's question about why some of the county officials were neutral on the bill, it was simply because they were not happy with the language in the bill that required the statement of estimated cost of the recall election. But since we've taken that out with the amendment, then they've kind of indicated that they would be proponents of the bill. Does that answer your question? Thank you. Thank you, Mr. President. [LB878]

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SENATOR ERDMAN: Thank you, Senator Aguilar and Senator Lautenbaugh. Senator Chambers, you're recognized to speak, followed by Senator Engel. [LB878]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the court should not be involved in this process at this stage, period. The reason that is unwise: If the court decides that based on the allegations neither nonfeasance, malfeasance, nor misfeasance exists, there can be no appeal. There is no hearing, there is no taking of evidence, so I don't know whether you could call that a final order of the court. I don't even see how you can call it the type of action that ought to be in court, because it amounts to an advisory opinion. The courts of Nebraska are not allowed to give advisory opinions, and the lawyers can catch me on this or correct me. There must be a controversy, meaning two parties with interests that are separate, distinct, and in opposition. Even if there are collusive lawsuits, they are not allowed, if in fact there is no dispute or controversy. In this case there is no controversy--nobody is suing anybody. Nobody is seeking any damages. And one party can decide not to let it go to court, but the other one cannot insist that it go to court. And if the court says there is malfeasance, nonfeasance, or misfeasance, and the one who went to court disagrees, there is no appeal. Now here's what I would do: If I brought one of those petitions and it went to court and the court said that based on these allegations misfeasance, malfeasance, nonfeasance, any one or a combination exists, do you know what I would say? I would tell the public, the court has said that there is malfeasance here. The court has said there is misfeasance here. Then you spend all this time arguing about what the court meant, but the court cannot discuss its opinion. That matter is still alive. The court cannot say, well, what I said is that, if the allegations are true--no, no. The court cannot further explain. There is no appeal, and the decision rendered by the court can be used in a way that is inappropriate. But I think what is being sought here is in the nature of an advisory opinion. There is nothing being decided as to the constitutionality of a law. There is nothing decided here as to whether evidence presented supports the filing of a charge, because no charge is before the court, no controversy is before the court, there is no "blank" versus "blank." It's just something given to the court, and the court is asked for an advisory opinion. No evidence is given, no hearing is conducted--it's an advisory opinion, and Nebraska courts do not give advisory opinions. I want to hear what some of my colleagues who are...I don't say they're more learned in the law than I am, but they practice in the courts more than I do, but I can read court decisions and the opinions underlying them. And the court in this state has said unequivocally, as have most courts, no advisory opinions are given. Some states will have a provision in their law where under certain circumstances, where a piece of legislation... [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR CHAMBERS: ...is involved, the court can render an advisory opinion. But that is not something which is done in this state. I won't even modify it by saying "not routinely done." It's not done at all. I don't believe anybody can show me where an

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advisory opinion was given by a court in this state, and I don't see the need for this extra baggage in the statute anyway. Even if you're going to say that there are certain requirements that must be met before you can try to recall a person, you don't have to put this court process in it at all, and I do intend to offer an amendment to strike all of that language from the bill. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Chambers. Those wishing to speak are Senator Engel, Schimek, Howard, Pirsch, Lautenbaugh, and Lathrop. Senator Engel, you're recognized to speak. [LB878]

SENATOR ENGEL: Mr. President, members of the body, I'm enjoying the debate so far, but I want to let you know on page 6, line 22, of Section 4, as far as talking about the court, the only court's involvement will be, "The court shall presume the allegations in the statement are true and construe in the light more favorable to the principal circulator or circulators and shall determine, without hearing and without cost to any party, whether these allegations..." fit into the definition of mis, mal, or nonfeasance. So that's all they're doing. And I think the thing is, what has happened so many times in my area and other areas across the state, is the defamation of character, the ruination of careers, and because the people have to defend themselves...for instance, our county attorney in Dakota County ran unopposed. And then when this came about, because he made a decision, which was his duty to make, this person who had this petition took the petition around, and so he had to really run an election to defend himself. And they were allegations against him, against his family, against everybody else, and it was very, very...it was devastating. In fact, like I said, he finally said it's just not worth it. And it was a...to serve as a county attorney in a small county, it is a sacrifice, because they don't make any money. They're almost like we are--not quite, but they're about like we are. So it is a sacrifice. So with that, I think this portion of the bill is a very, very important part of the bill, and I would hope that some of my legal colleagues would help me with this case, because I am not a legal person. I'd like to turn some time over to Senator Lathrop, if he happens to be there, to maybe comment on what Senator Chambers just mentioned. [LB878]

SENATOR ERDMAN: Senator Lathrop, 3 minutes. [LB878]

SENATOR LATHROP: Thank you. I'd be happy to, and I appreciate Senator Chambers' concerns. When I read this bill and I saw that provision in there, I viewed it differently and I thought, that makes a lot of sense, and maybe I can do it from a legal point of view. When we file lawsuits in the district court, we have what is called the 12(b)(6) motion the defense lawyer can file, and basically that is a challenge to whether or not you have stated a claim upon which relief may be granted. And what that means is, and the task of the judge when one of those is filed, is to look at it and say, if everything in this document is true, has the plaintiff stated a cause of action upon which relief may be granted? And I view this the same way, and that is, having someone in the process say,

