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Transcriber's Office

Floor Debate
March 31, 2008

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PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fiftieth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Senator Dierks. Would you all please rise. []

SENATOR DIERKS: (Prayer offered.) []

PRESIDENT SHEEHY: Thank you, Senator Dierks. I call to order the fiftieth day of the One Hundredth Legislature, Second Session. Senators please record your presence by roll call. Please record, Mr. Clerk. []

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

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Any corrections for the Journal? []

CLERK: I have no corrections, Mr. President. []

PRESIDENT SHEEHY: Messages, reports, or announcements? []

CLERK: One resolution, Mr. President, LR320 by Senator Stuthman, an interim study to be referred to the Executive Board. That's all that I have. (Legislative Journal page 1179.) [LR320]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Mr. Clerk, we will move to Final Reading. Members should return to their seats in preparation for Final Reading. Mr. Clerk, the first bill is LB1094. []

ASSISTANT CLERK: (Read LB1094 on Final Reading.) [LB1094]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB1094 pass with the emergency clause attached? All those

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in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1094]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1180.) The vote is 46 ayes, 0 nays, 3 excused and not voting, Mr. President. [LB1094]

PRESIDENT SHEEHY: LB1094 passes with the emergency clause attached. We will now proceed to LB1094A. [LB1094 LB1094A]

ASSISTANT CLERK: (Read LB1094A on Final Reading.) [LB1094A]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB1094A pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1094A]

ASSISTANT CLERK: (Read record vote, Legislative Journal page 1181.) The vote is 46 ayes, 0 nays, 3 excused and not voting, Mr. President. [LB1094A]

PRESIDENT SHEEHY: LB1094A passes with the emergency clause attached. Mr. Clerk, we'll move to the first item, LB880, under General File. [LB1094A LB880]

ASSISTANT CLERK: Mr. President, LB880 was introduced by Senator Kopplin. (Read title.) The bill was read for the first time on January 11 of this year, referred to the Natural Resources Committee. That committee reported the bill to General File with committee amendments. The bill was considered by the body on March 26 of this year. (AM1787, Legislative Journal page 633.) [LB880]

PRESIDENT SHEEHY: Senator Kopplin, you're recognized to open LB880. [LB880]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. If you'll recall, we introduced LB880. I'll briefly review what it's about. LB880 is brought by a consortium of communities, all the communities in Sarpy and Douglas County. Sarpy County, they worked together for about six and a half years to come up with a way of handling the water problems that exist in the Papillion Creek Watershed. The gist of the bill is that they are requesting that the NRD be allowed to have bonding authority which would be paid for within the existing levying authority of the NRD. The bill was amended in committee and I have another amendment. I worked very hard to try to get to the point where it's acceptable to everyone. I've ratcheted it down to the amendments that I will present to the committee amendments. I think I've answered a great many questions and I'm looking forward to get to that point. Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. Senator Loudon, would you like to give us a summary of the Natural Resources Committee amendment? [LB880]

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SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. The committee amendment does three things. First, it limits the size of the reservoir or water quality basin to those projects having a permanent pool of 500 surface acres or less. Second, it requires public access for any project that has a permanent pool greater than 20 surface acres. And third, it prohibits a district to turn over to a nonpublic entity any real property acquired by eminent domain for a water project. I would ask the body to adopt the committee amendment. Thank you, Mr. President. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Pedersen, would you like to give us a summary on AM2068, the amendment to committee amendment? (Legislative Journal page 1073.) [LB880]

SENATOR PEDERSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. This was that amendment that I put in that would change the current level of 4.5 cents to 3.5 cents as far as what they can levy. And it was put in for us to visit about different areas of the bill. The concern that I have had with the bill is the raising of taxes via...property taxes via the tool of bonding. And when the bonding...when there is a study that's currently going on, was due last June, still not in and won't be in, to say what really needs to be done in this area, by giving them bonding authority is like giving them candy to a kid and wondering what they're going to do with it in the future. A kid will eat it right away. But we have nothing in this bond...in this bill that tells us what the bonding money would be used for, how much the bonds would be for, when they would be due, nothing. It just gives them an open account to the candy store. There is a study. Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Pedersen. Are there members requesting to speak on AM2068? The floor is open for discussion. Senator Kopplin. [LB880]

SENATOR KOPPLIN: Thank you, Mr. President. Just a quick response to Senator Pedersen. There is indeed a study. There's an ongoing study of how these communities are going to deal with the water problems that exist in the Papillion Creek Watershed. This morning is a good day. It's raining and we just passed a bill to help out...pay those farmers that gave up their irrigation rights last summer because last year we gave bonding authority to the Republican Valley to take care...to try to take care of their lack of water. This year we're saying, hey, give us some bonding authority to help take care of the excess water. To say that we're going to have huge increases in property tax is just a stalling tactic. Anything that is passed has to be within the levying authority that the NRD already has. To say that it's an open checkbook to whatever they want to do is not true. In fact, my amendments will change that completely. We need to get down to a discussion of the bill as it is. And I'm hoping that you will not pass Senator Pedersen's amendment and help us to get to where we can discuss what is in the bill. Thank you. [LB880]

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PRESIDENT SHEEHY: Thank you, Senator Kopplin. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB1094, and LB1094A. Members wishing to speak: Senator Pedersen, followed by Senator Preister. Senator Pedersen. [LB1094 LB1094A LB880]

SENATOR PEDERSEN: Thank you, Mr. Lieutenant, members of the Legislature. Senator Kopplin's bill should be about water quality and the amount of water, but this bill of his is about bonding. Again, I'm going to mention that the Papio Creek (sic) Natural Resource District has contracted with HDR of Omaha for not a million but three-quarters of a million dollars' worth of study that was due in June of '07 and will not be done until after we're out of session. That study should tell us or tell them what needs to be done. Will it be dams, will it be low-impact development, combination of both? We don't have that, and yet we've got a bill here asking us to give them the money and, trust us, we'll do what's right with it. And the money they're going to get is money from, yes, property tax, the ones we hear the most about. With that, Mr. Lieutenant Governor, I will pull this amendment and we'll get about the business of what we're going to do with this bill. Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Pedersen. AM2068 is withdrawn. We will now resume floor discussion on the...Mr. Clerk, we have an amendment to committee amendment? [LB880]

ASSISTANT CLERK: Mr. President, the next amendment to the committee amendments is from Senator Kopplin, AM2288. Senator, I have a note to withdraw this one. [LB880]

PRESIDENT SHEEHY: Senator Kopplin, withdraw AM2288? [LB880]

ASSISTANT CLERK: Mr. President, the next amendment, Senator Kopplin, AM2455. (Legislative Journal page 1057.) [LB880]

PRESIDENT SHEEHY: Senator Kopplin, you're recognized to open on amendment to committee amendment, AM2455. [LB880]

SENATOR KOPPLIN: Thank you, Mr. Lieutenant Governor, colleagues. This amendment basically changes the committee amendment. It includes everything the committee amendment had on, but we go far more. I want to thank Senator Pedersen for removing the last amendment so that we can get down to a discussion of what is in the bill, I appreciate that. AM2455 was a work in progress, and I think you can follow along. We had, first of all, we had committee amendments to try to work this bill out. I came back with other amendments which I've withdrawn because they still weren't far enough. And now we're down to what I consider the bottom that we can get to. It is about bonding. It is about giving these communities authority to deal with their excess

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water problems. It is...there could be dams, but it's also about levies, it's also about trying to slow down water in other ways, it's trying to improve the quality of water, all of these things are part of this bill. This simply is saying, okay, here's a way that you can pay for it, just as we did with the Republican Valley. Under LB880, some of the concerns that were brought up was public access, that there would be dams built and nobody could use them. Well, the language we've put in here says any body of water over 20 acres has public access not only just to a drive up where you can stand on the bank, but it includes complete access to all of the shoreline and 100 feet of area, green space all around the body of water. We have put in statements on low-impact development. Some would want us to list every item of low-impact development in the bill that we can think of. That's not necessary. What is necessary is to recognize that many of these problems can be taken care of by low-impact development. And that's what we did. One of the big issues, and it still is being brought up, well, you're building huge dams. Those are off the table with the committee amendments. I have changed the committee amendment from 500-acre surface to a body of water no larger than 400 surface acres. Water quality, we put in a statement that says, measures and techniques to control at least a minimum of the first one-half inch of rainwater runoff. Now that word is important. It's not a one-half inch rain, because much of that soaks into the ground. We're talking about the runoff. And controlling the runoff is a higher standard than just controlling rainfall. It does fit what is commonly used in water quality projects. Local control was a concern, so we put in a statement that says, if the local subdivision has in their plans...has in their zoning and their concerns that dams won't be used, then bonding cannot be used for a dam in that area. But there are other areas that may wish to have a dam paid for with bonding. So we've given that control to the local entities. Eminent domain is an issue. I think the present laws prevent land being taken and given away to private people. But we have spelled it out even more strongly. The language clearly prohibits the district from using eminent domain to enrich private developers. There's another issue that I'd like to speak about for a few moments this morning. This bill was important last week, it's of even more importance this week. Last week a meeting of the Corps of Engineers was held in Omaha with members of the governing body of Omaha and other areas to discuss the levy situations in this watershed and in the Missouri watershed. After Katrina struck, the Corps of Engineers is facing many lawsuits because of the unstableness of levees. That has caused them to look at levees nationwide. And in the Midwest we will be a test case for what they plan to do. In other words, levees must be certified, fit the standards set by the Corps of Engineers. If not, they consider the levees not adequate and the flood plain will be drawn as if that levee didn't exist. That has huge ramifications on flood insurance for huge numbers of businesses in large areas, not only in the city of Omaha but as you go down huge chunks of good, developable land that Bellevue could...will and does have plans to see developed, would now be listed under the flood plain and would be severely limited. The new roads, new highway...bridge going across the Missouri River, south of Bellevue, has to be taken a look at, that they can reach and build that would...so that the new requirements of the levees would be considered. And it's not just the Missouri.

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Waterloo, in western Douglas County, has a huge problem because their levees will not meet the newer, stringent requirements. Levees along the Papio will not reach new requirements. All of these things will have to be redone, rebuilt. The levees are not the concern...not the charge of the Corps of Engineers. They are a charge of the local entities and the NRD. If we don't get them in compliance, we have terrific financial problems. To get them into compliance we have terrific financial problems because it has to be paid for. Giving these communities a tool to work with is essential, and that's what this bill is all about. Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. You have heard the opening of AM2455, an amendment to committee amendment. The floor is now open for discussion. Members wishing to speak: Senator Kopplin, followed by Senator Preister, Senator Gay, Senator Pedersen, Senator Lautenbaugh, and Senator Hudkins. Senator Kopplin. [LB880]

SENATOR KOPPLIN: Once again I will remind you I have worked considerably hard to bring this bill into a form that is acceptable. Those who wish to make it a case for property tax are making a case against property tax levying authority that already exists, because it does not increase that. If the NRD did not have the authority to set bonding issues, the individual cities could set bonding issues. But that reduces who pays for it to the members of that particular community that issues the bonds. This is a good bill, these are good amendments. This is a way to help deal with an area of the state that is not suffering from the drought, they are suffering from having to deal with water issues that are more than can be handled by individual communities. Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. Senator Preister, you're recognized. [LB880]

SENATOR PREISTER: Thank you, Honorable President, friends all. I rise to give you some background information and to thank Senator Kopplin because I think, as he just said and I think as he said earlier, he has tried to understand what the opposition concerns were by the residents in largely Washington County, but others across the watershed, and to incorporate those into some changes. I think he did a good job of listening. He understood most of what people's concerns were, and I think this amendment goes a ways to address and to deal with those. One of those was public access. In the past, people have been concerned because one partnership did not give access to the water that tax dollars went to pay for. So that obviously became a concern to folks and they wanted to make sure that if public dollars were going to be used to build dams that have water bodies, that at least the public would have access to those. This 100 feet from the watershed back does take that into account. I think that's probably a great enough distance, I think it addresses...but it goes entirely around the watershed, so I think that's good. That was one of the issues that was raised and that I had on a list of the issues that people had brought to me. Because public access had

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not been defined, essentially, a trail to the lake could have been construed as public access. So I think Senator Kopplin listened, he heard that, that is in this amendment, and I think that's a good thing, I appreciate that. Another major issue that we hear from the NRD was talked about prior to recently, but no one can...none of the people who have concerns with the dam building have heard that discussion up until they saw the presentation on February 2, and that deals with not singularly using dams as the way to address both water quality and water quantity, because it really doesn't deal with water quality. And in fact, it probably makes it worse because it concentrates the pollution in the water body. But that other concept that is now a part of a plan is low-impact development. And Senator Kopplin again is working at addressing that and ensuring or partially ensuring that low-impact development is a part of what happens with dealing with the water quality and quantity. And I think this is a methodology that is very important to the process. It's one that I didn't hear any disagreement on. Everyone said, including the NRD and the opponents to the dams, that low-impact development has a place in the watershed, it has a place in dealing with both water quality and water quantity, and I appreciate that Senator Kopplin has put that into this bill. It provides the financing for low-impact development. It doesn't say it can only go for low-impact development, which some people would prefer to see, but it certainly says that part of the bonding authority would be used for that purpose. It also reduces the size of the eligible permanent pools to projects under 400 surface acres. [LB880]

PRESIDENT SHEEHY: One minute. [LB880]

SENATOR PREISTER: That is a reduction from the 500 that's in the bill. The opponents would say that currently the largest dam is only 375 acres. So this is still larger, even at 400 acres, than the largest current dam that is operated. So it's still a sizeable amount. That 400 acres means that we also have to take into account the 100 foot. We also have additional acreage that is around that. Total, as I'm told, is close to a square mile, it's close to a section of land. So we're still talking about a very large area that would have to be taken from property owners, either through willing buyers and willing sellers. But the low impact component is a good component and the reduction is going in the right direction... [LB880]

PRESIDENT SHEEHY: Time, Senator. [LB880]

SENATOR PREISTER: Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Preister. (Doctor of the day introduced.) Senator Gay, you're recognized. [LB880]

SENATOR GAY: Thank you, Mr. President. I rise in support of the amendment and the bill. The one thing...Senator Kopplin has been doing a fine job explaining the need for this, and others have too. When I look at some the handouts he had handed out and

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some of the compromises that were made, I think especially to deal with the low-impact development measures, local control measures, some of these other issues that were very important, I know, to some of the opposition to this. And as I mentioned before on prior debate is, there are good people on both sides of this issue; it's just differences of opinion on how things are going to be done and how they're going to take care of their problem. I look at this, we're again asking an entity to take care of a major, major problem. And now it's become a bigger problem with the levees not being recertified or won't be recertified. Now we have a bigger problem even from when we discussed it prior to that. So my idea goes to this, is I hear people say, well, they've got money in the bank that's not being used, it's not being used, they have a plan that's not quite yet completed. What we're asking for is, how do you develop those plans? How do you deal with the problems? It hard to develop a plan unless you know the financing mechanism of what's going to happen. But they've been doing a good job, I think, the NRD, the local NRD, has to be available to answer these questions and deal with those issues. The low-impact development portion of this bill is, I think, part of the key to the whole...the whole compromise. That has been an issue. Some people think just low-impact development could get this problem solved; others believe we need dam sites and larger retention areas. So...but I think by working together, many of the counties and cities have been working together for a long time on this issue and I do think those quality people will get together and solve this local issue. But as we get in this debate, I would want to make sure that we understand there's...the game is constantly changing, constantly evolving that right now, as we have rains going on today, which is...when I was driving we're seeing runoff. And you have a thaw, ground is not quite thawed, we're getting a lot of runoff. It's kind of interesting to watch how these...where we're at. I've been many times at the bottom, down in Papillion area, Bellevue area, where water is running half an inch under a bridge. That will only compound as we have more and more development. And if we continue to not address the issue or not let those people, who we've given authority to address the issue, deal with that problem, I think we're going to be looking back at this someday, unfortunately, and say, you know, why didn't they do something about this? So I think we have a compromise here. I know with the local control issue that if this...it says here, if the local political subdivision prohibits in their comprehensive plan zoning ordinances or storm water policy, you don't have to use these bond proceeds to build there. But the way we're bonding, as well, it goes under the levy limit. So this isn't like a school bond, you're going over the levy limit and adding more taxes. This is allowing them to build under existing financial...what they have, but just allowing them to expand more and do the job. Because if you just do one small piece of the job, I'm not so sure that does any good either. And, oh, we'll throw a little bit a the problem at a time. I'm not so sure that happens when you have rapid development taking place and just small, little incremental changes to prevent flood control. The water quality issues and those things I'll talk about next time I hit my light. But I do think this is a good debate. Commend Senator Kopplin and others. [LB880]

PRESIDENT SHEEHY: One minute. [LB880]

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SENATOR GAY: Both those proponents and even those opponents, I think, have been working very closely together on this issue, and I commend them all for sharing their thoughts. They've been very civil, I know, to me. Even those people that disagree with me, they've been very civil when they discuss this issue. And it's an important issue that needs to be decided at some point. And hopefully we'll start making strides towards that on this bill. Thank you, Mr. President. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Pedersen, you are recognized. [LB880]

SENATOR PEDERSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. Yes, thanks to Senator Preister, there were some meetings, big meetings, brought all of the people together. But both of those meetings came out with no resolution. Senator Kopplin and Senator Gay talk about levees. None of them meetings talked about levees. We talked about low-impact development and dams. What I'm trying to bring to you people is there are ideas out there, but there is a three-quarter-of-a-million-dollar study by experts that is supposed to come in sometime after we're out of session that would hopefully bring these ideas together with some expertise. But what we're asked to do in LB880 is to say, well, whatever they do, here's some money, go ahead and do it. And I don't see it any other way but that. What Senator Kopplin handed out, aging levees and residual risk, I don't disagree with at all. There's some good information in there. But is that what they're going to do with the money? We don't know that. You know, it was just three short months ago that we thought we had three long months to go before we would get out of this Legislature. We're going to be out the week after next. Nine months later we'll be back in session. Is that too long to wait and look at something that they've already used tax money for to ask experts to look at and come back with a study? I don't think so, people. That isn't the way we work. That isn't the way you raise your children. By doing that we would be very poor stewards of the tax dollars, and we're already accused of that. And I can guarantee you that there is evidence that in the past the NRD that wants this bonding authority has not been good stewards of money already. Three-quarters of a million dollars, that would pay for some of the bills that we've introduced, A bills. That's a lot of money. Can't we wait and see what that money is going to buy for us before we spend more money? Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Pedersen. Members requesting to speak: Senator Hudkins, followed by Senator Lautenbaugh, Senator Kopplin, Senator Stuthman, and Senator Preister. Senator Hudkins, you are recognized. [LB880]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. If you look at the committee statement on this bill, you'll see that the bill did come out of committee 8-0, and that is really a shame because I have changed my mind because I've been on

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that committee long enough to realize that you don't really need to give NRDs any more financial power than they already have. We have seen what they have done with the money, and it's not in the best interests of the state of Nebraska. I would like to refer to Senator Kopplin's handout on public access, low-impact development, water quality, local control, and eminent domain. If you read the bill very carefully, this amendment really doesn't do that much. The first part, public access, and I have no problem with that, of providing public access to a permanent pool greater than 20 acres. Actually, I would like to see that 10 acres, but that's neither here nor there. Low-impact development, we've been told that there's an amendment to reduce the size of the eligible permanent pools to those projects between 400 and 50 acres, it would be projects under 400 acres rather than 500 acres. Well, there are no lakes between 400 and 500 acres, so this part of it does absolutely nothing. Water quality, with this change the NRD could bond an unlimited amount, as we heard from Senator Pedersen, and not be able to use the proceeds if the city or the county doesn't require low impact measures. So you have to have that requirement first. So collecting the runoff is really a higher standard than just collecting the rainfall. Local control, same thing, the NRD could bond and not be able to use the money if the county or city prohibits the project. Eminent domain, there was a bill earlier in the year to absolutely outlaw public domain. There was a phrase from that bill introduced into this one. If you look at what the purpose of NRDs are, there are a number of things that they have interest in. I'm going to just give you the last one, and that is development and management of recreational and park facilities. When they're putting in a 357-acre lake, that's not going to be considered flood control. It's going to be considered a multipurpose, and multipurpose has different rules on it. The provision does nothing but reinstate existing law. The NRD could still take land for a legal purpose, sit on it, and then later sell it to a private developer. And there is an amendment later on, AM2469, that would do just that. The State Auditor has sent all of us a letter that says that the Papio-Missouri NRDs have not been submitting their financial statements in a timely manner. We have also received information that this group has... [LB880]

PRESIDENT SHEEHY: One minute. [LB880]

SENATOR HUDKINS: ...millions of dollars set back. They haven't done anything with that money, they don't have a plan to do anything with that money, so why would we give them more ability to raise money which is going to be at the taxpayer, the property taxpayer detriment? Thank you, Mr. President. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Hudkins. Senator Lautenbaugh, you're recognized. [LB880]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I do thank Senator Kopplin for his attitude on being willing to listen and willing to compromise on this to a point. And I think he's worked very hard on this. Unfortunately, I

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do rise in opposition to the bill and the amendment as it stands. Others have given their reasons and mine don't differ dramatically from those. There is a study out there that we're waiting to complete. And honestly, when I took office, I immediately started hearing from my constituents about how this had proceeded previously and the level of distrust and suspicion they had with the NRD and the dam projects that were out there. That doesn't seem to have abated much, although I know the two sides have worked hard on this and I know there have been a lot of meetings and a lot of attempts to bridge the gap. But I don't think we're there yet, at least that's not the impression I've gotten. I would ask if Senator Kopplin would yield to a few questions. [LB880]

PRESIDENT SHEEHY: Senator Kopplin, would you yield to questions? [LB880]

SENATOR KOPPLIN: Yes, I will. [LB880]

SENATOR LAUTENBAUGH: Thank you, Senator Kopplin. Is there any limit to the amount of bonds that could be issued under this, under the underlying bill? [LB880]

SENATOR KOPPLIN: The bonding is limited by what they can pay for, which is simply the amount between what they're levying now and what the law already gives them the authority to levy, which is something like a penny and three-eighths. [LB880]

SENATOR LAUTENBAUGH: And where would the funds come from to pay these bonds back? [LB880]

SENATOR KOPPLIN: They come from the property tax on the entire NRD. [LB880]

SENATOR LAUTENBAUGH: Is there any limit on the duration of the bond issuance? [LB880]

SENATOR KOPPLIN: Not in my bill, no. [LB880]

SENATOR LAUTENBAUGH: Is this a one-time deal or would this be ongoing authority in perpetuity for the NRD? [LB880]

SENATOR KOPPLIN: I think as the communities work together to decide what they need to do, that projects would be paid for as they determine it was needed to do. You've got to remember this is a...these are 11, 10 active governmental entities working on this project. [LB880]

SENATOR LAUTENBAUGH: Now the information that has recently come up regarding the levees and I think you were referencing a little bit ago, the levees near the Qwest Center and whatnot, those aren't actually in this basin, if you will, are they? [LB880]

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SENATOR KOPPLIN: Would you repeat that question, please? [LB880]

SENATOR LAUTENBAUGH: The levees around the Qwest Center and possibly where the stadium will be developed, those aren't within the Papio Basin, are they? [LB880]

SENATOR KOPPLIN: They are within the...they are on the Missouri, they are not on the Papio. [LB880]

SENATOR LAUTENBAUGH: Would they be directly affected in any way by this bill? [LB880]

SENATOR KOPPLIN: They...that may be a decision that the communities involved will want to make because it's...it does put huge portions of downtown Omaha, not necessarily in threat of Omaha...of flooding, but in the flood plain, which means very pricey flood insurance for those whole areas. But it also deals with Bellevue and on down into Plattsmouth. [LB880]

SENATOR LAUTENBAUGH: Now the levees that within the Papio Basin, if you will, these bonds could be used for improvements on those, is that correct, for this bonding authority, I should say? [LB880]

SENATOR KOPPLIN: Levees are a big part of controlling water in any area, and certainly is in the Papio watershed. [LB880]

SENATOR LAUTENBAUGH: Is there any real... [LB880]

PRESIDENT SHEEHY: One minute. [LB880]

SENATOR LAUTENBAUGH: ...limit on what the bonds can be used for? [LB880]

SENATOR KOPPLIN: Is there any what? [LB880]

SENATOR LAUTENBAUGH: Any real limit on what the bonds may be used for, or is it just anything within the NRD's mission? [LB880]

SENATOR KOPPLIN: I'm not sure I got your question, but is there a limit on how the bonds could be used? Was that... [LB880]

SENATOR LAUTENBAUGH: Yes. Yes. [LB880]

SENATOR KOPPLIN: The limit has to do with controlling both quantity and controlling quality, and so it could be on any projects that would do any of those things. [LB880]

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SENATOR LAUTENBAUGH: And once we grant this authority to the NRDs, would the Legislature have any ongoing role in bond issuance? [LB880]

SENATOR KOPPLIN: You'll have to repeat that. [LB880]

SENATOR LAUTENBAUGH: Would the Legislature have any sort of an ongoing role in supervising the issuance of these bonds? [LB880]

SENATOR KOPPLIN: The difference between these and the Republican River bonds is that these are backed by property tax. [LB880]

PRESIDENT SHEEHY: Time, Senator. [LB880]

SENATOR KOPPLIN: So they would...we would not see them coming back to the Legislature to bail out that particular... [LB880]

PRESIDENT SHEEHY: Time, Senator. [LB880]

SENATOR KOPPLIN: ...thing. [LB880]

SENATOR LAUTENBAUGH: Thank you. [LB880]

PRESIDENT SHEEHY: Senator Kopplin, you are recognized. This is your third time on AM2455. [LB880]

SENATOR KOPPLIN: Okay. I do want to answer just a couple of questions that came up. Reference was made, well, why did the levee issues just come up? The levee issues just came up because we just learned about them. It wasn't until last Tuesday afternoon, late in the afternoon, that the Corps of Engineers laid it on the line as to what has to be done. Levees have to be improved or they don't get certified. If the levees meet certification, there isn't a problem; if there's not, there is huge impacts on development and existing flood insurance, and people suddenly finding themselves in flood plains they didn't know. This isn't something we just tried to spring on you; this just came up. I would suggest, especially those of you from Omaha that might be interested, to talk to the representatives from Omaha and see how you are affected. Or if you don't trust their words and my words, then I would suggest that you speak with the Department of Natural Resources, who...the new director has a very great understanding of levees and what the implications of these things are going to be. I'd also like to refer, we keep saying, well, they're spending all this money for a study. I would like to tell you that Douglas County, who's opposing this, did their own study on their streams, it cost \$117,000. What they found was of their 400 streams...400 miles of streams, only 1 stream was not impacted or degraded, even to the extent it was affected by E. coli. And what have they done? Nothing, nothing. We need to correct

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that. Senator Preister is so interested in low impact. I admire him for that. He is a great environmentalist who wants to clean up the streams of the state of Nebraska. You know, I'm not so far behind him on that. I want our streams to be clean. It's terrible that we have that many miles of streams in Douglas County that are degraded or polluted. And we bring up the point that, well, but if you put in a dam it just concentrates that pollution. Well, perhaps, but if you don't you just flush it down to Sarpy County so, you know, what's the difference? Low impact designs are important to me, maybe not quite to the extent that Senator Preister gets, but they are certainly important to me. And we need to do every one of them to clean up our environment. Mention was made about the finances of the NRD, that they're questionable how they do things. You know, they are audited just like anybody else. You were hinted at, well, they have all this money sitting around. You know what? It was just a few days ago that we looked at all the different entities in state government that had money sitting around. We said, oh, why don't we use that? Well, because it's committed, and the same is true for the NRD. Yes, they have a reserve, nothing that I would consider out of hand, but they have a reserve. But the amount of money that people are trying to say just isn't true. This is a good bill. It's a needed bill. It's become even more needed with the... [LB880]

PRESIDENT SHEEHY: One minute. [LB880]

SENATOR KOPPLIN: ...impact of what the Corps of Engineers have said. We have an opportunity to let communities work together to solve their own problems. We need to give them the tools to do with it...that with. Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. Senator Stuthman, you're recognized. [LB880]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I have some questions and concerns. And I would like to ask Senator Kopplin, if he would respond. [LB880]

PRESIDENT SHEEHY: Senator Kopplin, would you yield to questions? [LB880]

SENATOR KOPPLIN: As long as you remember I've got hearing aides. [LB880]

SENATOR STUTHMAN: (Laugh) Okay, okay. In this handout that we have here on the public access, and it states in there that there's, you know, the possibility of public access of 100 feet around the body of water for public access. Does this public access, does that mean that there's going to be a road, or a trail, or what will be developed on that public access? Because on a 400-acre lake there with that 100 foot around it, the distance around the dam would be approximately 2.5 to 3 miles. So is there going to be a place where you can take four-wheelers, motorcycles, or what do you mean will happen on the public access? [LB880]

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SENATOR KOPPLIN: I can't answer your question completely. I certainly hope there would not be four-wheelers and all of that allowed. But I can tell you what it is like at Wehrspann. There many people come to the parking lots, they park, and then they use the trails around the lake. It's used extensively. It makes a beautiful setting. [LB880]

SENATOR STUTHMAN: So in other words, there are trails that are made or built for people to walk around the lake then? [LB880]

SENATOR KOPPLIN: There is on Wehrspann. I couldn't answer you on what would be built in the new ones. I'm just telling you that the public has access to all the shoreline, to a departure point, for boats perhaps, and a green space. [LB880]

SENATOR STUTHMAN: Thank you, Senator Kopplin. These are some of the concerns that I have. You know, when you're giving the public access, that to me means that, you know, anybody can go to any part of the shoreline and do...you know, they can have a picnic, they can sit there, watch the water, they can fish, they can do most anything. I'm just a little bit concerned with, you know, is there going to be, you know, debris there that's going to be blowing into the fields that are beyond that 100 foot of access? Will that have to be fenced at some time? I have a little bit concern that, you know, that we are, you know, maybe opening up something that will be an expense later on. And, yes, they maybe will have regulations where you can't go around it with a motorcycle or a four-wheeler or any vehicle so, you know, are the people going to walk, you know, the three miles around? Yes, they maybe will, that they maybe will. So I just have a concern that when you allow this for the public access, and I'm not against the public access part of it, I am not...I want that on the record. The thing that I am concerned about is, you know, what is going to happen, you know, once the dam is established, you know, what are going to be the additional costs as we go along, you know, that will have to be borne by the property owners in that community, you know, for the enjoyment of the people, anyone in the state of Nebraska. So I just think that we're not looking at the big enough picture. Yes, a 20-acre lake or 25-acre lake, you know, there is not very much shoreline there. But when you're talking 400 acres, you know, there is a lot of shoreline there on that, and it could be up to 3 miles. So thank you, Mr. President. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Additional members requesting to speak on the amendment to committee amendment, AM2455: Senator Preister, followed Senator Loudon, Senator Hudkins, and Senator Wallman. Senator Preister, you're recognized. [LB880]

SENATOR PREISTER: Thank Honorable President. Let me start off by saying I've only heard one senator so far, other than Senator Kopplin and Senator Loudon, speak in favor of this bill. Senator Gay spoke in favor of it. If there is anybody here who supports it, I think it would be helpful for you to identify yourself, because I don't think there is any

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support for it on the floor. I could be wrong, but many of you have come to me and said, how can we do this? I don't want to be the one giving all the direction. But it seems to me that, from what you're telling me, there isn't support for it. I think there are some issues. I think Senator Kopplin has worked very well to address as many of them as he could. I think the issue that Senator Gay spoke to when he spoke hit it right at the center. He said, as long as there's continued development, we're going to continue to have problems. That's where the pressure has to be. It has to be on the cities and on the counties to enforce and enact strong zoning and strong requirements so we don't keep building in the flood plain. The more we build in the flood plain, the more we're going to need to deal with runoff, the more problems we're going to have with higher insurance rates, the more that we're also going to have to deal with water quality. I like Senator Kopplin, I like that he's trying to address both issues of water quality and water quantity. I like the NRD. I think they do good things. I'm not opposed to them. But I think we need to ensure what we're doing before we do it. And right now, as much as I like this amendment, as much as I like Senator Kopplin, I think we need to be clear on what we're doing. Senator Lautenbaugh got at the heart of many of the issues. His questioning was whether or not we actually have any jurisdiction over this after it's passed. I believe the answer was, no, we don't. Is it within the bonding authority, the levy authority? Yes, but we could also get to the point where the entire levy authority could go to pay bonding. We have no assurance of that. The taxpayers are certainly concerned about that. And that's all on property tax, that's a concern to all of us, I know. Senator Lautenbaugh was getting at some additional questions that I hope he continues with, because he was getting at the heart of the matter. All of these other things are helpful. Yes, we have some things in this amendment, including the next one that I'll get to, the water quality issue, I think that helps. The standard of having to address one-half inch of the runoff is a good standard, and I am thankful to Senator Kopplin and to the NRD and to the cities for putting that in. That's the standard that the city of Omaha intends to use, but they haven't gotten that passed and approved yet. There are a number of things. The plans have to be approved by all three counties. There's a lot of work still left undone. There are good things being worked on. As it's being worked on, answers will come. I think we need those answers so that we have the clear picture, so we know which dams may need to be built, which ones may not need to be built, where low-impact development will do the best good. We need a scientific, a geological type of approach. The plan that was put together by HDR has not been released. [LB880]

PRESIDENT SHEEHY: One minute. [LB880]

SENATOR PREISTER: We have been given information on it, but the public has not been allowed to see it. We have...and I can't, for the life of me, understand why we've had access to it and parts of it have been given out to discuss, but the whole thing isn't going to be released while we're in session. I don't feel comfortable with that. I think we need all of the information in order to make good policy decisions. I don't think we've got all of that. I think this amendment has moved in the right direction. I think it's doing good

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things to get closer to what's right. But even with that, we still don't have all the information that we need. We still, I don't think, can give a blank check on bonding to the NRD without some controls. This says that LID has to be a part of it,... [LB880]

PRESIDENT SHEEHY: Time, Senator. [LB880]

SENATOR PREISTER: Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Preister. Senator Louden, you are recognized. [LB880]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. I have listened to the discussion this morning on this bill, LB880. I want to point out that we've probably been working on this all summer, on this bill, and this is the culmination of it was what we come out of the work done this summer. Before that, I think they've been working at this about six years that I know of. But I'll tell you what. It's kind of a moving target because it used to be when we first came down here they were concerned about that couple of 2,000-acre lakes up in Washington County. And as I discussed with them through the summer, I told them I could never support building any kind of a lake like that above a metropolitan area. So that's what brought about bringing it down, the committee amendment, to 500 acres. And eventually they negotiated down to nothing bigger than 400 acres, which is still a sizeable lake if you get a lot of rainwater coming with it. But at any rate, perhaps you won't have a Rapid City catastrophe if you don't have lakes quite that large. Part of the problem, what's brought this forward is the fact that there's a bunch of that area down in Omaha that's going to be a flood plain now, because there's been a lot of development on up to the west of that area. Of course, whenever you have the development then you'll have runoff so, consequently, this is where they were wanting to construct some of these smaller dams and hold back some of the water so it didn't all come down through there, to take some of those areas off the flood plains down there in Omaha. And they...I'm surprised when you say the information wasn't handed out. I've been handed maps by the handful of different areas there. So the information is there, if someone wants to get it, to see where the flood plains are, which ones are under flood plains. And as you develop more of the land farther away, you're going to have more flood plain in downtown Omaha. So you're going to have to decide, and this is mostly the people in Omaha are the ones that are affected by it, in Douglas County, and some in Sarpy County. But you're going to have to decide how you want to do this, because it isn't going to get any better. They are still developing around Omaha and, most generally, the developments nowadays have been taking care of a lot of their runoff. So it's a question of how you want to do it now, or do you want to do it later, or do you want to wait till you're probably flooded out some time or another? Then you have a major catastrophe, and then it will cost a lot of money. It's just about like this levee deal, this just now came forward. So you're looking at another issue here that's going to have to be taken care of some time in the future,

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mostly because there's a lot of area that's going to be under a flood plain now and also there could be some chance of a problem arising, although not as likely on the Missouri River because you do have dams up ahead there and they can control the flow of that water. So the levee situation is mostly something to bring into compliance on what the Corps of Engineers understand. But I support the bill. I think it was something that needed to be done. We did a lot of work on it. No matter what was agreed to, there was always some other problem. And now the discussion got around to financial responsibility. Well, those people are voted on that board. So if you don't think they're financially responsible, I guess you have to do something about it at election. But I'm sure they're good people and they probably do what's the correct thing. As I've been showed when they talk about some of the money that they have as they call it reserved, most of that money is earmarked for some dam building, conservation use, and water retention. So I... [LB880]

PRESIDENT SHEEHY: One minute. [LB880]

SENATOR LOUDEN: ...I have no problem with it. So with that, I would give the rest of my time to Senator Kopplin, if he so desires. Thank you, Mr. President. [LB880]

PRESIDENT SHEEHY: Senator Kopplin, you're yielded 50 seconds. [LB880]