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yes, what this person has written does state a claim that is malfeasance, nonfeasance, or misfeasance. And so having a judge make that decision I think is a good idea in the process. Without it, this is what we're left with--somebody throws in a bunch of allegations, and nobody ever says yes, you've met the legal criteria, and he or she gets to go on with their recall effort without...maybe it doesn't even meet the standard that we're setting here in the statute. And what this process with the district court would do would be to at least have somebody say, assuming everything is true that is alleged, yes, this is misfeasance, yes, this meets the criteria. It doesn't mean it's true, doesn't mean the person ought to be recalled. It only means that the person has made or set forth allegations which fall within the criteria that are found in LB878. So I think it's a good idea, in my own opinion. Now it's true that district court judges... [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR LATHROP: ...and the judges of this state are not there to render advisory opinions, but I don't think that stops us from using them or employing them to determine whether or not someone making or initiating a recall petition has met the criteria with the allegations, so I think it's a good part of the bill and I support the bill generally. Thank you. [LB878]

SENATOR ERDMAN: Thank you, Senator Lathrop and Senator Engel. Senator Schimek, you're recognized to speak, followed by Senator Howard. [LB878]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I intend to give the remainder of my time to Senator Lathrop, too, as soon as I've said a word or two, and Senator Lathrop, I appreciate the fact that you just gave that explanation. It does make a lot of sense in a lot of ways. The question that I...that lingers in my mind is, will the public understand exactly what that decision of the court meant? They're not attorneys, they're not used to dealing with the court system. Will they think, yes, the allegations are true? That would be my only hesitation, so if you could address that, as well as, Senator Lathrop, the inclusion of that phrase "or conviction of a crime involving an act of dishonesty or a false statement." Is that really necessary? [LB878]

SENATOR ERDMAN: Senator Lathrop, you have 4 minutes. [LB878]

SENATOR LATHROP: Thank you, and I'd be happy to try to address the concerns that you've expressed. Again, going back to the standard for a recall, ultimately whether it's a lawsuit or whether it's a recall effort, a person can make an allegation. You can say anything you want and file a lawsuit, and you can make any kind of an allegation you want and file a recall action or a petition. But ultimately, you have to have somebody who says at the outset, yep, the legal standard has been met, you can stay the course. You can proceed to the next step. Now if we don't...maybe I'll put it in the form of a question. If we don't have a district court judge say, yes, these allegations meet the

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standard of the...or the criteria for a recall, then who is going to do it? Are we going to have an election commissioner do it? Are we going to have the Secretary of State do it? I think probably not. We look to our judiciary to decide issues, and I can't think of a better place to have a nonpolitical decision made than by a district court judge who is familiar with the task of deciding whether or not someone has met the legal criteria with the allegations that they've made. So in that respect, again I support it, and I think that just as a practical matter, I think LB878 is long overdue. We need to make sure that public officials are recalled for something they did, and not just because they've become unpopular because they have had to perform the duties of their tasks, of their office. We see sheriffs getting recalled all the time because they're...you know, maybe they arrested somebody's kid, or they did a tax foreclosure, something like that, that they're supposed to do, and it makes them unpopular. So this really is, I think, helpful for public officials who are doing what they need to do, although it might be unpopular. To answer your specific question about the crimes involving--I'm forgetting the language, even though I helped come up with it, but it involved stealing or... [LB878]

SENATOR SCHIMEK: Dishonesty or a false statement. [LB878]

SENATOR LATHROP: Dishonesty or a false statement. That language came to me through a rule of evidence--I borrowed it from a rule of evidence which allows you to impeach a witness if they've been convicted of a crime within ten years of a misdemeanor involving dishonesty. So that's where it came from. Why do I think it's necessary? Because I think you can do some things in your personal life that are so repugnant that you should stand for a recall. All of the things that were in the original bill dealt with your performance in office, but I think the door needs to be opened for criminal activity... [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR LATHROP: ...that involves dishonesty, and the people ought to be able to recall someone from public office who has been convicted of a crime involving dishonesty. So that's where it came from, that's where the language came from. The language is well understood by courts because it's the same language we use to determine what crimes you can use to impeach a witness with. So with that, I hope I've answered the question and maybe clarified things, and... [LB878]

SENATOR SCHIMEK: But Senator Lathrop, I know you have your light on, or you did have your light on. [LB878]

SENATOR LATHROP: I (inaudible). [LB878]

SENATOR SCHIMEK: I'm still interested in knowing if that definition of a false statement isn't...doesn't that fall under malfeasance? I don't quite get that, and maybe...I think our

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time is about up, and maybe you can explain that later. [LB878]

SENATOR LATHROP: All right. [LB878]

SENATOR SCHIMEK: Thank you. [LB878]

SENATOR ERDMAN: Thank you, Senator Schimek and Senator Lathrop. Senator Howard, you're recognized, followed by Senator Pirsch. [LB878]

SENATOR HOWARD: Thank you, Mr. President and members of the body. If I may ask Senator Engel a few questions. [LB878]

SENATOR ERDMAN: Senator Engel, would you yield to questions from Senator Howard? [LB878]

SENATOR ENGEL: Yes. Yes, I will. [LB878]

SENATOR HOWARD: Thank you, Senator Engel. And I'm going to present a scenario, if you'd allow me to, because sometimes it's easier for me to picture these things when there's actually an example held out there. I'm wondering, in considering this, if there was a situation where...and this is purely fictional--I'm not alluding to anyone that's in real life. But if there was a situation where, per se, a mayor--let's just pick out a mayor--embarked on a project that some of his constituency felt very strongly about and opposed, and over the course of time they banded together and decided to take action to get a recall petition. Would that fit within the specifications in this amendment? [LB878]

SENATOR ENGEL: Responding to that, if it would meet the criteria. The court would...like again, I'll just read it to you again: presume the allegations in the statement are true and construe them in the light most favorable to the circulator. But if the court decides that they fit into the category of mis, mal, or nonfeasance, then yes. If not, no. That's the way I understand it. [LB878]

SENATOR HOWARD: So the judgment would be left up to the court to decide, if this situation rose to the... [LB878]

SENATOR ENGEL: Well, if the person bringing the petition on this "fictional" mayor you're talking about, and this is what the petition read, he would...the judge would, the way I understand it, he would read that petition, and whatever the wording is in that petition, if that, in that wording, it met the criteria of mis, mal, or nonfeasance, then it would go forward. But if it didn't meet those criteria...the judge is not making the decision, other than determining whether it meets those criteria. [LB878]

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SENATOR HOWARD: Would the decision regarding whether this met the criteria have to be rendered prior to the gathering of signatures? [LB878]

SENATOR ENGEL: Yes. [LB878]

SENATOR HOWARD: Okay. Well, that's very helpful. Thank you for explaining that to me. And if Senator Lathrop would like the remainder of my time to continue his discussion, I'd be happy to give that to him. [LB878]

SENATOR ERDMAN: Senator Lathrop, 2.5 minutes. [LB878]

SENATOR LATHROP: Thank you, and I appreciate that, Senator Howard. If I can go back to this, and the question was why do we need this, because this would be misfeasance in office if you did some form of dishonesty or false statement? The answer to that is, is that that language is intended to address things that happen outside of the office. If you look at the misfeasance, nonfeasance, and malfeasance, those are all things that you do or don't do in the context of the office to which you've been elected. But the crimes involving dishonesty or false statement, that can happen in the private sector, in your nonpublic life. For example, let's say that you're the treasurer, the county treasurer, but they also appointed you to be the accountant at the church, and you embezzle \$1,000 from the Sunday collection. That is something that people ought to be able to have a recall, because you have exhibited the kind of behavior, after a conviction of a crime involving that kind of behavior, embezzlement, that really touches exactly and directly on your ability to continue to serve the public as the treasurer or any other elected official. So I think that section...my intent in offering that to Senator Engel was to address the behavior outside of one's office that should be a proper subject for a recall. So hopefully that answers that question, as well. [LB878]

SENATOR ERDMAN: Thank you, Senator Lathrop and Senator Howard. Senator Pirsch, you're recognized to speak, followed by Senator Lautenbaugh. [LB878]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I was wondering if Senator Lathrop might yield to a few more questions. [LB878]

SENATOR ERDMAN: Senator Lathrop, would you yield to questions? [LB878]

SENATOR LATHROP: Sure. [LB878]

SENATOR PIRSCH: Thank you, Senator Lathrop. And could you comment...so the current state of the law, as I understand it, with respect to recall is there are not specific grounds mentioned? A recall can thus occur for nearly every purpose, with the exception of the county attorney. I believe there are some statutory restrictions on that. And that is the underlying purpose of the bill, to add restrictions as to the triggering

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events to allow for recalls? [LB878]

SENATOR LATHROP: I think, as I understand Senator Engel's bill, it is to delineate those behaviors which are the proper subject, or will now be the proper subject, of a recall effort. [LB878]

SENATOR PIRSCH: And currently there's no restrictions in place for that, is that correct? [LB878]

SENATOR LATHROP: I'm not the best person to answer that. I don't think... [LB878]

SENATOR PIRSCH: Okay. [LB878]

SENATOR LATHROP: I see Senator Aguilar shaking his head no,... [LB878]

SENATOR PIRSCH: Okay. [LB878]

SENATOR LATHROP: ...so I'm going to accept that there are truly no meaningful limitations on what you can recall someone for. [LB878]

SENATOR PIRSCH: Very good. So the underlying purpose behind the bill is to say, in some instances we want to...I guess the proponents of the bill are saying that certain recalls have no merit, and they only serve to harass and vex public officials as they attempt to do their jobs legitimately. Is that correct? [LB878]

SENATOR LATHROP: I think that's right. [LB878]

SENATOR PIRSCH: Okay. With respect to what's outlaid in the underlying bill, it categorizes three acts--malfeasance, misfeasance, and nonfeasance, which would constitute a basis for then triggering...allowing for a recall then, as well as the original language, I think, talks about...well, I think it's by amendment, then, the first amendment, AM2041, which then would add to the underlying bill which allows for malfeasance, misfeasance, or nonfeasance, it also now would allow for conviction of a crime involving an act of dishonesty or a false statement, and that is the...that additional language is the language I think Senator Chambers has an objection to and would rather encapsulate by using the term "moral turpitude"? Is that correct, my understanding? [LB878]

SENATOR LATHROP: That's what I understand the purpose of FA195, yes. [LB878]

SENATOR PIRSCH: Okay. Very good. And moral turpitude, I would agree with Senator Chambers, that it is actually a word that is used already in the law and has meaning. When we're talking about impeaching a witness, the law...the courts allow for

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impeaching to the extent that the witness has committed a felony within the last ten years or a crime that involves moral turpitude. So it is a term that is interpreted by courts and does have meaning. With respect to the terms in the amendment, this is AM2041, it says conviction of a...well, strike that. Let me ask you about the underlying bill. As part of the definition of malfeasance in office, it says the knowing and intentional commission by a public official of an unlawful or wrongful act. That's in line 16 and 17, page 2 of the underlying bill. Do you see that, Senator? [LB878]

SENATOR LATHROP: I'm looking, and I'm trying to get there. [LB878]

SENATOR PIRSCH: Okay, sure. [LB878]

SENATOR PIRSCH: But what's your question, while I'm... [LB878]

SENATOR PIRSCH: I guess my question is, the word "wrongful" is added to the word "unlawful." And I'm wondering...obviously, if you use additional verbiage there must be a reason. It must not be a synonym. And so I'm wondering your interpretation. What does "wrongful" mean, different and apart from "unlawful," such that it was added to line 17 of page 2 of the bill? [LB878]