SENATOR KOPPLIN: Just to react to a couple of things that did come up. There was some comments about you have to do the costs of upkeep. Well, certainly. That's been part of the problem. Douglas County has some levees and they have some things, but they haven't taken care of them. Upkeep is important, and it would be part of this. And Senator Preister says we've got to quit building in the flood plain. I don't disagree with him. But I can tell you this, that within the next 10 years another 25 percent of Douglas County will be gone to development. If we don't do some things now, you're not going to be able to do certain flood control and quality control things in the future because it will have been developed. [LB880]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Louden. Thank you, Senator Kopplin. Mr. Clerk, do you have items for the record and a motion on your desk? [LB880]

CLERK: I do, Mr. President. Confirmation hearing report from Natural Resources. Bills read on Final Reading this morning were presented to the Governor at 9:35 a.m. (Re LB1094, LB1094A.) A hearing notice from General Affairs Committee. Study resolutions: LR321, Senator Fischer, LR322; Senator Raikes offers LR323; Senator Gay, LR324; Senator Heidemann has LR325, that will be laid over, Mr. President; and the Transportation Committee offers study resolution LR326. (Legislative Journal pages 1182-1185.) [LB1094 LB1094A LR321 LR322 LR323 LR324 LR325 LR326]

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I have a priority motion. Senator Chambers would move to bracket LB880 until April 17, 2008. [LB880]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on your motion to bracket until April 17, 2008. [LB880]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is a way to get a vote. I do not like the bill. I'm not going to take the time to express all of the specific reasons I'm in opposition to the bill. And the discussion as it goes forward, if it continues, may address some of those matters. But when you have a bill like this and attempts are made to modify it, to change it so that it might be palatable without substantively altering what the bill does, there's the possibility that people may become inattentive, get the impression that something of substance in fact has been done and the bill will move, then I'd have more work to do on Select File. A policy is what I see being developed here. We're not just talking about a particular area that may be developed, how you are going to do that, how you will fund it. Whenever I see bonding authority connected with eminent domain I am very concerned. This is not something that the state is going to do directly. The state is not going to be exercising eminent domain on behalf of the greater good for the greater number. This is where the state is giving authority to a political subdivision. I am not prepared to do such a thing. Maybe if I were going to remain in the Legislature and could observe how this activity would unfold, I might have a less adamant attitude against this bill. But being opposed to it in the way that I am, I'm unable to say that I will let the bill pass if I'm able to stop it, that rather than stop it I'll let it pass and leave it to others to correct what I see is a problem. I will not do that. Since I would not be here to clean up any mess that might result, I don't want that to occur in the first place. In the area where I live and have always lived a highway was built through the heart of that area. People's homes were taken, elderly people who had spent many years accumulating enough money to purchase a home. By opening a corridor and leaving it there for years without any development, the value of those people's property continued to plummet. There was not going to be any development; nobody was going to buy those homes. Then, when the state decided to come through, they could take those homes for a song. They could offer very little because, if you went by a market value, there was very little market value left. And if the people refused to be willing sellers, the fact that the value had dropped so low, the state could condemn, take the property and get away like a thief. And that's what began to happen. This bill does not impact directly anything or anybody in my legislative district. But for almost a dozen more days my constituency embraces the people of the state of Nebraska. Although there will be great joy, "Parson" Carlson, throughout the land when I'm stripped of the title State Senator, while I have it I'm going to do everything that my sense of duty requires me to do. This area is a part of the state. The people who live there and will be affected are residents, even if not citizens, of this state. Eminent domain is a tool in the minds of some people. When you have watched the devastation that it can wreak, you see it as a weapon. Those who are going to be the victims or the

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subjects, if you will, generally lack a voice. They have no political clout to speak of. So if you wait until that wolf is at the door, those ravening jaws spread wide, Senator Carlson, and as soon as one of those four of the quadruplets toddles out that door, those jaws will clamp shut and the wolf will have a meal of a fat, juicy, tasty young Christian. I don't want that to happen. Not only do I not want that wolf, Senator Carlson, to consume a fat, tasty, juicy young Christian, I don't want that wolf to consume a gnarled, tough, leathery, old, skinflint, whatever he or she happens to be by the time they get my age. If there are people who are of a mind to support this bill no matter what form it takes, they'll vote against this motion. If there are people who, no matter what form the bill takes, would not feel comfortable, they will vote for this motion. If there are people who are unsure which way they ought to go or don't want to make a move at this point, they may vote against it to allow the discussion to continue. They may simply not vote. But if at this point in the session a bill of this kind is going nowhere, it would be good to find out. Now if a bill comes along which I am totally opposed to, I will make it clear and I will make it clear that my intent is to take advantage of the fact that the days have dwindled down to a precious few and that puts me at an advantage and I will fight that bill. And there is one coming up which I have that attitude about. It starts with a V, it ends with an L, and there are a few other letters in between. Senator Kopplin has worked on this bill, others who support it and are not in the Legislature have worked on the bill. That can be said about any significant measure that comes before us. That, in and of itself, is not enough to justify passage of this bill. So rather than give into the temptation of laying out specifics as to why I'm opposed to the bill, which is not my intent, I'm going to terminate my remarks here and listen to the debate on this motion. I did not stray very far from the motion itself and I gave you enough background so you'll understand why I'm opposed to the bill. I think when you mix bonding authority virtually unlimited with eminent domain it spells disaster. We do not allow children to play with matches. I don't want to give the NRDs this kind of authority. Thank you, Mr. President. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening on the motion to bracket until April 17, 2008. Members wishing to speak from the floor: Senator Hudkins, followed by Senator Loudon, Senator Langemeier, Senator Pedersen, and others. Senator Hudkins, you're recognized. [LB880]

SENATOR HUDKINS: Thank you, Mr. President, members of the body. I will be supporting the bracket motion. I can understand, however, Sarpy County's interest in this bill, and I do appreciate the work that Senator Kopplin and Senator Gay have done, because they live in Sarpy County and, if you go back to water 101, water runs downhill. But I see it as all of these dams being put up in Washington County. The problem comes from all of the cement and the development in Douglas County, and then Sarpy County is at the bottom of the hill. So the dams are going to be built at the north end. That farmland goes out of production. You have less ground on the tax rolls, and then the remaining land picks up the difference. The problem is, the way I see it, is that businesses and houses were built in the floodplain. They knew it was the floodplain.

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Where was planning then? Every time you build a house or a business, you have roof lines, you have cement, that water runs off. Now, with newer ideas, such as low-impact development, rain gardens and so forth, we're not going to have as much water run off. But I also see serious questions when a political subdivision like the Papio-Missouri NRD uses taxpayer money for a study that they want supported. HDR did this. They're a good engineering firm, but they're being paid for a study. Now would you be so stupid as to find for the opposite side of the person that wanted the study done? I don't think so. The environmental issues of dams should also be looked at. You stop more down river flows of water, you impact environment with dams. There are less-intrusive ways of achieving this goal. And this is also another way to levy property taxes, and I think that the goal of all of us is to reduce property taxes. All of the local governments in the Papillion Creek Watershed have been working together for several years to develop a storm water management plan, as is required under the Clean Water Act. While there is still diversion, and we've been hearing that on the floor, in the group about using dams alone, as opposed to low impact and all the other things, to control storm water, the process that we're at now has led us to a compromise of using low impact in all...new development and significant redevelopment with a greatly reduced number of dams. I don't want dams at all. This will place more financial burden on the developers if we do it this way under bonding...I'm sorry, the other way around. It will put more financial burden on the property taxpayers. If the developers are going to be gaining on this, I think it should be up to them to foot the bill. If you look at some of the ground around some of these new lake developments, that ground has gone up considerably. And so if the buyers are willing to pay the high prices for the lakefront development, then I think the developers should be able to pay for the... [LB880]

PRESIDENT SHEEHY: One minute. [LB880]

SENATOR HUDKINS: ...process of protecting those downstream. So I will be supporting this bracket motion. If the bracket motion fails, I will be continuing to oppose the bill. Thank you, Mr. President. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Hudkins. Senator Pedersen, followed by Senator Lautenbaugh, Senator Kopplin, Senator Friend, and Senator Langemeier. Senator Pedersen, you're recognized. Senator Pedersen, you're recognized. [LB880]

SENATOR PEDERSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. I, too, obviously, will be in support of Senator Chambers' bracket motion, and not because of Senator Kopplin's lack of effort to do what he knew what his district wanted, but because I think it is best that we not give money to a project that we don't even know what the project is. And I forgot about the eminent domain thing. That was the first issue I brought up in the bill that I brought to the Legislature this year that was amended into this. Senator Kopplin did mention, you know, that the problems, the floodplain, the potential flooding has been there and they've done nothing. I'm not one

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to pick on people but, honest, as an organization, the "they" in this case is defined as the Papiro Creek (sic) Resource District. They have done nothing. And there's been little tries here and there. The biggest and best one I think so far, and I compliment them for this, is the three-quarter-of-a-million-dollar study. I know I keep bringing that up, but that's a lot of money and it's supposed to hire expertise, more so than any one of us in here have had, to tell us what to do. And in nine months, people, we will be back as a body--I won't be here, but the body will be here--and hopefully that study will have enough expertise in it that you can act on it then. Nine months, they'll go fast. Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Pedersen. Senator Lautenbaugh, you are recognized. [LB880]

SENATOR LAUTENBAUGH: Thank you, Mr. Lieutenant Governor and members of the body. I, too, rise in support of Senator Chambers' motion. And, once again, I'm mindful of the hard work Senator Kopplin put in this, but I just don't think, as a body, we are there yet. And so I rise in support of the motion as well and I won't belabor the point. Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Kopplin, you're recognized. [LB880]

SENATOR KOPPLIN: Thank you, Mr. Lieutenant Governor, members of the body. I'm glad that Senator Chambers says, when you talk about significant legislation, this was and is a significant piece of legislation. But I would also like to remind him, when he talks about his area, that it's not involved, it's involved in a different way. If you recall, there's parts of Omaha that are...that have a single way to carry sewage and storm water off, and in times of storms it flood...it backs up into all those houses. Those have to be divided into two separate lines, and we're talking about a billion dollars. That is not a part of my bill, so why am I interested? Because Omaha has a areawide treatment center of which my community uses. We will all pay increased funds to take care of those problems in Omaha. Keep that in mind when you say there's nothing there for you. For the four years I've been down here, I've listened to the Washington County folks for four years. It's always the same, never an idea, just don't build any dams. Okay. We've tried to work some of that out with them. For four years I've sat and listened to we have to have a plan for storm water runoff in every city. Never have we gotten anything out of committee to deal with that, never. It's still just sitting there. This is the first time we've gotten anything out of committee that tries to deal with storm waters and both quality and quantity, to allow cities to work together to do it. It's a great idea. The bracket motion, yeah, you can vote yes for the bracket motion; ends the bill--bonding authority goes away. But you know what else? So do all the concessions that we've made. The property tax authority the NRD has does not go away. It's still there. All the concessions are gone also. Cities are on their own to deal with their own

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problems. They already have bonding authority--they don't need a vote of the people, anything--and they'll have to do that to take care of their problems. So you're not doing anything about property tax at all. Senator Hudkins keeps referring to all the property taxes. She knows she's just carrying water for Washington County and that's all. So do what you...do what your conscience tells you to do. You can kill this and, like Senator Pedersen says, well, you can try again in nine months, somebody can, but we've been trying for four years to deal with storm water runoff issues. Senator Schimek had a good bill this year, but it was...it was opposed by every business around because they would have had to pay a fee, never left committee. So you're still sitting with no way to handle storm water runoff. So if we kill this bill, we still have no way to deal with anything. With that, I would ask you to think carefully about this bill. Think about the possibilities of a whole group of communities working together to try to solve some problems versus killing it all and saying, cities, we don't care, you're on your own. [LB880]

PRESIDENT SHEEHY: One minute. [LB880]

SENATOR KOPPLIN: Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. Senator Langemeier, you're recognized. [LB880]

SENATOR LANGEMEIER: Mr. President, members of the body, I rise in support of the bracket motion. We've seen this bill before in Revenue Committee and it has died in Revenue Committee. It went to Natural Resources this year and it came out. And it's not all about building dams in Washington County. It's a philosophy. When the Legislature came up years ago with the idea of doing cooperative agreements, sitting on the NRD for eight years before I came to this body, the NRDs mastered cooperative agreements long before our schools started work in cooperative agreements. Most NRDs do cooperative agreements with counties, with cities, with DEQ, with DNR, the Environmental Trust. They've worked out deals to create a group of people to create structures to deal with all the issues the NRDs deal with. It comes down to one NRD, and the question is, is there's discussion out there that we have to prevent homes being built in certain areas. We need to bond dams into the future. We need to get those dams in there right now before we develop that into residential areas. The reality is, is if we work within the confines of county zoning, city zoning that are out there, we could create a policy in your 20-year plan of what these areas can look like and deal with them into the future. And so to say we're going to bond out 40 years for structures, bond out for a number of things, the tools are out there. We don't need to add another tool to a toolbox where we have plenty of tools. If we'd have a lot more cooperation, the tools that we currently have could be used. And so I would encourage these groups to cooperate and discuss the issues and look somewhere else than to the Legislature for strictly bonding authority. And with that, I rise in support of the bracket motion. Thank you, Mr. President. [LB880]

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PRESIDENT SHEEHY: Thank you, Senator Langemeier. Senator Preister, you're recognized. [LB880]

SENATOR PREISTER: Thank you, Honorable President, I'm still saying it, friends all. I appreciate the discussion. I think it is an important one. I think we do have issues of water quality and water quantity that we've got to address. It's correct. We've been dealing with this for over six years. The way of resolving a lot of that I supported, was what Senator Schimek introduced this year, and it had even more opposition or more powerful opposition, let's say that, because it had the chamber of commerce and a host of people, and you can look on the committee statement, that oppose that approach. So the committee was in a somewhat awkward position in wanting to do something and this is what they advanced. I don't fault the committee because, seeing all that opposition, it would have been difficult to advance. But that really got at the heart of the problem. It dealt with water quality. It dealt with the clean water requirements that Senator Friend talked about earlier in the discussion is the essence of what we need to do. That's killed. We don't have it. We don't have the report and the study released yet. It's not going to be released until after the session ends. I think the public needs to see that, needs to have access to the information. We need to have time to digest and to comment and to refine what may need refining. At that point, then there may be...and there is a need for financing. We've got to find a way to finance it, I don't dispute that, but I think bonding at this point is too early. For that reason and for a number that I've elaborated on, I'm going to support the bracket motion. I don't think that means we're doing nothing. In the negotiations, in the discussions there were a host of things that can be done. Some of them I'll read to you. There's still flood control that can go on and there's money sitting aside in the NRD to do that. Channelization of the existing creek can continue to go on, and it is going on and it has made a difference and a lot of that water is moving into the channel and getting out of the area quickly. Zoning, the three counties are dealing with that right now. Their plans are not yet approved. They should be approved by next year. So they're implementing requirements for storm water management. They're implementing requirements for storm water and other runoff not to have the kind of pollution that it has. They're able to do that now and need to keep doing that. The basinwide zoning enforcement, that's a key. We need to enforce the zoning that we've got currently and it's not always being done. Low-impact development can be implemented and can be part of the requirements. The partnership approach, which is what the NRD is working with and doing, I think is great and I support it and I think that partnership needs to work, with the caveat that that partnership needs to make its decisions with elected officials. At this point, it's not elected officials that have been making the decisions. It has been the administrative representatives going to those meetings, not...there's only been one board member, one elected member that's been attending them, to my knowledge. The partnership approach is good. Nonpoint source requirements, that's essentially where we've got to put more emphasis and that's being done and can continue to be done. Development requirements, that's central and key.

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We've got to implement more requirements on new development. If we keep doing the same development we're only going to exacerbate the problem. That can be done and is being worked on in the plans. Wise spending... [LB880]

PRESIDENT SHEEHY: One minute. [LB880]

SENATOR PREISTER: ...of taxes, we certainly need to do that. Buyout plans for the floodplain, those are being done. I helped put one together in my district. They work. They're helpful. They are being done currently and can continue to be done. Reduce current runoff, that's being done by the NRD and it can continue to be done. Storm sewer overflows, that's the heart of the clean water part of the process. We've got to address that. The city of Omaha has the biggest responsibility. They're working on it. And the legislation that Senator Schimek had introduced would have dealt specifically with that, but again, that was killed. Other things are being done and need to continue to be done. The stream bank restoration, some of that's being done and it will continue to be done. All partners complete their components. That's essential. All of the partners in this partnership agreement have to implement their portion of it. [LB880]

PRESIDENT SHEEHY: Time, Senator. [LB880]

SENATOR PREISTER: So much is being done, much can continue to be done. [LB880]

PRESIDENT SHEEHY: Time, Senator. [LB880]

SENATOR PREISTER: Thank you. [LB880]

PRESIDENT SHEEHY: Senator Kopplin, you are recognized. [LB880]

SENATOR KOPPLIN: Just a few quick comments...well, thank you, Mr. Lieutenant Governor. Just a few quick comments: Reference keeps being made to there's a plan but they don't know what the plan is. Well, it's an ongoing plan, they've been working on it for a long time. All that's missing is really the final report, so that's really been overexaggerated here today. As far as trying to get groups to work together to solve these problems, that's what this bill was all about. Thank you. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. Seeing no additional requests to speak, Senator Chambers, you're recognized to close on your motion to bracket. [LB880]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I will be as brief as I can. Again, to state what I said in my opening, bonding authority of this kind, combined with eminent domain authority, can create a blueprint for disaster for the people who are in the way of others who want to make money and have no way to

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resist those encroaching individuals. Not everybody has purchased a home as an investment which he or she wants to hold only long enough for somebody to come along and offer more than what the individual paid for the home. The person, the person and his or her family, may actually choose to reside there. If eminent domain is to be utilized and there is a virtually bottomless sack of money, there is no way that the property owner can resist. An amount can be offered which would make any effort by the homeowner useless if the homeowner were of a desire to challenge it in court. If money is not what you want and you have not placed a monetary value on what you possess, no amount of money is satisfactory. There are many unanswered questions, unsettled issues, but for my part this is not the type of thing at this time that I would vote in favor of turning over to the NRDs, not just this one but any one. So having listened to the debate even before I came up here, the relatively small amount of debate, by comparison, on this motion, there's no need for me to try to persuade anybody of anything relative to the merits or lack of merits in the bill itself. We can consider the amount of time that we have in front of us and the more time taken on this bill the better for my purposes further down the line, because this bill will have to be discussed again and again and again. It will be taking time, time, time, which does redound to my benefit should I be in one of those sets of circumstances where I have to kill a bill at all costs or any cost. Mr. President, I will ask for a call of the house and I will accept a machine vote. [LB880]

PRESIDENT SHEEHY: Thank you, Senator Chambers. There has been a request for the call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB880]

CLERK: 37 ayes, 0 nays, Mr. President, to place the house under call. [LB880]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Heidemann, Senator McGill, Senator Engel, the house is under call. Senator Heidemann, the house is under call. Senator Chambers, all members are present. Members, you have heard the closing. The question before the body is on the motion to bracket LB880 until April 17, 2008. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB880]

CLERK: 25 ayes, 8 nays, Mr. President, on the motion to bracket the bill. [LB880]

PRESIDENT SHEEHY: The motion to bracket is adopted. The call is raised. Items for the record, Mr. Clerk. [LB880]

CLERK: Thank you, Mr. President. Study resolutions: LR327, Senator Burling; LR328, Senator Karpisek; LR329, Senator Nantkes; Senator Christensen, LR330, LR331,

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LR332. That's all that I had, Mr. President. (Legislative Journal pages 1186-1188.)
[LR327 LR328 LR329 LR330 LR331 LR332]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to next item under General File. []

CLERK: Mr. President, LB245 is a bill introduced by Senator Johnson. (Read title.) Introduced on January 10 of last year, at that time referred to Health and Human Services. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM542, Legislative Journal page 730, First Session, 2007.) [LB245]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Johnson, you're recognized to open on LB245. [LB245]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor, members of the Legislature. The baseball season starts today and in Wrigley Field they're going to put up a statue of Ernie Banks, one of my all-time favorite players. One of the things that he was kind of famous for was "Let's play two." He was so enthusiastic about his sport that he always wanted to play a doubleheader. This is the second part of my doubleheader for this year. The LB395, the Clean Air Act, was felt by most people to be the most significant thing that we could accomplish for medical health improvement for the citizens of Nebraska. This is our chance to do the same thing for oral or dental health. Now there are a few differences, as you will see today. One is LB245 would require all cities with a population of 1,000 or more to reconsider a mandate passed by the Legislature in 1973, 35 years ago, to fluoridate their human drinking water supplies. Thirty-five years ago, cities and villages had the ability to opt out of this mandate. If the city of village did opt out, interestingly enough, the law did not provide for any reconsideration of the decision to opt out. It was permanent. Considering all the information now available that proves that the public health value to fluoridating public water supplies, any decision made 35 years ago, perhaps we should reconsider it. According to the Center for Disease Control Division of Oral Health, there have been 27,000 scientific studies that indicate that fluoridated water is safe, healthy, and effective. LB245 reestablishes the 1973 mandate to fluoridate public water supplies. As introduced, LB245 again authorizes the voters of such cities to opt out of the requirement after the effective date of this act, but before January 1, 2009. However, you will see in the committee amendments, which will be presented next, the options for the opt out are expanded. AM2317, which will be presented after that, extends the time for the opt out until June 1, 2010. The message is simple--fluoridation is safe, it's inexpensive and it works. You will find a packet of information that is being disseminated that tells where we stand with fluoridation. Fluoridation is the single, most effective, public health measure to prevent tooth decay and improve oral health for a lifetime, not just children, but it helps in adults as well. For public health successes, this is one of the top ten. Inadequate exposure to fluoride places children and adults in the

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high-risk category for tooth decay. Information, and this is in your packet, from three cities in Nebraska that do not fluoridate their water show this high risk for tooth decay. Nebraskans in these three cities, where the Dental Association conducted two-day free clinics, show this high risk for the tooth decay. In these three cities, over \$1.8 million of free dental care were given and much of it could have been prevented by fluoridation. This was over \$1.8 million given in just six days. Fluoride is nature's cavity fighter. It is already present in water sources, as listed on the sheets in the packet. Nebraska cities have sufficient amount of naturally occurring fluoride--there are several, McCook and Minden amongst them--that they do not need further addition. Larger communities, the estimated cost is about \$3 a year per person. The average cost for fixing a dental filling is over \$100. Studies show water fluoridation continues to be effective in reducing tooth decay 20 to 40 percent, even in the era where we have widespread availability of fluoride from other sources, such as fluoride toothpaste. A CDC study estimated that for every \$1 invested by the public in water fluoridation it saved \$38 in costs of dental treatment. One of the questions that was raised just yesterday when I received a phone call is what about the rural water districts. Many of these, apparently, do not have any cities that have a 1,000 or greater population. We, as a staff, are looking into this. At this time we do not have any answers for this, but we will work with these people in the interim between now and Select File. With that, Mr. Lieutenant Governor, I would ask for the advancing of LB245 to Select File and I will proceed with the amendments as directed. [LB245 LB395]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the opening to LB245. As noted, we do have a Health and Human Services Committee amendment, AM542. Senator Johnson, you're recognized to open. [LB245]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. This is the committee amendment. LB245 provides for the fluoridation of the water. This is AM542. I guess the numbers are just reversed. What this does is it strikes the language in the green copy and clarifies that fluoridation is not required if a city or a village has sufficient amounts of naturally occurring fluoride in the water supply. The amendment also expands the options for the opt out by providing that in an additional public initiative that the governing body of the city or village subject to the fluoridation requirement may also place an ordinance prohibiting fluoridation on the ballot for public vote. Thus, a city or village can opt out of the fluoridation requirements by one of two ways. The voters placing the issue...the ballot on initiative...or using the initiative petition process, the voters themselves can have the initiative petition, or the governing body of the city or village also can place this ordinance on the ballot for a vote of the people. The intent of this bill is to challenge all of our communities that do not add fluoride to consider the single, most important, dental health issue of our time. It is safe and it does work. Mr. President, that concludes my remarks regarding this amendment. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You've heard the committee

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amendment from Health and Human Services Committee amendment, AM542. Mr. Clerk, do you have an amendment to the committee amendment? [LB245]

CLERK: Senator Johnson would move to amend the committee amendments with AM2317. (Legislative Journal page 987.) [LB245]

PRESIDENT SHEEHY: Senator Johnson, you're recognized to open on AM2317. [LB245]

SENATOR JOHNSON: Again, thank you, Mr. Lieutenant Governor. The need for this amendment stems from the fact that this bill was introduced last year and now comes up again this year. What it does is it moves back the effective date of the requirement to add fluoride to public water supplies to the same amount of time or period as provided in LB245 when it was advanced by the Health and Human Services Committee last year. Cities and villages with this population of over 1,000 that do not currently fluoridate their water will have until June 1, 2010, to opt out rather than one year earlier. They still have the two methods for opting out, as noted previously. The second change made by AM2317 moves back the effective date from May 2009 to June 1 of 2010. This again will allow the city or village to use a regularly scheduled primary election in May to be the vehicle for any possible vote of the people to opt out. What this would do is it would make the election process or opting out process very easy to do and at minimal cost. This will reduce the cost of this issue to the voters and will make it easy and so that they should be able to decide on just what the cost is to their individual community and decide the issue on the cost-benefit ratio. Thank you, Mr. Lieutenant Governor. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the opening of the amendment to committee amendment, AM2317. Members requesting to speak from the floor: Senator Aguilar, followed by Senator Hansen, and Senator Preister. Senator Aguilar, you're recognized. [LB245]

SENATOR AGUILAR: Thank you, Mr. President, members. I rise in extremely strong support of the amendments, as well as the underlying legislation. As Senator Johnson discussed on the mission of mercies that transpired in North Platte, Grand Island, and Norfolk, my wife and I had the privilege of participating and volunteering our time in both the Grand Island Mission of Mercy, as well as the Norfolk Mission of Mercy, and I can tell you that we saw and witnessed firsthand the devastation that young people, as well as adults, that could have been prevented with fluoridated water in our state. This is something I believe very strongly in and I think that it's the responsibility of this Legislature to move this forward and do whatever they can to help educate the public on this issue. If you look at one of our highest expenditures for Medicaid cost, it is indeed oral health and the damages caused by cavities and other afflictions to the oral health of our state. We need to help educate in every sense and especially in the fact that fluoride is safe. It is extremely safe. The benefits are more than enormous and the cost

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savings are more than enormous as well. So I encourage you to do that, go back to your district and talk about the safety. Do the research yourself, if you don't believe me or Senator Johnson and all the dentists in the state of Nebraska and all the oral health professionals that do promote this. You know, they don't have anything to gain by promoting fluoride. You know, if anything, it's going to take away from their business. But they understand that they can't keep up with the devastation that's out there in young people today and the best way to attack it is to get it when the children are as young as they can and to prevent it. Preventative maintenance is the best attack, and fluoride does that just that. So I encourage you to support this, do some research, educate throughout your district, and encourage you and urge you to support this legislation. Thank you, Mr. President. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Aguilar. (Visitors introduced.) Senator Hansen, you're recognized. [LB245]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I rise in opposition to the amendment and the reason is I do support the opt-out clause, and that's why Senator Johnson offered the amendment that we would have an opt-out clause to those communities that chose not to use fluoride. I do want to start out by saying that the Mission of Mercy in North Platte three years ago was the first Mission of Mercy that we had in the state of Nebraska, sponsored by the rural...well, not only rural, but all the dentists in the state. They chose North Platte to do that. But I do want to remind Senator Johnson that we had people from all over the state because that was the first Mission of Mercy. We had people come in from Omaha that came in the night before that stayed in their cars so they could take advantage of that free dental work. The youths...I talked to a local dentist that sponsored the Mission of Mercy and he said, by far, the most severe cases that he looked at was drug related rather than probably the lack of fluoride. But we had folks, we had kids from Omaha. We had parents and families from Lincoln and Grand Island and all over. Whether the fluoride issue can really be used as a Mission of Mercy issue I'm not exactly sure. Mainly, I rise to state some old...some old expenses to fluoridating systems that are not fluoridated at present. Nineteen ninety-seven, that's the latest numbers that I have, and this pertains to North Platte, they have 21 wells. And the 1997 figures, and I don't even know how to calculate the new figures, and they didn't want to do it because they didn't want to know, the cost of the equipment alone was \$39,000. The cost to set up the equipment was \$7,800. The cost for the chemicals was \$22,603. Total cost for maintenance was \$14,872. Costs for lab tests, to make sure the fluoride was in at the right level, was \$217. Annual cost to fluoridate was \$37,692 after the initial equipment was purchased. At that time in 1997 it was figured to be \$1.57 per person, and Senator Johnson has already stated it's closer to \$3 in 2008 dollars. So it certainly needs to be up to the cities and the small towns. Sutherland is a town in my area, it's not quite to 1,000, but if they do reach 1,000 it would cover them too. So the only two towns in my district would be North Platte and Sutherland that will concern this. I've talked to them, talked to them

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about the expenses. We had a bill last week that actually raised the...most of the property taxes in Lincoln County on a school bill, so I don't think we need to...this is going to be an unfunded mandate, and Senator Johnson knows that, and I can't support it for that reason. Thank you, Mr. President. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Preister, you're recognized. [LB245]

SENATOR PREISTER: Thank you, Honorable President, friends. Thank you, Senator Hansen. I appreciate your perspective. I think you were taking largely a financial one. I want to oppose this bill also, and apologize because I don't have all of my facts or information right now, but many of you have been receiving some of the same information that I have from constituents. I've got some that talk about some studies and, according to some of this, most western European countries that are not fluoridated and have experienced the same decline in dental decay as the U.S. The fluoridation role in the decline of tooth decay is in serious doubt, according to some of the information that I've received. The largest survey ever conducted in the United States, where over 39,000 children from 84 communities that was done by the National Institute of Dental Research, showed little difference in tooth decay among children in fluoridated and nonfluoridated communities. That was a study done by Hileman in 1989 for that organization. According to the National Institute of Dental Research, those researchers found in the study an average difference of only 0.6 decayed, missing, and filled surfaces in the permanent teeth of children age 5 to 17 residing in either fluoridated or unfluoridated areas, and that study was done by Brunelle and Carlos in 1990. This difference is less than 1 tooth surface, and there are 128 tooth surfaces in a child's mouth. The result was not shown to be statistically significant, in a review commissioned by the Ontario government done by Dr. David Locker. Where fluoridation has been discontinued in communities from Canada, the former East Germany, Cuba, and Finland, dental decay has not increased but has actually decreased, according to Maupome in 2001; Kunzel and Fischer in 1997, again in 2000; Kunzel in 2000; and Seppa in 2000. I think there are a number of studies that will show what you want to see and want to know, but there are certainly other studies that raise the issue more today than earlier when this was a heated, debated topic. When you put fluoridation in toothpaste, if you read the label on toothpaste there's a warning. It tells you not to swallow it. It tells you not to swallow it for good reason. It's to be on the tooth, not in your system. It's particularly concerning with small children because small children aren't just little adults. They're developing, and as their system develops they're impacted more and more significantly by even smaller amounts of added chemicals in their system. Those developing children are getting fluoride from sources that we don't know. We can't measure how much they get from food. Water is added to many foods. [LB245]

PRESIDENT SHEEHY: One minute. [LB245]

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SENATOR PREISTER: We don't know the total amount. If you could control that total amount in every child and it was only applied to the teeth and they spit it out, fluoride might be a good thing. Where it's put in water, it can be a problem because you can't control the amount the child gets. When you put it in a whole water system, you have difficulty in regulating it, in controlling amounts, and it's dispersed throughout the system. In a small child, we want to keep their teeth healthy and free of dental caries, but by doing this we're going way beyond that and we're putting it throughout their whole developing system. I think that's a problem. I'm not going to vote for the bill, I would hope others, as Senator Hansen has, would think before they vote for it as well. Thank you. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Preister. Other members wishing to speak on AM2317: Senator Avery, followed by Senator Johnson, Senator Stuthman, and Senator Langemeier. Senator Avery, you're recognized. [LB245]

SENATOR AVERY: Thank you, Mr. President. I'm going to support this bill because I think it is a good bill. It is certainly one of the issues that I thought we had put it to rest back in the fifties, but apparently we haven't. The Centers for Disease Control and Prevention considers fluoridation of water one of the greatest achievements in public health in the twentieth century; ranks in the top ten. The American Association of Family Physicians, in a policy statement, say the following: Fluoridation of public water supplies is a safe, economical, and effective measure to prevent dental decay. The American Dental Association, they state that, thanks in large part to community water fluoridation, half of children ages 5 to 17 have never had a cavity in their permanent teeth. They go on to state that fluoride's benefits are particularly important for those people, especially children, who lack adequate access to dental care. Let me restate that. This is something that is good for children who lack access to adequate dental care. The U.S. Surgeon General has written that community water fluoridation is safe and effective in preventing dental decay in both children and adults. Water fluoridation benefits all residents served by community water supplies regardless of their social or economic status. In April of 2000, the Journal of Dental Research concluded that the use of fluoride since 1960 has been the primary factor in saving some \$40 billion in oral healthcare costs in the United States. The annual cost of community water fluoridation is approximately 50 cents per person, that's annual. The lifetime cost to provide fluoridated water to one person is less than the cost of a single dental filling. I think that this is compelling evidence and compelling arguments to support LB245, and I will do so. Thank you, Mr. President. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Johnson, you're recognized. [LB245]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. I just thought we might

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touch on a few of the things that have been mentioned. There is no question this is an unfunded mandate, but that being the case, what we have done is basically to challenge each of our communities over 1,000 population to consider adding fluoride to the water. They can, quote, opt out of this measure and the expense of this measure by two means: either their governing body, usually the city council or town board, or a group of people can actually do it on an initiative petition as well. But one of the things that we've been talking about here this morning is just the cost to Medicaid, and it is a huge expense. One of the problems that we have in Nebraska is that the Medicaid reimbursement to dentists is really rather marginal and so there are many dentists around the state that do not even take Medicaid patients, and so here is a way that we can help, from a public health standpoint, to do this. Now Senator Hansen did make one very valid point here. There may be instances where the injection sites of the fluoride into the water might be several sites for a relatively small population to be served, so these costs of perhaps \$6,000 per injection site, if you multiplied it by ten, might be a very significant figure. That might be a reason that you, the community, might not want to do it, is because of the high expense per person. But I would caution you against thinking that this is going to benefit just Medicaid. This helps all kids and all adults. Now we heard references about Europe and things like this. There is not a single European country that has taken steps against using fluoride. In fact, I don't know of any place that has taken steps against fluoride. One of the things that is cited regarding this is how many European countries discontinued it. They were mainly behind the Iron Curtain where the water supplies were not maintained well prior to the fall of the Iron Curtain and now it is very difficult to add fluoride to their water, so they are actually going to different means, one of them, for instance, being salt that contains fluoride. The other thing is this: is one of the things that I was told many years ago is beware of a series of one, and that's what we're hearing in opposition, is isolated studies, unquote, that we are comparing with very good, approved studies by such people as the Center for Disease Control. Let's compare real studies to studies that are done here and there... [LB245]

PRESIDENT SHEEHY: One minute. [LB245]

SENATOR JOHNSON: ...by people that may have some axe to grind for some reason or other. Let's have good studies. Now if indeed fluoride is so bad to have in the water, where, Senator Preister, and you are my good friend, where has been your campaign since 1973 to rid fluoride from the water supplies of these people if it's causing disease right and left? Obviously, it isn't in Omaha and Lincoln, and it isn't in Kearney, and it isn't in McCook where it's been there naturally, nor Minden, nor any of these places. There are no studies of consequence to do this. We need to offer this opportunity to all of the kids and adults in the state. [LB245]

PRESIDENT SHEEHY: Time, Senator. [LB245]

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SENATOR JOHNSON: Thank you. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Johnson. Senator Stuthman, you're recognized. [LB245]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. As many of you probably noticed on your gadget that I was present and not voting when this was moved out of committee, and I'll give you some of the reasons why I did not vote on it. I felt, you know, that it was an unfunded mandate and I've got a real concern about the fact that we as a legislative body are trying to tell the communities what they have to do. I think the communities should possibly do it on their own, although, you know, I really do think, you know, fluoridation does help with tooth...with the preservation of your teeth. I'm very supportive of that. I do also have a concern of what is happening in the environment right now as far as, you know, what do you see? Are people drinking of that tap water? Are they drinking very much of the tap water or do they continually have that bottled water with them all day long? And I think there's a lot of bottled water that is sold today and I think people drink...the majority of their drinking water is bottled water, and that does not have the fluoridation in it. Maybe we should come with a bill next year that all bottled water should have fluoridation in it. I don't think that would sell very well. That is the concern that I have. But I know the dentists in my area are very supportive of this. You know, they see on a day-to-day basis, you know, what it does for the individuals, for the kids. But I think there's something that we have to do as a legislative body, is we have to look at the big picture, the total picture. You know, is this the only water that these kids are drinking? Probably not. So that is why I did not vote to move it out of committee, because I thought it was an unfunded mandate. And it was brought to my attention a little while ago where, you know, communities have several well fields. You know, are they all tied in just to the water tower and it comes out as Senator Hansen was talking about, you know? The water supply comes to different parts and areas of some of those smaller communities and they would have to have numerous of those sites where they would inject it into the water. And they said like \$6,000, and if they have a number of them that would be a tax increase to the property owners in them small communities. And you know a community today of, like, 1,100, you know, I guess they can vote not to participate. But I think what we're trying to emphasize is, you know, that they...fluoridation is good but if they don't want to, they don't have to put it in. But I don't think...I don't think the fact of putting it in the water in the communities is maybe getting to all of the children that we're very much concerned about. I think it also was stated that a lot of the problems come from people that do not see a dentist regularly, do not probably see them early enough as a child. I think those are the issues that we really need to be addressing. So with that, I'm going to listen to the discussion. I know I've got the majority of the dentists in my area are very supportive of this, but I'm trying to look at, you know, what the real issue is, is how we can get that accomplished when there's so many other sources of water that do not have the fluoridation in. Thank you, Mr. Lieutenant Governor. [LB245]