SENATOR LATHROP: Well, now I'm going to take a shot at this, but... [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR LATHROP: ...remember that that bill is Senator Engel's and that language was his and not mine. I did have a little hand in the amendment, but I'm trying to think of some malfeasance that you could commit that is wrongful without being unlawful. I don't know if that makes that language redundant, but perhaps Senator Engel might have an example of wrongful conduct in the performance of one's duties that is not also unlawful. [LB878]

SENATOR PIRSCH: Very good, and I will ask...I'll talk about that. I think my time is going to run up, but it would seem to suggest in that is, there's more of a subjective element in utilizing the term "wrongful" that is separate and apart from the criminal justice system. Using the word "unlawful," I think, has an ordinary and common meaning, and that's what I'd address some remarks as to the meaning of the word "wrongful." And I guess my question is, does that imply that...and I just want to be clear for clarification's sake, that it is...it could encompass acts that are not wrong... [LB878]

SENATOR ERDMAN: Time. [LB878]

SENATOR PIRSCH: Thank you. [LB878]

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SENATOR ERDMAN: Thank you, Senator Pirsch and Senator Lathrop. Senator Lautenbaugh, you're recognized, followed by Senator Chambers. I don't see Senator Lautenbaugh. We'll proceed to Senator Chambers, followed by Senator Wightman. [LB878]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I listened very carefully to what Senator Lathrop said, but here's the difference, and you may not accept it from me. When you are filing a lawsuit, a judge entering an opinion relative to the kind of issues Senator Lathrop mentioned, does not end the lawsuit. It does not end everything. Here, the judge ends everything. When you have a lawsuit, you have two parties contending over a justiciable issue, and each is there to defend or advocate for his or her position. There are no parties in this proceeding. So if the judge says there is nothing in this petition, even if true, which constitutes malfeasance, misfeasance, or nonfeasance, that attempt to recall is over, and the one who is trying to bring the recall has no recourse. A judge, without receiving evidence, without having to give a reason for a decision, and with nobody to challenge it, renders a decision and the judge is not above being involved in local politics. I think this whole subsection should be stricken. If you're going to have the court, let the two sides contend. If the one being recalls says there is not a statement here of anything which, if true, would be one of these three categories, and I'm going to take it to court, then the other side must be there so that the issue is joined, and this proceeding is like any other one, and the judge's decision should be considered a final order, so that it can be appealed. You all are complicating this process, and you're complicating it in a way that can completely defeat the purpose of recall. I tried to explain from my position, as I see it, the difference between a constitutional officer and a local official. Under the state of the law right now, a local official serves at the pleasure of the public. The local official serves at the pleasure of the public. If an official is allowed to appoint somebody to an office and the statute that creates that office and the appointment says this person serves at the pleasure of the appointing official, the appointing official can remove that person for no reason whatsoever--just say, you're out of here. And sometimes that can save the person who is being removed, because there could be something very bad if it were to be brought up. So that person is removed. Nobody can show me in the law where local officials do not serve at the pleasure of the public. You are doing more than complicating a procedure here. You are changing the whole basis of the manner of representation that is to be given, the extent and scope of the franchise. The franchise given where a local official is involved can be taken back. The public can change its mind. The public does things on the basis of whim. Even when they vote for a person, against a person, for an issue or proposition, or against it, there is nothing that says and nothing requires that there be deep thought, deliberation, and consideration given to anything. You just vote because you want to! You can just look away and mark...put a pencil mark on a paper and whichever item it's closest to, that's what you can vote for. That is the nature of the franchise, that is the nature of representative democracy, and that is the nature in this state... [LB878]

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SENATOR ERDMAN: One minute. [LB878]

SENATOR CHAMBERS: ...of the way that a local official serves. That person serves at the pleasure of the electorate, and the electorate has the right to changes its mind. And I think that this subsection 4 is so unwise, so skewed, so given to arbitrariness and capriciousness, that it ought not be injected into the recall system. This procedure is being made so unwieldy, so skewed and complicated, that this is a bill that I will fight, not from the standpoint of pique, p-i-q-u-e,... [LB878]

SENATOR ERDMAN: Time. [LB878]

SENATOR CHAMBERS: ...but I think there's a distortion of the system. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Wightman, you're recognized, followed by Senator Lathrop. [LB878]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. Again, I think I will support the underlying bill. I'm not sure where I stand on the amendment. Probably the committee amendment is fine. I have some questions that I'd like to ask Senator Lathrop, however. [LB878]

SENATOR ERDMAN: Senator Lathrop, would you yield to questions from Senator Wightman. [LB878]

SENATOR LATHROP: I'd be happy to. [LB878]

SENATOR WIGHTMAN: Senator Lathrop, about a century ago when I was in law school--well, it might be closer to a half century--they used to talk, and I'm certainly not practiced in this area, that it required a justiciable controversy. I don't know if that language still appears in cases asking for an advisory opinion or not. Does it? [LB878]

SENATOR LATHROP: It does. You...yeah, you have to have a justiciable controversy, and that hasn't changed between the time you went there and I was there, but that's been 27 years. [LB878]

SENATOR WIGHTMAN: Okay. Now, does it make a justiciable controversy, in the event that the Legislature passes subsection 4? Is that automatically, just by the very nature that it's in statute, create a justiciable controversy, or do you know the answer to that? [LB878]

SENATOR LATHROP: I don't know that...I have to agree with Senator Chambers. I

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don't see an adversarial lawsuit filed, where one person says one thing and the other person says the other. As I read that section, the person who is the subject of the recall can file a response or he can file, he or she, can file an action in the district court challenging the sufficiency of the allegations. I don't know if the person that brings the recall can then come in and argue that he's made his case or made proper allegations, or if it's just the person who's defending themselves that is heard by the district court. [LB878]