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PRESIDENT SHEEHY: Thank you, Senator Stuthman. Members requesting to speak are Senator Langemeier, Senator Kruse, Senator Chambers, Senator Wightman, Senator Karpisek, and others. Senator Langemeier, you're recognized. [LB245]

SENATOR LANGEMEIER: Mr. President, members of the body, I rise kind of middle of the road here. It's kind of ironic I'm going to the dentist at 3:30 today to get a root canal, so this discussion is quite timely. My discussion is going to focus around logistics, is if you're the city of Lincoln and you have a main water source coming out of the Platte Valley and it's comes into Lincoln, it's pretty easy to fluoridate the water coming in. You take a community like Schuyler that's got 14 wells located all around the town that are all just direct feeds into the water system, you'd need one of these pieces of equipment to fluoridate on every well, which, you know, they tell me they're about ten grand apiece so that's not horrendous dollars, but it's still dollars and so I have that concern. And that leads me to the opt-out provision. And if Senator Johnson would yield, I'd like to ask him some questions. [LB245]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB245]

SENATOR JOHNSON: Certainly. [LB245]

SENATOR LANGEMEIER: Senator Johnson, in that opt-out provision, it's my understanding that this bill would make fluoride mandatory in every community in the state that has a central water system, correct? [LB245]

SENATOR JOHNSON: And a population greater than 1,000. [LB245]

SENATOR LANGEMEIER: Over...excuse me, over \$1,000, yes, I need to add that on. With the opt-out provision, as I understand it, says that a city council, if they want to opt out, they have the right to put this on the ballot for a vote of the people in the community. [LB245]

SENATOR JOHNSON: Not only the governing body of the community but the citizens can do it by initiative petition as well. [LB245]

SENATOR LANGEMEIER: So could the city council themselves opt out, or they only could put it up for a vote? [LB245]

SENATOR JOHNSON: They can just put it up to a vote. This has to be a decision of the people. [LB245]

SENATOR LANGEMEIER: Would you be...would not the city council be elected and be representing of the people? [LB245]

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SENATOR JOHNSON: That's correct, but we have chosen to do it this way since it affects all of the people directly and, since it is indeed an unfunded mandate, we chose to go this way where the people themselves would vote on the issue. This is what we heard time and time again on LB395, is that the people needed to vote, and so this was done deliberately this way since this is an unfunded mandate. There's no question about that. [LB245 LB395]

SENATOR LANGEMEIER: So you wouldn't support an amendment that would allow the city council to make that decision without the vote. [LB245]

SENATOR JOHNSON: No, we've made that decision. [LB245]

SENATOR LANGEMEIER: Okay. Thank you. Thank you, Mr. President. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. Senator Kruse, you're recognized. [LB245]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the bill and I marvel, as I'm listening, that we are back to talking about fluoridation. I'm sold. I remember when that was a Communist plot, and we had all kinds of goofy stuff out there and if you were a real Christian you couldn't be for fluoridation and so on. That's...some of that strange reasoning is still floating around. It's pretty hard to get solid evidence. I would remind you that major cities, and I'll speak only for Omaha, has had fluoridation for years and we seem to be doing well by it. I'd remind you that this is an unfunded mandate, as someone has suggested, that saves us a chunk of money, a lot of money. Part of that budget bill you passed last week is to provide dental care to low-income people, and the dental care, I am told by those who are working at it, is largely because they're not getting enough fluoride. A mental health...a mental...a public health clinic reported to us on the board that there is quite an increase in children's dental needs, and this is expensive. It's really tough. We said, well, what's happening here, and they said, well, these kids, as Senator Stuthman has noted, are drinking too much bottled water; they aren't getting enough fluoride to protect themselves. So that is another question, but I would submit to you it's another question. We need to do what we can. This is very inexpensive, especially as you compare it to the costs of dental care. It is also the responsible thing to do especially for low-income children who are not going to see a dentist. Fluoride is a protection. It's proven through the years. It's being done in major cities and we know what it can do. We know that it would be helpful and, seems to me, it ought to be helpful to the smaller cities as well. Thank you. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Senator Chambers, you're recognized. [LB245]

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SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would like to ask Senator Johnson a question, if he's willing to answer. [LB245]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB245]

SENATOR JOHNSON: Certainly. [LB245]

SENATOR CHAMBERS: Senator Johnson, at what age of a person does fluoride cease to be of value if he or she still has teeth or remnants of teeth? [LB245]

SENATOR JOHNSON: It's my understanding, Senator, that it is still valuable in adults as well, more valuable in children but still valuable in adults. [LB245]

SENATOR CHAMBERS: Thank you. And had he given a different answer, I was going to tell him that he can give me all the studies he wants because I have concrete evidence. Those are my teeth. I'm 70 years old, still going strong. They're not worn down. I got a gap between the top two in the front and a dentist asked me did I want that gap closed. I said, oh no, that's a part of my identification, that's a part of my character; without that, I'm no longer me. And some of us are going to start a club of the gapped teeth people because, when you find them, most of them have done something very remarkable. I think it's remarkable to even still have teeth when you have a gap like that. But at any rate, I have always been in favor of the fluoridation of water. I come from a poor area, I represent poor people, I am poor myself, and it is demonstrable that the children in the area that I represent have fewer cavities now than they were having at the time that I was growing up. Based on the way we had dental care, when I was in about the 3rd grade they had a clinic at Central High School and I had a tooth drilled with no medication whatsoever, not one drop, and then I found out that there was such a thing as offering something that would deaden it. I'm not going to say it was because I was a black child, but whenever I've mentioned that to a dentist they've always said that should not have been. But because I endured that and survived, I have no fear of anything the dentist will do. And I'm going to try to help Senator Langemeier by telling him that if he wants to save that money, he can come down to my office. I have a pair of pliers and a screwdriver, and when I get through with him, he'll need no root canal. And once he gets over the discomfort, his teeth will be as strong as those of a chipmunk. He can go out here and crack a walnut with his teeth and have no problem. But on this matter, Senator Stuthman mentioned something about an unfunded mandate. There's an unfunded mandate from the state that I have automobile insurance. There's an unfunded mandate that in my house I have to have running water. I have to have certain structural soundness in order for my house to be habitable and the state is not going to pay for it; I do. There are many so-called unfunded mandates. The state has what are called police powers and these enable the state constitutionally to require activities, place requirements on individuals in political subdivisions that are in the best interests of the people at large. And children do need to be looked after. I think Senator Stuthman

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brought up a very interesting issue also on the bottled water. It's been determined through studies that there are bacteria in this water not found from the tap water, because that water is not treated the same way as that from tap water. But Coca-Cola, I think Pepsi and some of the largest producers of this scam, and beneficiaries of it, acknowledge that they use tap water; it's more sanitary. But they didn't admit it until it was found out. I had been telling people just give me those bottles and I'll take them out. I'll sterilize them and I'll fill them up with water from the tap and there you go. [LB245]

PRESIDENT SHEEHY: One minute. [LB245]

SENATOR CHAMBERS: Fluoride is not going to hurt the children in this state. If I thought it would, I would be opposed to it. I'm 70 years old. I've had a chance to observe things. I haven't seen anything in fluoride that I consider to be harmful. Another thing that is unusual, it was stated by...I'm not picking on Senator Stuthman, that the majority of dentists in his district favor this. When have you ever seen a profession come to the Legislature and support something that would cut into their income? Why would the dentists say do this when it's going to diminish their income? I rest my case. Thank you, Mr. President. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Wightman, you're recognized. [LB245]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I am, in spite of what Senator Chambers said, am concerned over unfunded mandates. Here, however, I think that the unfunded mandate is justified and probably will support this bill. I am impressed with the fact that the dentists, who certainly do not have a financial gain by their position on this issue, are strongly in favor across the state of Nebraska, in favor of fluoridation of water. I know there have been votes of many communities. My own home community of Lexington had a vote a number of years ago. They rolled out the opposition and it did not carry. I know Gothenburg within my community had a similar situation. They actually put in the equipment to do the fluoridation and then it was voted out on an initiative. So I know that there will be a lot of opposition and I think there will probably be a lot of votes with regard to the opt out, but I do think the end justifies the means here. I do have a couple of questions for Senator Johnson, if he would respond. [LB245]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB245]

SENATOR JOHNSON: Yes, sir. [LB245]

SENATOR WIGHTMAN: Senator Johnson, you probably did discuss this already, and I was out part of the time, but I know most of the people, most of the children probably use toothpaste with fluoridation in it. Can you tell me about the relative benefits from

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that compared to fluoridation? [LB245]

SENATOR JOHNSON: It's my level of knowledge that the fluoridated toothpaste is helpful, but it is not as effective as the water, because there is some process where in the water that is...then ends up in the saliva and so on, that this has an effect on the amount of sugar that is in the saliva, and then either fosters the growth of bacteria that attack the teeth or not. So that's about as good an answer as I can give you, I'm afraid. But the fluoride in the water is more effective. [LB245]

SENATOR WIGHTMAN: Thank you. I have one other question. I think there have been some studies that indicates that communities with high numbers of immigrants or minorities tend to have more problems with tooth decay than those who have very low numbers. Is that...have you seen such studies? [LB245]

SENATOR JOHNSON: Well, I think that just goes along with the poor...the lower level of income for people, the more likely they are to have problems, be it with their teeth or their general health. [LB245]

SENATOR WIGHTMAN: And that's partly just because of poor dental care. Is that correct? [LB245]

SENATOR JOHNSON: Yes, sir. [LB245]

SENATOR WIGHTMAN: Well, with that, you know, I will continue to listen. I, right now, would intend to support this. I am impressed with the fact that dentists across the state are supportive of this issue and so would intend to support it. Thank you, Mr. President. Thank you, Senator Johnson. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Karpisek, followed by Senator Preister, and Senator Johnson and others. Senator Preister (sic)...or Karpisek. [LB245]

SENATOR KARPISEK: (Laugh) Thank you, Mr. Lieutenant Governor. My first question was what Senator Langemeier asked about the city council being able to vote of it, and I guess Senator Johnson said that is not possible; it would have to go to a vote of the people. Would Senator Johnson yield, please? [LB245]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB245]

SENATOR JOHNSON: Yes, sir. [LB245]

SENATOR KARPISEK: And is that right, the city council would not be able to just... [LB245]

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SENATOR JOHNSON: I'm sorry, I missed out on the conversation. [LB245]

SENATOR KARPISEK: Oh, that's fine. The city council would not be able to opt out on its own. [LB245]

SENATOR JOHNSON: They can put it on the ballot. [LB245]

SENATOR KARPISEK: On the ballot. I guess my main concern is the...we've talked about it before, the health risk of ingesting the fluoride, and at this level you don't feel that there would be any negative side effects? [LB245]

SENATOR JOHNSON: Let's put it this way: Every major organization that the Center for Disease Control, which is the world's best source of knowledge, agrees that at the levels that are in...suggested for the water, that it has no harmful effects that can be detected. [LB245]

SENATOR KARPISEK: And is the roughly \$6,000 per entry point, is that pretty correct? [LB245]

SENATOR JOHNSON: That's certainly in the neighborhood. It would depend a little bit on how your water source is and that's really one of the questions, is that there might be several injection points that could make the cost quite high per individual. That's why the law was put together the way it is. [LB245]

SENATOR KARPISEK: Okay. Thank you, Senator Johnson. That's all the questions I have. I think many people don't have their children drink out of the tap anymore because they're concerned about nitrates, different things in the water supply. But I do have a good friend that works with a lot of low-income people and I doubt that they can afford bottled water or that they do it very much, so I do believe that those low-income families, those kids, are probably missing out. Do they go to the dentist very much? Probably not. Do they brush their teeth like they should? Probably not. And I think that's who we really need to think about here, is the low-income kids. Senator Kruse talked about that it will save the state money. I would have to say he is probably right. I don't like the unfunded mandate part of it, but if it is going to be good for the kids and save us some money, I think it's all right, especially with the opt-out clause. I will support the bill and, just on a lighter note, I wish that Senator Johnson would have been so accommodating on an opt out on his other major bill this year. Thank you, Mr. President. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Preister, you're recognized. [LB245]

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SENATOR PREISTER: Thank you, Honorable President. I appreciate Senator Karpisek's humor and being confused with him was an honor to me. I'm not sure it was the other way around earlier. But I disagree with him on the other opt out and Senator Johnson and I both agree on health. We both agree on children's health. We both agree on prevention, and we likely both agree that fluoride can play a role in preventing tooth decay. That's not the issue for me. The issue is...Senator Johnson, could I have a little dialogue with you? [LB245]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB245]

SENATOR JOHNSON: Certainly, Senator Preister. [LB245]

SENATOR PREISTER: Senator Johnson, earlier you talked about studies, and so did I, and you had discredited some of those, but you, in the time you just spoke, gave high praise to the Centers for...I'm sorry, the Center for Disease Control and Prevention. [LB245]

SENATOR JOHNSON: Yes, sir. [LB245]

SENATOR PREISTER: Did you acknowledge something to the effect that they were one of the most reputable organizations? [LB245]

SENATOR JOHNSON: Yes, sir. [LB245]

SENATOR PREISTER: So if I were to say to you that the Center for Disease Control and Prevention, in 1999 and again in 2001, assessed all of these studies and in their findings they said that it's the topical application that prevents dental caries, it's the topical application, putting it on the tooth, that has a beneficial effect, but that the systemic application did absolutely nothing positive that they could determine, would you say that that is from a reputable organization, and would you have any comments on that study? [LB245]

SENATOR JOHNSON: Well, I haven't seen that, but there's no question, sir, that one of the things is for children of affluent parents that can get their kids to the dentist for the sealant application, and you put that with the fluoride in the water, that's the best thing you can do. Does that happen with poor or less affluent children? I think not, and that's where the difference is. The...I'd have to see the other reference. All the literature that I have before me supports this with the CDC and that supplied by the American Dental Association and many other groups. [LB245]

SENATOR PREISTER: Thank you, Senator Johnson. [LB245]

SENATOR JOHNSON: Thank you. [LB245]

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SENATOR PREISTER: That's all I would ask. Well, perhaps you would give some credibility to Dr. Arvid Carlsson, who is a pharmacologist. He's also a Nobel Laureate in medicine physiology, awarded to him in the year 2000. And he assessed the findings and said, again, fluoridation topically, when you put it on the tooth, just as Senator Johnson said, there is a reaction with saliva and it does benefit. But when you ingest it in the system, that's not where the body takes the benefit. And in developing children, when you don't have a controlled amount, when they're getting it in uncontrolled amounts from food sources, from other water sources, you don't know how much they're getting and we don't know the total benefit versus the total detriment to those young, developing children. That's my concern. Why, Senator Johnson asked earlier, am I not on a crusade against the fluoride in Omaha's drinking water? Well, as so many in here have already said, that battle has been fought and it's lost. I preferred...and I won't carry bottled water. Bottled water has other chemicals that have been added to it, in addition to the plastic that's a worldwide problem and we've created this massive, this huge area almost the size of Africa,... [LB245]

PRESIDENT SHEEHY: One minute. [LB245]

SENATOR PREISTER: ...in the ocean of plastic and it's swirling around and collecting out in the Pacific, but not many people are too interested in the ocean and how it affects all of us. But regarding fluoride, I have a charcoal filter and use tap water. I think tap water is probably the best water we have. But when we're talking about requiring it and forcing it on children, yes, poor kids have more dental caries. I was one of those kids. I have a lot of those cavities. We need more education. We need to help make toothpaste with fluoride available. We need to do it topically. But, my friends, I have very serious concerns about the amount of fluoride these children are going to ingest along with a range of other chemicals that they're being bombarded with topically on their skin, which is a large organ that absorbs a lot of things that are not healthy to them; they are taking it in, in the air in greater quantities than any of us ever did when we were growing up; they're getting it in foods. Kids... [LB245]

PRESIDENT SHEEHY: Time, Senator. [LB245]

SENATOR PREISTER: ...are being bombarded with things that are not healthy. I don't want to put more fluoride in their bodies. [LB245]

PRESIDENT SHEEHY: Time. [LB245]

SENATOR PREISTER: Thank you. [LB245]

PRESIDENT SHEEHY: Thank you, Senator Preister. Mr. Clerk, do you have items for the record? [LB245]

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CLERK: I do, Mr. President. Amendments: Senator Synowiecki to LB1147; Senator McDonald to LB844; Senator Langemeier to LB245. Study resolutions: LR333, Senator Synowiecki; LR334, Senator Lathrop; LR335, Senator Erdman; all will be referred to the board. Mr. President, the Agriculture Committee will meet in Executive Session at 1:00 today, Room 1524; Agriculture Committee at 1:00 in Room 1524. (Legislative Journal pages 1189-1192.) [LB1147 LB844 LB245 LR333 LR334 LR335]

And a priority motion: Senator Fischer would move to recess until 1:30 p.m. []

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

RECESS []

SENATOR LANGEMEIER PRESIDING []

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

ASSISTANT CLERK: There is a quorum present, Mr. President. []

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

ASSISTANT CLERK: Mr. President, your Committee on Enrollment and Review reports LB1072, LB928, LB736A, LB928A, LB308A to Select File. Amendment to be printed to LB245 from Senator Langemeier. And a new resolution, LR336, calling for an interim study, introduced by Senator Hansen. That's all that I have. (Legislative Journal pages 1193-1199.) [LB1072 LB928 LB736A LB928A LB308A LB245 LR336]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Now we will proceed with the first item on this afternoon's agenda. And pursuant to the agenda, it is 1:30, we move down to Select File, 2008 senator priority bills, LB853. [LB853]

ASSISTANT CLERK: Mr. President, with respect to LB853, I do have E&R amendments. (ER8184, Legislative Journal page 918.) [LB853]

SENATOR LANGEMEIER: Senator McGill for a motion. Senator McGill for a motion. [LB853]

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SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB853]

SENATOR LANGEMEIER: Thank you, Senator McGill. You have heard the motion. All those in favor say aye. All those opposed say nay. They are adopted. Mr. Clerk. [LB853]

ASSISTANT CLERK: Senator Hudkins would move to amend with AM2114. (Legislative Journal page 979.) [LB853]

SENATOR LANGEMEIER: Senator Hudkins, you are recognized to open on AM2114. [LB853]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. If you've been looking at your computer, you have seen that I have filed a number of amendments to this bill. I want to be very up front with you and say that if this particular amendment is adopted, AM2114, then the next four are not needed. What AM2114 does is strike the original provisions of LB853 and replace it with new language that is taken from the model legislation formulated by the National Conference of Insurance Legislators, otherwise known as NCOIL, the legislators. The other insurance group is NAIC, the group of insurance commissioners. You were given last week--it's in your offices somewhere--a summary of the steps that were taken to create this model legislation. And you also were given a letter from the president of NCOIL. And you also should have had a summary of the states that have adopted NCOIL versus NAIC and a comparison of the two different models. The main difference between the amendment that I am offering and the current legislation is very simple. The amendment clearly defines what a stranger-originated life insurance policy is and prohibits their use. Secondly, it maintains the options of the consumer in the event of a change of life circumstance, in that they have a competitive market for their policy that will give them the best return on their paid premiums. And further, under the amendment the insurance companies are still allowed to restrict their policies by the terms of the policies. As a contract, the insurance company can restrict the transfer of their policies if they don't want to have their policies impacted by a viatical settlement. I would urge you to adopt this amendment and then adopt the bill. Now you're probably all wondering: what is a viatical settlement? A viatical settlement is the sale of a life insurance policy by the policyowner before the policy matures. Such a sale at a price discounted from the face amount of the policy but usually in excess of the premiums paid or current cash surrender value provides the seller an immediate cash settlement. Generally, viatical settlements involve insured individual with a life expectancy of less than two years. In countries without state-subsidized healthcare and high healthcare costs--in other words, the United States--this is a practical way to pay extremely high health insurance premiums that severely ill people face. Some people are also familiar with life settlements, which are similar transactions but involve insureds with longer life expectancies from, say, 2 to 15 years. These viatical settlements became popular in the United States in the late 1980s when the AIDS epidemic first hit. The early victims of

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AIDS were largely gay men, many of whom were not particularly old. They often had no wives or children, who are the traditional dependents in a life insurance policy. But they had life insurance policies through employment or due to other investment activity. The dependents on the policies were often their parents, who didn't need the money. Viatical settlements offered a way to extract value from the policy while the policyholder was still alive. At the time the AIDS mortality rate was very high and life expectancy after diagnosis was typically short. Investors were reasonably sure that they would collect in a relatively short time. This combination of events caused a surge in viatical settlements as both investors and viators saw an opportunity for mutual benefit. These settlements eventually developed a bad reputation in the investing community. The companies that purchased them from policyholders typically resold them to individual investors. Salespeople were paid large commissions to push the settlements, which were not conventional investments and which were misunderstood by many investors. The government regulatory agencies had little experience and few regulations dealing with viatical settlements and the industry attracted some unscrupulous dealers. Despite the bad experience of some investors, viatical settlements remain an often-valuable tool for the personal financial management of many ill people. A 2002 study showed that among hospice financial counselors who have had experience with viatical settlements, most reported positive experiences. In 2007, the North Dakota Legislature passed a bill which was a first in the nation piece of legislation, which regulates the viatical settlement industry within the state. The Federal Trade Commission has pointed out that policyholders should investigate thoroughly before entering a viatical settlement. Make sure you know what you're buying. Potential investors and insurance companies should also tread carefully in this area. The key to identifying a legitimate viatical investment is that the life insurance policy was purchased before the individual was diagnosed as terminally ill. Say, for example, that John Doe has a \$100,000 life insurance policy when he was diagnosed with terminal cancer. A viatical company may offer \$50,000 to purchase the policy and then be designated as its new owner or beneficiary. The viatical agent would then offer this \$100,000 policy to an investor for \$68,000. The estimated term, the length of time before collection of the policy's face value, is usually the life expectancy of John Doe. The viatical operator would immediately pocket \$18,000 from this transaction and the investor stands to gain by paying \$68,000 for a policy worth \$100,000. The most common scheme is executed by recruiting applicants who already have a preexisting terminal disease, generally AIDS or cancer. And this is where the problems lie. Viatical settlement brokers, licensed agents, and representatives of viatical settlement companies recruit applicants to apply for multiple, what's called jet-issued policies. They misrepresent the truth and answer no to all of the medical questions. Healthy imposters then undergo the medical examination and blood or saliva testing. In many cases, the insurance agent who issues the policy is a party to the scheme. The agent or one applicant may even submit the same application to many insurance companies. The policies are then purchased by viatical settlement companies which in turn sell them to unsuspecting third-party investors. The insurance industry is the biggest victim of this fraud and could incur huge losses, conservatively estimated at

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\$1-plus billion within the next few years. However, some investors receive nothing in return for their guaranteed investment. Now it may seem morbid for someone to choose this type of investment. However, viatical investments are legal and can result in high rates of return. So what my amendment would do is give you the definition of a STOLI. That's a whole other kettle of fish. STOLI is a stranger-originated life insurance. The bill that you have before you says that a person who has a life insurance policy can, after two years, sell this policy to someone. That's perfectly okay. In LB853, that two years in some cases goes to five years. So what you are doing is taking away an option for the consumer. [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR HUDKINS: I think I'll stop there, Mr. President, and continue later. Thank you. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. I would like to announce one change to the impending agenda. We are going to be passing over, at the introducer's request, LB986 and LB986A. We will be passing that over. (Visitors introduced.) Mr. Clerk, for a motion. [LB853]

ASSISTANT CLERK: Mr. President, I do have amendments pending to AM2114. The first is from Senator Hudkins. This is AM2616. (Legislative Journal pages 1199-1200.) [LB853]

SENATOR LANGEMEIER: Senator Hudkins, you are recognized to open on AM2616. [LB853]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. This amendment is to AM2114 and it pretty much mirrors the Kansas law in that, on page 2, it says, "Any person who solicits, markets, or otherwise promotes the purchase of an insurance policy for the sole purpose of or with the primary emphasis on entering into a viatical settlement contract shall be guilty of a Class IV felony." There are a number of states who have also been looking at this particular issue. They...let's see. Okay, here we go. When state legislators are presented with both the NAIC and the NCOIL models, they are rejecting the NAIC model. Remember, NAIC is insurance commissioners. Instead, they're moving to legislation based on the NCOIL model, insurance legislators, or they are amending state statutes to add key anti-STOLI, based on the NCOIL model. The STOLI, as I said, is a stranger-originated life insurance policy. And the amendment that we're looking at just makes our...my amendment to the bill more like the Kansas Legislature. So we are saying, okay, if you don't want this STOLI legislation, then if you do enter into it there is going to be a penalty, and that penalty currently is a Class III misdemeanor and we would move it to a Class IV felony. We don't want to harm the policyholder. I don't know when the last time was that you bought an insurance policy,

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but it's not the easiest thing in the world to understand. This would help the insurance policyowner to not be bombarded with all kinds of financial what-ifs or if this happens then. So we are just saying that if you do this as an outside investor with the sole purpose of doing this, becoming the primary investor, primary holder, then there are going to be penalties involved. I don't know of any other thing I can add at this point. If there are questions, of course I'd try to answer them. Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. (Visitors introduced.) You have heard the opening on AM2114 and AM2616 offered to the amendment. The floor is now open for discussion. Those wishing to speak, we have Senator Chambers and Senator Howard. Senator Chambers, you are recognized. [LB853]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, for clarification I'd like to ask Senator...a question. (Laugh) She knows who I mean. [LB853]

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

SENATOR CHAMBERS: Yes. [LB853]

SENATOR HUDKINS: Yes. [LB853]

SENATOR CHAMBERS: Senator Hudkins, I've been trying to keep track of what's going on here and other things, too. So this amendment that's before us would raise the penalty from a misdemeanor to a Class IV felony? [LB853]

SENATOR HUDKINS: Yes. [LB853]

SENATOR CHAMBERS: And who would be guilty of the felony? [LB853]

SENATOR HUDKINS: The person who is the third...the originator, the third party, the stranger. [LB853]

SENATOR CHAMBERS: So if I were interested...if somebody came to me and tried to get me involved in one of these situations, that person would be guilty of a Class IV felony? [LB853]

SENATOR HUDKINS: Yes. [LB853]

SENATOR CHAMBERS: There would be...would there be any way that I could initiate this kind of an arrangement and the one with whom I initiated it would not be guilty of a Class IV felony? [LB853]

SENATOR HUDKINS: Yes. [LB853]

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SENATOR CHAMBERS: Is this for the purpose of discouraging these types of transactions or is it getting at a particular type of these transactions which type is deemed to be hurtful to the person who might be selling the policy? [LB853]

SENATOR HUDKINS: This is to discourage this type of arrangement. If you buy a life insurance policy, you and your spouse are normally beneficiaries for each other. If you don't have a spouse, most likely your children are the beneficiaries. But if you have a life insurance policy and then right after that you are diagnosed with a terminal illness and you think, oh good grief, I don't have any children, my spouse is gone, my parents don't need it, I'm going to need a whole boatload of money to pay for my medical treatments. I don't need this life insurance policy, I need the money. So they may go to a second company and sell that policy. Then that second company can go to a third company. And we're trying to discourage...now that, what I just said, is all okay. But if the third company goes to the individual and tries to arrange this, that's what we're trying to prevent. [LB853]

SENATOR CHAMBERS: Okay. Thank you, Senator Hudkins. I'm...this amendment kind of threw me a curve because I don't like the bill. I believe that I should be able to do what I want to with what's mine. My life, "Parson" Carlson, is mine; my death, "Parson" Carlson, is mine. I don't have any children who are small now. I don't have anybody who I would leave insurance to. I don't have life insurance. But at my age, if I were in a position, as I actually am, to make contact with somebody who would set up one of these arrangements, I would get some money that without that arrangement I would never get because I'm not going to take out a life insurance policy. If I took it out, it's not going to benefit me because it kicks in and pays benefits only after I croak, which is of no benefit to me. If I decide I want to keep it, I'm not going to sell it back to the company for the amount that I put into it. So I'm never going to realize my investment, the amount of my investment itself. Whether I take out a policy and then sell it for less than the face value or somebody comes to me and says I'll lend you money to buy a policy,... [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: ...then I'm going to give you a certain amount of money and I get the face value of the policy when you croak, why should I not be able to do that? It benefits me because without that arrangement I cannot afford life insurance. I'm not going to have life insurance, I'm not going to gain anything from my croaking. But by letting me get into that kind of a situation then, Senator Carlson, not only can an old frog do only one thing, which is croak, an old frog might do a little singing prior to croaking. Thank you, Mr. President. But I'm not sure that I like this amendment. Thank you. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Howard, you are

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recognized. [LB853]

SENATOR HOWARD: Thank you, Mr. President and members of the body. And, Senator Hudkins, I've listened to the explanation. This is an area I'm not well-versed on so it will be a...I'm trying hard to learn here. And if I understand correctly, if an individual would buy a life insurance policy--say this individual is 24, good health, no problem--but in the course of a matter of years develops a serious life-threatening problem such as AIDS, such as breast cancer, something that unfortunately has a tragic diagnosis and it doesn't look that this individual has a life expectancy, the individual is faced with probably not being able to work due to his or her health and needs some money to live. And so am I correct in understanding that would be the situation that a person could find themselves in and would look to a situation like this to sell their life insurance? If I may ask Senator Hudkins that question. [LB853]

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

SENATOR HUDKINS: Yes. Senator Howard, yes, you are correct. If someone buys a life insurance policy, then finds that they do have a terminal illness and no spouse, no children, their parents don't need it, this...being able to sell this insurance policy would enable them to have cash for necessary living expenses. And if I may, I could go on and talk some more about STOLIs, but you tell me. [LB853]

SENATOR HOWARD: Thank you. I appreciate that, because I wanted to follow up on this before I went to the next question. This bill would prohibit someone...currently they can sell this policy after they've owned it for two years, if that's correct. [LB853]

SENATOR HUDKINS: That's correct. [LB853]

SENATOR HOWARD: And then this would extend that time to a five-year period. They would not be able to sell it before five years had elapsed since they had purchased it. [LB853]

SENATOR HUDKINS: Under certain circumstances, yes. [LB853]

SENATOR HOWARD: Which could make it very difficult for people that were faced with a terminal illness and needed to meet their ongoing day-to-day expenses. [LB853]

SENATOR HUDKINS: Correct. [LB853]

SENATOR HOWARD: Then the STOLI piece of it I would see as another issue, a separate issue. And I tried to listen to your explanation so I better understood. But it seems like in that case what you're trying to address is someone that fraudulently purchases a policy, presenting themselves as somebody else who may have a health

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problem, and the person that's actually there getting the exam and going through the tests is not that individual. I mean, the other person is healthy. So they're saying they're the person who has actually got the illness in order...simply to make a profit. Is that the scenario? [LB853]

SENATOR HUDKINS: Very possibly. There could be fraud in that case because whoever is the individual that is unhealthy, chances are when they have their medical exams for a life insurance policy that health problem is going to come out. And so they send somebody else, someone entirely healthy to take the exam. So obviously that would be fraud. [LB853]

SENATOR HOWARD: That's blatantly, blatantly fraudulent. But it's, I suppose, a matter of being able to determine that that's not the person they're representing themselves to be. I appreciate your explanation and helping me better understand this. And I offer Senator Hudkins the remainder of my time, if she would like that. [LB853]

SENATOR HUDKINS: Thank you, Senator Howard. I would go on and talk a little more about the STOLI. S-T-O-L-I is the short term for stranger-originated life insurance. What that is, is a life insurance policy that is initiated by and for the benefit of a disinterested third party--in other words, a stranger. The insured is used only as a pass-through to get the policy issued. Such transactions... [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR HUDKINS: ...violate insurable interest laws by placing control of the policy in the hands of a stranger from the moment the policy is issued. The stranger is an investor in the policy. At the inception, the stranger controls the ownership of the policy and the death benefit, leaving the insured with little or no benefit of the policy. STOLI is a clearly defined and isolated phenomenon that has nothing to do with legitimate life settlements or nonrecourse premium financing. Life insurers have deliberately broadened the definition of STOLI to implicate any policy that is issued in which the owner is aware of the policy's market value and, in some cases, where the owner is simply made aware of the secondary market. Some instances, life insurance people... [LB853]

SENATOR LANGEMEIER: Time. [LB853]

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

SENATOR LANGEMEIER: Thank you, Senator Hudkins and Senator Howard. Senator Pahls, you're recognized. Before you do that, Mr. Clerk, for an announcement. [LB853]

ASSISTANT CLERK: Mr. President, the Health Committee will meet in Executive

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Session now under the north balcony. [LB853]

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

SENATOR PAHLS: Thank you, Mr. President, members of the body. Received AM2616 and AM2618 within the last hour or so, so we had a brief chance to take a look at them. And the point I want to make, quite simply, if you take a look at the number of amendments to this bill, you should know what the intent behind it is. I see these amendments that are to improve AM2114 as what I call something to lull you into a sleep. I've looked at various portions of this. It looks like some of the material has been cherry-picked from NCOIL, some of it is from somewhere. We do not know. So I think this leads us to believe that this is an example of stalling something. I looked at our...the bill that came out of the committee, on page 11, answers some of these issues and also on page 73. I do see these amendments filling the...making her amendment that these are addressed to, the senator's amendment, better. But the thing about that amendment: it guts the original bill. So I'm asking you to take a serious look and do not get lulled into the idea that we will pass about anything. So I would suggest that we vote red. Thank you. [LB853]

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

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would like to ask Senator Pahls a few questions to help me understand what we're doing and why. [LB853]

SENATOR PAHLS: Yes. [LB853]

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

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: Senator Pahls, under the current law there is a viatical series of statutes which allow this kind of speculative dealing with life insurance policies under certain circumstances. Is that true or false? [LB853]

SENATOR PAHLS: True. [LB853]

SENATOR CHAMBERS: Now there is a two-year minimum that a person must own a policy and be paying the premiums himself or herself before a viatical arrangement can be entered into? [LB853]

SENATOR PAHLS: Unless, unless--there are some exceptions--terminally or

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chronically ill, death of a spouse, divorce, retirement, disability, bankruptcy. Those are the exceptions to this current, our current law, and also the law that...if we would pass the bill. [LB853]

SENATOR CHAMBERS: Right. But aside from those situations which are not being touched by your bill, a person who does not fall within any of those exceptions must hold this policy for at least two years. [LB853]

SENATOR PAHLS: Correct. But also, my understanding, if you would go to the director of the Department of Insurance, that may be...and I'm using the word "wild card." [LB853]

SENATOR CHAMBERS: Okay. The reason I would have to hold that policy for two years is to benefit the insurance company, isn't it? Because it certainly doesn't help me, if I'm a policyholder. [LB853]

SENATOR PAHLS: Correct, correct. [LB853]

SENATOR CHAMBERS: So then why don't we get rid of the two-year requirement? It's to benefit the insurance industry. This bill that we have before us is to benefit the insurance industry. The policyholder is not even in the equation at all. Would you agree with that? [LB853]

SENATOR PAHLS: Well, the intent, we're trying not to do anything fraudulently. I don't know if I'm missing your point or not. [LB853]

SENATOR CHAMBERS: Okay. The way I see it, you have Al Capone on the right hand. You have John Dillinger on the left hand. John Dillinger and Al Capone are fighting and you want us to get on the side of Al Capone, which would be Mutual of Omaha and their ilk, against those you consider to be John Dillinger. [LB853]

SENATOR PAHLS: I'd go more for the idea that we don't want to get something for nothing. That's where I'm coming from. [LB853]

SENATOR CHAMBERS: Well, if a person can find that kind of situation, let him or her benefit from it. Why should Al Capone and John Dillinger's fight interfere with what I, as a third party, an innocent third party, can gain? Maybe I don't want to keep this policy for two years. I see that I'm not going to be able to continue paying the premiums. My alternative is to let it lapse and the insurance company gains all around because they've got my premiums, I didn't croak so they don't have to pay any benefits. They gain from that two-year limit, don't they? [LB853]

SENATOR PAHLS: Yes. If you let it lapse, they would get that. That's part of the

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business model. [LB853]

SENATOR CHAMBERS: And if I keep it longer than two years and it lapses, the insurance company gains. Isn't that right? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: If I borrow on my policies, one where there's some cash buildup, I've got to pay interest on my money which I borrowed from the insurance company. Is that correct? [LB853]

SENATOR PAHLS: That would be just like my house. If I borrow against my house, I own the house, I still have to pay interest on it. [LB853]

SENATOR CHAMBERS: But you live in your house. Nobody is going to take your house. This is different. This is where you put your...if you put your money into this insurance policy, the insurance company is going to use your money to make money. They don't just involve themselves in insurance. They invest in real estate, they play the stock market, they might even be in the lottery. But insurance companies are not restricted in terms of... [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: ...making what are considered legitimate investments, are they? [LB853]

SENATOR PAHLS: Yes, they're not restricted (inaudible). [LB853]

SENATOR CHAMBERS: Do you think they make the bulk of their money from the premiums paid or from their investments that they make? [LB853]

SENATOR PAHLS: Well, the reason why they can invest, of course, is from the premiums. [LB853]

SENATOR CHAMBERS: But they make more money from their investments, wouldn't they? [LB853]

SENATOR PAHLS: I would assume. [LB853]

SENATOR CHAMBERS: Now their aim is to make money, period. But since I only have less than a minute, I will put my light on and not try to ask a question which you can't adequately answer in the few seconds left. Thank you, Mr. President. [LB853]

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SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Carlson, you are recognized, followed by Senator Hudkins. [LB853]

SENATOR CARLSON: Mr. President and members of the Legislature, I stand in opposition to AM2114, AM2616, and am for the underlying bill, LB853, as it stands. The National Association of Insurance Commissioners and the National Conference of Insurance Legislators are each committed to dealing with the problem of stranger-owned life insurance. Each one has a little different approach. They each have the same goal, and that's to curtail this unethical practice. And so I would ask that the body, after this debate, would vote against all these amendments and would pass the underlying bill, LB853. We have had a tradition in Nebraska of a good Department of Insurance, a reputable Department of Insurance, reputable directors of the Department of Insurance. Tim Wagner supported the NAIC model, which is the underlying plan in LB853, and his successor, Ann Frohman, also supports LB853. And I would urge you to pass the underlying bill and be in opposition to the other...to the rest of these amendments. Thank you. [LB853]

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

SENATOR HUDKINS: Thank you, Mr. President and members. Absolutely the insurance commissioners are reputable people. I never said, I never hinted, and I would never hint that they weren't. But they are insurance commissioners. They're looking at this from an entirely different angle, as are the insurance legislators. The legislators...the insurance legislators, the members of NCOIL are most likely chair of their insurance, banking, and those types of committees. The proponents of LB853 claim that the initiative prohibits STOLI. However, the proposed legislation goes further and stamps out the secondary market for life insurance. LB853 fails to define STOLI and that will be my next amendment. And it also fails to provide customer protection against STOLI transactions. If you want to see the difference between the two, following...let's see, this was from November of 2007: NCOIL closes in on illegal STOLI and unanimously adopts the amended model act, which is from NCOIL. Following more than 35 hours of debate over the past 16 months, NCOIL, at their annual meeting in Chicago, accepted a model law which was a targeted attempt to prohibit controversial stranger-originated life insurance transactions while encouraging legitimate life settlements. According to the life insurance and financial planning committee chair representative, the end product of the work represents a proposal that takes aim only at what's wrong with the life insurance market--in other words, STOLI. The work resulted in a model law that will offer important guidelines to states looking to stop this inappropriate activity. Why is Nebraska looking at putting in STOLI? That's a good question because we have already heard, and I'm sure we'll hear later, why this is not a good idea. Representative George Keiser from North Dakota says that STOLI occurs at the front end of a life insurance sale. By defining STOLI and strengthening reporting

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requirements and penalties for participating in STOLI, the NCOIL model gets at the heart of what needs to change. And he goes on to say that we hope that states considering amendments to existing laws will be better served by the NCOIL proposal. There are a number of states that have been dealing with this and almost all of them have either defeated anything having to do with NAIC and have adopted anything having to do with NCOIL, because they see that as the better product. In its current form, if the motivation of LB853 is consumer protection in life settlements, the change in law isn't needed as the current law is working to protect customers. If the motivation is to stop STOLI, LB853 fails in that regard as it is based on the model of the National Association of Insurance Commissioners, which model has been criticized... [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR HUDKINS: ...by other states. Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: That was one minute. Thank you, Senator Hudkins. Senator Carlson, you're recognized. [LB853]

SENATOR CARLSON: Mr. President and members of the Legislature, brief comments here. I'm going to take a chapter from Senator Chambers' book concerning the lobby. A number of members in the lobby have been paid big money to derail LB853. They have a job to do and the companies that they represent would rather have us sit around and talk about this all afternoon and do nothing. That's their goal. They don't care one bit about NCOIL or NAIC. They want the bill derailed. This LB853 is a good bill. It will serve the public in a good way. It's the right thing to do and I ask that you again defeat all these amendments and vote for LB853. Thank you. [LB853]

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

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. Senator Carlson said he was taking a page out of my book, and I don't mind that. I will not accuse him of plagiarism. As Oscar Wilde said, imitation is the sincerest part of flattery. I would like...form. I'd like to ask "Parson" Carlson a question or two. [LB853]

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

SENATOR CARLSON: Yes, I would. [LB853]

SENATOR CHAMBERS: Senator Carlson, you know that Mutual of Omaha wants this bill, don't you? [LB853]

SENATOR CARLSON: Yes, they do. [LB853]

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SENATOR CHAMBERS: Do they have any lobbyists working to get this bill passed? [LB853]

SENATOR CARLSON: Yes, they do. [LB853]

SENATOR CHAMBERS: Are their lobbyists paid? [LB853]

SENATOR CARLSON: I would imagine so. [LB853]

SENATOR CHAMBERS: And they're paid to do a job, is that correct? [LB853]

SENATOR CARLSON: That's correct. [LB853]

SENATOR CHAMBERS: And their job is to get this bill passed, right? [LB853]

SENATOR CARLSON: That's part of their job, yes. [LB853]

SENATOR CHAMBERS: And their aim is to make as much money, Mutual of Omaha, their aim is to make as much money as they can in their business. Is that right? [LB853]

SENATOR CARLSON: I don't know about as much money as they can. Everybody has got to be in business for profit. So yes, it's to make money. [LB853]

SENATOR CHAMBERS: Are there people who invest in Mutual of Omaha? Are there investors? [LB853]

SENATOR CARLSON: Yes, there would be. [LB853]

SENATOR CHAMBERS: So Mutual of Omaha is concerned about getting a return for its investors. Is that true? [LB853]

SENATOR CARLSON: Yes, they would be. Yes. [LB853]

SENATOR CHAMBERS: And they would want as high a return as possible? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: That's the way business operates, isn't it? [LB853]

SENATOR CARLSON: Certainly. There's got to be a profit or there's no business. [LB853]

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SENATOR CHAMBERS: Did Calvin Coolidge say that the business of the average American is business? Is he the one who said that? [LB853]

SENATOR CARLSON: (Laugh) I don't know that, Senator Chambers. [LB853]

SENATOR CHAMBERS: Okay. Now why is it all right for your Jesse James, which is Mutual of Omaha, to be out their gouging the public but you don't want the Dalton brothers over here, who fell out with Jesse, to try to do the same thing? [LB853]

SENATOR CARLSON: Well, the... [LB853]

SENATOR CHAMBERS: Let me put it like this, so that people who don't know who Jesse and the Daltons were. Jesse is rustling cattle in the western part of Nebraska, everything west of Lincoln, and the Daltons are rustling everything on a line east of that line, meaning Omaha and Lincoln. Now there might be some bleeding of one into each other's territory so they fight. Why should I, if I'm the sheriff, favor Jesse James or the Dalton brothers when both of them have the intent of rustling cattle? [LB853]

SENATOR CARLSON: May I answer that? [LB853]

SENATOR CHAMBERS: I hope you will. [LB853]

SENATOR CARLSON: All right. There's a distinct difference, Senator Chambers, and that is Mutual of Omaha is operating within the law and the Daltons and James never had any intention of operating within the law. [LB853]

SENATOR CHAMBERS: So if they could get a law that made it all right for them to rustle, their same conduct would then be lawful because they got legislators to legalize it. Isn't that true? [LB853]

SENATOR CARLSON: Well, they'd have to change the law, that's right. [LB853]

SENATOR CHAMBERS: But Mutual wants to stop somebody from profiting in an area where they've had more or less a monopoly, which is gouging the public. [LB853]

SENATOR CARLSON: I don't agree with you that it's gouging the public at all. [LB853]

SENATOR CHAMBERS: But they do get benefits by making me keep a policy for at least two years before I can sell it, even if during that period it's going to lapse and I can't gain anything back from what I put into it. That's the way Mutual likes it, isn't it? [LB853]

SENATOR CARLSON: There's another reason why you've got to keep your policy two

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years, and I'm going to take time if I answer that, or if you don't want me to I won't answer it. [LB853]

SENATOR CHAMBERS: I'd like you to answer it, so I guess you'll do it on your own time. How much time do I have, Mr. President? [LB853]

SENATOR LANGEMEIER: 1:40. [LB853]

SENATOR CHAMBERS: Thank you. Members of the Legislature, we all know that the purpose of these insurance companies is to make as much money as they can. The public be d-a-m-m-e-d. That keeps me from being accused of something that a minister was accused of, and I never want to be accused of anything a minister is accused of, Senator Carlson, because ministers are awfully sinister. But in any case, Mutual and their ilk don't want competition. That's all this boils down to. They could care less about the policyholder. The only interest they have is in that policyholder paying the money... [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: ...and they hope that the policy lapses before they have to pay any benefits. That's what they count on. I would venture to say they figure a certain number of policies lapsing and a certain amount of money accruing to them because these policies lapse. They're not going to make it easy for somebody to keep a policy. Easy to get it, but then they want to make you keep it and not profit from it in the way the insurance company hopes to profit. If it looks like I'm going to have a policy that will lapse, why should I not be able to get somebody to give me some money, because I'm not going to have the policy, I cannot pay the premiums? But at least I can derive something by selling it to somebody. And by them buying it, they don't deprive me of anything because I was losing everything the policy would have given me. I only stand to gain and that's what the insurance companies don't want. [LB853]

SENATOR LANGEMEIER: Time. [LB853]

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

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Hudkins, you are recognized. [LB853]

SENATOR HUDKINS: Thank you, Mr. President and members. I would like to ask Senator Carlson a question, if I may. [LB853]

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

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SENATOR CARLSON: Yes, I would. [LB853]

SENATOR HUDKINS: Senator Carlson, would you support the president of NAIC and his position as to how the legislation similar to ours in his state is being affected? [LB853]

SENATOR CARLSON: You're kind of leaving me there. To be honest with you, I don't know who the president of NAIC is. [LB853]

SENATOR HUDKINS: The president...well, okay. But the president of NAIC is actually...I guess it was a rhetorical question, because the president of NAIC is actually supporting the provisions of NCOIL. He says that is a better way to do it. And I am not trying to derail this legislation. I am trying to make it better, more consumer-friendly. And I'm finished, Senator Carlson. If you wanted to sit down, you may. I would say that the main difference between the amendment, AM2114, that I am offering and the two behind that are just things that we forgot the first time around. But the main difference between AM2114 and the current legislation is very simple. This amendment clearly defines what a stranger-originated life insurance policy is and prohibits their use. And secondly, it maintains the options of the consumer in the event of a change of life circumstance in that they have a competitive market for their policy that will give them the best return on their paid premiums. And further, under the amendment the insurance companies are still allowed to restrict their policies by the terms of the policies. As a contract, the insurance company can restrict the transfer of their policies if they don't want to have the policies impacted by a viatical settlement. When we get finally back to AM2114, I will be talking about some more issues here. But right now I am asking for your support on AM2616, which mirrors what some of the other states do. And I may have misspoke a minute ago when I said that Kansas had adopted this. Actually, it has passed out of the conference committee supporting the two-year term before policyholders can sell it. And this was advanced on the 25th of March. So it seems rather interesting that the president, the national president of the insurance commissioners, is supporting the model legislation of the insurance legislators. Thank you, Mr. President. [LB853]

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

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I've been listening to the discussion this afternoon and I have never been too much involved in any of the insurance issues and things like this, so I have not made a decision on this. But I would like to give the balance of my time to Senator Chambers. [LB853]

SENATOR LANGEMEIER: Senator Chambers, 4:40. [LB853]

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SENATOR CHAMBERS: Thank you, Senator Stuthman. Thank you, Mr. President. And I'd like to ask "Parson" Carlson a question or two. [LB853]

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

SENATOR CARLSON: Yes, I would. [LB853]

SENATOR CHAMBERS: Senator Carlson, you said you will explain to me why the two-year restriction benefits me as the insured. Would you tell me how that happens? [LB853]

SENATOR CARLSON: I think you had made the statement that it benefits the insurance company. And that may be true, but there's a reason for it. And in every policy, it doesn't make any difference what kind of life insurance policy there is, there's a two-year contestable period which means the death benefit can be contested in the first two years for falsification of information on the application, for falsification of medical history or whatever. And so a policy cannot be...shouldn't be sold as a commodity anytime in the first two years. There may not be a death benefit there. [LB853]

SENATOR CHAMBERS: But that doesn't help me as the one with the policy. The insurance company has that in to protect itself, isn't that true? [LB853]

SENATOR CARLSON: Not entirely. That protects the other insureds so that we don't have someone getting insurance in an illegal fashion and having a lot of death benefits paid when they shouldn't have been paid. So it's to protect the policyholders. [LB853]

SENATOR CHAMBERS: But the ones who would pay the death benefit are the insurance companies, and they're the ones protected. If the beneficiaries got the money, they're not hurt, even if I fraudulently get the policy. But let's move away from that because you're having a difficult time. When I was talking about Mutual of Omaha, you said what they're doing is legal, correct? [LB853]

SENATOR CARLSON: Yes, I did. [LB853]

SENATOR CHAMBERS: But what these other companies are doing is legal also. Isn't that correct? [LB853]

SENATOR CARLSON: It depends on how it's done. [LB853]

SENATOR CHAMBERS: Well, if it's not legal, why don't they just go get the law and go after them? What they're doing now is legal. Isn't that correct? [LB853]

SENATOR CARLSON: Not in the first two years, it's not. Can I go on or do you want

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more of your own time? [LB853]

SENATOR CHAMBERS: Well, let me ask you this. If what they would be doing is illegal, what do we need the law for, because it's already unlawful? If it's already illegal, what do we need this law for? [LB853]

SENATOR CARLSON: That's just to further make it more difficult for them to operate and in an unethical manner. [LB853]

SENATOR CHAMBERS: If murder is wrong, why do you pass another law that says murder is wrong? You're saying exactly the same thing. If you got one law, you don't need another one, do you? [LB853]

SENATOR CARLSON: If murder is committed and it's... [LB853]

SENATOR CHAMBERS: Murder most foul is committed. [LB853]

SENATOR CARLSON: ...nothing done with it, we maybe need another law. [LB853]

SENATOR CHAMBERS: Thank you. Members of the Legislature, this bill doesn't make sense. If what the viaticals are doing is illegal, you can get them now. If what they're doing is not illegal, they are as legitimate as Mutual of Omaha. There are insurance companies that have contested paying benefits and wound up having to pay them. And when they have to pay them, they delay as long as they possibly can, hoping to wear out the person or that the person will croak. And there have been attempts to put into the law a requirement that once the insurance company contests and if it can be shown that there's a questionable contestation, they will pay interest on the full amount of time that elapses between when they should have paid the benefits and when they actually paid. Insurance companies are slippery and there are laws that are attempting to rein them in. The viaticals are as legitimate and legal as Mutual of Omaha, but Mutual of Omaha and their ilk do not want the competition. That's what the issue is. The policyholder is not involved. Let's say that I fraudulently obtain a policy from Senator Carlson. [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: And I sell it to Senator Loudon and he's counting on that policy being legal. And the contest occurs when time comes to get the benefits and he can't get them. Well, that is let the buyer beware. He chose to assume the risk. Now the insurance company is doing everything it can to benefit itself. If a viatical company purchases a policy and they don't score under it, that's the risk that they assume. If the insurance company insures me, they don't expect me to live 100 years, but that's the risk they assume. But then they count on 30 people's policies lapsing and then they use

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that lapse money to pay me. They're always going to come out ahead. And I'm in favor of anything that weakens LB853. And at the right moment, Senator Carlson... [LB853]

SENATOR LANGEMEIER: Time. [LB853]

SENATOR CHAMBERS: ...the stake is raised. Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no other lights on, Senator Hudkins, you are recognized to close on AM2616. [LB853]

SENATOR HUDKINS: Thank you, Mr. President and members. If you were off the floor, or for whatever reason you did not hear what this amendment does, it simply increases the penalty if you engage in some of these illegal fraudulent acts. That's all it does. It amends AM2114, which makes LB853 better. It has a lot of the same things. It does not have the five-year waiting period. The states, there are a number of states that have been looking at this type of legislation. When they are presented with both models, they are affirmatively rejecting the NAIC model, the insurance commissioners' model, and they're accepting the insurance legislators' model. My amendment pretty much mirrors, with a couple of exceptions and we'll talk about those later, the NCOIL model. New York does not follow the NAIC model at all. Washington, D.C., is the NAIC but without the five-year ban on assignment. Indiana has rejected every single NAIC provision and has replaced it with anti-STOLI provisions. That's what we're doing, that's what I'm doing, is if you don't want this to be happening, let's just say that it's illegal. LB853 does not do that. Maine, the Joint Commission on Insurance and Financial Services voted unanimously to strip all of the insurance commissioners' provisions. Iowa, their insurance commissioners' model act was killed. Connecticut rejected NAIC in favor of NCOIL. North Carolina, the NAIC was pulled from further discussion. We talked about Kansas. Ohio was amended in the house committee to add the anti-STOLI provisions. Again, that's what I'm doing in AM2114. Utah held interim hearings on the insurance commissioners' model and elected not to introduce it in 2008. Vermont used the NAIC model but had the anti-STOLI provisions from NCOIL. So that gives you a rough idea of what some of the other states are doing. And I have...if you want to look at the list, I'd be glad to show it to you. So right now what we're just doing is saying that this is a consumer protection issue and LB853 does not do that. I am not trying to derail it. I'm not trying to get rid of it. I'm trying to make LB853 better so that it does provide consumer protection. Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. You have heard the closing on AM2616 offered to AM2114. The question is, shall AM2616 be adopted? All those...there's been a request for a call of the house. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB853]

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CLERK: 24 ayes, 0 nays to place the house under call. [LB853]

SENATOR LANGEMEIER: The house is under call. Senators, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator White, would you please check in? Senator Christensen, please check in? Senator Gay, the house is under call. Please return to the Chamber. Senator Hudkins, when all members are present and accounted for, how do you wish to proceed? [LB853]

SENATOR HUDKINS: Roll call. [LB853]

SENATOR LANGEMEIER: Roll call vote in regular order? [LB853]

SENATOR HUDKINS: Yes. [LB853]

SENATOR LANGEMEIER: Senator Gay will be here momentarily. All members are present and accounted for. There has been a request for a roll call vote in regular order. The question is, shall AM2616 be adopted to AM2114? Mr. Clerk, please call the roll. [LB853]

CLERK: (Roll call vote taken, Legislative Journal pages 1200-1201.) 5 ayes, 35 nays on the amendment to the amendment. [LB853]

SENATOR LANGEMEIER: AM2616 is not adopted. With that, I raise the call. Items for the record, Mr. Clerk. [LB853]

CLERK: Mr. President, a communication from the Governor to the Clerk. (Read re LB797, LB822, and LB1096.) Study resolutions: LR337, Senator Johnson, LR338, LR339; Senator Gay, LR340; Senator Rogert, LR341; Senator Johnson, LR342; Senator Erdman, LR343. Committee on Judiciary, chaired by Senator Ashford, reports LB847 to General File and LB868 to General File. Amendments to be printed: Senator Loudon to LB986; Senator White to LB1147. (Legislative Journal pages 1201-1209.) [LB797 LB822 LB1096 LR337 LR338 LR339 LR340 LR341 LR342 LR343 LB847 LB868 LB986 LB1147]

Mr. President, I now have an amendment to the committee amendments from Senator Hudkins, AM2618. (Legislative Journal page 1209.) [LB853]

SENATOR LANGEMEIER: Senator Hudkins, you are recognized to open on AM2618. [LB853]

SENATOR HUDKINS: Thank you, Mr. President and members. Just a quick comment on that last amendment, we've been told that STOLI should be illegal and we've also

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been told that that isn't working. So why wouldn't we have supported an increase in penalty? We didn't, so that's all right. Now this amendment, AM2618, simply says that "Soliciting, marketing, or otherwise promoting the purchase of an insurance policy for the sole purpose of or with the primary emphasis on entering into a viatical settlement contract." So what it does, it just prohibits the STOLIs. In the Viatical Settlements Act, on page 2 of the amendment, AM2114, there is a definition of what the Viatical Settlement Act or behavior is. And all that this amendment does is say that you can't do that. And that's easy enough to understand. That's the purpose of it. We want to define STOLI. We want to prohibit it as a fraudulent Viatical Settlement Act. We want to prohibit trust-initiated STOLIs. We want to prohibit premium-financed STOLI schemes, including ensuring that such STOLI policies can't be the subject of a future viatical settlement contract. It prohibits agreements to sell a policy even before the policy was issued. And it provides consumer disclosure related to financing and requiring applicants of premium financing to affirm that the loan is not a STOLI scheme by asking specific questions. It also protects the consumer property rights by requiring the insurance carriers to disclose the option of a settlement as an alternative to the surrender or lapse of a policy. And it prohibits insurers from interfering with the right to assign a policy, including interfering with insurance producers who might advise and assist a policyowner or otherwise interfere with a viatical settlement. So basically all this amendment does is prohibit the STOLIs. I can't make it any clearer than that. Thank you, Mr. President. [LB853]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. You have heard the opening on AM2618 offered to AM2114. Those wishing to speak: we have Senator Cornett, Chambers, Pahls. Now we have Senator Chambers and Pahls. Senator Chambers, you are recognized. [LB853]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. I'd like to ask Senator Pahls a question. [LB853]

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

SENATOR PAHLS: Yes, I will. [LB853]

SENATOR CHAMBERS: Senator Pahls, do you favor this amendment or are you opposed to it? [LB853]

SENATOR PAHLS: May I elaborate? [LB853]

SENATOR CHAMBERS: Say it again? [LB853]

SENATOR PAHLS: May I elaborate my position? [LB853]

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SENATOR CHAMBERS: And then you'll give me some of your time, if needed? [LB853]

SENATOR PAHLS: Yes, I will. [LB853]

SENATOR CHAMBERS: Okay, go ahead. [LB853]

SENATOR PAHLS: Yes. This allows me to jump in ahead of you. No, that's a little humor there. What I have done--again, we just received this amendment just not too long ago so we did a fast look through our bill. And basically, I believe if you look on page 59, for the next 6 or 7 pages is very detailed about advertising. And I think the intent of this...of Senator Hudkins' amendment, you could probably find parts of it in there. Again, I'm trying to say, this is an attempt to help her amendment, which I don't agree with. [LB853]

SENATOR CHAMBERS: Okay. Now you said if you look... [LB853]

SENATOR PAHLS: On page... [LB853]

SENATOR CHAMBERS: ...okay, and I'm going to add to it, and rummage through several pages of the original bill you might find parts of what she's talking about in this concentrated way in her amendment. True? [LB853]

SENATOR PAHLS: Right. I... [LB853]

SENATOR CHAMBERS: Okay. Now if you went to the Valley of the Dry Bones, and Senator Carlson is familiar with this, where the foot bone is connected to the ankle bone, to the leg bone, to the knee bone, to the thigh bone, to the pelvis bone, to the backbone and so forth... [LB853]

SENATOR PAHLS: To the toe. [LB853]

SENATOR CHAMBERS: ...there's no...(Laughter) I understand that; they don't. If...there is no guarantee that every bone that's going to be necessary to put that "skelekon" together--and I put the K in the middle, "skelekon"--to put that "skelekon" together, there's no guarantee that every bone necessary to that purpose will be found, even among all those bones in the Valley of the Dry Bones. Would you agree? [LB853]

SENATOR PAHLS: I agree. [LB853]

SENATOR CHAMBERS: So would you rather have a full-fledged "skelekon," if that's what you're trying to put together? (Inaudible.) [LB853]

SENATOR PAHLS: I don't want this skeleton. [LB853]

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SENATOR CHAMBERS: Hmm? [LB853]

SENATOR PAHLS: I don't want this skeleton. [LB853]

SENATOR CHAMBERS: But if you did, it would be best to have it, right? [LB853]

SENATOR PAHLS: I don't anticipate having it. [LB853]

SENATOR CHAMBERS: Okay, thank you. I'd like to ask Senator Carlson a question or two. [LB853]

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

SENATOR CARLSON: Yes, I will. [LB853]

SENATOR CHAMBERS: Senator Carlson, you have been involved in the insurance business, right? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: Would you say it's a part of the upper world or the underworld? [LB853]

SENATOR CARLSON: Oh, it's a part of the upper world. [LB853]

SENATOR CHAMBERS: Okay. Now the insurance industry would rather that I lapse before...that my policy lapses before I lapse. Isn't that true? That's what they'd rather. [LB853]

SENATOR CARLSON: No, I wouldn't agree with that. [LB853]

SENATOR CHAMBERS: They want to pay those benefits to me. You're saying that? [LB853]

SENATOR CARLSON: And they want those premiums paid every year, too. [LB853]

SENATOR CHAMBERS: But they want to pay those benefits to me? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: You don't own an insurance company, do you, Senator Carlson? [LB853]

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

SENATOR CHAMBERS: I can understand why not. Senator Carlson, as between Jesse James and the Daltons, which do you find to be the more abhorrent? [LB853]

SENATOR CARLSON: Probably Jesse James. [LB853]

SENATOR CHAMBERS: Tell me why. [LB853]

SENATOR CARLSON: I don't know why. I just had to pick one of the two. [LB853]

SENATOR CHAMBERS: Well, you know Jesse James was in banking and worked on the railroad. (Laughter) What do you have against bankers and railroad operators? [LB853]

SENATOR CARLSON: I have nothing, as long as they're within the law. [LB853]

SENATOR CHAMBERS: All right. Now what is wrong with the Daltons so that you didn't like them? Do you know anything about them? [LB853]

SENATOR CARLSON: Not a whole lot. They're just a couple of crooks. [LB853]

SENATOR CHAMBERS: Do you know anything about their parents? Do you know anything about their parents? [LB853]

SENATOR CARLSON: No. [LB853]

SENATOR CHAMBERS: Do you think their parents would have wanted them to be good boys? [LB853]

SENATOR CARLSON: I would hope so. [LB853]

SENATOR CHAMBERS: Do you think that when they were growing up their parents might have tried to get them to sing as a quartet and they tried and they couldn't make a go of it, and because their parents had them trying to sing when they couldn't the only way they could make a living was to do what they... [LB853]

SENATOR LANGEMEIER: One minute. [LB853]

SENATOR CHAMBERS: ...wound up doing, in other words, a form of entrepreneurship? You still don't like the Daltons, huh? [LB853]

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

SENATOR CHAMBERS: All right. In a fight between John Dillinger and Al Capone, which one do you hope wins? [LB853]

SENATOR CARLSON: Dillinger. [LB853]

SENATOR CHAMBERS: Why? [LB853]

SENATOR CARLSON: As abhorrent as his lifestyle was, it's probably better than the other guy. [LB853]

SENATOR CHAMBERS: But Al Capone only got convicted of tax evasion. [LB853]

SENATOR CARLSON: That's right. [LB853]

SENATOR CHAMBERS: John Dillinger was a murderer--cold-blooded, heartless, cruel murderer. And you're more in favor of the murderer winning, right? [LB853]

SENATOR CARLSON: Yeah, I don't like what Capone died of. [LB853]

SENATOR CHAMBERS: All right. Now if Bonnie and Clyde were fighting Rodan and Godzilla, which team would you want to win? [LB853]

SENATOR CARLSON: Probably Godzilla. [LB853]

SENATOR CHAMBERS: Because of the first name, right? God? [LB853]

SENATOR CARLSON: There we go, yeah. (Laugh) [LB853]

SENATOR CHAMBERS: Okay. Thank you, Senator Carlson. Now you all see whose leadership you're following on this bill? Members of the Legislature, in reality we can go around... [LB853]

SENATOR LANGEMEIER: Time. [LB853]

SENATOR CHAMBERS: ...and around on this bill...did you say time, Mr. President? [LB853]

SENATOR LANGEMEIER: Time. [LB853]

SENATOR CHAMBERS: All right. [LB853]

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

SENATOR PAHLS: Mr. President, members of the body, Senator Chambers, I will...some of the time I robbed from you I will donate back. Oh, you don't need it? Oh, okay. Well, thank you. Again, the point I'm trying to get across, this robs LB853 so I would say vote no. Thank you. [LB853]

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

SENATOR CHAMBERS: Mr. President, members of the Legislature, I don't want Senator Pahls to expire on us or lapse this afternoon. He sounded like he was on his last legs, unless he's seeking sympathy. I could scarcely hear him and I was pulling for him to get through with whatever he was going to say, and I still didn't get the last of it. It just kind of trailed on away. And I looked around. He is still with us. Senator Pahls, let me ask you this question, if you'll answer. [LB853]

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

SENATOR PAHLS: Yes, I will. [LB853]

SENATOR CHAMBERS: If this bill did not pass and things continued as they are right now, would you agree that these viatical arrangements, which this bill purports to be aimed against, are not a big thing in Nebraska, are they? [LB853]

SENATOR PAHLS: Perhaps in the state of Nebraska, at the moment, they are not. We're trying to be proactive. But through the literature that I have read, these--and I think we talked about it the last time--these death bonds, things like...this is the next big adventure on Wall Street. [LB853]

SENATOR CHAMBERS: But the fact is, this is anticipatory legislation rather than remedial legislation. Isn't that correct? And here's what I mean by that. If there is an existing malady, the legislation is designed to remedy it. If you're regarding something a great way off and it might come but it might not, then you're anticipating a problem that may arise and you're trying to do something in case it gets here. This would fall into the anticipatory category, wouldn't it? [LB853]

SENATOR PAHLS: Yes, and that's a very good educational term. We use that a lot. But I was just reading the paper and it appears that we have ten, plus an additional four, life settlement corporations are applying to do work in the state of Nebraska. Now I do not know what the number was, happened to be in the past. But apparently there were ten, four applying, that means there is some energy being produced. [LB853]

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SENATOR CHAMBERS: Senator, this Viatical Act that's currently on the books has not been there very many years, has it? [LB853]

SENATOR PAHLS: No. [LB853]

SENATOR CHAMBERS: Did that act legalize viaticals in Nebraska? [LB853]

SENATOR PAHLS: No. [LB853]

SENATOR CHAMBERS: Was it for the purpose of regulating something that might be undertaken in Nebraska? [LB853]

SENATOR PAHLS: Yes. My staff said regulatory. [LB853]

SENATOR CHAMBERS: So even that act was not put in place because there was a great amount of corruption, fraud, or misuse of life insurance policy purchasers? [LB853]

SENATOR PAHLS: That is my understanding, because I think the birth in the state of Nebraska was 2001 and, as I recall, we did touch on viatical in part of our insurance package last year. So it is a continuing...it's evolving. And I think by what's out there, it looks like this is not the end of what's going to happen. [LB853]

SENATOR CHAMBERS: But the insurance companies claim that eventually, if worst comes to worst, rates may rise on policies. [LB853]

SENATOR PAHLS: That is a possibility, because this all started basically, what, 20, 25 years ago when the AIDS epidemic...that's why this sort of came about. They found out that with the new drugs people were living longer, so they had to morph into something else. And I think that's what they're morphing into. [LB853]

SENATOR CHAMBERS: The second thing...that's where morphine came from, you said? [LB853]

SENATOR PAHLS: Morphing. [LB853]

SENATOR CHAMBERS: Oh, okay. (Laughter) [LB853]

SENATOR SCHIMEK PRESIDING [LB853]

SENATOR SCHIMEK: One minute. [LB853]

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SENATOR CHAMBERS: So the second scare tactic used by the insurance industry is that if the viatical industry takes hold, there may come a day when insurance benefits are taxed. They offer that as a second scare tactic, right? [LB853]

SENATOR PAHLS: That...it's my understanding at the federal level they are taking a look at that because right now, again, the insurance, it's not taxed. I have a feeling if this continues to grow, you know how the government is always looking for the additional tax. [LB853]

SENATOR CHAMBERS: But when Congress is working on something, they move with the speed of a glacier. If they're thinking seriously about something, maybe half that speed. But if all they're doing is looking at something, they'll never get to it. Would you agree with that in general? [LB853]

SENATOR PAHLS: If you look at what's happening to the glaciers right now, they're moving pretty darn fast. [LB853]

SENATOR CHAMBERS: (Laugh) Irrelevant, but thank you. [LB853]

SENATOR SCHIMEK: Time. Thank you, Senators Chambers and Pahls. Senator Chambers, your light is next. [LB853]

SENATOR CHAMBERS: Madam President, Senator Pahls and his minions know that we're going to be on this bill for a time. He knows it, so he's getting into the spirit. He's confident that Mutual of Omaha has such a hold on enough of the senators in this body that they will vote what Mutual of Omaha wants without even realizing that they are hurting the policyholder. Mutual of Omaha has never done anything to help policyholders. If in taking care of their investors, if in being able to assure that a large enough number of people's policies will lapse, if they're making enough money on their extra insurance or outside insurance area investments, enough money will come in, then something they do may incidentally redound to the benefit of the policyholders. Their aim is to market, to ballyhoo, to promote their policies in such a way that you feel like you've got a no-lose situation. I'd like to ask Senator Pahls a question. [LB853]

SENATOR SCHIMEK: Senator Pahls, would you yield to a question? [LB853]

SENATOR PAHLS: Yes, I would. [LB853]

SENATOR CHAMBERS: Senator Pahls, what percentage of life insurance policies lapse during the first two years based on Mutual of Omaha figures? What percentage, not the number. [LB853]

SENATOR PAHLS: I do not know that. I could get that for you. [LB853]

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SENATOR CHAMBERS: You don't know? He doesn't know. [LB853]

SENATOR PAHLS: One of many things. [LB853]

SENATOR CHAMBERS: Senator Pahls, what insurance company other than Mutual that you know of is in favor of this bill? [LB853]

SENATOR PAHLS: To be honest with you...well, of course, they have Pacific Life, the one that you're very familiar with. [LB853]

SENATOR CHAMBERS: Are you speaking in tongues? Because you're... [LB853]

SENATOR PAHLS: What I'm trying to say is, I really have not...not too many insurance companies have contacted me on this. I've listened to the director of Insurance, Ann Frohman. That's where I'm getting a lot of my information. [LB853]

SENATOR CHAMBERS: But you would agree that these viaticals are not doing anything illegal, wouldn't you? [LB853]

SENATOR PAHLS: That's a hard... [LB853]

SENATOR CHAMBERS: Well, if they're not...if what they're doing is illegal, you don't need a law. You've already got a law to take care of it. [LB853]

SENATOR PAHLS: Yeah. Well... [LB853]

SENATOR CHAMBERS: You're trying to make that which is legal illegal, isn't that true? [LB853]

SENATOR PAHLS: It's my understanding, if they are having people sign contracts or policies and they are not being truthful, they're creating a fraud. [LB853]

SENATOR CHAMBERS: Is that legal or is that illegal? Is it legal to do that right now? Hmm? [LB853]

SENATOR PAHLS: I'm thinking. [LB853]

SENATOR CHAMBERS: Okay. [LB853]

SENATOR PAHLS: And I'm looking. [LB853]

SENATOR CHAMBERS: Put your thinking cap on. (Laugh) You're not sure that it's

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illegal? [LB853]

SENATOR PAHLS: Yeah, I'm getting some advice here. If they're not telling the truth on their application, yes, they would be...that would be illegal. [LB853]

SENATOR CHAMBERS: So you don't need this law for that, do you? That's already taken care of, right? If what they're doing is illegal, what do we need this law for? My colleagues aren't listening. When I say knots on logs, I apologize. I'm sorry, mea culpa to every log that ever existed. A log has more sense than what's being shown here. If it's already illegal, what do you need the law for? And if it's legal, why do you want to knock out the competition for Mutual of Omaha? You haven't been given a reason to have this bill other than that you know that Mutual wants it. Maybe the only thing you know about Mutual is... [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR CHAMBERS: ...what you saw them do on their Wild Kingdom programs. That doesn't make them good citizens, Senator Carlson. When they come here trying to mislead the senators, they're not doing a good thing. But it's not an unusual thing. Our job is to be informed and not be misled. But people are being misled or else you're going to have to attack those whose job it is to enforce the criminal laws because they're allowing criminal activity in the insurance industry and are not enforcing the laws. But they're not going after criminal conduct. They're going after competitors. That's what they're going for. And this is not a big problem in Nebraska. [LB853]

SENATOR SCHIMEK: Time. [LB853]

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

SENATOR SCHIMEK: Thank you, Senator Chambers. We are on discussion of AM2618 to AM2114. Senator Chambers, your light is next, but I believe you've already spoken three times. I'm sorry, I forgot to mention it to you. Senator Hudkins, your light is next. [LB853]

SENATOR HUDKINS: Thank you, Madam President. I would give my time to Senator Chambers. [LB853]