SENATOR WIGHTMAN: It is possible, at least, that a district court might determine that this isn't a justiciable controversy and might refuse to rule in the case, or do you think by virtue of the fact that it's statutory they would rule? [LB878]

SENATOR LATHROP: Well, I think the court would rule. If we tell the district court to review these on an application from an elected official, I think they have to review them. [LB878]

SENATOR WIGHTMAN: And it would... [LB878]

SENATOR LATHROP: I don't think they can say there's no justiciable controversy because we don't have two parties in here. If we tell the district court judge, this is your job...we tell the Supreme Court to do a lot of different things, including having impeachment trials, that aren't the normal function of the court. So I don't know why we couldn't tell the district court to review the contents of a recall petition, to see if it expresses facts which, if true, amount to malfeasance, misfeasance, or nonfeasance. [LB878]

SENATOR WIGHTMAN: I'll go on one step further than subsection 4. I raised the question as to whether it should be a felony, and Senator Adams indicated to me personally that there's already a statute. Do you know that, in effect, that if a person is charged or convicted of a felony, he automatically can be removed from office? [LB878]

SENATOR LATHROP: I asked the same...yeah. I asked the same question, and I think the answer was found in the constitution, if I'm not mistaken, and perhaps Senator Engel can answer that, because I had the same concern, a guy convicted of a felony. And I think the answer was, they're already prohibited by, I think the constitution. [LB878]

SENATOR WIGHTMAN: And subject to removal, if they are already in at the time they commit the felony? [LB878]

SENATOR LATHROP: Right. That's my understanding. [LB878]

SENATOR WIGHTMAN: Okay. So to put felony in here doesn't accomplish much,

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because that's already covered. [LB878]

SENATOR LATHROP: I think that's right, and that was a concern I expressed when I read the bill the first time, too. [LB878]

SENATOR WIGHTMAN: Thank you, Senator Chambers (sic). Thank you, Mr. President. Or... [LB878]

SENATOR ERDMAN: Thank you, Senator Lathrop and Senator Wightman. Senator Lathrop, your light is next. You may speak, followed by Senator Pirsch. [LB878]

SENATOR LATHROP: You know what? I think I'll waive. [LB878]

SENATOR ERDMAN: Senator Lathrop waives off. Senator Pirsch, you're recognized to speak, followed by Senator Lautenbaugh. [LB878]

SENATOR PIRSCH: Thank you very much, Mr. President, members of the body. I was just wondering if Senator Engel might yield to a question or two. [LB878]

SENATOR ERDMAN: Senator Engel, would you yield to a question from Senator Pirsch? [LB878]

SENATOR ENGEL: Yes. Yes, I will, um-hum. [LB878]

SENATOR PIRSCH: Thank you very much, Senator Engel, and I will just address to you the question that I had with respect earlier to Senator Lathrop, and that is, I'm just trying to clarify the meaning of the...and I'm referring to page 2 of the underlying bill, the green copy, and page 2, line 16 and 17. It's a definition of the word "malfeasance in office," those words. It says in part, means the knowing and intentional commission by a public official of an unlawful--which I think is pretty clear in its meaning--or wrongful act. And it's the term "wrongful" that I'm trying to have a clear definition of the meaning, how much subjectivity is introduced through that use, the use of that term. And so...first of all, was the...where was that particular language taken from, if you know? [LB878]

SENATOR ENGEL: Well, in response, it came from the last two times this bill was presented, and from what I understand, it originally came from a statute or law in Minnesota, is where it came from. As far as the definition of "unlawful" or "wrongful," I suppose wrongful could be any kind of definition. It could be adultery, it could be something that's not right and it's perhaps not moral. But it's wrongful. I don't...I think that's strictly a legal-type situation here. I can't tell you,... [LB878]

SENATOR PIRSCH: Sure. [LB878]

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SENATOR ENGEL: ...(inaudible). [LB878]

SENATOR PIRSCH: And I appreciate that. Well, we're going to be having a...the way that things are structured is the reason for the question, that a judge, my understanding is, if something is put on the petition--I mean one of these recall movements are undertaken--and the movement would have to put the grounds or the basis of their movement, and then that justification would be in turn reviewed by...possibly by a judge, and would look at the term "wrongful," in part, and try to discern what it is that we meant here on the legislative floor, I think it would be easy for him to see what an unlawful act...and so insofar as that's...that that term is used, I guess what I'm questioning is, if there is a matter of public policy, say, there's an initiative a city councilman wants to further, but it's an unpopular...well, I guess regardless of whether it's popular or unpopular, if a certain segment of the population were to come forward and say, we don't like that activity, we think it's wrong to engage in that, maybe not a moral element added to it, is it...do they have a claim to say that that is a wrongful act because they believe that it's wrong or not in the best interest of the municipality to proceed in that manner? [LB878]

SENATOR ENGEL: Are you...I'm sorry. As far as my... [LB878]

SENATOR PIRSCH: Oh, sure. Yeah, let me re-ask that. Could wrong be interpreted in the sense that a certain segment of the population believes that it's wrong to engage in that act, although it isn't illegal? I mean,... [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR ENGEL: It's my understanding, Senator Pirsch, that it's in office, malfeasance in office. And so if they committed that act while in office, I'm assuming that's where it would apply. [LB878]

SENATOR PIRSCH: Very good. Well, I do appreciate that, and I just yield the balance of my time to Senator Chambers, if he has any other questions. [LB878]

SENATOR ERDMAN: Senator Chambers, 30 seconds. [LB878]