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

SENATOR CHAMBERS: Thank you, Senator Hudkins. Thank you, Madam President. Members of the Legislature, insurance law is complicated. You are expected to consider this issue to be so complex that you cannot understand it. You walk off the field immediately and you hope that it's what you're told that it is. This issue is not

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complicated. This is one of those which is not complicated. This is one where the insurance companies, on the one hand, don't want competition and another group of insurance people, hangers-on, want to compete for the business that's out there. Understand this: whoever owns the policy at the time that the insured croaks is going to get the benefits. They will be the same regardless of who holds the title to the policy. What the insurance companies don't like is the fact that, if this is done, policies are not going to lapse. The insurance companies are going to be deprived of that money they count on getting when policies lapse. That's a part of the insurance equation. They know that people are going to buy policies and they know those people may not be able to afford that amount of insurance when they buy the policy. So they're going to get what they can from that person until the person can no longer pay the premiums and down comes the hammer and the insurance company pockets all of that money and the one paying the premiums realizes nothing. But now, now we have modern-day Robin Hoods, or hood robins. They're not going to rob the poor, as the insurance companies are doing, or rob the rich. They are saying if you entered this commercial transaction--and that's what it is, it's a commercial transaction where morality has nothing to do with anything--let the buyer beware. You have people who will change their mind about this policy and they cannot continue paying the premiums. They don't want to pay the premiums. So somebody is waiting and they say, we will give you money that otherwise you're not going to have, because when your policy lapses you get nothing. We're going to give you something. And you say, there's no way for me to get something for nothing; what do you get out of it? This policy is for \$100,000 when you croak. We're going to give you less than that amount, whatever we agree that it is. And what I get is the difference between what I give you and the face value of the policy. Now if something comes up and the whole thing falls apart, it's on me. I'm the gambler. You get that money I gave you and you keep it. You're home free. Now the dispute is between me and these insurance people and they can look after their interests. They can control legislatures and they're demonstrating it here today. And you all feel sorry for Mutual of Omaha because some upstart companies are going to compete with them and make it possible for an insurance policyholder to get something from that policy whereas under the current system he or she may get nothing. [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR CHAMBERS: When has nothing ever been better than something? Who are you interested in helping? These insurance companies are not going to raise their rates because of these viaticals. And if they do, they will help the viaticals because more people might be in danger of their policy lapsing, so they will run to the viatical and say let me sell you this policy. And they say, you got it. It will be like Deal or No Deal. They'll say right away, deal. And the insurance company would be there saying, no, no, don't take the deal; no, no, don't take the deal; maybe you'll die before your policy lapses. Well, what kind of encouragement is that? I don't want to just wait for the rainy day. I want to live until I die. And when I die, I don't want anybody to get anything. But if the

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viaticals were smart enough, let them have it. Thank you, Madam President. [LB853]

SENATOR SCHIMEK: Thank you, Senator Chambers. Senator Howard, you are recognized to speak. [LB853]

SENATOR HOWARD: Thank you, Madam President and members of the body. In the words of Senator Stuthman, I have some concerns. I'd like to ask Senator Pahls some questions, if he would allow me. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR HOWARD: Senator Pahls, I find this very interesting this afternoon. And as a person that doesn't have a background in insurance information, I really learned a lot. And the more I learn, the more questions come to my mind. Can you tell me what the percentage of policies that people take out that just default, they stop paying or for whatever reason they can't? Is that high? Is there a high number of this occurring? [LB853]

SENATOR PAHLS: To be honest with you, that's a question similar to what Senator Chambers. I can find that information for you but I don't keep that kind of data close at hand. Again, what is it that you want and I'll see if I can't find it. [LB853]

SENATOR HOWARD: Well, you see these advertisements on television: I took out this policy and I'm so glad I did, on my husband, because he has died and it's such a help. Or when my children were small they were always these Gerber advertisements that were coming in the mail, you can take out life insurance on your child for pennies a day. And I'm wondering, do people...is it a high percentage of people that take these initial offers and then over the course of time, whether it be weeks or years, they don't keep up with the premiums? They simply drop this. And what's the figure on that? I think that enters into this whole big picture. [LB853]

SENATOR PAHLS: Right now, I have one of my staff members going out to see if we can't find that information. That kind of information, I'll be honest with you, I just do not have at my fingertips. [LB853]

SENATOR HOWARD: Well, maybe you can tell me this to help me better understand. When people stop paying the premiums on a policy, they're out of luck, aren't they? I mean, they get nothing out of this. [LB853]

SENATOR PAHLS: I would assume if they have any cash value in that policy, they could, you know, they could take that and I would agree that it's not as high as you or I would like it to be. This is a business. [LB853]

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SENATOR HOWARD: Well, if they've only...I'm sorry, excuse me. [LB853]

SENATOR PAHLS: No. Go ahead. [LB853]

SENATOR HOWARD: If they've only paid on it for a few years and there isn't any cash value invested, but say they've paid semiannually \$125, there would still be money that they have paid in to the insurance company, and then that benefits the insurance company. Am I correct? [LB853]

SENATOR PAHLS: That is correct, but I'm assuming, let's say they had it for three years, they did have insurance. They were covered if something would have happened to them. So it wasn't like they're paying the money out and they're not getting something in return. They did get a...you know, they were protected for that period of time, so that's of some value. [LB853]

SENATOR HOWARD: So for that period of time they kind of bet against themselves. (Laugh) They took the bet they wouldn't make it. [LB853]

SENATOR PAHLS: I'm sorry. I was talking... [LB853]

SENATOR HOWARD: They...I mean, I've heard this said before that they kind of bet against themselves that they wouldn't make it, because the benefit is paid if you die. [LB853]

SENATOR PAHLS: Yeah. [LB853]

SENATOR HOWARD: I would like that information on what percentage of these policies go into a state of being lapsed and no one gets any benefit except the insurance company that originally issued that. [LB853]

SENATOR PAHLS: Right. And part of the business model, whether we like it or not, if insurance lapses, that dollar I would assume to some degree would keep the premiums for other people, it would keep them down. [LB853]

SENATOR HOWARD: That is what I appreciate you, you're a very positive person. (Laugh) But if you could get me that information, I would like to see that. I think that would... [LB853]

SENATOR PAHLS: Okay, I will do that. I promise you... [LB853]

SENATOR HOWARD: ...that would... [LB853]

SENATOR PAHLS: Right now we are trying to get that for you. [LB853]

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SENATOR HOWARD: ...help me, and possibly others, better understand the entire picture. Thank you. [LB853]

SENATOR SCHIMEK: Thank you, Senator Howard and Senator Pahls. We are debating AM2618. Seeing no further lights, Senator Hudkins, would you like to close on your amendment? [LB853]

SENATOR HUDKINS: Thank you, Madam President and members of the body. This is a simple amendment. It just outlaws STOLIs, the stranger-originated life insurance. Thank you. [LB853]

SENATOR SCHIMEK: Thank you, Senator Hudkins. You have heard the closing on AM2618 to AM2114. The question is the adoption of the amendment. All in favor...oh, Senator Hudkins. [LB853]

SENATOR HUDKINS: I would like to ask for a call of the house, please. [LB853]

SENATOR SCHIMEK: Okay. 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. Have you all voted who wish to vote? Record, Mr. Clerk. [LB853]

CLERK: 21 ayes, 0 nays to place the house under call. [LB853]

SENATOR SCHIMEK: The house is under call. Senators, please record your presence. All other senators please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. The house is under call. Will Senators Johnson, Dubas, Wallman, Lautenbaugh, McDonald, and Ashford please check in. The house is under call. The house is under call. Would all members please return to the Chamber. Senator Dubas, Senator Wallman, the house is under call. Senator Hudkins, we are all present and accounted for. Thank you. The question is...there has been a request for a roll call vote on the adoption of the amendment. Mr. Clerk. [LB853]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1210.) The vote is 8 ayes, 27 nays, Madam President. [LB853]

SENATOR SCHIMEK: The amendment is not adopted and the call is raised. Mr. Clerk. [LB853]

ASSISTANT CLERK: Madam President, I have nothing further pending to AM2114. [LB853]

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SENATOR SCHIMEK: Okay. So we are back to the discussion of AM2114. Is there any discussion? Seeing none, Senator Hudkins, would you like to close on AM2114...oh, Senator Chambers, I'm sorry. Your light is on; you may speak. [LB853]

SENATOR CHAMBERS: Thank you. Madam President, I was told I had spoken three, but that was on the last amendment... [LB853]

SENATOR SCHIMEK: That was on the amendment to the amendment. [LB853]

SENATOR CHAMBERS: Is this my third time on this one, so that I will know where I am? [LB853]

SENATOR SCHIMEK: Let me check. [LB853]

SENATOR CHAMBERS: Thank you. [LB853]

SENATOR SCHIMEK: I don't believe you have spoken at all on this, Senator. [LB853]

SENATOR CHAMBERS: Thank you. I appreciate that, Madam President, because I definitely intend to speak. Members of the Legislature, there were 35 votes against an amendment, then 27. It takes 33 for cloture. I don't know whether people are just not voting for whatever reason, but they didn't reach the 33 magic number. I don't know how many people actually intend to vote for this bill to go forward. I don't know how many will vote for cloture. But this bill is going to take some time, and I think it justifiably should. There was a question that I wanted to put to Senator Pahls but I may have let that page slip by me. But I will find it before we finish discussing this bill. Let me ask Senator Pahls a question, though, anyway. [LB853]

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

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: Senator Pahls, there are provisions in this bill, not the amendment we're talking about, which relate to the purchase of, I guess, a group policy... [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: ...and that's allowed. Isn't that true? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: Is that purchase subject to the two-year minimum rule?

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[LB853]

SENATOR PAHLS: What page are you on? Can you tell me that, Senator? [LB853]

SENATOR CHAMBERS: I didn't understand you. [LB853]

SENATOR PAHLS: Can you tell me which page you're on? [LB853]

SENATOR CHAMBERS: No, this is not from a page. I'm looking for the other question I wanted to ask you. But...well, I will ask you, do you know whether or not these group policies or master policies which cover a number of people can be purchased by another company? [LB853]

SENATOR PAHLS: You know, I do not think so. I think we are...you're referring to an article that was in the Los Angeles Times (inaudible). [LB853]

SENATOR CHAMBERS: No, I'm referring to language that was in this bill. [LB853]

SENATOR PAHLS: You know, to be honest with you, I read the bill several times but I just can't...it's not hitting the brain cells. [LB853]

SENATOR CHAMBERS: Well, we've been on this bill and it's the kind where a lot of things in it are not going to be committed to memory, so I'm not faulting you for that, and I should not have allowed my pen to fall out of the book where it was marking a page. But while I'm looking for that, I will make comments about the bill itself as I've been doing. Senator Pahls, the last vote was against an amendment which stated in as a forthright a manner as possible that certain practices would be unlawful. You said that if you looked through this bill you may find provisions that...pieces of them, anyway...that would have done what Senator Hudkins' amendment was aiming at. Do you remember saying that? [LB853]

SENATOR PAHLS: Yes. Yes, if you're looking...if you're talking about...I'm looking at AM2616? [LB853]

SENATOR CHAMBERS: The one we just voted down. Or was it the one before? [LB853]

SENATOR PAHLS: I think it was the one before that I was referring to. [LB853]

SENATOR CHAMBERS: Okay. [LB853]

SENATOR PAHLS: AM2616, right? [LB853]

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SENATOR CHAMBERS: Yes. [LB853]

SENATOR PAHLS: And again... [LB853]

SENATOR CHAMBERS: And you had said that if you look through the bill there are places where you could find things related to advertising--I don't remember everything you said--which would be covered...which would cover what she was trying to do in her amendment. Do you remember saying that? [LB853]

SENATOR PAHLS: Yes. Yes, I do. [LB853]

SENATOR CHAMBERS: And have you reviewed what you were going to refer our attention to, to see if, in fact, it did cover as much as her amendment would have covered? [LB853]

SENATOR PAHLS: I'm trying to find the... [LB853]

SENATOR CHAMBERS: And on this I am not in a hurry, if it takes all my time. [LB853]

SENATOR PAHLS: Okay. Page 59. [LB853]

SENATOR CHAMBERS: Okay. [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR CHAMBERS: I'm on page 59. [LB853]

SENATOR PAHLS: Okay. What I am talking about as you read through this, this would...through constantly reading through all the sections, you...that would hopefully find the information that we are looking for. [LB853]

SENATOR CHAMBERS: But this says that you can't make some kind of guarantee. Hers would have made the attempt to market, promote, or do anything with it illegal. Her amendment went farther than your language on page 59. [LB853]

SENATOR PAHLS: Well, I think if you read...the point I'm trying to get across--I'm not doing a very good job of that--if you go through the total, read throughout the total section dealing with advertising, I think the intent is there. It would be not to the specification that Senator Hudkins' amendment was going towards, but I do believe that you could find the intent in there. [LB853]

SENATOR CHAMBERS: Okay, I'll accept that for now, because our time is up. Thank you, Madam President. [LB853]

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SENATOR SCHIMEK: Thank you, Senators Chambers and Pahls. Senator Hudkins, your light is next. [LB853]

SENATOR HUDKINS: Thank you, Madam President. As soon as I find my notes I'll be with you. Thank you, Madam President and members of the body. This amendment will provide freedom of choice on the part of the consumer, and I think that's what we're here to do, is to protect the individual rights of the consumer when it comes to making a decision on what to do with a life insurance policy. Let's say you're not going to be able to afford these premiums any longer. Should you just let the policy lapse? Well, if you do that, then whatever money that you have paid in premiums so far is just money down a rathole. And many policies do lapse within five years of purchase. Or should you cash it in? The cash value versus the premiums that you have paid is very low if you do not have a competitive viatical market. Is there a secondary market that will pay more for the policy than the insurer will in making a cash settlement? Yes, and those are the companies that deal in viatical settlements. I like to liken what this bill is doing...some of you will remember that five years ago, in fact it was five years ago two weeks ago, I was diagnosed with breast cancer. After a biopsy, it was decided that I need to have surgery. It was minor surgery and everything was fine after the surgery. After the surgery, when the incision healed, I was scheduled for radiation. Now, radiation is a very precise treatment, whereas chemotherapy is put into your body either with a fusaport, whatever, however; I did not have to have that. That is going throughout your whole body. And radiation is a very precise, almost like a laser beam. You are positioned in a plastic model that has been made just for your body. They position you, make sure that everything matches. They wanted to do some tattooing to make sure that it would all match, and I said no, so they used Magic Markers. And since I had to go in everyday for radiation treatments for 36 days, those Magic Marker marks did not come off. So when they got me positioned in that model, in that mold, and got everything all lined up, they were able to shoot a radiation beam directly at the affected area. I would call that a rifle approach rather than a shotgun approach, which is what the chemotherapy would do. Now, this amendment is model legislation, just as the underlying bill is model legislation. I prefer my model because it's more like hunting with a rifle than a shotgun. This amendment will prohibit STOLIs but will not have the consequences... [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR HUDKINS: ...of destroying the secondary market of viatical settlement contracts. The underlying bill prohibits STOLIs, but it also negatively impacts the viatical settlement industry to the detriment of the consumer. This amendment is the rifle. The bill is the shotgun. Now, I prefer to shoot my meat with a rifle so that I ruin less of the meat, thus in this area of the law I would propose that it's better to use a rifle, which is AM2114, rather than the shotgun, LB853. It will still kill the varmint, STOLI, but it will

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leave the bald eagle, the viatical settlement contracts, alone. Thank you, Madam President. [LB853]

SENATOR SCHIMEK: Thank you, Senator Hudkins. Senator Pahls, you are recognized to speak. [LB853]

SENATOR PAHLS: Thank you, Madam President, members of the body. It is my understanding that this amendment basically is modeled after NCOIL, because we have basically two competing models here. And just let me take a look at some of the aspects or some of the components of this amendment. What I did is I asked the Department of Insurance and Bill Marienau on my staff to take a look and see where they could find NCOIL and maybe where it could be maybe a little bit deceptive. And this is some of the things that they came up with. In AM2114, it includes material that does not appear in any NCOIL act. Give you an example. On page 16, line 19, it requires insurers to inform the insured that viatical settlements are an available alternative to insured over 60 or terminally or chronically ill who seek to surrender requests, etcetera. Also on page 31, line 24, prohibits a person from restricting an insurance producer from involvement in a contract, charge different rates...on and on. I'm not going to read the total thing. On page 17, it includes exemptions to the two-year prohibition that does not appear in the NCOIL act. Here's some: page 18, line 7, dealing with charitable organizations; page 18, line 23, dealing with the viators with the insured employee at the time of the policy; page 19, line 5, deals with the experience significant decrease in income, cannot pay premiums. Does not include all the material which is included in the act, NCOIL act. 13(a)(vi), prohibits common control over brokers and providers. Does not include 9(a)(xv), requires that the provider disclose to the insurer that a broker represents, etcetera. Does not include 9(a)(xii) dealing with requiring providers and brokers to print separate sign fraud warnings, etcetera. To me, this does not in good faith include a lot of the NCOIL, and I think it...if you look at it, it probably is overly partial to STOLI. And I guess the people who are writing some of these amendments, you understand what side they're representing. I mean, a lot of money is coming into the state. Here's...we really feel like a lot of it does not come from the NCOIL model. On pages 5 and 6, and on page 8 and on page 26, to the best (inaudible) the new language is only part from NCOIL. On pages 14-17, the new language in Section 2 is not from the model act at all. And on pages 31-32, the new language is not from the NCOIL model act at all. These are some of the areas that my staff and the Department of Insurance found. I'm sure there are others. The one reason why I'm going to ask you to vote red on this, because the amendments are 32 pages of one thing and another, but hiding in the middle of it, on page 17-19, is actually what they want to do. They want to remove what we think is important dealing with the two- and the five-year concept. And to me, that's what this...that's the main thing. Another thing I would like to point out, that I believe that this is a combination of a number of different people working on these amendments. The one thing about whether you agree or disagree... [LB853]

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SENATOR SCHIMEK: One minute. [LB853]

SENATOR PAHLS: ...whether you agree or disagree with the NAIC model, that was...has been worked on by our Department of Insurance, over 50 department of insurance directors, and a few more if you deal with the territories. So this is not something that my staff and I sat down and we created. This is not a local homegrown piece of legislation. This was done over the summertime. A number of people were at the table, life settlement people, insurance people. Not every one got what they wanted. So this is not something that just appeared. And the interesting thing about this, none of these amendments brought to us at the hearing...not too much of this was discussed at the general... [LB853]

SENATOR SCHIMEK: Time. [LB853]

SENATOR PAHLS: Thank you. [LB853]

SENATOR SCHIMEK: Thank you, Senator Pahls. The next speakers are Senators Chambers, Carlson, Janssen, and Hudkins. Senator Chambers, you're next. [LB853]

SENATOR CHAMBERS: Thank you, Madam President. Members of the Legislature, I'm going to ask Senator Pahls some questions and I hope I can do this in a coherent, logical fashion. [LB853]

SENATOR SCHIMEK: Senator Pahls, would you yield to a question or two? [LB853]

SENATOR PAHLS: They may not be answered in that fashion but the answer will be attempted. [LB853]

SENATOR CHAMBERS: Thank you. Senator Pahls, after a person has had one of these policies for five years, may that person enter in the kind of viatical arrangement which would be illegal if it were entered into after two years? Let me ask it a different way. Currently, one of these arrangements can be entered into after the person has held a policy for two years. Is that correct? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: This bill, if adopted, would raise that amount, that number of years, to five years. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: Now, even though you don't have figures, more policies would be likely to lapse during a five-year period than during a two-year period. Do you think

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that sounds plausible? [LB853]

SENATOR PAHLS: I would agree with you. [LB853]

SENATOR CHAMBERS: So by raising the amount, the number of years, we are not outlawing the practice which is said to be so bad, because it can be done as it can be now. [LB853]

SENATOR PAHLS: But as a business model, that's why they are fighting it, because it is not profitable for the life settlement companies to try to get people to viaticate. [LB853]

SENATOR CHAMBERS: But it is more profitable for the insurance companies if you must hold a policy for five years, because there is a greater likelihood it will lapse during those five years than during the current two. And if a person cannot unload that policy which is going to lapse, it will lapse and the insurance company will get the money. Isn't that true, if it happens the way that I've described it? [LB853]

SENATOR PAHLS: But you must also keep in mind there are some exceptions that we had talked about... [LB853]

SENATOR CHAMBERS: I know, but they don't enter in, because obviously, outside of those exceptions, a lot of activity is occurring which the insurance companies fear, so we don't even have to talk about the exceptions. [LB853]

SENATOR PAHLS: But those are pretty powerful exceptions, I would... [LB853]

SENATOR CHAMBERS: But they're not adequate. They wouldn't help me. I'm not ill. I don't have a spouse that just died. I don't fit into any of them. But I want and need some money. I can't get it any other way. Why should I not be allowed to enter into one of these arrangements? [LB853]

SENATOR PAHLS: The insurance company, as I think about it, are going to sell policies to those individuals who happen to have a net worth. They're not going to be going out looking at somebody...I'm talking about the insurance companies. That would throw up a red flag if all of a sudden somebody wants to buy a million-dollar policy. Just like myself, there's no way, if they look at my assets, that I probably would qualify. (Inaudible)... [LB853]

SENATOR CHAMBERS: Then don't buy a million-dollar policy. [LB853]

SENATOR PAHLS: Pardon? [LB853]

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SENATOR CHAMBERS: Buy the policy that they will sell you, which you in turn can sell, and you can get advice from the company that's going to buy it from you. [LB853]

SENATOR PAHLS: But they will not...do you think an insurance company is going to sell a policy...? Number one, if you're not physically fit, they're not going to take a look at you. And if they look at your net worth, I think a red flag. They're not...I... [LB853]

SENATOR CHAMBERS: Senator Pahls, if that is a problem, then you don't need this bill, because if those are the policies... [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR CHAMBERS: ...the viaticals are interested in, and those policies are not going to be sold, then that puts the viaticals out of business. You all talk about this insurable interest, but the very fact that you have this bill goes against what you're saying. People are going to get these policies that you say the insurance companies are not going to sell them. They're selling them. The viaticals are purchasing them. But they don't want the competition. They want people to buy policies, and a certain percentage of those policies to lapse. And the bigger the policy, the higher the premium, and the better chance it's going to lapse. Senator Pahls, you've seen these advertisements where you can buy a month's insurance for a dollar, or whatever is it. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: Most of those people are not going to buy the insurance and they don't expect them to, but they get all those dollars. They're hustling the people. That's a business arrangement, not just for advertising. [LB853]

SENATOR SCHIMEK: Time. [LB853]

SENATOR CHAMBERS: They make money. Thank you, Madam President. [LB853]

SENATOR SCHIMEK: Thank you, Senators Chambers and Pahls. Senator Carlson, you are recognized to speak. [LB853]

SENATOR CARLSON: Madam President and members of the Legislature, I'd like to address a question to Senator Hudkins, if she would yield. [LB853]

SENATOR SCHIMEK: Senator Hudkins, would you yield? [LB853]

SENATOR HUDKINS: Yes. [LB853]

SENATOR CARLSON: Senator Hudkins, I just need to clarify, the last time you spoke I

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think that you made a statement that if you owned a policy or policies and couldn't pay the premium, then they may have to lapse because you wouldn't have a market for those policies. Is that what you said in your introductory remarks? [LB853]

SENATOR HUDKINS: I don't believe so. I said that I had a series of options. One was to let the policy lapse, or I could cash it in, or if there were a secondary market I could go to them. [LB853]

SENATOR CARLSON: And when you said if there were a secondary market, that was inferring that if LB853 passes there won't be a secondary market? Did you mean that? [LB853]

SENATOR HUDKINS: There won't be a secondary market. [LB853]

SENATOR CARLSON: There will be a secondary market. LB853 does not take away the secondary market. [LB853]

SENATOR HUDKINS: There is certainly a disincentive for there to be a secondary market industry. [LB853]

SENATOR CARLSON: There is not a disincentive at all if you take out a policy and pay for it for two years. The disincentive is for the STOLI people to come and entice you into applying for a policy, and then giving it over to them. And the LB853 would make that a five-year requirement instead of two, but it does not take away the secondary market. [LB853]

SENATOR HUDKINS: Senator Carlson, could you point that out in the bill, the language that says that? [LB853]

SENATOR CARLSON: As I stand here, I can't point that out in the bill. I certainly will find it. [LB853]

SENATOR HUDKINS: All right. Thank you. [LB853]

SENATOR CARLSON: But it does not take away the secondary market at all. It does not prevent Senator Chambers from making a deal with someone to take out a policy on himself, get paid for it up front. He simply has to wait five years before he can turn that over to a secondary individual. In the meantime, he's got five years of coverage whether he wants it or not. But he could be paid up front, so LB853 does not prevent that. Again, I would urge the body to vote down these various amendments and stay with the underlying bill, LB853. Thank you. [LB853]

SENATOR SCHIMEK: Thank you, Senators Carlson and Hudkins. Senator Janssen,

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the Chair recognizes you next. [LB853]

SENATOR JANSSEN: Thank you, Senator Schimek. I'm trying to grasp all of what little knowledge I can here about what we're talking about. And it seems as though the further ahead I go the more behind I get, so I think I will give the rest of my time to Senator Chambers. Maybe he can help me. [LB853]

SENATOR SCHIMEK: Thank you, Senator Janssen. Senator Chambers, you have 4 minutes and 36 seconds. [LB853]

SENATOR CHAMBERS: Thank you, Madam President. Thank you, Senator Janssen. And I'd like to ask Senator Carlson a question or two. [LB853]

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

SENATOR CARLSON: Yes. Yes, I will. [LB853]

SENATOR CHAMBERS: Senator Carlson, language doesn't mean the same thing to me as it does to you, if I understood you correctly. So let me rehearse what I think you said, that there's nothing to stop me from entering one of these arrangements, and some money will be made available to me and I can get it up front, but I must wait five years. That's what you said, isn't it? [LB853]

SENATOR CARLSON: No. [LB853]

SENATOR CHAMBERS: Under this bill? Then tell me what you said, because that's what I understood you to say. [LB853]

SENATOR CARLSON: Okay. It doesn't prevent you from making a deal with me, and I'm asking you to take out a policy on yourself and I'll pay you a thousand dollars to do it. I could pay you that right up front if I'm willing to do it. But you have to wait five years before turning that policy over to me. That doesn't prevent me from paying you up front. [LB853]

SENATOR CHAMBERS: And that's what you feel the bill is saying. [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: So then any amount that you would want to pay me for taking out a policy, you could do that under LB853. [LB853]

SENATOR CARLSON: I could do that. It's illegal, but it's... [LB853]

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SENATOR CHAMBERS: Is it illegal now... [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: ...or would it be illegal under LB853? [LB853]

SENATOR CARLSON: It's illegal now. [LB853]

SENATOR CHAMBERS: And why is it illegal? [LB853]

SENATOR CARLSON: Because that's what the law is, that on the application... [LB853]

SENATOR CHAMBERS: I have to wait two years, right? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: Okay. So even with the law as it is now without a change, I can't get paid up front legally, can I? [LB853]

SENATOR CARLSON: Not legally, no. [LB853]

SENATOR CHAMBERS: Right. And the point that I was making is that that is...I'm acknowledging that's what the situation is, and that is to benefit the insurance company, to my detriment. They know that I may let my policy lapse. They want to make me keep it for two years. Now, let me go a little further. Let's say that I fraudulently obtained the policy, and you purchase it from me, and I turn it over to you. And when time comes to get the benefits, it's shown that I purchased that insurance policy fraudulently. You don't get any benefits, do you? [LB853]

SENATOR CARLSON: I get the benefits right now, if it's after two years. Under LB853, I wouldn't get those benefits until five years. After five years, I'll get the benefit. [LB853]

SENATOR CHAMBERS: So even if I got it fraudulently, after two years the fraud is erased. Is that correct? [LB853]

SENATOR CARLSON: It kind of acts like the contestable period. [LB853]

SENATOR CHAMBERS: And that's the only period during which it's contestable, those two years, under the current law. Is that correct? [LB853]

SENATOR CARLSON: I believe it is. [LB853]

SENATOR CHAMBERS: Now, suppose I'm not even the person that I say I am. After

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two years, is that erased also? [LB853]

SENATOR CARLSON: I don't know that, Senator. If you apply for a policy under a false name, I've never had that occur, and I don't know. [LB853]

SENATOR CHAMBERS: Okay. I won't linger on that. Let's go with what LB853 would do. Would it prevent that company from giving me the money to buy the policy? If LB853 were in effect, could you give me the money to buy the policy... [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR CHAMBERS: ...and you pay all of the premiums and I never pay anything? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: That would be allowed under LB853? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: Could I get a loan from you for that purpose? [LB853]

SENATOR CARLSON: If you talk me into it, negotiate it. [LB853]

SENATOR CHAMBERS: And I wasn't going to pay you back. [LB853]

SENATOR CARLSON: If you negotiate it. [LB853]

SENATOR CHAMBERS: Have you seen language in the bill that would allow that? [LB853]

SENATOR CARLSON: No. [LB853]

SENATOR CHAMBERS: I thought I saw some language that might have restricted that, but maybe I read it incorrectly. [LB853]

SENATOR CARLSON: Well, we're talking about whether it's legal or illegal, and I'm answering this, we can do it if we don't get caught. [LB853]

SENATOR CHAMBERS: No, I'm talking about what legally can be done... [LB853]

SENATOR CARLSON: No, then it's not legal. No. [LB853]

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SENATOR CHAMBERS: That's the point I'm saying. It prevents me from doing something that would benefit me. LB853 will do that. It will cut out that opportunity for me to let you purchase a policy on me and pay me, and then you pay the premiums until such time as the policy kicks in. [LB853]

SENATOR SCHIMEK: Time. [LB853]

SENATOR CHAMBERS: I couldn't do that legally, could I? [LB853]

SENATOR SCHIMEK: Thank you, Senators Chambers and Carlson. Senator Hudkins, your light is next. [LB853]

SENATOR HUDKINS: Thank you, Madam President and members. Senator Pahls, I would like to ask you a question, please. [LB853]

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

SENATOR PAHLS: Yes. [LB853]

SENATOR HUDKINS: Senator Pahls, if we had a verbatim amendment that followed the NCOIL provisions, verbatim, word for word, would you support that? [LB853]

SENATOR PAHLS: No. [LB853]

SENATOR HUDKINS: Why? [LB853]

SENATOR PAHLS: The reason why, if you allow me to talk a little bit,... [LB853]

SENATOR HUDKINS: You have one minute. [LB853]

SENATOR PAHLS: ...in 2001, we started on this path. The...Tim Wagner, our past director, our current director, this is the path we're going. There are two separate paths. The director convinced the Banking Committee, all eight of us, that this would be the best path to travel. [LB853]

SENATOR HUDKINS: All right, Senator Pahls, thank you. So what you're saying is that you are going to eliminate another choice for the consumer. Didn't representatives of the viatical settlement industry meet with you and the Department of Insurance and legal counsel, and weren't these people told that you would not consider any amendments consistent with NCOIL? [LB853]

SENATOR PAHLS: Ah... [LB853]

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SENATOR HUDKINS: The answer is yes. That's what you had said to that group, that you would not consider any amendments that would... [LB853]

SENATOR PAHLS: You're not...no, you ask a question and then you answer it. [LB853]

SENATOR HUDKINS: That was a rhetorical question. Because you were hesitating, I didn't want you to have to say something that you weren't comfortable with, and so I answered the question for you. I appreciate your help on this. If we go back to AM2114, this is based on the NCOIL model legislation prohibiting the use of stranger-oriented life insurance. NCOIL is the voice of state legislators in Washington in the face of mounting federal initiatives to preempt state insurance regulations. The purpose of NCOIL is to help legislators make informed decisions on insurance issues. And if you have all been told that don't accept any of these amendments, then unfortunately you're not making an informed choice. If you listen to what Senator Pahls says, what Senator Carlson says, what I say, then you will have made an informed choice. This legislation is going to affect your constituents. NCOIL works to educate state legislators on current and perennial insurance issues, helps state legislators from different states interface effectively with each other, improve the quality of insurance regulation, assert the prerogative of legislators in making state policy when it comes to insurance, and speak out on congressional initiatives that attempt to encroach upon states in overseeing insurance. Many legislators active in NCOIL chair or are members of the committees responsible for insurance in their respective states. There are two provisions within the amendment that are not identical to the model legislation. The first one is located on page 16, and the other difference is Section 6 that begins on page 31. While neither of these comes directly from the NCOIL model legislation, both are good public policy. If you're looking...and I hope you're listening...if you are looking toward the protection of the consumer and not the insurance or viatical settlement industry, the language that starts on page 16 requires insurers... [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR HUDKINS: ...to notify insureds, under certain circumstances, that they have the option of entering into a viatical settlement contract instead of lapsing, surrendering, accelerating the death benefit, or assigning the policy in order to obtain necessary cash, or to stem expenses within their lives because of current financial problems or health problems. This portion of the amendment is consistent with NCOIL model legislation that is desired to prohibit preying on the elderly or the ill by individuals without an insurable interest, and yet giving those same people options regarding an asset of their estate to provide them with needed funds for living expenses or health-related costs. Thank you, Madam President. [LB853]

SENATOR SCHIMEK: Thank you, Senator Hudkins. Senator Chambers, you are recognized to speak. [LB853]

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SENATOR CHAMBERS: Madam President, members of the Legislature, Senator Carlson was confused in the questioning that I was putting forth, and I apparently didn't make it clear in terms of what would be considered legal and what would be considered prohibited under LB853. If his answers were correct, then there's no need for the bill at all, because the things that I would want to do would be allowed under LB853. But we know that they won't, because LB853 is designed to prohibit those kinds of activities from occurring. I'd like to ask Senator Carlson a question...I meant Senator Pahls. I'll ask Senator Pahls a question or two first. [LB853]

SENATOR SCHIMEK: Senator Pahls, would you yield to a question? [LB853]

SENATOR PAHLS: Yes, I will. [LB853]

SENATOR CHAMBERS: Senator Pahls, earlier, you said you weren't interested in putting a "skelekon" together, correct? [LB853]

SENATOR PAHLS: (Laugh) As long as it's not mine. [LB853]

SENATOR CHAMBERS: Okay. Would you turn to page 5? [LB853]

SENATOR PAHLS: In...? [LB853]

SENATOR CHAMBERS: The bill itself, LB853, the green copy. Have you got it? [LB853]

SENATOR PAHLS: I have it, page 5. [LB853]

SENATOR CHAMBERS: Okay. Look at line 18 and go to the last word on the line, and what does it say? [LB853]

SENATOR PAHLS: Toe. [LB853]

SENATOR CHAMBERS: No. [LB853]

SENATOR PAHLS: No, it says bone. [LB853]

SENATOR CHAMBERS: It says what? [LB853]

SENATOR PAHLS: Bone, b-o-n-e. [LB853]

SENATOR CHAMBERS: It says bone. This bill is interested in bones, isn't it, although you weren't. Now, let's go down to the next line, 19. [LB853]

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SENATOR PAHLS: But, Senator... [LB853]

SENATOR CHAMBERS: Wait, listen. Tell me if I'm reading this correctly: "a bone or joint of the skeletal structure." Is that in your bill? [LB853]

SENATOR PAHLS: No. No. We removed this into another bill because I was threatened that my...this bill wouldn't happen. [LB853]

SENATOR CHAMBERS: Are you on page 5? [LB853]

SENATOR PAHLS: I'm on page 5, but we... [LB853]

SENATOR CHAMBERS: In line 18, there is no line drawn through "bone." [LB853]

SENATOR PAHLS: Well... [LB853]

SENATOR CHAMBERS: That is existing language and it remains intact. [LB853]

SENATOR PAHLS: Okay. [LB853]

SENATOR CHAMBERS: Is that right? [LB853]

SENATOR PAHLS: But we removed this from the bill and put it into another bill. [LB853]

SENATOR CHAMBERS: Is this language...if LB853 is enacted into law, "bone" will be in LB853 when it's enacted into law, won't it, right here, in this line, won't it? [LB853]

SENATOR PAHLS: No. Because, if I'm not mistaken... [LB853]

SENATOR CHAMBERS: If you're not striking it, then it remains in the law, doesn't it? You're not striking it. [LB853]

SENATOR PAHLS: We did strike this because we removed several parts of this bill and put it into another bill because, I'm going to be honest with you, I was threatened that this bill would not make it through. And there are other parts of the insurance package that I wanted to make sure that it made it through in case this happened to stumble. [LB853]

SENATOR CHAMBERS: So then you have a committee amendment that strikes this language that I'm discussing. [LB853]

SENATOR PAHLS: Yes. [LB853]

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SENATOR CHAMBERS: Is that true? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: Okay. Where on the committee amendment? [LB853]

SENATOR PAHLS: I'll need some help here (inaudible). [LB853]

SENATOR CHAMBERS: It's just under the pink...it's just behind, I guess, the fiscal note. It says E&R...well, it wouldn't be in the E&R amendments? Did you have a committee amendment? [LB853]

SENATOR PAHLS: Yes. It is my understanding, and walk me through and tell me whether I get it correctly or not, we moved sections of this bill, LB853, and we... [LB853]

SENATOR CHAMBERS: So when the committee amendment says, "Strike sections 1 to 4,"... [LB853]

SENATOR PAHLS: Yeah. [LB853]

SENATOR CHAMBERS: ...that meant including 4,... [LB853]

SENATOR PAHLS: Yeah. [LB853]

SENATOR CHAMBERS: ...Sections 1, 2, 3, and 4. [LB853]

SENATOR PAHLS: "Strike sections 1 to 4 and 22 to 38." [LB853]

SENATOR CHAMBERS: And was that committee amendment adopted? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: Okay. So this language would be out of the bill? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: But it's someplace else. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: So "bone" and "skeletal structure"... [LB853]

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SENATOR SCHIMEK: One minute. [LB853]

SENATOR CHAMBERS: ...would be in another bill in which you had some part to play, correct? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: Okay. So you were concerned about bones and skeletal structures, right? You spoke a little hastily, didn't you? [LB853]

SENATOR PAHLS: Right, and I should have known. [LB853]

SENATOR CHAMBERS: Okay. [LB853]

SENATOR PAHLS: I should have hesitated a little bit... [LB853]

SENATOR CHAMBERS: Okay. [LB853]

SENATOR PAHLS: ...but the last time I hesitated, I was told that I didn't have the right answer. So I tried to (inaudible). [LB853]

SENATOR CHAMBERS: Did I say that? [LB853]

SENATOR PAHLS: No, you did not and you never have. [LB853]

SENATOR CHAMBERS: Well, you're talking to me. Is my name Ernie, as far as you know? [LB853]

SENATOR PAHLS: You're more than fair. [LB853]

SENATOR CHAMBERS: (Laugh) That's all I'll ask you on that, and I think my time might be up. Thank you, Madam President. [LB853]

SENATOR SCHIMEK: Thank you, Senators Chambers and Pahls. Senator Chambers, again I forgot to tell you that that was your third time. Sorry. We are on discussion of AM2114. Are there any further lights? Seeing none, Senator...Senator Wallman, you are recognized to speak. [LB853]

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

SENATOR SCHIMEK: Senator Hudkins, the time is yours, almost 5 minutes. [LB853]

SENATOR HUDKINS: Thank you, Senator Wallman. Thank you, Madam President and

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members. I'll continue where I stopped before. The second provision of this amendment is Section 6. Again, while this language is not contained within the NCOIL model, it is consistent with providing information and knowledge to and protection of the customer, the consumer, both of them. It does so by prohibiting any person from prohibiting, restricting, limiting, or impairing the lawful negotiations of a viatical settlement contract, (2) discriminating against individuals through the rates charged for life insurance policies because the person has previously entered into a viatical settlement agreement, or (3) making false or misleading statements regarding the business of viatical settlements for the purpose of inducing an owner from not entering into a viatical settlement. This section of the amendment clearly falls into the area of the law entitled unfair trade practices or unfair competition, all of which are intended to protect the consumer from malicious actions of others who intend to interfere with a business relationship of the individual consumer. I think it's important that we understand the difference between model legislation and uniform legislation. The main difference between the two of those is the interest of the participants. Uniform legislation is created by participants that don't have a vested interest in the issue but understand the subject matter. Model legislation, on the other hand, is generally created by participants who have a vested interest in the outcome of the legislation. This amendment, AM2114, is model legislation, just as the underlying bill is model legislation. Both sides have a vested interest. The insurance companies want the policyholders to have to go to them to sell their policies. The other side says, after the prescribed period of time, those policies can be sold. And that's where, before, when we were talking about this incentive, if this takes five years to take effect, then there is going to be a disincentive for the third party to become involved. Like I said, this amendment is a rifle approach. It takes care of the bad stuff without harming the good. LB853, which I am trying to make better for the consumer, is more the shotgun approach. It protects the consumer but it also gets rid of the viatical settlement people. And I think that we do need to have the viatical settlement contracts, but let's do them legally, not with a STOLI. I would like to maybe put this in very simple terms. Wherever we talk about insurance, let's put the word "automobile." You buy a car or you buy an insurance policy. You paid for it or you're making payments, so it's yours. Now, after two years, you want to sell this. I see this as your having to go back to the dealer to sell your car. You would not be able to sell it to anyone else. [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR HUDKINS: There would be no competition, so there would be strict limitation on consumer choice. We are knocking out the competition by not allowing for these third parties. Thank you, Madam President. [LB853]

SENATOR SCHIMEK: Thank you, Senator Hudkins. The next light is Senator Howard's. Senator Howard, you are recognized to speak. [LB853]

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SENATOR HOWARD: Thank you, Madam President and members of the body. I continue to pursue the issue I asked earlier, which is what percentage of all insurance policies lapse? People just, for whatever reason, don't continue to pay the premiums after a period of time. And I have gotten, interestingly enough, two different answers from two entirely different concerns. The Nebraska Department of Insurance says to me or tells me that it's 4 percent--4 percent in a year's time--which that seems like a low number. An alternate source that seems reliable says 7 percent lapse each year, which over a ten-year period is 70 percent lapse, which is a different way of looking at this, a different figure. That, to me, is a very high number, a very high percentage of policies that simply lapse or are surrendered, and nobody benefits except the insurance company. I continue to puzzle over this and I wonder if Senator Pahls would answer a few questions and assist me with this. [LB853]

SENATOR SCHIMEK: Senator Pahls, would you yield to a question or two? [LB853]

SENATOR PAHLS: Yes, I have, Senator, and I do have some more information. I don't know if it will be more confusing or more enlightening. [LB853]

SENATOR HOWARD: Well, I appreciate that you, too, have been looking at this, because I think this is a major factor in the issue that we're looking at. I'm very concerned if people are lulled into taking insurance policies--for pennies a day you can have your loved one insured--and yet, for whatever reason, after a period of time they can't keep up that premium. Possibly you can assist me with the figures that you've been able to learn. [LB853]

SENATOR PAHLS: Okay. I received this from the National Underwriter on-line, and this is the information that I'm reading: In the universal life market, a market that is popular with life settlement firms, the overall lapse rate for all policy years combined declined to 4.6 in 2003-2004 from 5.3 in 2001-2002. So it did decline from 5.3 to 4.6 in that basically four-year period. Also, it says the 2003-2004 UL lapse rate was only 2 percent for the policies issued to consumers over 70 years and older. And the lapse rate was 10 percent for policyholders with an attained age of 70 or older. I don't know quite what that means, but that's the information I have received. [LB853]

SENATOR HOWARD: Could you repeat that last part? That seemed a little confusing to me. [LB853]

SENATOR PAHLS: Yeah. Yeah, as I read that it also did. Let me read the paragraph. The 2003-2004 lapse rate was only 2 percent for policies issued to consumers age 70 and older, and the lapse rate was 10 percent for policyholders with an attained age of 70 or older. Now, I need some help probably understanding that part. [LB853]

SENATOR HOWARD: Yeah, would those be the same people? I...thank you for

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attempting. [LB853]

SENATOR PAHLS: I told you it could be confusing. [LB853]

SENATOR HOWARD: Yeah. Thank you for attempting that. I would suggest that part of this lapse, part of this surrender, would go into our economic conditions and when we enter times where it's hard to make your house payment or gas taxes increasing where you're just struggling to pay for the very basics. When you get that annual or semiannual life insurance premium bill of, say, \$125,... [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR HOWARD: ...thank you...that may look to you like an impossibility, and there may be situations where people simply say, I can't, I don't have the money. And that's not the way we want to do business in this state. I'm very concerned about this. I'm concerned about this lapse rate. I'm concerned that the only people that benefit from this lapse rate, especially after a ten-year period, would be the insurance companies, and that's certainly not how they advertise the benefit of life insurance. Thank you. [LB853]

SENATOR SCHIMEK: Thank you, Senators. Senator Cornett, you are next to speak. [LB853]

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

SENATOR SCHIMEK: Did you yield to Senator Chambers? Senator Chambers. [LB853]

SENATOR CHAMBERS: Thank you, Madam President. Thank you, Senator Cornett. I was sure last time I only spoke twice. One of the times Senator Janssen gave me, but I guess it was three. I just didn't realize that. I would like to continue my discussion with Senator Pahls. Senator Pahls, the major in this bill, as I'm getting it, is to extend that two-year period to five. Is that true? [LB853]

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

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

SENATOR CHAMBERS: Is that true? [LB853]

SENATOR PAHLS: Yes. I think that's a major point that's... [LB853]

SENATOR CHAMBERS: So if you didn't have that, you wouldn't need the rest of the bill. Is that correct? [LB853]

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SENATOR PAHLS: Well, there are other aspects of the bill that have merits. I...you know... [LB853]

SENATOR CHAMBERS: So then we could get rid of that raising the number of years from two to five, and you would still have a bill that would do something of value. Is that true? [LB853]

SENATOR PAHLS: Of value, but not to what the direction that we want to go. [LB853]

SENATOR CHAMBERS: And you...the direction you want to go is to knock out the competition. I say it bluntly, you say it differently, but isn't that the main thrust of the bill, that there is an enterprise which has sprung up and the insurance companies, at least Mutual...Mutual doesn't like it? Isn't that true? [LB853]

SENATOR PAHLS: Yes, I would assume they do not care for... [LB853]

SENATOR CHAMBERS: Now, how many other states have done something like this? [LB853]

SENATOR PAHLS: Well, this is going throughout all the states. Right now, I know North Dakota and West Virginia have passed, using this NAIC model. Earlier, Senator Hudkins said that there were a number of other states. This is very...this is a hot button right now because of the potential. [LB853]

SENATOR CHAMBERS: Let me pin you down to our discussion. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR CHAMBERS: You know of two states, North Dakota and West Virginia. Is that true? [LB853]

SENATOR PAHLS: Right, and that's just because I just... [LB853]

SENATOR CHAMBERS: Now, neither of those states is known as a trendsetter in anything. Isn't that true? [LB853]

SENATOR PAHLS: I have friends in both states so I don't know if I would want to... [LB853]

SENATOR CHAMBERS: Say what? [LB853]

SENATOR PAHLS: I have friends in both states so I don't know if I'd say they're

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nontrendsetters, but... [LB853]

SENATOR CHAMBERS: I've got friends in the penitentiary. [LB853]

SENATOR PAHLS: No, they are not known as trendsetters, I'm assuming, in the area of insurance. [LB853]

SENATOR CHAMBERS: Right. And, Senator Pahls, you can hardly say that the fact that North Dakota and West Virginia have been terrified into passing bad legislation like this indicates that we're dealing with a national problem. You can't draw that conclusion from those two states, can you? [LB853]

SENATOR PAHLS: But this is occurring in all of the states. I only just read that on the... [LB853]

SENATOR CHAMBERS: Senator, the two states that you gave are the two. If this were a national problem, you'd have states other than North Dakota and West Virginia, wouldn't you? [LB853]

SENATOR PAHLS: But, Senator, I think they're working on this right now, as we speak. [LB853]

SENATOR CHAMBERS: Okay, thank you. Members of the Legislature, Senator Pahls knows that they try to knock off the silliest states that they can, the weakest, easiest, most spineless legislatures they can get. That's why Nebraska is picked. You all are easy targets, you're easy marks. Mutual of Omaha is in Omaha, so you've got to do what they want, and you're told this is a national problem. New York doesn't think so, Pennsylvania doesn't think so, Texas, California,... [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR CHAMBERS: ...Colorado. I don't many more states by heart. (Laugh) If something is a national problem, the larger states are going to sniff the wind and get it. North Dakota and West Virginia? What doth it profit a man to lose his soul and gain North Dakota and West Virginia? You're not supposed to lose your soul for the whole world, and you're asking the Legislature to lose its soul, "Parson" Carlson, for West Virginia and North Dakota. You ought to be ashamed of yourselves. I'm trying to bring you to your senses. Thank you, Madam President. [LB853]

SENATOR SCHIMEK: Thank you, Senator Chambers and Pahls. Mr. Clerk, did you have items for the record? [LB853]

CLERK: I do, Madam President, thank you. Agriculture Committee reports LB1116 to

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General File with amendments, and LB861 indefinitely postponed, and LB1044 indefinitely postponed. Urban Affairs reports LB51, LB302, LB387, LB971, LB1117, and LB1166, all indefinitely postponed. Study resolutions: Senator Engel, LR344; McDonald, LR345; Rogert, LR346; Raikes, LR347; Dubas, LR348, LR349, LR350; LR351, LR352; Senator Preister, LR353; Stuthman, LR354; Fulton, LR355. I have amendments to be printed: Senator Adams to LB1153. That's all that I have. (Legislative Journal pages 1210-1220.) [LB1116 LB861 LB1044 LB51 LB302 LB387 LB971 LB1117 LB1166 LR344 LR345 LR346 LR347 LR348 LR349 LR350 LR351 LR352 LR353 LR354 LR355 LB1153]

SENATOR SCHIMEK: Thank you, Mr. Clerk. We are still on the discussion of AM2114. Senator Wallman is recognized to speak. [LB853]

SENATOR WALLMAN: Thank you, Madam President, and I would yield my time to Senator Hudkins. [LB853]

SENATOR SCHIMEK: Senator Hudkins, Senator Wallman has yielded you almost five minutes. [LB853]

SENATOR HUDKINS: Thank you, Madam President. Thank you, Senator Wallman. Senator Pahls, I have a couple of questions, and this time I will allow you to answer. [LB853]

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

SENATOR PAHLS: I don't want to answer them now. [LB853]

SENATOR HUDKINS: (Laugh) [LB853]

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

SENATOR HUDKINS: Well, this is really simple. [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR HUDKINS: If you would look on page 56 of the bill, line 7, paragraph (i). Are you there? [LB853]

SENATOR PAHLS: I'm sorry. [LB853]

SENATOR HUDKINS: Page 56, line 7, (i). [LB853]

SENATOR PAHLS: Okay. [LB853]

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SENATOR HUDKINS: Okay. The question I have is, what are unencumbered assets? Now, if I have a loan, and part of the collateral for that loan are the funds in my checking account, can I pay the premiums with the money from my checking account? [LB853]

SENATOR PAHLS: I don't know. What would you suggest? I'm trying to figure this out. Maybe you can help me out. What would that...in your estimation, what do you think that means? [LB853]

SENATOR HUDKINS: Well, I don't know, Senator Pahls. This isn't my bill. [LB853]

SENATOR PAHLS: Well, I understand that. [LB853]

SENATOR HUDKINS: Okay. [LB853]

SENATOR PAHLS: It's your own money. That's what I've been told by my staff. Yeah, the STOLI people have not given you the money, so that would be the unencumbered assets. That is what I have been told by my staff. [LB853]

SENATOR HUDKINS: Okay. All right, I'll take that. Also on page 56, line 17, (iii),... [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR HUDKINS: ...can you explain that, and you might...I don't have it right in front of me so if you could read (iii) for the benefit of others? [LB853]

SENATOR PAHLS: "Neither the insured nor the policy has been evaluated for settlement." [LB853]

SENATOR HUDKINS: Okay. What does... [LB853]

SENATOR PAHLS: "Evaluated" means you take it out and somebody...you try to sell it, they take a look at it, that's my understanding, for settlement. [LB853]

SENATOR HUDKINS: All right. How about Section 15? [LB853]

SENATOR PAHLS: What page are you on? [LB853]

SENATOR HUDKINS: I don't know. I'm looking, as well. [LB853]

SENATOR PAHLS: It seems like we are going through the bill, picking out...maybe you're... [LB853]

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SENATOR HUDKINS: Well, no. There are just questions that I'm having a little trouble with. [LB853]

SENATOR PAHLS: No, I understand. I understand that, Senator. I understand. [LB853]

SENATOR HUDKINS: Oh, Section 15 is on page 54: It's a violation of the Viatical Settlement Act for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of a viatical settlement contract or within a two-year period commencing on the date of issuance. It's... [LB853]

SENATOR PAHLS: What they're trying to do is actually get you not to have your contract evaluated. If you do, you sort of establish the five-year parameter. That's my understanding of it, Senator. [LB853]

SENATOR HUDKINS: All right. Thank you very much. I appreciate it. We were talking a bit ago about North Dakota and West Virginia. I have that same sheet. I would like to tell you about Indiana. Indiana rejected every single NAIC provision which we see in LB853, and they replaced it with key anti-STOLI provisions from NCOIL. Maine unanimously voted to strip all of the NAIC provisions and add key anti-STOLI provisions. Iowa: this bill was based on the NAIC model act, was killed. Kentucky: this was the NCOIL model act with several amendments. The Kansas Office of Insurance supports the bill. It passed the House and it's pending in the senate insurance committee. [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR HUDKINS: Connecticut rejected NAIC in favor of NCOIL, Arizona same thing, Rhode Island, Georgia, Minnesota, Illinois. Now, some of these have had bills introduced, one on behalf of NCOIL, one of behalf of NAIC, and I don't have time to give all of those to you. But just be aware that there are many more states that are going with the NCOIL model act rather than the Insurance Commissioners' act. I see the Insurance Commissioners' act, which is LB853, as benefiting insurance companies. I want to protect the consumers. Thank you, Madam President. [LB853]

SENATOR SCHIMEK: Thank you, Senator Hudkins. Seeing no further lights, Senator Hudkins, you are recognized to close on your amendment, AM2114. [LB853]

SENATOR HUDKINS: Thank you, Madam President. This amendment is, except for two sections, the NCOIL language. Now, I am aware that the Banking...or at least Senator Pahls has said--he didn't say it on the floor but he said it to another group of people, which he will admit if I would have given him time--that they would accept no NCOIL amendments. I'm sure all of you have been out in the Rotunda talking to the

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NAIC representatives--and that's fine--but just to have them say, don't accept any of Hudkins' amendments, they're not what we want. You are all elected to your positions; you all have brains in your heads. Hopefully, you have listened to both sides of the question. You are more in favor of protecting consumers than you are insurance companies. We want there to be a choice for consumers. We want there to be a viatical settlement industry. And if you change this from two years to five, then it isn't as much of an incentive for the viatical people to buy these policies. Again, I'm looking out for the consumer. I'm looking out for businesses. I'm not opposed to insurance companies. I have life insurance policies, and it's with a different insurance company than was discussed today--and I think that's probably a good thing or they would cancel my policy. (Laughter) But we want to do the right thing for the most people, and most of the people are consumers. When you buy an insurance policy, I'm sure that you do not have a bachelor's degree in Insurance 401. Most of us couldn't even pass Insurance 101. We want there to be information available to the consumers so that they have the choices before them so that they may make the right decision. Hopefully you will make the right decision and accept AM2114. And remember, in my opening remarks, I said that if AM2114 is adopted, the next four amendments go away. Thank you, Madam President. I would ask for a call of the house and a roll call vote, please. [LB853]

SENATOR SCHIMEK: Thank you, Senator Hudkins. 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 opposed vote nay. Record, Mr. Clerk. [LB853]

ASSISTANT CLERK: 17 ayes, 0 nays to go under call. [LB853]

SENATOR SCHIMEK: The house is under call. Senators will please return to the Chamber and record their presence. All unauthorized personnel should leave the floor. Please record your presence, Senators. The house is under call. Will all senators please check in. Senator Nantkes, Senator Johnson, Senator Friend, please return to the Chamber and record your presence. Senator Hudkins, all are present and accounted for. How did you wish to proceed? Mr. Clerk. [LB853]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1221.) The vote is 10 ayes, 27 nays, Madam President. [LB853]

SENATOR SCHIMEK: The amendment is not adopted. Mr. Clerk. [LB853]

ASSISTANT CLERK: Madam President, Senator Hudkins would move to reconsider the vote just taken. [LB853]

SENATOR SCHIMEK: The motion is to reconsider. Senator Hudkins, on your motion to reconsider. [LB853]

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SENATOR HUDKINS: Thank you, Madam President. While most of us are still here and before you all get away again, I would like to explain to you why this amendment is needed. This protects the consumers. LB853 protects the insurance company. It's like you're buying a car, and after two years, or five years, you want to sell that car. The only person you can sell that car to is your car dealer. Same way with this, with a few exceptions. Why would you want to take away an option for the consumer? The consumer, if they are in a position with a life insurance policy that they need the money, they're not even going to know about the viatical settlement companies. When we first started discussing this on the floor, I asked a question about an insurance policy that I had. It was bought for me by my parents when I was little. Well, obviously, it didn't qualify under what we're talking about because the current time is two years, and we're saying we want to extend that to five years. If we only can go to our insurance company to sell our policy, you can bet your boots that we're not going to get as much money from them as if we went to another company, a viatical settlement company. I want all options to be available to the consumers. I'm not trying to cheat the insurance companies. I just want to make sure that they are forced to tell the consumers what their options are. We talked about, what can you do if you're...you have a policy and you've been paying premiums, and now you have been diagnosed with an illness. Your children...or maybe you don't have children...your spouse is gone, or your children don't need it, or your parents don't need, but you do. Why would you restrict the consumer to an additional three years before they may sell that policy? So I would ask you to think about this. It is for consumer protection. I'm not trying to stab a knife in the back of any insurance company. They're big boys and girls. They know what the laws are, most consumers don't. I want to make it so that the consumer understands, is protected, knows what the options are. We do not want these stranger-originated life insurance policies. Who understands them? Well, after today, I think there would be at least 49 of us, plus staff, plus who's ever in the lobby, are going to understand them a lot better than we did before today. But I want people to know what they're doing. I want options to be open. Thank you, Madam President. [LB853]

SENATOR SCHIMEK: Thank you, Senator Hudkins. And before we move on, the call is raised. Senator Chambers, your light is next to speak. [LB853]

SENATOR CHAMBERS: Thank you, Madam President and members of the Legislature. And these senators who are scurrying out of here, it's probably too early for...I'd like to ask a question of Senator Friend. [LB853]

SENATOR SCHIMEK: Senator Friend, would you yield to a question? [LB853]

SENATOR FRIEND: Yes, I will. [LB853]

SENATOR CHAMBERS: Senator Friend, you've been in the Legislature for how many years, roughly? [LB853]

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SENATOR FRIEND: Roughly, six. [LB853]

SENATOR CHAMBERS: And have there been points in the session in each of those years when we would have to stay late? [LB853]

SENATOR FRIEND: Yes. [LB853]

SENATOR CHAMBERS: And when we stay late, are the senators expected to operate on an empty stomach? [LB853]

SENATOR FRIEND: On occasion. [LB853]

SENATOR CHAMBERS: Which predominates, when the senators are going to make it through the night on an empty stomach or when they are provided a free meal? [LB853]

SENATOR FRIEND: Yeah, "Captain Lunch-hunter" usually predominates. [LB853]

SENATOR CHAMBERS: Led my "Lieutenant Hungry." All right? [LB853]

SENATOR FRIEND: Right. [LB853]

SENATOR CHAMBERS: Now, what time, generally, does the dinner bell chime? [LB853]

SENATOR FRIEND: It varies a little bit, but do you want to know about tonight? Are you interested? [LB853]

SENATOR CHAMBERS: Roughly. Well, what time are they going to eat this evening? When will dinner be served? [LB853]

SENATOR FRIEND: I don't know, but I did offer Madam President, if she is hungry, I will go sit there and watch you work. [LB853]

SENATOR CHAMBERS: Watch who work? [LB853]

SENATOR FRIEND: You. [LB853]

SENATOR CHAMBERS: Oh. But here's what I want to know. What time will my colleagues be flying out of here like a covey of quails heading for the freebies at the trough prepared for them by the lobbyists? [LB853]

SENATOR FRIEND: I honestly don't know for sure. Probably five... [LB853]

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SENATOR CHAMBERS: Around five o'clock. [LB853]

SENATOR FRIEND: Five or five-thirty. [LB853]

SENATOR CHAMBERS: Okay, that's probably why they're sitting here now, conserving their energy, anticipating that delicious free meal provided by the lobbyists, some of whom want us to pass this bad bill, correct? [LB853]

SENATOR FRIEND: Can you repeat that? [LB853]

SENATOR CHAMBERS: No. Thank you. Members of the Legislature, I had said Mutual of Omaha, but we know that the "whale" insurance company wants this bill too. And they were praised to high heaven when they said they were going to do some work in Nebraska. It got so sickening that the Speaker had to tell people, you all be quiet because Senator Chambers told me if it didn't get too sickening he would let you go ahead and do this and give it to the company, but it's reaching that breaking point, knock it off. I meant, they were up here thanking God, thanking Jesus, thanking everybody they could think of for that insurance company coming to Nebraska. A bunch of rubes, you're easy. They know that. That's why this bill is before us now. It is not a national problem. I would like to ask Senator Pahls a question, the answer to which he may not know. Senator Pahls, do you have any idea what the total value of the insurance policies that are held by companies in America would be, life insurance policies? [LB853]

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

SENATOR PAHLS: Okay. I think 13 trillion, 679 million...I don't know. [LB853]

SENATOR CHAMBERS: Now, I'll buy that. [LB853]

SENATOR PAHLS: Okay. I thought it sounded good, but I don't. I'm sorry. [LB853]

SENATOR CHAMBERS: Oh, but you're just taking a number out of the air. [LB853]

SENATOR PAHLS: Yes, I did. [LB853]

SENATOR CHAMBERS: Or have you heard that the number, the amount, runs into trillions? Remember, I'm talking about the face value of the policies. [LB853]

SENATOR PAHLS: Of course, I... [LB853]

SENATOR CHAMBERS: Do you think that an insurance company has more in assets

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than it has in terms of the face value of the policies it has issued? [LB853]

SENATOR PAHLS: If they do not, they... [LB853]

SENATOR CHAMBERS: Does it have assets enough to cover all of those policies... [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR CHAMBERS: ...should they all come due at the same time? [LB853]

SENATOR PAHLS: If they do not, they would be probably in trouble. I'm assuming they have to have a percentage, not 100 percent, but I can't tell you that, but I'm sure they have to have a certain percentage of their...to back their policies. [LB853]

SENATOR CHAMBERS: So if the happenstance occurred where all of those policies would come due--let's say there is a catastrophe and the people die, and all of them are insured by this company--it wouldn't have sufficient assets to pay off those policies, would it, the face value of the policy? [LB853]

SENATOR PAHLS: I'm assuming, if they were all called in at the same time, it would be difficult. [LB853]

SENATOR CHAMBERS: Well, if they didn't have assets, it would be impossible, wouldn't it? [LB853]

SENATOR PAHLS: Yes, if they... [LB853]

SENATOR CHAMBERS: So they allow insurance companies to operate based on the way things ordinarily happen without sufficient assets on hand to cover the face value of all the policies they've issued, because it is highly unlikely that all of them are going to... [LB853]

SENATOR SCHIMEK: Time. [LB853]

SENATOR PAHLS: Yes. [LB853]

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

SENATOR SCHIMEK: Thank you, Senators Chambers and Pahls. Senator Howard, you are recognized to speak. [LB853]

SENATOR HOWARD: Thank you, Madam President and members of the body. I

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continue to struggle to get my mind around this bill and the reason why we should pass this. And in thinking back, I remember earlier this year when I came in with a bill to limit scalpers' ability to sell tickets to an event at many times the face value of that ticket and I came up against an argument--free enterprise, and what the market will bear, and it's poor legislation to restrict an individual's ability to engage in the buying or the selling of tickets or whatever the public demands. And this, to me, has very much the same feeling and yet, on the other side of the fence, it seems to me that this bill is in direct contradiction to that argument. My intent in trying to make a wise decision on this proposed legislation is purely, solely in giving the average citizen control over their own life insurance policy that they've bought, they've paid for, they've procured with the understanding that this is going to be there for them when they need it, and in some cases, tragically, they need it to sustain their lives rather than to look upon it as a death benefit. I say to you we have the responsibility to seriously look at this legislation; to not just pass it over and say, well, it's pretty confusing and I really don't understand it and, you know, maybe it doesn't affect that many people. I say to you this has a potential to affect many people. This is something we need to take seriously, that even if we're no experts in insurance we need to focus our attention to, that we need to weigh in on. I feel a commitment to look at this legislation and to say who's benefitting. Who's benefitting? Is it the person who's paying the premium, or is it the life insurance company that issued the policy? I don't remember ever hearing an advertisement that said please buy this premium and our intention is to be here for you but, you know, if circumstances change we stand to benefit. No. No, no, no. This has got to work for the individual. This has got to work for the individual, the average person who expects this to be there for them should they need it. I'm going to offer the remainder of my time to Senator Hudkins. [LB853]

SENATOR SCHIMEK: Thank you. Senator Hudkins, you have 2 minutes and 6 seconds. [LB853]

SENATOR HUDKINS: Thank you, Madam President and members. Senator Carlson, if I may ask you a question. [LB853]

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

SENATOR CARLSON: Yes, I will. [LB853]

SENATOR HUDKINS: Do some insurance companies prohibit their agents from discussing the potential of a sale of a life insurance policy on the secondary market? [LB853]

SENATOR CARLSON: No, I don't think they prohibit them from discussing it. [LB853]

SENATOR HUDKINS: So they never even discuss the possibility with the policyholder?

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[LB853]

SENATOR CARLSON: Well, I may be misunderstanding your question. Your question was are there certain insurance companies that prohibit their agents from even discussing... [LB853]

SENATOR HUDKINS: Yes. [LB853]

SENATOR CARLSON: ...the sale of the policy. [LB853]

SENATOR HUDKINS: Uh-huh. [LB853]

SENATOR CARLSON: I don't think so, because that question is a part of the application. You couldn't get away from it. [LB853]

SENATOR HUDKINS: Okay. So on the application, what would be the question that would be on there? [LB853]

SENATOR CARLSON: The question would be whether or not you're purchasing this policy in anticipation of selling it to another party. [LB853]

SENATOR HUDKINS: All right. And I think we heard earlier that you can lie on the application. [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR HUDKINS: And if you get away with it, you're home free. Is that correct? [LB853]

SENATOR CARLSON: That would be correct. [LB853]

SENATOR HUDKINS: All right. [LB853]

SENATOR CARLSON: That's what the contestable period is about. [LB853]

SENATOR HUDKINS: All right. Thank you very much. So again, colleagues, look at who's benefitting. If the policyowner doesn't even know that this is available, which I definitely did not and I would venture to guess that probably at least 45 out of the 49 of us didn't know, we want to benefit the policyowner. We want them to know that there is this possibility for them if the case arises,... [LB853]

SENATOR SCHIMEK: Time. [LB853]

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SENATOR HUDKINS: ...if they have an emergency, if they need the money, if...
[LB853]

SENATOR SCHIMEK: Time, Senator. [LB853]

SENATOR HUDKINS: Thank you. [LB853]

SENATOR SCHIMEK: Thank you, Senator Hudkins. Senator Hudkins, your light is next anyway, so you may proceed. [LB853]

SENATOR HUDKINS: Thank you, Madam President. Senator Pahls, if I may ask you a question. [LB853]

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

SENATOR PAHLS: Yes, you may. [LB853]

SENATOR HUDKINS: Thank you. Under current law, a life insurance policy is void because of...if there's fraud involved. Is that correct? [LB853]

SENATOR PAHLS: After the two-year, I'm assuming, you may get lucky after two years.
[LB853]

SENATOR HUDKINS: If someone could prove fraud prior to that, would it still be in effect? [LB853]

SENATOR PAHLS: I'm assuming it would not be if fraud is proven. [LB853]

SENATOR HUDKINS: If they could...if they were proven, all right. And is it one of the questions on a life insurance policy designed to detect a stranger-originated policy?
[LB853]

SENATOR PAHLS: Yes, some of the applications that were shown to me, it indicated that there's a line that you'd have to basically say what you were doing and I think that is to make it clear that if you're doing, I'm using the word, the STOLI idea, that you probably are not going to get this contract or this policy. [LB853]

SENATOR HUDKINS: All right. If there is this question on the application... [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR HUDKINS: ...and if the policyholder answers that question in a way that would prohibit a STOLI, I think what I'm trying to say is if the policyowner lies on the

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application and says, no, this isn't going to be sold to a third party, then how do these STOLs get done? [LB853]

SENATOR PAHLS: Okay. Could I just read one of these statements? [LB853]

SENATOR HUDKINS: Sure. [LB853]

SENATOR PAHLS: Here's a statement from one: Does the proposed insured and/or the proposed owners have a current agreement or commitment to sell, transfer, assign... [LB853]

SENATOR HUDKINS: Could you speak up closer to the microphone and louder, please? [LB853]

SENATOR PAHLS: Anything else? Okay. [LB853]

SENATOR HUDKINS: Re-read what you said, but... [LB853]

SENATOR PAHLS: Okay. Okay. [LB853]

SENATOR HUDKINS: ...I don't think very many of us heard you. [LB853]

SENATOR PAHLS: And I apologize for that. My back is hurting me at this time of day and I start to lean over. So one reason why it wouldn't qualify: Does the proposed insured and/or the proposed owners have a current agreement or commitment to sell, transfer, assign or release the policy or any beneficial interests of the policy or its ownership structure to a life settlement company, viatical company, bank, investor, secondary market? If yes, you need explain in detail. Now if they don't and if they lie, I'm assuming they would probably be in trouble. [LB853]

SENATOR HUDKINS: Who would they be in trouble with? [LB853]

SENATOR PAHLS: I guess the insurance company. If they found out, I'm assuming they would not be very happy. [LB853]

SENATOR HUDKINS: Who would be in trouble: the policyowner who lied on the application, or the person who wants to be the stranger? [LB853]

SENATOR PAHLS: The broker, I would assume, if he is causing or trying to make me lie, saying this is the way to go, I think that this would...the broker would be the one that we would be concerned about. I do not think probably, for the most part, if I'm not mistaken, I think in the bill it's a third-degree misdemeanor. They're not trying to go after the 70-year-old person. I don't think that's the goal. The objective is to go after the

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broker. [LB853]

SENATOR HUDKINS: Thank you. And... [LB853]

SENATOR PAHLS: That's my assumption. [LB853]

SENATOR HUDKINS: And...thank you. And that's what I hoped that you would say. We don't want to go after the sweet little old lady who doesn't have a clue as to what's going on with this insurance policy. We don't want to go after the gentleman... [LB853]

SENATOR SCHIMEK: One minute. [LB853]

SENATOR HUDKINS: Thank you. We don't want to go after the gentleman who has been convinced or coerced or whatever other word you want to use that this would be in their best benefit if they would engage in this STOLI transaction. So if the person lied on their application but it still gets issued, the policy gets issued, then why isn't that policy void? Senator Pahls. [LB853]

SENATOR PAHLS: I'm assuming if the insurance company found out that it probably would be void. [LB853]

SENATOR HUDKINS: But it's the insurance company that would benefit if this weren't allowed to happen, because the policyowner would go to them and say, I really need the money, what will you give me? [LB853]

SENATOR PAHLS: Yeah. I... [LB853]

SENATOR SCHIMEK: Time. [LB853]

SENATOR HUDKINS: Thank you. [LB853]

SENATOR SCHIMEK: Thank you, Senators Hudkins and Pahls. Senator Chambers. [LB853]

SENATOR CHAMBERS: Thank you, Madam President. Members of the Legislature, I'd like to keep Senator Pahls on his feet to earn his \$12,000, this afternoon if possible. [LB853]

SENATOR PAHLS: Thank you. [LB853]

SENATOR CHAMBERS: Senator Pahls, I'm going to ask Senator Carlson some questions. You're too accommodating. I'd like to ask Senator Carlson a question or two, if he would respond. [LB853]

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

SENATOR CARLSON: Yes, I will. [LB853]

SENATOR CHAMBERS: Senator Carlson, would you be offended if I said the way you're behaving today I consider you a minion of the insurance industry? [LB853]

SENATOR CARLSON: Would I be offended? [LB853]

SENATOR CHAMBERS: Yes. [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: Oh, really? [LB853]

SENATOR CARLSON: You've offended me. [LB853]

SENATOR CHAMBERS: Then I take that back. You're not a minion of the insurance industry. [LB853]

SENATOR CARLSON: Thank you. [LB853]

SENATOR CHAMBERS: Do you work for an insurance company? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: Are you a minion of that insurance company for which you work? [LB853]

SENATOR CARLSON: No. [LB853]

SENATOR CHAMBERS: I'm not through with you. Senator Carlson, did you hear the discussion I was having with Senator Pahls about...I will ask you the questions. Do you think an insurance company has assets on hand equal to the face value of all the insurance policies it has issued? [LB853]

SENATOR CARLSON: I'm going to say what I think. That doesn't mean it's entirely accurate. I would say no. [LB853]

SENATOR CHAMBERS: Right, and I would agree. [LB853]

SENATOR CARLSON: Yeah. [LB853]

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SENATOR CHAMBERS: And a lot of things are based on what they call actuarial activity, so you consider likelihoods, possibilities, averages, all of those kind of things. It would be actuarially virtually impossible for all of those policies to have to be paid off at the same time. Would you agree? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: And that's why an insurance company can operate legally without having on hand assets equal to the face value of all the policies that are outstanding. [LB853]

SENATOR CARLSON: That's correct. [LB853]

SENATOR CHAMBERS: Now in the same way that that is not likely to happen, do you think insurance companies figure into their revenue flow an amount equivalent to the number of policies or the percentage of policies they think are likely to lapse? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: Okay. So it's known that policies are going to lapse. It's such a certainty that it can be calculated in. Can...so far no trick questions, would you agree? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR CHAMBERS: Can an insurance company, as we've been told, put a provision in its contract, in its policy, that this policy cannot be transferred to another person in the way that would happen in a viatical situation, and they'd adopt the appropriate language; could they put that into their policy that such a thing could not happen within five years of the date of purchase? [LB853]

SENATOR CARLSON: Well, I would...you said five years. [LB853]

SENATOR CHAMBERS: Yes. [LB853]

SENATOR CARLSON: I don't know. I think maybe they could. It is two years now. [LB853]

SENATOR CHAMBERS: That's by law. [LB853]

SENATOR CARLSON: Uh-huh. [LB853]

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SENATOR CHAMBERS: And the law sets the minimum, not the maximum. Could they do that? [LB853]

SENATOR CARLSON: I think they could. I don't think they would. [LB853]

SENATOR CHAMBERS: Why not? [LB853]

SENATOR CARLSON: It would put them at a marketing disadvantage. [LB853]

SENATOR CHAMBERS: Right. Right. So even though they can do that by way of a business decision, they're not going to do it, are they? [LB853]

SENATOR CARLSON: I doubt that they would. [LB853]

SENATOR CHAMBERS: And I agree with you, and that's the point. So they want us to do by statute what they could do by a business decision. Isn't that correct? They want us to make it a matter of law that the five years will be there, forgetting those exceptions. I don't even want to talk about them because those will be there whether it's two years or five or whatever. But in the area outside those exceptions where we're operating and this bill is designed to hit, by a business decision they could do it, but they want the Legislature, instead, to do it so that that same principle applies to everybody. [LB853]

SENATOR CARLSON: I think that's correct. [LB853]

SENATOR CHAMBERS: Thank you. That's all I will ask Senator Carlson. [LB853]

SENATOR FRIEND PRESIDING [LB853]

SENATOR FRIEND: One minute. [LB853]

SENATOR CHAMBERS: Members of the Legislature,...what did you say, Mr. President? [LB853]

SENATOR FRIEND: One minute. [LB853]

SENATOR CHAMBERS: Oh, thank you. I didn't hear you. You got to speak more loudly. Members of the Legislature, those of you who might be listening and those outside the Chamber who I know are listening, there are too many times when the Legislature is asked to do with the law what businesses can do on their own. Senator Carlson was very forthright, and I knew what the answer would be, and probably all did who were listening. It would not be a good marketing move to put that kind of limitation into the policy, even though they could do it. So they can do it right now, but they want us to do

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it. We are the villains. They can say the Legislature has said that thus and so is the law and we put it in our policy you cannot transfer ownership of this policy. [LB853]

SENATOR FRIEND: Time. [LB853]

SENATOR CHAMBERS: And that's the way it is with everybody. I didn't hear you, Mr. President. [LB853]

SENATOR FRIEND: Your time has expired. [LB853]

SENATOR CHAMBERS: Thank you. You do have to speak up. I'm not accustomed to you whispering. Thank you. [LB853]

SENATOR FRIEND: Thank you, Senator Chambers. Members, we are discussing the reconsider motion on AM2114. Senator Pankonin, you are recognized. [LB853]

SENATOR PANKONIN: Thank you, President Friend and members of the body. I haven't spoken on this bill and this issue today, but I do want to for a few minutes. I am on the Banking, Commerce and Insurance Committee that heard this bill, had a hearing on this bill and the issues thereof, and I think the reasons why...I shouldn't say I think, I know the reasons why I'm supporting LB853 and against these amendments are twofold. I mean, it is a very technical subject. It has...and, as Senator Chambers said, we've got two competing groups of insurance companies. If you don't trust insurance companies, we have insurance companies on both sides. We have lobbyists on both sides. I think what I took in consideration, besides my basic understanding of insurance, and I have used insurance, I own life insurance because I have insurable interests in my family and a small business that I wouldn't want to have sold so my employees would be out of work if something happened to me prematurely, so I think there is reasons to have life insurance. But I think the two reasons that I'm supporting the bill is that our Director of Insurance was very firm in her resolve that this is the right public policy and, more importantly to me, Senator Carlson, who's answered a lot of questions today, was very strong in our committee about this public policy. And if I could, I'd like to ask Senator Carlson a question. [LB853]

SENATOR FRIEND: Senator Carlson, will you yield to a question? [LB853]

SENATOR CARLSON: Yes, I will. [LB853]

SENATOR PANKONIN: Senator Carlson, you know, we've got two competing groups of insurance companies, we have competing groups of lobbyists, but you had sold these types of products but, Senator Chambers asked you before, you do not own an insurance company. And as an agent, is it better off to have a two-year provision or a five-year provision in your...from your professional opinion and your experience?