SENATOR CHAMBERS: Th-th-th-that's all, folks! [LB878]

SENATOR ERDMAN: Thank you, Senator Pirsch, Senator Chambers. Senator Lautenbaugh, you're recognized to speak. Senator Chambers, your light is next, but you have spoken three times. [LB878]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I've been listening to the debate, and I believe I agree with Senator Lathrop here, in that I don't

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think this rises to the level of an advisory opinion, as the bill is written. We do have other things that the courts do, the district courts routinely do, known as ancillary proceedings, where you're trying to do discovery in a matter that's pending in another state, to obtain records locally, and those types of things don't count as advisory opinions, and they're not unheard of in the district court. So I'm wondering if Senator Chambers would yield to a question. [LB878]

SENATOR ERDMAN: Senator Chambers, would you yield to a question from Senator Lautenbaugh? [LB878]

SENATOR CHAMBERS: Yes, I will. [LB878]

SENATOR LAUTENBAUGH: Senator, are you familiar with ancillary proceedings in the district court? [LB878]

SENATOR CHAMBERS: Well, give me an example. Yeah, these are side issues and not the merits of the matter itself. [LB878]

SENATOR LAUTENBAUGH: Well, it would be more common to have, say, if an action was pending in Iowa but discovery needed to be had in Nebraska, there would be a proceeding opened where there's just one party named and an order issued to obtain records in Nebraska, that kind of thing. [LB878]

SENATOR CHAMBERS: Yeah, I've heard of that, but that's not what we have here. It...go ahead. [LB878]

SENATOR LAUTENBAUGH: Well, I understand that's not exactly what we have here, but I would argue that what we're doing here is more akin to that kind of thing than to an advisory opinion. So I... [LB878]

SENATOR CHAMBERS: Oh, it's your time. Go ahead. [LB878]

SENATOR LAUTENBAUGH: So for clarity's sake, is...it's your problem that this is not a...or is your issue that this is not a full-blown legal proceeding with both parties represented? [LB878]

SENATOR CHAMBERS: Yes, because the judge's statement ends everything, either way. And what it could serve as is a road map. The judge doesn't determine the truth of anything, so we're telling people in the statute, be sure you allege something which is horrendous, in order to have your recall allowed, and the judge looks at it and says, if that were true, that would be malfeasance, so the recall goes forward. In other words, I don't think it accomplishes any significant or valuable purpose, and I hope that doesn't seem evasive, but I'm trying to give a complete answer. [LB878]

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SENATOR LAUTENBAUGH: No, no. I understand that. I appreciate that. So how would you improve upon this, or is there any way you can have review of a recall, in your opinion, before proceeding with the recall? [LB878]

SENATOR CHAMBERS: I don't think there should be a recall. I think it should be at the discretion or whim, if you will, of the public to change its mind, and these officials who serve at the pleasure of the public would continue to do so. But if you're going to involve the court, it should be a full-blown issue. We're not saying here the court makes the determination, but if the one being recalled puts it in court. Either make it mandatory on the court in the case of every petition filed, or make it full-blown. [LB878]

SENATOR LAUTENBAUGH: Would it address your concerns if there was a provision that provided for an appealable order to be issued by the court setting forth findings? [LB878]

SENATOR CHAMBERS: We are then making it so complex that I think it changes the nature of the recall. But if something was to be done, it should be done that way, but the appellate court could not review, because there was no hearing and no record, so the appellate court would say, there is nothing on which we can form an opinion. There's no record. [LB878]

SENATOR LAUTENBAUGH: I believe, Senator, there are provisions for review in other proceedings where there's not a record, per se, such as an ancillary proceeding, a refusal to issue that order. Would this be akin to something like that, or would something like that be acceptable to you? [LB878]

SENATOR CHAMBERS: I don't think that would be the same, because you have some underlying issues that have been joined by parties, so it's not just something in a vacuum, in the way this is. There are no parties involved in this at all. It's not an adversarial proceeding. The one you're talking about is a part of an adversarial proceeding. And I agree, there might be some aspects of an action that could even be ex parte, but that overall proceeding still is adversarial. [LB878]

SENATOR LAUTENBAUGH: Thank you, Senator. Senators, I believe the issue here is still whether or not... [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR LAUTENBAUGH: ...we're going to try to fix this process. Thank you. And with that in mind, I realize the concern that this does lay out a road map as to what you have to allege to get over the hurdle, but there are other provisions in existing law and in this bill that would address that, or at least provide for an opportunity for the person

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being recalled to address them. If there was some crazy allegation made that happened to fit within the parameters of this bill, then that would be very, you would presume, be very easy for the person who is the subject of the recall to address and run against. I still think this bill has merit, in that it does require some sort of parameters, some sort of a statement within some parameters, if you will, that would constitute a legitimate basis for recall. While it does put some infringement on the recall process or limit it in some way, it still make sense to do it, in my opinion. Thank you, and I'd yield the rest of my time to Senator Aguilar. [LB878]