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[LB853]

SENATOR CARLSON: Senator Pankonin, if we say yes to the question that stranger-owned life insurance is not a good idea and it ought to be limited without giving up the viatical market, then a five-year provision is better than a two-year provision. And like Senator Chambers kind of led me into, it puts all the companies on a level playing field instead of company by company making that decision. [LB853]

SENATOR PANKONIN: Colleagues, that's the number one reason I'm supporting this bill. Tom Carlson has spent a career or a good part of his life in this industry. I think he's the type of person that I would feel comfortable buying products from because I think he would look for your best interests. And as a public policy position, that has been the number one reason why I'm supporting this bill, besides the fact that our Department of Insurance is backing that bill as well. So for the...and I agree with Senator Chambers. There's two different groups of insurance companies and lobbyists. But it comes down, to me, in this very technical area, that we have someone in our body who has been involved with these products and I think that gives me confidence that we're on the right public policy, because of Senator Carlson's experience and feeling that this is the best for our state and its citizens. Thank you. [LB853]

SENATOR FRIEND: Thank you, Senator Pankonin. Senator Carlson, you are recognized. [LB853]

SENATOR CARLSON: Mr. President and members of the Legislature, and thank you, Senator Pankonin, for those kind words. Mr. President, I'd like to address a question to Senator Hudkins, if she would yield. [LB853]

SENATOR FRIEND: Senator Hudkins, will you yield to a question? [LB853]

SENATOR HUDKINS: Yes. [LB853]

SENATOR CARLSON: Senator Hudkins, I think in discussion that you and I have had and then listening to you during the debate today, you, I believe, agree that stranger-owned life insurance is not a good idea. [LB853]

SENATOR HUDKINS: Yes. [LB853]

SENATOR CARLSON: Thank you. Senator Howard, is she available? I'd like to address a question to her. [LB853]

SENATOR FRIEND: I'm sorry, Senator Carlson, to who? [LB853]

SENATOR CARLSON: Senator Howard. [LB853]

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SENATOR FRIEND: Senator Howard, will you yield? [LB853]

SENATOR HOWARD: Yes, I will. [LB853]

SENATOR FRIEND: Thank you. [LB853]

SENATOR CARLSON: Senator Howard, you and I have not talked individually about this but I'm asking, do you think that stranger-owned life insurance is a bad idea? [LB853]

SENATOR HOWARD: Senator Carlson, I'll be real honest with you, I'm learning about this as this debate progresses. You know, on the face of it I would have a question about it, but on the other hand I want to know more about it and I want to know how it would be that a stranger, as we call them a stranger, would own somebody's life insurance. So I'm sorry I can't give you a yes or no. I can say I am learning. [LB853]

SENATOR CARLSON: Okay. Thank you, Senator Howard. We can make villains out of insurance companies that operate in the state of Nebraska and have their home offices here: Pacific Life and Mutual of Omaha and others. I pick out the two larger companies. These companies do business, I believe, the way it's supposed to be done, in an ethical manner. There are companies that don't and I would never stand up and defend a company that operates in an unethical way and takes advantage of people. We have...I'm not going to try and make villains out of the lobby that we have either. We have just a difference of opinion here. But Senator Chambers talks frequently about us giving in to lobbyists and being just a doormat for lobbyists, and I would say that I am not about to be a doormat for lobbyists that are really trying to defeat this bill and leave open a practice that's unethical. So I have a disagreement. And they use stalling tactics. They use confusion tactics. They try and get people confused about life insurance and what it does in the marketing of insurance, and that's all part of the game of the political process. LB853 does absolutely nothing to personal policies that an individual buys, pays the premium on for two years, and then has an unexpected event occur in their life to where they don't either need that insurance anymore or they can't afford it anymore and they want to see what they can do in selling it on a secondary market. LB853 does absolutely nothing to that possibility. It doesn't take away the viatical market. What it does is discourage stranger-owned life insurance which is unethical business. It's business that companies... [LB853]

SENATOR FRIEND: One minute. [LB853]

SENATOR CARLSON: ...engage in to try and get people to take out insurance and then, as soon as they gain possession of that policy, they absolutely want that person to die. They don't want that person to live. That's the way they gain. That's not ethical. I

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buy life insurance with my wife and family as beneficiary because I want them taken care of when I'm not here. They don't want me to die in order that they receive a benefit. A business partner and I may have insurance on one another, but we're better off alive than we are dead. My business partner does not want me dead. But a stranger wants nothing more than me to keel over the minute he gets ahold of that policy. That's the way it's the most profitable. That's the unethical part of that business. That's the reason for LB853 being a good bill and, again, I ask you to defeat the amendment on the reconsideration and vote for LB853. Thank you. [LB853]

SENATOR FRIEND: Thank you, Senator Carlson. Senator Hudkins, you are recognized. Senator Hudkins, you are recognized. [LB853]

SENATOR HUDKINS: Thank you, Mr. President and members. Senator Carlson, may I ask you a question? [LB853]

SENATOR FRIEND: Senator Carlson, will you yield to a question? [LB853]

SENATOR CARLSON: Yes. [LB853]

SENATOR HUDKINS: We've been hearing a lot on the news lately about people misspeaking. Well, I think I misheard. Did you ask me if I supported stranger-owned or stranger-originated? [LB853]

SENATOR CARLSON: Well, I'm meaning the same thing, so if we want to call it stranger-originated, I asked you if you thought stranger-originated life insurance was a bad idea. [LB853]

SENATOR HUDKINS: Okay, stranger-originated, yes. Stranger-owned, that is a viatical settlement and that is perfectly fine, as far as I'm concerned. I would also like to ask you another question. If...you're an insurance company...or insurance agent. If an existing policyholder came to you and wanted to know their options concerning their policy, would you tell them about the secondary market? [LB853]

SENATOR CARLSON: Yes. Reason I hesitated a little bit, it kind of depends on circumstances. And I know my clients, but if that were appropriate, yes. [LB853]

SENATOR HUDKINS: Have you ever done that? [LB853]

SENATOR CARLSON: No, I haven't because there isn't a way that I could do that with my company, but that in terms of letting them know what may be available, I would do that. [LB853]

SENATOR HUDKINS: Thank you. Senator Pahls. [LB853]

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SENATOR FRIEND: Senator Pahls, will you yield to a question? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR HUDKINS: Senator Pahls, thank you. I know that you are a...were a school administrator rather than an insurance agent. Is that correct? [LB853]

SENATOR PAHLS: Yes. [LB853]

SENATOR HUDKINS: But I would like to ask you a similar question. Can't these policies be written so that it says how many years the policyowner has to wait before they can sell that policy? Can't we already do that? [LB853]

SENATOR PAHLS: I can't answer that question. [LB853]

SENATOR HUDKINS: I think we were told earlier, and maybe it was me that said it, I don't remember, it's been a long afternoon, that the insurance companies can say in their policies what the rules are. And if the companies want to have a two-year period before they can sell it to the secondary market or three years or five years, and I think Senator Chambers was touching on this the last time he spoke, I think that the insurance companies already have the option of doing that. They can put into their policies anything they want that is legal, that is not against the law. There can be certain conditions. So I would think that they could already do this and, therefore, we would not have to have LB853. Senator Carlson, do you have a comment on that? [LB853]

SENATOR FRIEND: Senator Carlson, will you yield? [LB853]

SENATOR CARLSON: Yes. And you asked me if I have a comment on that, and I think probably insurance companies can do that. But we're moving forward at the request of the Director of Insurance, who wants to keep the insurance business clean, upright, ethical in the state of Nebraska, and making a progressive decision to ward off trouble and to keep business in the way that is going to be best for the citizens of Nebraska, and that's better if it's across the board. [LB853]

SENATOR FRIEND: One minute. [LB853]

SENATOR HUDKINS: All right. I'm not saying that any of the insurance companies are not clean, not ethical and not upright. I think, far and away, our insurance companies are doing that. But it is sometimes we have to, not punish, but we have to place restrictions on one group to prevent the unethical activities of another. And if you can already do this, then I don't see the need to continue with LB853. Thank you, Mr. President. [LB853]

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SENATOR FRIEND: Thank you, Senator Hudkins. Senator Howard, you are recognized. [LB853]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I'm surprised myself, I've gotten so interested in this, not having a background in insurance issues or really thinking I would ever be intrigued by this. But as someone that holds a life insurance policy and has for a very long time and pays her premiums quarterly, I find myself really (laugh) really following this. And I appreciate Senator Carlson and his questions and if I could maybe ask him a question or two, that would help me to continue to have a clearer picture of this. [LB853]

SENATOR FRIEND: Senator Carlson, will you yield to a question? [LB853]

SENATOR CARLSON: Yes, I will. [LB853]

SENATOR HOWARD: Thank you. And I wasn't trying to be cagey earlier when I gave you...not an answer, but I was being honest in that I'm trying hard to better educate myself on this so that when I cast a vote it's with...a thought-through vote. And I'm wondering, are you familiar with an actuarial firm called Milliman, Milliman? [LB853]

SENATOR CARLSON: Senator Howard, I don't know that I am. If you're pronouncing it correctly, I don't know that I am. [LB853]

SENATOR HOWARD: Let me spell it. It's M-i-l-l-i-m-a-n. And I understand this is the largest actuarial firm in the U.S., so I thought it might ring a bell with you if I could pronounce it correctly. [LB853]

SENATOR CARLSON: No, I'm not. [LB853]

SENATOR HOWARD: Okay. Well, I can appreciate that. But in looking at the information that they produce is that over 89 percent of the universal life insurance policies that are issued don't pay death benefits, and probably for one of two reasons: Either the premiums lapse or the policy is surrendered prior to a time when they would actually have to pay a recipient. And if you take that 89 percent, subtract that from the 100 percent, obviously that's 11 percent remaining. And the figures that they have given me is that approximately 1 percent of the insurance policies go into the hands of a secondary person or, as we're calling them on the floor, a stranger, and that seems like certainly a low figure for the insurance policies that are issued. Am I following this correctly? Do you...do you... [LB853]

SENATOR CARLSON: Well, I'm hearing what you're saying and I find it difficult to believe those figures. Can I have a few seconds? The company that I worked for, the

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lapse ratio on policies like universal life would be more in the area of 4 or 5 percent. I've got some other information here that the type of policies that would be used in a secondary market, the lapse ratio is more like 10 percent. The high lapse rate in insurance, life insurance, policies is term insurance. They're kind of designed not to be in force when a person dies because the premiums go up all the time. So it really depends on the kind of policy. You did say universal life, but that's not the experience that I've had with my company, which is one of the larger companies in the United States. [LB853]

SENATOR HOWARD: Okay. Well, I appreciate that. Thank you. Thank you for giving me your information on that. Unfortunately, it just seems to confuse me more. If there's such a disparity over these figures, I have a real concern, if this is accurate from this Milliman, this actuarial firm, that 89 percent of these universal life insurance policies do not pay death benefits, it seems like a lot of people are putting money into something that they will never see a benefit from. But I thank you for your information and I thank you for your knowledge in this area. [LB853]

SENATOR FRIEND: One...one minute. Thank you, Senator Howard. Senator Chambers, you are recognized and this is your third time speaking on this motion. [LB853]

SENATOR CHAMBERS: Eh? What's that, sonny? (Laughter) Mr. President, members of the Legislature, Senator Carlson almost had me rolling in the aisle. If a friend of his buys a policy, his friend wants him to stay alive, he thinks and he hopes. Do you realize more people are poisoned by their significant other or a friend than by a stranger, Senator Carlson? But here's how that breaks down. If the ones that we refer to as the stranger, as Senator Howard said, would purchase the policy, that person wants me to die. You...I'm going to die because they want me to die? So here's what they do. They say, we just bought this policy that was on the life of Senator Harms. Now we call all 15 of our people together and we say, now at exactly 8:15 p.m. we're all going to want together, we're going to want Senator Harms to die. So we get there and we just want and we want and we want, and Senator Harms outlives all of us. What difference does it make if somebody wants me to die? Senator Carlson, people have been wanting me to die ever since I've been in this Legislature and before, and they have gone on to the stone orchard and I'm still chugging right along. So the motivation, the feeling somebody has about this means nothing. And I'm sure Senator Carlson is not suggesting that what they do when they buy one of these policies, they make a little doll of each person whose policy they purchase and then, after a respectable amount of time comes, they take a pin and they (sound effect) and that person croaks and they recover. He's not suggesting that. He wants, though, to get it away from the purely business aspect of it that there is competition which the insurance companies don't want to confront. This problem, as it's called, is not national in scope. It is not consequential, and the insurance companies are really overreaching when we're going to have to spend all of

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this time, put forth all this effort to go from two years to three years so that the customer can be gouged a little deeper. That ought to be enough to kill this bill. These insurance companies have us going through all of this so they can get three extra years, during which they hope that policy will lapse. That's what they're hoping. The viaticals have not bitten substantially into the revenue of any insurance company in this country. No insurance company has been able to show us that and none can show it to us. It's not that these viaticals will say we're going to target customers of Mutual of Omaha. Anybody who's got insurance, maybe there is a company that they would like people to buy insurance from because it's the one they think of. But there are other insurance companies implicated. This is not a problem significant enough for us to do the work that these companies can do for themselves. In addition to everything else that has been said, we know that ethics is a concept defined by law if there are sanctions imposed by the law. What is ethical or not ethical is decided by people and it's not something intrinsically bad. Senator Carlson said he'll never be a doormat of the lobbyists. I'd like to ask him a question or two. [LB853]

SENATOR FRIEND: Senator Carlson, will you yield? [LB853]

SENATOR CARLSON: Yes, I will. [LB853]

SENATOR CHAMBERS: Senator Carlson, doth thou eat the lobbyists' food? [LB853]

SENATOR CARLSON: You know that I have partaken before. [LB853]

SENATOR CHAMBERS: Do you intend to partake more of the lobbyists' food? [LB853]

SENATOR CARLSON: I may. [LB853]

SENATOR CHAMBERS: Knoweth thou, Senator Carlson, that the hand which feedeth "controleth." [LB853]

SENATOR FRIEND: One minute. [LB853]

SENATOR CARLSON: Not me. [LB853]

SENATOR CHAMBERS: Verily, verily I say unto you, let not your good works be evil spoken of. Now if all your other colleagues are controlled by those who feed them, and everybody in the world is controlled by the hand that feeds, you're telling us that you're different. You're the exception that proves the rule, more or less. [LB853]

SENATOR CARLSON: It's not what goes into the mouth that makes a person unclean. [LB853]

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SENATOR CHAMBERS: But that which cometh out in the draft, which is a very bad way of saying that you know what you don't want to talk about before you eat. But that's in the "Bibble," isn't it, Senator Carlson? [LB853]

SENATOR CARLSON: It's in the Bible. [LB853]

SENATOR CHAMBERS: All right. Now if that which goeth into the mouth is not what profanes, can a person pop pills, drugs? It's going into the mouth. Jesus said that's not what defiles a man. So can they take drugs and be in line with what Jesus said? Come on now. [LB853]

SENATOR CARLSON: Oh, you're asking...you're asking...we also are... [LB853]

SENATOR FRIEND: Time. [LB853]

SENATOR CARLSON: ...commanded...thank you. [LB853]

SENATOR CHAMBERS: He saved you. (Laughter) [LB853]

SENATOR FRIEND: Thank you, Senator Chambers and Senator Carlson. Senator Hudkins, you have spoken three times on this. I apologize that I hadn't let you know. There are no other lights on so you are recognized to close, if you wish. [LB853]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. You get just so caught up in the emotion and the facts and all of that, that you forget how many times you've talked. I would like to just share with you one paragraph. This is taken from the December 2007 issue of California Broker, and this says: "STOLI: Fact and Fiction Combating STOLI Without Violating Consumer Rights." The subject of stranger-originated life insurance has dominated much of the life insurance industry's public discourse in recent months, as it has ours today. But, for all the talk about STOLI's risks, industry participants and state regulators have had remarkably little substantive changes about what STOLI is and what it is not. Advisors are being asked to understand and act on an important issue without a clear definition of STOLI. The misconceptions are mainly coming from life insurers and their trade associations. These insurers are portraying STOLI as a far-reaching and uncontrollable threat to their longstanding business practices and assumptions. The goal is to stamp out the competitive forces of a secondary market for life insurance, using STOLI as a Trojan horse. Carriers are deliberately equating STOLI with legitimate secondary market transactions. By creating a perception, albeit wrong, that all or most life settlements and all nonrecourse premium financing transactions are STOLI, carriers have been advocating for broad antisecondary market legislation and have engaged in market conduct that prevents consumers from getting the true value of their life insurance policy. A recent analysis demonstrates that STOLI is a clearly defined and isolated

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phenomenon that has nothing to do with legitimate life settlements or nonrecourse premium financing. I thought it quite interesting. I pulled up the committee statement on LB853 and the proponents were Senator Pahls, who was the introducer, I understand that; Ann Frohman, who is with the Department of Insurance, I certainly understand that one; Jim Hall, American Council of Life Insurers; Janis McKenzie, Nebraska Insurance Federation; Terry Headley, who is with the National Association of Insurance and Financial Advisors, Nebraska; Jim Hall, who is with the American Council of Life Insurers. The people that spoke for this bill all are involved with the life insurance industry. The opponents were Robert Wooley, who is with Coventry; Burton Shepard, the Nebraska Land Title Association; Tip O'Neill is with the Association of Independent Colleges and Universities of Nebraska. I'm assuming that all three of these gentlemen are speaking for people in the secondary market. And then we had a speaker speaking neutrally for the Nebraska Dental Association. I thought that was rather interesting because why would the Dental Association care about our life insurance policies? The lobbyists on both sides of this issue are doing their job. The ones that support LB853 are telling you to support LB853, obviously, and to not accept any amendments to it. The other side, they're doing their job. They're saying this bill is not policyowner friendly; it is insurance company friendly. What we have is a difference of opinion so I guess, ladies and gentlemen, that this is up to you. I'm not saying one...well, yes, I am, I am saying that one side is right and one side is wrong, but it's going to be up to you to decide, after you have hopefully listened to both sides of the question, who would you rather support:... [LB853]

SENATOR FRIEND: One minute. [LB853]

SENATOR HUDKINS: ...the policyowner, or the insurance companies who are not doing anything illegal, they're just not telling it like it is? Thank you, Mr. President, I would ask for a call of the house and a roll call vote, please. [LB853]

SENATOR FRIEND: Thank you, Senator Hudkins. Members, you've heard the closing on the motion to reconsider. There has been a request for a call of the house. All of those in favor of the house going under call please signify by voting aye; all of those opposed vote nay. Have all voted who wish to? Record please, Mr. Clerk. [LB853]

CLERK: 25 ayes, 0 nays to place the house under call. [LB853]

SENATOR FRIEND: Thank you, Mr. Clerk. Members of the Legislature, the house is under call. Senators, please record your presence. Those senators outside the Chamber please report to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Carlson, please check in. Thank you. Members, please check in. The house is under call. Senators Pedersen and Preister, please check in. Senator Hudkins, did you ask for a roll call vote in regular order? Thank you. All members are present and accounted for. Mr. Clerk,

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there has been a request for a roll call vote in regular order. Please call the roll. [LB853]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 1221-1222.) Vote is 7 ayes, 34 nays, Mr. President, on the motion to reconsider. [LB853]

SENATOR FRIEND: The motion is not successful. Mr. Clerk, next item. I do raise the call, members. [LB853]

ASSISTANT CLERK: Mr. President, Senator Hudkins would offer AM2354. (Legislative Journal page 979.) [LB853]

SENATOR FRIEND: Senator Hudkins, you are recognized to open on AM2354. [LB853]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. AM2354, this amendment would remove the requirement for viatical settlement providers to provide a surety of \$250,000 to the Department of Insurance. Current law, 44-1103, requires that viatical settlement providers be licensed by the state of Nebraska before they can do business here. Part of the application process requires disclosure of the identities of all stockholders, partners, officers, members, and employees. The director may refuse to issue a license if she is not satisfied that any stockholder, partner, officer, member, or employee thereof may materially influence the applicant's conduct that meets the standards of the Viatical Settlements Act. This amendment would strike the new...on page 24 and 25, would strike the new matter and reinstate the stricken language. This would strike the requirement that brokers provide financial responsibility, up to \$250,000. I am just unclear on what purpose this serves. The broker is the only one injured if the policy lapses. So if the current Director of Insurance may refuse to issue a license, if she's not satisfied about all of the things that I talked about, why should the viatical settlement providers be required to provide this \$250,000 bond? Thank you, Mr. President. [LB853]

SENATOR FRIEND: Thank you, Senator Hudkins. Members, you have heard the opening on AM2354. There are senators wishing to speak. Senator Chambers, you are recognized. [LB853]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, Senator Hudkins hit this nail squarely on the head. The viatical representative is going to pay the person whose policy is being purchased. That is the point at which financial responsibility is established. If this person does not have the money to pay then the policy is not sold. This is another of those attempts by the insurance companies to create an onerous requirement that has nothing to do with anything except putting another hurdle in the pathway. This is one of the most disgusting, dishonest, unethical things I've seen these rotten insurance companies do. You know why I'm using the term "rotten"? This proves it. It's only to put a hurdle in the path. There is nobody who's going

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to be cheated out of anything by these viatical providers. They must give you the money before you give up the policy. And if they are not able to continue paying the premiums, the policy lapses in their hands and they lose the money they paid for the policy and they have no chance to recover. So why do the insurance companies want this? I hope there's not another bill that the insurance industry or that the insurance commissioner wants this session. I'm fed up with them. And the fact that she would do this means nothing to me because in most cases the insurance commissioner winds up getting a job with somebody in the insurance industry. Those people don't get that position because they are somehow more expert than anybody else. They're political appointments in the first place. Then they work hand in glove with the insurance industry. There are practices that this bill is talking about addressing which can be addressed by the insurance commissioner under the existing law, but you don't have to know the law to be an insurance commissioner. You just bark when they say bark; you bite when they say bite. I'd like to ask our resident professional and expert, Senator Carlson, a question or two. [LB853]

SENATOR FRIEND: Senator Carlson, will you yield to a question? [LB853]

SENATOR CARLSON: Yes, I will. [LB853]

SENATOR CHAMBERS: Senator Carlson, this amendment would take away the requirement that one of these viatical providers put up a several-hundred-thousand-dollar bond. Why is it necessary for that to be the case when nobody is running the risk of being harmed? [LB853]

SENATOR CARLSON: I'm going to be straightforward with you, Senator Chambers, and I really don't know. [LB853]

SENATOR CHAMBERS: Thank you. Members of the Legislature, nobody knows. There is no reason under heaven, in heaven or under the earth for this provision. It's another one of those obstacles, and Senator Pahls and others have been told, don't accept any amendments and we're going to put some of the craziest stuff in there and that Legislature is going to accept all of it when they don't even know why it's there. But since Senator Pahls is the Chair of that committee, I'd like to ask him a question or two. [LB853]

SENATOR FRIEND: Senator Pahls, will you yield to a question? [LB853]

SENATOR PAHLS: Yes, I will, and hopefully I can answer a little bit about the... [LB853]

SENATOR CHAMBERS: Senator Pahls, if I'm going to have a deal on one of these viatical excursions, I have the policy, Senator Wallman represents the viatical operator and he says I will give you a certain percentage of the face value of that policy, and I

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say okay. [LB853]

SENATOR FRIEND: One minute. [LB853]

SENATOR CHAMBERS: Until he gives me the money, he doesn't get anything from me. Why is it necessary to have this bond, and are insurance agents required to post such a bond? [LB853]

SENATOR PAHLS: May I...do you want me to respond? [LB853]

SENATOR CHAMBERS: If you will. [LB853]

SENATOR PAHLS: Okay. On page 24, this is how I am reading this bond, and I'm going to skip a sentence, is authorized recovery by the director on behalf of any person in this state who has sustained damages as a result of an erroneous act, failure to act, conviction of fraud, or a conviction of an unfair practice of the viatical settlement provider or broker. So, as I see this, is the \$250,000 actually protects the consumers. [LB853]

SENATOR CHAMBERS: Does an insurance agent have to put that money up? [LB853]

SENATOR PAHLS: I don't know if the agent does, but I know there are certain bonds that have to be throughout the... [LB853]

SENATOR CHAMBERS: An independent insurance agent has to put up a \$250,000 bond to protect anybody... [LB853]

SENATOR PAHLS: No. [LB853]

SENATOR CHAMBERS: ...against the same things. [LB853]

SENATOR FRIEND: Time. [LB853]

SENATOR CHAMBERS: Was that my second or first time? [LB853]

SENATOR FRIEND: That was your first time, Senator Chambers. Thank you, Senator Chambers and Senator Pahls. Senator Pahls, you are recognized. [LB853]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Again, I'm reading on page 24, this is my reading of the information: If a viatical settlement broker or viatical settlement provider has demonstrated evidence of financial responsibility, and it goes on. I believe, as I read this, if damages are incurred, those are the individuals who pay that or have that bond. And it's my understanding, by reading some of the literature,

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if you're bonded in one state I think it is reciprocal. So, as I see it, it's just one more protection for the consumer, if I'm reading this correctly. So for them to be involved, the broker or the provider, we're actually holding them a little bit more accountable because if they do--and this is how I'm reading it, to be honest with you--if they do mess up that's one way that the director can help with the damages. So I see it basically as protecting the consumer, not the other way around. That's my understanding. Any, Senator, a question? [LB853]

SENATOR FRIEND: Senator Pahls, we are on your time now so if you would like Senator Chambers to have the time... [LB853]

SENATOR PAHLS: Yes, Senator Chambers, please. [LB853]

SENATOR CHAMBERS: Thank you, Senator Pahls. Members of the Legislature, an independent insurance agent can be responsible for an erroneous act, failure to act, conviction of fraud, or conviction of unfair practices. All of these things any number of people can be guilty of, but they're not required to post a \$250,000 surety bond or insurance or the various other methods by which you can show responsibility: a deposit of cash, certificates of deposit or securities, or any combination thereof. They don't make these other people who provide services do this. This is another gimmick by the insurance companies, and if any other...if this is not taken out of here, any bill that the insurance companies bring here this session, because it's all the time I've got, I'm going to do everything I can to stop it. Eight hours, eight hours on General File, and that's a pledge that I'm making and I only have to do it for 12 or 13 days and if you think I can't do that you've got another think coming. This is totally unnecessary. This is overkill. But since I'm on Senator Pahls's time, that's all that I will take, and give back to him whatever time remains. [LB853]

SENATOR FRIEND: Senator Pahls, there is still 2 minutes remaining. [LB853]

SENATOR PAHLS: Mr. President, members of the body, it does appear to me that this \$250,000 bond is not an outrageous amount for an area that has caused some concern in the industry. Thank you. [LB853]

SENATOR FRIEND: Thank you, Senator Pahls. Members, we are discussing AM2354. Senators wishing to speak are Lathrop, Hudkins, Chambers, and Carlson. Senator Lathrop, you're recognized. [LB853]

SENATOR LATHROP: Thank you, Mr. President and colleagues. We've been on this all afternoon and I think we're getting close to eight hours and so we'll have an opportunity shortly to decide whether or not we should end the debate on this bill and vote on it. And I see the last vote there was an awful lot of people that look like they're losing interest in it, and I wanted to stand up and talk before we got to that place in time for this

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reason. We are going to regulate an industry, further regulate an industry, these viatical settlements, and after eight hours of debate--I have to tell you I've been listening, I've been paying attention, the first couple of hours I was involved in it--and I haven't heard a compelling reason to do any of this. I have to agree with Senator Chambers. I haven't heard a compelling reason. The one reason I did hear came from Senator Carlson, who I regard as someone who would know about insurance and who I regard as an honorable man. But Senator Carlson told us today that the people who buy the viaticals now are hoping that you die. That's the argument. And, in reality, it isn't any different...these people aren't hoping that you die; they're just...they just know it's going to happen and they're making the same kind of bet with the same kind of experts who can give us the averages on life expectancy, and in some respects it isn't any different than an annuity you would buy from State Farm or any other insurance company, and that is they sell the policy and the sooner you die the less they have to pay. And the viatical people, the sooner you die after the thing is sold, the sooner that they get paid. That doesn't mean they're hoping you die or wishing you'd die. The law of averages governs the entire insurance industry; they know. And so I don't think this is about a moral or an ethical issue about whether or not someone is hoping you're dying or not, and nor have we heard a compelling reason for this bill. I believe that what we have heard in the course of the discussion this afternoon is that this is something this industry could do for itself, this is something they could put in the policies, and this is something the commissioner can regulate without a statute. Is it a problem in Nebraska? We haven't heard one instance where somebody has taken advantage of an older couple or anybody where this has even happened in Nebraska. So, you know, shortly you'll be given an opportunity to cut this off, and maybe it's our job on the floor to say, have we heard enough, is there a compelling reason for this, and I'd say I haven't heard it and, no, there isn't a compelling...no compelling reason has been made to move this bill at this point in time. Somebody tell me why it's a problem in Nebraska. Somebody tell me why we can't regulate it within the insurance company and within the industry and by the insurance commissioners, and then we can take up a bill that is on the order of LB853. Thank you. [LB853]

SENATOR FRIEND: Thank you, Senator Lathrop. Senator Hudkins, you are recognized. [LB853]

SENATOR HUDKINS: Thank you, Mr. President and members. Senator Pankonin, if you are...yes, you are. I would like to ask you a question, please. [LB853]

SENATOR FRIEND: Senator Pankonin, will you yield? [LB853]

SENATOR PANKONIN: Yes, I will. [LB853]

SENATOR HUDKINS: Senator Pankonin, you said that you were in favor of keeping this bond, this \$250,000. Was that correct? [LB853]

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SENATOR PANKONIN: No, I didn't talk about that issue. [LB853]

SENATOR HUDKINS: Okay. Somebody did. I'll just go ahead and ask you the question. A bond is done for safety to replace if something gets damaged or protection in the case of someone is in danger. When these viatical companies file this bond, do you know where the money goes? Who do they file it with? [LB853]

SENATOR PANKONIN: I'm sorry, Senator Hudkins, I have no knowledge about what you're doing, but I think... [LB853]

SENATOR HUDKINS: All right. Senator Pahls or Senator... [LB853]

SENATOR PANKONIN: Senator Pahls might be able to help. [LB853]

SENATOR HUDKINS: ...Carlson, do either of you know? [LB853]

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

SENATOR PAHLS: It is my understanding that it would be to the Director of Insurance. [LB853]

SENATOR HUDKINS: All right. Then what...okay, so the bond is paid to the Director of Insurance and then this viatical company...well, how long does that money stay there? [LB853]

SENATOR PAHLS: I cannot answer that. [LB853]

SENATOR HUDKINS: So does the Department of Insurance just keep it forever? [LB853]

SENATOR PAHLS: Well, as it's explained to me, until there are damages, and if there are damages that's when it will be used, like there are...just to give you an idea, in the Insurance Department we have a number of fees that we collected and that money stays in the account and they use it for if they're going to do audits or if they're checking up on. So I'm assuming this money would be money that they could utilize to pay damages if it did occur. [LB853]

SENATOR HUDKINS: Do the insurance companies also have to pay a similar bond a bond? [LB853]

SENATOR PAHLS: I think what we're trying to do here is protect that individual if they are harmed by a broker or a provider. [LB853]

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SENATOR HUDKINS: Okay. [LB853]

SENATOR PAHLS: That is the intent. [LB853]

SENATOR HUDKINS: Okay. So let's say then that that \$200 and...let's say we have in Nebraska, and I haven't any idea how many viatical settlement companies there are, but just for purposes of discussion let's say that there are ten. Each one of these has to pay a bond, a surety bond, of \$250,000. And \$250,000 times ten is, my math is correct, \$2.5 million, right? If that's the case, then there is interest that collects on this money. Who gets to use that interest? [LB853]

SENATOR PAHLS: Well, it is my understanding, now I may have some people who work with bonds, you buy the bond for protection. I don't know if that money actually is given there at that time. [LB853]

SENATOR HUDKINS: Okay. [LB853]

SENATOR PAHLS: Yes, you purchase the bond. If there are damages then that bond, that's how you collect, from the bond. [LB853]

SENATOR HUDKINS: And you purchase...let's do it again. You purchase this bond from whom? [LB853]

SENATOR PAHLS: The insurance companies. [LB853]

SENATOR HUDKINS: Insurance companies. So if you have to do this bond, then they get to use your \$2.5 million. Is that correct? [LB853]

SENATOR PAHLS: Well, I don't know if there's actually that money transaction that you're talking about takes place. [LB853]

SPEAKER FLOOD PRESIDING [LB853]

SPEAKER FLOOD: One minute. [LB853]