SENATOR ERDMAN: Senator Aguilar, you have 5 seconds. Thank you, Senator Aguilar. (Laughter) Senator Louden, you're recognized to speak. [LB878]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look at this bill and listen to the debate this afternoon on it, I think we've heard a lot of it before in years past, where we've tried to do something about recall elections. I think we have to be very careful of it, because now you're spelling out what someone has to be recalled for, and that is something...an option that's left up to the voters of the county or the state or the entity that is being...where the recall is being circulated or wants to be circulated. I agree with Senator Chambers that I think this is something that the people do, and I don't think that we should be changing that or try to put it into the court, or start to describe what it takes for a recall election. As you look through the bill, there's other areas in there I'd have concern with, not just where you're asking for the recall, or describing what it takes to be recalled. But it also describes who the petition circulator can be or take some of that out. It also mentioned that you have to put in there the estimated cost of what it's going to cost, so if you put that on a petition, that's another issue on that. So there are some of the things that I somewhat would be concerned about when you start actually tinkering with this thing. The recall system has worked quite well in these areas in Nebraska over the years, as the first part of it in the bill mentions when the different areas where this applies, and that's mostly for your cities, villages, irrigation districts, and school districts, community colleges, hospitals, to name all those types of local entities that...where people are close to it. And there probably isn't any other way, if someone has a problem, than to have a recall election. You have to circulate the petitions, you've got to get a certain number of petitions before you can have a recall, of voters. So it is somewhat controlled with other areas in statutes. So I really don't know why we have this brought forwards, other than the fact that every year or so it seems like, every session, we have part of it brought forwards to work with the recall election for local officials. So with that, at the present time I don't think I can support the amendment and I don't think I can support the bill. I think that what we have today has worked quite well over the years, and I don't know as we have to fine-tune it in any way, because it is something that has worked quite well over the years. There's...many a times there's been recalls attempted, but they've never gotten enough signatures on the petition. So I think it's something that the people do themselves. It's their right and it's their prerogative to do this, and I don't think that we need to work with

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it or tinker with it anymore. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Louden. Senator Chambers, you're recognized to close on FA195. [LB878]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator Louden hit the nail on the head once again. This is a process that the people of the state are familiar with. If you look at the issues in Omaha, where a petition is being circulated or proposed to be circulated, maybe they'll get enough signatures to call for an election. Remember, you don't just file a petition and the recall occurs. You have to get a certain number of signers. Then you have to have an election and then the voters have to speak. There is nothing that in my opinion would prevent the people in Omaha from being fully advised in terms of what this petition is about, that the man wants to serve. They know it relates to the stadium. Some people say there has been not a clear statement of where the funds will come from, whether or not the existing Rosenblatt Stadium ought to be torn down--all of these issues are known. The fact that attempts are made to recall is not a basis to do away with it. That is the purpose of recall. There should not have to be a reason of the kind that is being put forth in this bill. If a judge says that the allegations rise to the level of malfeasance, then the public can be told, the court has said that what I am alleging is true. Then the other side says, well, no, it's not true. Then you say, well, why did the court say it? And you get into all of these side issues. The judge is going to take a position one way or the other. The court ought to stay out of this kind of political activity. This is a political question if ever there was one. There have been some very serious issues which the U.S. Supreme Court and other courts have refused to resolve, because they ruled that they are political in nature. They have to be resolved through the political process. Recall is a political process. You're not determining whether or not somebody meets the standards in the law. That could be a legal question. But as to whether this person continues to be fit to hold this office, that is a political question. This is an unwise bill. Regardless of how you vote on my amendment is irrelevant to me. I'm not going to dig my heels in on the basis of the committee amendment. I'm digging my heels in on the basis of what is showing itself more and more to be an unwise law. So when my time runs out, I'm going to withdraw my pending amendment. There are problems with the committee amendment. Mine does not resolve those problems. Mine does not address with specificity the objections that I find with the committee amendment. You are complicating a procedure which nobody can show has not worked the way it was intended. How was it intended to work? To allow citizens, if they can get enough signatures on a petition, to force an election. And it is not the signatures on the petition that determines whether the person remains in office. That determination is made based on the outcome, the result of the election participated in by the voters. The voters will make the final determination. Since... [LB878]

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SPEAKER FLOOD: One minute. [LB878]

SENATOR CHAMBERS: ...these officials serve at the will of the electorate, the electorate is entitled to change their mind, and they can change it for any reason or no reason. And if an individual files a petition which is not clear and is not specific, the one against whom it is filed writes a defense. And both of those items are put on the petitions that are delivered by the election commissioner to the petitioner or the circulators. And if what is alleged in the petition does not stand up, the recall vote will not be successful, or the circulators will not procure enough signatures. How about all that talk earlier about complicating the petition process? This... [LB878]

SPEAKER FLOOD: Time, Senator. [LB878]

SENATOR CHAMBERS: Thank you, Mr. President. I will withdraw my pending amendment. [LB878]

SPEAKER FLOOD: FA195 is withdrawn. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR252, LR253, and LR254. (Legislative Journal page 891.) Moving now to discussion on AM2041, Senator Howard, you're recognized. [LB878 LR252 LR253 LR254]

SENATOR HOWARD: Thank you, Mr. President, members of the body, and I'd offer my time to Senator Chambers, if he would want it. [LB878]

SPEAKER FLOOD: Senator Chambers, Senator Howard has given you the balance of her time: 4 minutes, 51 seconds. [LB878]

SENATOR CHAMBERS: Thank you. Mr. President, now that my amendment is gone, we're looking at the committee amendment. That is what is before us. I think there is superfluous, needless language in the committee amendment. Senator Lathrop said that they added the name of these two crimes: dishonesty--or elements, or a false statement. Are you telling me...I would like to ask "Parson" Carlson a question, because I think he's been following. [LB878]

SPEAKER FLOOD: Senator Carlson, will you yield to a question from Senator Chambers? [LB878]

SENATOR CARLSON: Yes, I will. [LB878]

SENATOR CHAMBERS: Senator Carlson, would you rather deal with a thief or somebody who has committed misdemeanor sexual assault? [LB878]

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SENATOR CARLSON: Probably a thief. [LB878]

SENATOR CHAMBERS: Well, dishonesty is a basis for recalling, but misdemeanor sexual assault is not. Would you rather deal with somebody who made a false statement or somebody who slapped a person or knocked a person down for no reason at all? In other words, an assault. [LB878]

SENATOR CARLSON: Well, I'd deal with the assault person in my way. [LB878]

SENATOR CHAMBERS: But it you have somebody... [LB878]

SENATOR CARLSON: I'd take care of him, just like you would. [LB878]

SENATOR CHAMBERS: Well, but I believe in turning the other cheek, if it's you who... [LB878]

SENATOR CARLSON: Oh, you do sometimes. [LB878]

SENATOR CHAMBERS: If it's you, all right? But here's what this language says: conviction of a crime. Let's say that the crime is first-degree sexual assault, but the prosecutor doesn't charge it. Then it doesn't apply, because this language does not say the commission of the crime, but the conviction. So if the conviction does not occur, no matter what the crime is, it's not a basis, under this language of the committee amendment, for recall. Does that make sense to you? [LB878]

SENATOR CARLSON: Not really. [LB878]

SENATOR CHAMBERS: Thank you. That's all I'll ask you. Members of the Legislature, I can understand what the committee was trying to do. I can understand why Senator Lathrop selected these two items. He made it clear that when you're trying to impeach a witness or show that that witness lacks credibility, if there had been this kind of conduct, you can bring that up. You can't just bring up anything out of a person's past. But when it comes to an act of dishonesty or a false statement, it goes to whether or not this person tells the truth and can be relied on, not whether it's a good person or a bad person. But when you're talking about removing somebody, you're looking at whether this is a good person or a bad person. You're talking about fitness or suitability to hold the office. So if the person commits an act of first-degree sexual assault, but there has been no conviction because the prosecutor didn't charge it, then that is not a basis for being recalled. And if you wrote that in your petition, it did not have anything to do with the office itself, so it's not misfeasance, it's not malfeasance, it's not nonfeasance. It's outside the realm of what was done in the office. Since there was no conviction for it, it cannot be the basis for removal. If you commit child abuse and you're convicted but it's a misdemeanor, that is not a basis. You commit domestic abuse, that is not a basis.

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When you start trying to name these crimes, you cannot do that without complicating a situation and letting worse offenders through! Dishonesty and a false statement. There have been men who've been accused... [LB878]

SPEAKER FLOOD: One minute. [LB878]

SENATOR CHAMBERS: ...of rape, and they might say, look, I'm a thief and I'm a burglar, but I'm not a rapist. So there are some things that carry much more opprobrium as far as society is concerned than making a false statement or even stealing or embezzling. Let's say a person embezzles all of the money out of the church coffers, and a charge is brought. Then the church says, if you pay it back, we'll drop the charges. Well, the act of dishonesty has been committed, charges were brought, but there was no conviction because it didn't go to trial. If a felony has been committed but is plea-bargained down to a misdemeanor and a plea is entered, that cannot be a basis for a recall. This is more complicated than people are acknowledging. It has an allure to it, but I'm not in favor of changing this procedure. If somebody... [LB878]

SPEAKER FLOOD: Time, Senator. [LB878]

SENATOR CHAMBERS: Thank you, Mr. President. [LB878]

SPEAKER FLOOD: Thank you, Senator Chambers. There are no other lights on. Senator Engel, you are recognized to close...oh, no, Senator Aguilar, you are recognized to close on AM2041. [LB878]

SENATOR AGUILAR: Thank you, Mr. Speaker and members of the body. Again, first I guess I want to point out for Senator Louden's...you know, he was questioning the language of the bill requiring a statement of estimated costs. This amendment takes that out of the bill, Senator Louden. That's no longer there. Also, the other language I was very clear about. It was chosen because it's already in the rules of evidence. I would ask you to support this amendment, as well as the underlying bill. Thank you. [LB878]

SPEAKER FLOOD: Thank you, Senator Aguilar. You've heard the closing on the committee amendments to LB878. All those in favor vote yea; all those opposed vote nay. Have all those voted who wish to? Senator Engel, for what purpose do you rise? [LB878]

SENATOR ENGEL: Have a call of the house, please. [LB878]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB878]

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CLERK: 31 ayes, 1 nay, to place the house under call. [LB878]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Synowiecki, Senator McDonald, Senator Langemeier, Senator Pahls, Senator Dubas. Senator Cornett, would you please check in. Senator Johnson, the house is under call. Senator Dubas, the house is under call. Senator Langemeier, the house is under call. Senator Engel, all members are present or otherwise accounted for. How do you wish to proceed? [LB878]

SENATOR ENGEL: I'd like to have a roll call in regular order. [LB878]

SPEAKER FLOOD: A roll call in regular order has been requested. Mr. Clerk, please read the roll. [LB878]

CLERK: (Roll call vote taken, Legislative Journal pages 891-892.) 28 ayes, 5 nays, Mr. President, on adoption of the committee amendments. [LB878]

SPEAKER FLOOD: The committee amendments are adopted. I do raise the call. Mr. Clerk, items for the record. [LB878]

CLERK: Mr. President, amendments to be printed: An amendment to LB1094 by Senator Chambers; LB1092, Senator Karpisek; Senator Chambers to LB878. New A bills: LB988A by Senator Raikes. It appropriates funds to implement LB988; LB1157A by Senator Raikes, appropriates funds to implement LB1157. Name adds: Senator Wallman would like to add his name to LB920. [LB878 LB1094 LB1092 LB878 LB988 LB988A LB1157 LB1157A LB920]

And I have a priority motion. Senator Avery would move to adjourn until Tuesday morning, March 11, at 9 a.m.

SPEAKER FLOOD: You've heard the motion to adjourn. All those in favor say yea. All those opposed say nay. The yeas have it. We stand adjourned.