SENATOR HUDKINS: Well, if there are damages, then do the viaticals have to come up with \$250,000 just bang? [LB853]

SENATOR PAHLS: Right. That's why, when you purchase the bond, is my understanding, then that bond is where you'd get that \$250,000. [LB853]

SENATOR HUDKINS: So if you don't do things according to the way they're supposed

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to be done, then your company would have to pay the \$250,000. Is that correct?
[LB853]

SENATOR PAHLS: That is my understanding. [LB853]

SENATOR HUDKINS: And I think we're out of time. Mr. President, did you say one minute? Mr. President, how much time do I have left? [LB853]

SPEAKER FLOOD: Fourteen seconds, Senator. [LB853]

SENATOR HUDKINS: Thank you. [LB853]

SPEAKER FLOOD: Thank you, Senator Hudkins. Mr. Clerk, do you have a motion on the desk? [LB853]

CLERK: I do, Mr. President. I have a priority motion. Senator Pahls would move to invoke cloture, pursuant to Rule 3, Section 10...or Rule 7, Section 10, excuse me.
[LB853]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Pahls, for what purpose do you rise?
[LB853]

SENATOR PAHLS: For a call of the house. [LB853]

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. [LB853]

CLERK: 26 ayes, 0 nays, Mr. President, to place the house under call. [LB853]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused 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 Engel, Senator Johnson, Senator Cornett, Senator Nelson, Senator Lathrop, Senator Hansen, Senator Wallman, Senator Lautenbaugh, please check in. The house is under call. All senators are present or otherwise accounted for. It is the ruling of the Chair that there has been full and fair debate on LB853 on Select File. Members, the first vote is the motion to invoke cloture. All those in favor vote aye; all those opposed vote nay. A roll call vote has been requested. Mr. Clerk, please read the roll. [LB853]

CLERK: (Roll call vote taken, Legislative Journal pages 1222-1223.) 33 ayes, 8 nays, Mr. President, on the motion to invoke cloture. [LB853]

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SPEAKER FLOOD: The motion to invoke cloture is adopted. We now proceed to...we now proceed to a vote on AM2354. The question is, should AM2354 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted who wish to? Mr. Clerk, please record. [LB853]

CLERK: 4 ayes, 26 nays, Mr. President, on the amendment. [LB853]

SPEAKER FLOOD: AM2354 is not adopted. Mr. Clerk, we now proceed to LB853. The question is, should LB853 advance to E&R for engrossing? All those in favor of LB853 advancing to E&R for engrossing vote yea; all those opposed vote nay. A record vote has been requested. Have all those voted who care to? Mr. Clerk, please record. [LB853]

CLERK: (Record vote read, Legislative Journal page 1223.) 36 ayes, 5 nays, Mr. President, on the advancement of LB853. [LB853]

SPEAKER FLOOD: LB853 advances to E&R for engrossing. I do raise the call. Mr. Clerk, items for the record? [LB853]

CLERK: I do, Mr. President. Thank you. Study resolutions: Senator Preister, LR356, LR357; Senator Cornett, LR358; Senator Raikes, LR359; Senator Lautenbaugh, LR360; Senator Dierks, LR361; Senator Ashford, LR362; Senator Erdman, LR363; Senator Loudon, LR364, LR365; Senator Christensen, LR366; Senator Fischer, LR367; all calling for interim studies, all will be referred to the Executive Board. LR368 is by Senator Schimek; LR369 by Senator Schimek. In addition, Mr. President, your Committee on Enrollment and Review reports LB765 as correctly engrossed; LB777 correctly engrossed; LB889 correctly engrossed; LB952 correctly engrossed; LB973 correctly engrossed; LB988 correctly engrossed; LB988A correctly engrossed; LB1049, LB1055, and LB1157, LB1157A, all reported correctly engrossed. (Legislative Journal pages 1224-1236.) [LR356 LR357 LR358 LR359 LR360 LR361 LR362 LR363 LR364 LR365 LR366 LR367 LR368 LR369 LB765 LB777 LB889 LB952 LB973 LB988 LB988A LB1049 LB1055 LB1157 LB1157A]

SPEAKER FLOOD: Thank you, Mr. Clerk. Given our proximity to 6:00 this evening, we'll now proceed to our 6:00 bill, General File, 2008 senator priority bill, LB1174 offered by Senator Dierks. [LB1174]

CLERK: LB1174 is a bill originally introduced by Senator Dierks. (Read title.) Bill was introduced on January 23 of this year, referred to the Agriculture Committee. The bill was advanced to General File. There are Agriculture Committee amendments pending, Mr. President. (AM2319, Legislative Journal page 960.) [LB1174]

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SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Dierks, you're recognized to open on LB1174. [LB1174]

SENATOR DIERKS: Thank you, Mr. President. Mr. Speaker and members of the Legislature, I am pleased to introduce my priority bill, LB1174, to the body. LB1174 will place provisions very similar to the successful 1982 citizens' Initiative 300 in the Nebraska state statute. Initiative 300 banned nonfarm corporations from owning farm or rangeland in Nebraska. LB1174 reinstates the wishes of the majority of voters who told us this and what they wanted 26 years ago. It places a ban on nonfarm corporations from owning farm and rangeland. LB1174 was drafted with consideration to the recent court cases in which questions were raised concerning violations of the Commerce Clause and the Americans with Disabilities Act. Farmers and ranchers from other states may join a farm or ranch entity in Nebraska as long as they provide day-to-day labor and day-to-day management where they are located. After listening to the opponents who testified against LB1174 at the Ag Committee hearing, I proposed what I thought would be a compromise amendment. It would allow five or fewer unrelated individual farmers or ranchers to join together to form a farm entity. The only stipulation is that all of the five or fewer farmers and ranchers must provide day-to-day labor and day-to-day management. There is no requirement as to where they work on a farm or ranch. This amendment allows unrelated five or fewer beginning farmers and ranchers to join together or a retiring farmer to join with a beginning farmer to form a farm or ranch entity. The possibilities are endless now and family farming and ranching would be protected in Nebraska from large nonfarm-related corporations. The opponents have not accepted this amendment. We have a lot of things to talk about this evening. I think I will stop now and allow for the committee amendments to be introduced. Thank you, Mr. Speaker...Mr. President. [LB1174]

SENATOR FRIEND PRESIDING [LB1174]

SENATOR FRIEND: Thank you, Senator Dierks. Mr. Speaker, oh, Mr. Clerk, you have amendments? [LB1174]

CLERK: Mr. President, the Agriculture Committee amendments offered by Senator Erdman, as Chair. [LB1174]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Erdman, as Chair of the Agriculture Committee, you're recognized to open on AM2319. [LB1174]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. Good evening. The Agriculture Committee held a public hearing on LB1174 on February 12, 2008. The hearing room was well attended. There were a number of individuals that testified in favor, against, and in a neutral capacity. You can follow along and find those individuals specifically on the committee statement. The committee advanced LB1174

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to General File with the committee amendments on a vote of 7 to 1. All members of the committee were present and, again, the vote was 7 members in favor, 1 member against the bill, as amended. The committee amendment, which is AM2319, strikes the original provisions of LB1174. Essentially, it becomes the bill. The amendment makes largely clarifying and technical changes, however, and adds significant substantive revisions by adding an exception for nonrelated agricultural producers to be able to be an accepted entity under the provisions of LB1174. Specifically, what the committee amendment does is it consolidates the legislative findings, which you'll find at the beginning of the committee amendment, AM2319. It revises for style and logical progression, as well as removing some of the redundancy that was found in the original draft of LB1174. It inserts a new finding section, stating the legislative findings of public interest in allowing the limited use of limited liability business entities that are formed by owner-operator farming and ranching operations to pool resources in achieving economies of scale. The additional statement of legislative findings parallels the additional exception that was provided to the committee by Senator Dierks of allowing qualified owner-operator controlled farm or ranch entities to be exempt from the general prohibition in Section 4 of the bill. It modifies the definition of entity, the substantive effect which is to clarify that cooperative associations included in the term encompasses both stock and nonstock cooperative association, and this amendment...this section also rearranges this sentence order for style and clarity. It replaces the term of "farm and ranch" which was previously in LB1174 with a new defined term of "farming and ranching operation." This new term is then substituted throughout the bill, as revised by the committee amendment, and reinforces the concept of farming and ranching as an enterprise utilizing agricultural resources wherever located as opposed to a geographically defined entity. It modifies the defined term "family farming or ranching entity" by again substituting the term "farming and ranching operation" for the term "farm or ranch." And again, this further enforces that qualifying contribution of management and labor is to the entity's farming and ranching enterprise as opposed to being provided upon geographically defined assets. Additionally, the amendment specifies that trusts are permitted as a part of a qualifying majority ownership or family trust, as defined in Section 76-1511 or 76-1512. A new defined term of "qualified owner-operator controlled farm or ranch entity" has also been inserted. This term is defined as an entity which ownership is exclusively held by farmers or ranchers meeting the thresholds of personal engagement in farming and ranching operations where the member of the organization group provides day-to-day labor and management to the entity's farming or ranching operation. The amendment omits the "actively engaged in day-to-day labor and management" as a defined term. The substantive purpose of this term in the bill as introduced is effected in the new Section 3 of the bill, as amended. Section 3 of the bill, as amended, instructs that interpretation and application of the bill's restrictions on use of a business entity to conduct farming and ranching shall include reasonable accommodations for qualified individuals with a disability to comply with the Americans with Disabilities Act. "Qualified individuals with a disability" is substituted for the bill's original designation of disabled individuals as those, quote, having physical or mental

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impairment that substantially limits life, excuse me, major life activities. The substituted term utilizes a more accurate ADA, or Americans with Disabilities, terminology to designate individuals for whom reasonable accommodation is to be provided. The general prohibition of agricultural land and engaging in farming and ranching and enumerated exceptions to this prohibition is contained in Section 3 of the bill and, as introduced, becomes Section 4 of LB1174 as amended. The committee makes the following revisions to this section specifically: It inserts "qualified owner-operator controlled farm or ranch entity" as an enumerated exception to the prohibition; it clarifies that the exception for operators raising poultry includes operations raising poultry for poultry products, eggs, or as a poultry hatchery; it omits the exception for production contracts that were included in subsection...excuse me, subdivision (2)(o) of Section 3 of the bill as introduced. The purpose of the exception in LB1174, as introduced, was to grandfather production contracts that may have been entered into with an entity that would be prohibited by LB1174 from engaging in farming and ranching, a defined term that includes the owning, feeding or keeping livestock to avoid the potential impairment of a contract. Omission of the exception removes the express grandfathering of production contracts in existence on the effective date of the bill, and defers to prosecutorial discretion in enforcing the bill's prohibition where an impairment of an existing contract may occur. Omissions of this subdivision also voids a potential unintended conflict with other enumerated exceptions. Finally, it substitutes the term "farming and ranching operation" for the term "farm or ranch," as appropriate, throughout the enumerated exceptions to the general prohibition of farming activities owned or conducted by entities. A few other items that are contained in the committee amendment: it modifies provisions in the bill, introduced to provide for a 50-year period for entities to requalify as a family farm or ranch entity. The requalification period is contained in what became subsection (3) of Section 4 of the bill, as amended. The committee amendment rearranges the sentence order for clarity, and this amendment further clarifies that renewal of an entity's lease of agricultural land or the entity's purchase of land leased at the time it falls out of qualification as a family farm entity do not constitute an increase in land holdings. It omits the provisions of subsection (3) of Section 4 of the bill, as introduced, and coupled with the changes elsewhere in the amendment, the allowance of a reasonable accommodation for qualified persons with a disability is deferred to as an element of enforcement rather than an assigned duty of the Secretary of State. It adds a new reporting element to information currently required to be reported by entities, pursuant to Section 76-1520, that the reporting entity report names and addresses of shareholders and members. The harmonizing revisions to this section contained in Section 7 of the bill, as introduced, are carried over into the committee amendment. Finally, an additional harmonizing revision to changes elsewhere in the amendment is made within Section 77-5203 of the Beginning Farmer Tax Credit Act to include owner-operator controlled farm or ranch entities as qualified owners of agricultural assets. The committee amendment does become the bill. As I mentioned earlier, they are technically or they are generally designed to be clarifying with the exception of the expansion of the owner-operated exception that was offered to

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the committee by Senator Dierks. Again, the committee heard the bill on February 12; it was advanced to General File on a vote of 7 to 1. The committee has adopted them by a majority vote and I offer the committee amendments for your consideration this evening. Thank you, Mr. President. [LB1174]

SENATOR FRIEND: Thank you, Senator Erdman. Members, you've heard the opening on committee amendments, AM2319. Mr. Clerk, you have an amendment to the committee amendments. [LB1174]

CLERK: I do, Mr. President. Senator Stuthman would move to amend the committee amendments, FA252. (Legislative Journal page 1174.) [LB1174]

SENATOR FRIEND: Senator Stuthman, you are recognized to open on FA252. [LB1174]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. My amendment deals with, on page 4, in lines 15 and 16, and it strikes out "the cultivation of land for." And in that it was stated: farming and ranching means the cultivation of lands for. I think it is time that that gets stricken out of there because of the practices that we do...are engaged in right now at the present time as far as, you know, what we do with the soil. And I think that, you know, the cultivation of the soil, to me, that means with a cultivator, and that is how you cultivate the soil. There are very, very, very few cultivators used at the present time right now. The environmental people and the people with conservation have dictated to us, you know, no-till, minimum till, and preparations like that where you do not till the soil, you plant the crops, you spray, you harvest the crops. So there really is very little cultivation that occurs at the present time. And when you're speaking of ranching and cultivating the soil, I don't think a rancher that has pasture land has a cultivator to cultivate the soil of their ranch. I think this is something that should be stricken from the bill because of the practices that we do right now, you know. Several years ago, when I was a smaller, younger farmer at the time, we did cultivate, we did cultivate the soil a lot. We worked the soil, we worked the soil to death. We disked it, we plowed it, we spring-toothed it, we disked it again, we planted it, we cultivated it, we cultivated it a second time, we cultivated it the third time. The third time we usually called that we laid by the corn. We didn't lay by the corn, but that was the last and final cultivation preparation. So I think those practices are not used anymore. So I think that should be stricken from the bill because we do not cultivate the grounds like we used to at that time. I still have probably four or five cultivators in the machine shed, but I never use them. I think fairly soon they're going to get sent to a consignment sale or they're going to end up at the scrap metal place because we do not utilize those. At one time it was the best cultivator around, was the Buffalo cultivator. It was the real ticket to cultivation. But we do not have these practices anymore. And a lot of you people here on the floor, you know, have never had the experience of cultivating the soil. And we do not do that anymore. The majority of the crop ground is no-till, and that's

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what the conservationists want. They don't want us to till up the soil because of the erosion. They don't want dirt into the streams. And they want us to take care of that on the land and preserve the soil, keep a cover crop on the soil. And I think that's very important. So I would ask for your support in trying to eliminate this portion of it. With that, thank you, Mr. President. [LB1174]

SENATOR FRIEND: Thank you, Senator Stuthman. Members of the Legislature, you've heard the opening on FA252. Senators wishing to speak are Erdman, Preister, Dierks, Hansen, and Wightman. Senator Erdman, you're recognized. [LB1174]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I'm going to rise in opposition to this amendment because I don't think it's necessary. But I think we can have a conversation this evening about the underlying provisions of LB1174, the committee amendment, the proposed impact, and the focus and determine whether or not the language that's before us tonight accomplishes that goal. And obviously through this conversation you're going to have a decision to make about whether or not you believe this is the way to accomplish the goal. Last interim we worked as a committee, after the federal district courts had handed down their opinion that Initiative 300 was unconstitutional, we had interim studies. We had LR93, in which we also received \$50,000 from the Legislature to assist us in gathering opinions and insights, consultants, legal products, whatever we would need as a committee to be able to know what the response should be. The committee's response wasn't predetermined. There was not the incentive nor was there the focus from my perspective that the simple response to I-300 was I-300. The reality was is that we step back as a committee and we gathered a lot of information. We went across the state. We had town hall meetings, excuse me, we had public meetings in Norfolk, we had one at Lincoln, we had one in Scottsbluff. We gathered input from Nebraskans because it was 1982 when the people of the state of Nebraska voted to adopt Initiative 300. It was many years prior to that that the groups and the organizations that were promoting Initiative 300 had tried to pass legislation in the Nebraska Legislature and weren't successful, and so they went the route of going through the initiative process and amending the Nebraska Constitution, and they were successful by a vote of 56 to 44. The Initiative 300 amendment, the resolution passed and was adopted into our Nebraska Constitution. Senator Dubas, Senator Dierks and a number of other members of the Legislature were actively involved in that process. They can tell you about the rationale, they can tell you about the need or the perceived need about what was trying to be remedied under Initiative 300. And as a committee, we believed it was responsible to step back and decide whether we were simply going to respond with what we always had or whether there were other things we should consider. We went through a very, I thought, beneficial conversation until about September 24. At that point it became clear that the conversation was difficult to go forward because of the fact that there was no language on the table, and because of the divided interests that were previously on this issue. You've got folks that were opposed to Initiative 300 the way it was written, you've got

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folks that would like to have seen modifications to I-300, and you have folks that supported Initiative 300 the way it was written. And it was very difficult, because of those types of histories, to be able to get past those conversations and try to have a conversation about what the middle ground is. In the intervening time we also know that there are organizations and entities that have been organized, and they have organized under the laws of the state of Nebraska which do not prohibit their business structure now, but would likely be impacted by a reversion or reintroduction of I-300. We heard from those individuals. Ultimately what happened is the ag groups couldn't agree, they couldn't find common ground, and one group or one part of the ag groups decided to pursue Initiative 300 with the remedies provided to them that the court had given them direction on the Dormant Commerce Clause and the Americans with Disabilities Act. That was the bill that Senator Dierks introduced in front of the committee. The ag organizations that had traditionally supported modification of Initiative 300 and some of the citizens of the state of Nebraska who didn't support Initiative 300 in any form still have reservations about the bill in the amended version. Tonight we can go through what those issues are and explain how they work, but ultimately we as a Legislature can decide. One of the most compelling arguments for Initiative 300... [LB1174 LR93]

SENATOR FRIEND: One minute. [LB1174]

SENATOR ERDMAN: ...or for LB1174 is that it was passed by the people of the state of Nebraska. That is a compelling argument. Unfortunately, those same compelling arguments have fallen on deaf ears in the Nebraska Legislature on other issues. However, one of the things you have to realize is that in 1982 I didn't have a vote. I was five years old. A lot of things have changed since then. The public policy response that we enact as a Legislature to the court's opinions on Initiative 300 have to be based not only in 2008 and building on the foundation that got us here, but also looking forward. And two and a half short years ago I was still on the farm. I'm still involved in agriculture, but it's not paying the bills. Of course it didn't pay the bills then either, but the reality is, is that it's not my primary source of income anymore. I wish it were. But there's been a lot of changes in agriculture that we need to be sensitive to about our public policy response. And I hope that our conversation is focused on that. And with all due respect to Senator Stuthman, I don't think his amendment... [LB1174]

SENATOR FRIEND: Time. [LB1174]

SENATOR ERDMAN: ...accomplishes a whole lot of anything. Thank you, Mr. President. [LB1174]

SENATOR FRIEND: Thank you, Senator Erdman. Senator Preister, you are recognized. [LB1174]

SENATOR PREISTER: Thank you, Mr. President. To those of you who are listening, I

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appreciate your attention. I rise in support of Senator Dierks's LB1174 and also his amendment, actually it's the committee amendment. And I do serve on the Ag Committee, so I have had some opportunity to work with Senator Dierks and the rest of the committee on the amendment. I think Senator Dierks has done yeoman's efforts to put it in this position, to get the committee amendment, to address a lot of the concerns of interested parties. He's worked hard to get to this point and he's made a number of concessions in order to do that. I appreciate that work. That isn't the primary reason I'm supporting it. I think the family farm is deserving of support. I've got farm family and friends that are currently in production agriculture and I know that it's not a good business for somebody who wants to just get an easy income and that there are some serious challenges. Senator Dierks has taken into account what the court did. And in the amendment we have the allowance for five unrelated people. So for those who want to have partnerships, corporations, co-ops involved, those five unrelated people, they don't any longer have to be family members, they can be even people who don't live in Nebraska. That's pretty clear in the amendment. Those folks can partner together, they can form whatever alliance they need for financing or for other labor or other concerns, and work together, work cooperatively to be able to join in an effort to make profitability out of farming. It incorporates the corporate model with the family farm model to address what the court struck down. I think that's an important component. It's important to me, and I think it addresses some of the issues and concerns that cause the challenge of I-300 over its approximately 25-year life span. In that time, until recently, it was upheld and it served the state, I think, admirably for all of those years. It must have been because otherwise why in 2007 would Nebraska be number one of all the states for commercial red meat production; number two in all cattle and calf production, number three in corn, grain, and sorghum and dry edible bean production; number five in soybean production; number six in hog production? I think if having I-300 in the constitution was so bad for the state, we would never achieve that kind of result. Senator Dierks and the committee amendment is allowing that to continue, not impeding it, and is allowing partnerships to develop, but is doing it through the model of the family farm as opposed to corporations who would have investments in large tracts of land, but would sit perhaps on Wall Street or in an insurance company office or somewhere else, and not sit on the land and not have the same respect, appreciation, and regard... [LB1174]

SENATOR FRIEND: One minute. [LB1174]

SENATOR PREISTER: ...for what happens on that land. I think the bill with the accompanying Ag Committee amendments addresses issues and concerns, does it in a way that respects a corporate model, but allows for the family farm to be able to continue operating, to partner, to use the resources that are available, and to be able to move forward with respect to the vote of the people on I-300 and the I-300 initiative that has served us extremely well. If it had not, we would certainly not be in the positions that I just outlined. Thank you, Mr. President. [LB1174]

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SENATOR FRIEND: Thank you, Senator Preister. Senator Dierks, you are recognized. [LB1174]

SENATOR DIERKS: Thank you, Mr. President. I'm going to be in opposition to the amendment that Senator Stuthman has offered. Cultivation has a much broader term than just putting a cultivator in the ground. We talk about cultivating our cash crop, we talk about cultivating our pasture rotation methods. It's a broad term. And besides that, we've gone over the language in this legislation with a fine-tooth comb. We know that every word that we have in there is important to the legality of the bill and to help us stand up in any kind of a court presentation. Senator Preister got into some stuff that I wanted to refresh for you, too. And this comes from the Nebraska Ag Facts, Nebraska ag card put out by the Department of Agriculture, and it deals mostly with 2006 figures. But it says that cash receipts from farm marketing combined over...contributed over \$12 billion to Nebraska's economy in 2006. Nebraska's six leading commodities in order of importance for cash receipts are cattle and calves, corn, soybeans, hogs, wheat, and dairy products, which represent 95 percent of the state's total farm receipts. Every dollar in agricultural exports generates \$1.64 in economic activity, such as transportation, financing, warehousing, and production. Nebraska's \$3.3 billion in agricultural exports translate into \$5.3 billion in additional economic activity. I don't think this is the kind of stuff that you would hear if Initiative 300 had been failing. So I do feel very strongly that Initiative 300 has been effective; it has kept us in the lead in this nation...our state and this nation in the lead in the way it produces livestock and the way it transfers the money from production to economic development in the communities. There is another thing that I wanted to bring to your attention. One of the things that I've observed over the years, listening to the market report from Yankton, the radio station in Yankton, the market report every morning would give the report something like this, and usually that report came out about 7:00 a.m. and then again about 8:00 a.m. And she would say, 45,000 cattle slaughtered in Texas today, 90 percent packer controlled; 40,000 cattle slaughtered in Kansas today, 95 percent packer controlled; 40,000 cattle slaughtered in Nebraska today, 30 percent packer controlled. Why would Kansas and Texas have the packers control 90 to 95 percent of the fat cattle that are slaughtered in that state and Nebraska only 30 percent? There's only one answer to that, folks. That's Initiative 300 was working. If it were working perfectly, there wouldn't even have been the 30 percent. When you let the packers control the marketplace, then the individual producer is in deep trouble because when they need to get their cattle or hogs slaughtered there may not be room...there may not be shackle space available for those people that do that. I should tell you another thing. This would give you some idea about packer concentration. [LB1174]

SENATOR AGUILAR PRESIDING [LB1174]

SENATOR AGUILAR: One minute. [LB1174]

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SENATOR DIERKS: One of my friends is in the hog business and he decided...and he'd been selling his fat hogs over at IBP at Madison. That's back when it was IBP. He decided to try the market at Hormel. So he called over there one Monday morning and he told them what he had and he said, I'd like to know what you're offering for these hogs. And the buyer said, you know, we don't know yet, we haven't contacted IBP this morning. Isn't that a fine kettle of fish? IBP controlled that market, even though it wasn't theirs. There are so many things...examples I can give you of where Initiative 300 was effective and where we need to do some stronger controls of packer ownership. Cost of land, it's gone...skyrocketed out in our country. This Initiative 300 hasn't caused any depression in land prices any place in Nebraska. Land prices in my district are phenomenal, \$4,500 an acre... [LB1174]

SENATOR AGUILAR: Time. [LB1174]

SENATOR DIERKS: ...for 20 acres of irrigated...20 quarters. Thank you, Mr. Chairman. [LB1174]

SENATOR AGUILAR: Thank you, Senator Dierks. Senator Hansen, you are next and recognized. [LB1174]

SENATOR HANSEN: Thank you, Mr. President. Very briefly, to the amendment, Senator Stuthman's, I think it is important that we use the word "cultivation" there because if that word has not changed since 1982, then it is an important word to change, because we don't cultivate the crops anymore. We use much different, much better cropping systems. And in the amendment, right after that, it says that for other horticulture, and in subsection (b) it's the ownership, keeping, feeding of animals for the production of livestock and livestock products. I can tell you that the ownership and the feeding is okay, but the keeping of livestock doesn't pay the bills. Nebraska has lost 20 percent of its rural farm operators since Initiative 300 went into effect. It may or may not have happened with or without Initiative 300, but we have lost 20 percent. In the mid-nineties, when Nebraska reached, equaled, and even surpassed for a very short time...amount of time the number of cattle on feed with Texas, Nebraska had 8,000 feedlots; the same number of cattle on feed, Texas had 800. In 2004, Nebraska was again about the same number of cattle on feed as Texas, we had 5,000 feedlots. We've lost 3,000 in just that short amount of time. Texas, they're still 800. There is something to say about an economical size of operation. I think that's extremely important. And we're going to talk about some of these later on this evening, I'm sure. But we do want to hit the idea of why do we want to restrain business practices in the state of Nebraska? I would like to jump up to number five or why...how we picked five people or more that are nonrelated, excuse me. Senator Preister, would you yield to a question? [LB1174]

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SENATOR PREISTER: Yes, I will. [LB1174]

SENATOR HANSEN: Thank you, Senator Preister. How do you suppose the number five came about? Is that because that's all the fingers we have on one hand, or was it a roll of the dice, or why 5? Why not 50? Why not 500? [LB1174]

SENATOR PREISTER: I wasn't directly involved in that negotiation, but my understanding of it is that it's more than one, or two, or three, or four, obviously. So you give some opportunity for more people to be involved. And it was part of the discussions with the different groups. It addressed the issue of more than just a partnership or two, and it gave a pretty broad range, a wide range of people. I think five, when you have a business, normally you don't have that...more than that, unless you have some kind of investor or corporate kind of structure, I would guess. [LB1174]

SENATOR HANSEN: Okay, thank you. Senator Dierks, would you yield? [LB1174]

SENATOR AGUILAR: Senator Dierks, would you yield? [LB1174]

SENATOR DIERKS: Yes. [LB1174]

SENATOR HANSEN: Thank you, Senator Dierks. Can you help me through some of this? How did the number five come about? [LB1174]

SENATOR DIERKS: It was just an arbitrary figure. We knew that we wanted to open it up so that you could have more than a related entity, family related entity to do these farming operations. So we decided to open it up and allow for five. [LB1174]

SENATOR HANSEN: Okay. [LB1174]

SENATOR DIERKS: We also talked about doing it for more, and we got to thinking, well, we don't want to open it clear up because that destroys the purpose of the legislation. [LB1174]

SENATOR HANSEN: But you did open it up to five? [LB1174]

SENATOR DIERKS: Yep. [LB1174]

SENATOR HANSEN: And it was an arbitrary number. [LB1174]

SENATOR DIERKS: Yes. [LB1174]

SENATOR AGUILAR: One minute. [LB1174]

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SENATOR HANSEN: Would you take seven? Would you take nine? (Laugh) [LB1174]

SENATOR DIERKS: Didn't know you were an auctioneer, Tom. [LB1174]

SENATOR HANSEN: We're going to get to a number that we can both agree to. But I think five is too low. And I can make some...I'll make a case, I think, later about why that number needs to be higher, and part of the reason is because we have 5,000 feedlots in this state and Texas has 800. Thank you, Mr. President. [LB1174]

SENATOR AGUILAR: Thank you, Senator Hansen and Senator Dierks. Senator Wightman, you are next, you are recognized. [LB1174]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I come from Dawson County. Out in Dawson County I would say that there is a lot of opposition to LB1174. I'm sure there are some people in favor of it. Quite frankly, I was not even in favor of Initiative 300 at the time it was passed. I think we have to consider the circumstances under which it passed. Out in our area, in 1982, we were already starting to see the decline in values. We were seeing high interest rates. We had Prudential, who had taken a big position in some land, and I think there was a rush to try to shut that off. And I don't think Initiative 300 was too well thought through. I guess I would question some of the basic policy provisions that are set forth in LB...or at least the committee amendment, I think in the bill as well, LB1174. I guess I would ask Senator Dierks some questions in that regard. And certainly I think Senator Dierks is very conscientious and well-meaning in his efforts to limit corporate farming and corporate or limited liability companies in the farming operation. I just question the wisdom of it, however. I notice in looking at lines 10 and 11 of the bill, page 1, it says that communities surrounded by owner-operated farming and ranching corporations have less poverty...operations, excuse me, have less poverty and score better on most measures of socioeconomic vitality. Is that based upon any study or... [LB1174]

SENATOR AGUILAR: Senator Dierks, would you yield? [LB1174]

SENATOR DIERKS: Yes, I will. I think I have a handout for that. I'll have to take a look, Senator Wightman, but it was based on some research that we had. [LB1174]

SENATOR WIGHTMAN: There were a lot of unintended circumstances, I think, on Initiative 300 when it passed. I know as a practicing attorney in central Nebraska, we were a little surprised by an early case under Initiative 300 that limited a bank's ability to hold land in trust for minor shareholders or for anyone if their interest was as a beneficiary of a trust. I would ask Senator Dierks some questions with regard to that, if he would yield. [LB1174]

SENATOR AGUILAR: Senator Dierks, would you yield to some more questions?

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[LB1174]

SENATOR DIERKS: Yes. [LB1174]

SENATOR WIGHTMAN: Are you familiar, and I don't know the name of the case in which it was held that a corporate trustee, particularly a bank, trust department of a bank, was unable to hold the legal title to land that had been, in effect, the beneficial interest had been willed and passed to minor children? Are you familiar with that case? [LB1174]

SENATOR DIERKS: I don't believe I am. [LB1174]

SENATOR WIGHTMAN: I'm wondering if your bill addresses that in any way? [LB1174]

SENATOR DIERKS: I think that the bill has the same responsibility to that effort as did the original Initiative 300. [LB1174]

SENATOR WIGHTMAN: So if it was banned under Initiative 300, it would still be banned under LB1174, is that correct? [LB1174]

SENATOR DIERKS: I think that's right. I'm not sure that ban is the right word. But I think that the banker has a certain number of years to get...if they have to foreclose on some property that they've loaned money on, they've got, I think, five years in order to dispose of that property without violating the law... [LB1174]

SENATOR AGUILAR: One minute. [LB1174]

SENATOR DIERKS: ...without violating the law. [LB1174]

SENATOR WIGHTMAN: And I'm aware of that situation. But this was a different situation in which somebody passed his property under the terms of a will to the bank to hold it as trustee for minor children. And they found that was in violation of Initiative 300. And as a result of that many of the banks would form partnerships, general partnerships with some of their officers, who would then hold these landholdings, and apparently they weren't challenged again and they were allowed to do that under Initiative 300. I'll ask more questions later. I think at this point I'll go ahead and terminate this part of my conversation. Thank you, Senator Dierks. Thank you, Mr. President. [LB1174]

SENATOR AGUILAR: Thank you, Senator Wightman and Dierks. Next up to speak, Senator Erdman. [LB1174]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. There's a lot of information available. And one of the things, as I pointed out earlier, the committee

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did was we spent \$25,000 soliciting the assistance of the University of Nebraska-Lincoln, the Ag College, in gathering studies and reports that have been done in this area so that we have that information available to us. That was supplemented by the work that was done by the Nebraska Farmers Union, the Center for Rural Affairs, the Friends of the Constitution, and others. And they all, as a collective group, provided a good reference, if you will, of documents that are available to us. And those are items that we had asked to be put together. They weren't specific studies done, but they were, rather, a collection of those studies, that we had them at our disposal, whether it's at the state level for the Attorney General's Office to have at their disposal during a court case or upon a court case, or for the drafting of legislation. There are some very talented legal minds in Nebraska that are on both sides of this issue. I believe one of them is here today watching. But the reality is, is that everyone that has been a part of this conversation is trying to figure out how to respond to the court. And in the event that you've figured out how to do that, you still have to answer the fundamental question of, is this the right response? And I think those are two questions that have to be answered. But before I get into the comment about the unrelated producers, let me share with you some information from the "Structure and Finances of U.S. Farms, Family Farm Report," from the United States Department of Agriculture. This is the 2007 edition. Most U.S. farms, 98 percent, are family farms defined as operations organized as proprietorships, partnerships, or family corporations that do not have hired managers, 98 percent of them. Nonfamily corporations make up a small stable share of farm numbers and sales accounting for less than 1 percent of the farms, and 6 to 7 percent of the farm product sales in each agricultural census since 1978. So we know currently that the structure, if you will, of agriculture is owner-operated, we know that, the numbers tell us that, 98 percent of them. One of the things that's also important in this conversation is to understand how ag policy affects producers. Obviously, we know right now that our friends in Congress can't figure out how to extend or pass a farm bill. They've known this deadline has been coming for five years, and they still can't figure out how to get it done. I'm hopeful that they'll figure that out soon. And there is progress being made to do that. But here's another stat that I think is important for people to understand, of the farms that are recognized in the United States, 61 percent of them receive no farm payments, 61 percent. And everybody wants to get up and attack agriculture, and the farm program and all of these things. The growth in the farm bill in Washington is for commodity...not for commodity programs, but for nutrition programs and things that don't directly benefit the producer. They benefit them long-term because there's markets available for food stamps and other things for their commodities. But 61 percent of the farms in America receive no farm payments. That's a pretty staggering number. And again that comes from the same process. One last stat that I'll share with you from the same study: Two-fifths of U.S. agricultural production is produced or marketed under contract. One of the things that's in LB1174 and one of the things that was in Initiative 300 are restrictions on marketing contracts. That is a direct impact on some of those farms to the extent that they're in Nebraska. But realize that the response has to be twofold. Is it legal? And is it the right policy. Let me talk to you about what that

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policy is in the committee amendment. It is true that there is an unrelated producer exemption in the bill, but it is substantially different than the requirements for a family farm LLC. [LB1174]

SENATOR AGUILAR: One minute. [LB1174]

SENATOR ERDMAN: In a family farm LLC, under Initiative 300 and again under LB1174, 50.1 percent of the stock must be held by a family farm...excuse me, a family, and they have to provide the day-to-day labor and management. And we have Nebraska Supreme Court cases that define labor and management, so we know what that is. Under this bill, it's not the LLCs, it's not the family farm LLCs that can go together, five of them; it's five individuals. Five individuals can form a partnership, an LLC, whatever they deem for their benefit, and one of those five individuals not only has to provide the day-to-day labor and management of their operation, but they also have to provide the day-to-day labor and management of the joint operation. On a scale of 1 to 10, if 1 was most restrictive, and 10 was least restrictive to provide an exception for unrelated producers, this is a 1. There are other ways to do it, but again,... [LB1174]

SENATOR AGUILAR: Time. [LB1174]

SENATOR ERDMAN: ...where you draw that line is essential for the public policy to be decided. Thank you, Mr. President. [LB1174]

SENATOR AGUILAR: Thank you, Senator Erdman. Senator Burling, you are next and recognized. [LB1174]

SENATOR BURLING: Thank you, Mr. President and members of the body. This bill is about production agriculture. And I've been involved in production agriculture all my life, so I feel like I probably should speak to this bill. During a 40-year period, beginning about 1960, I was fortunate to be involved with professional organizations, agribusiness, cooperatives, so on and so forth. And for the next 40 years, up to the time I was elected to the Legislature here, I was involved in problem solving and policymaking regarding agribusiness and production agriculture. And I visited most of the counties in this state, visting with producers about their problems and their challenges and so on and so forth. So I remember vividly the corporate farming discussion of the 1970s. And at that time, the proponents of I-300 believed that corporate farming was a threat to the family farm. And these people felt very strongly about that and they gave it all, and they were dedicated to it. And I admire them for that. They're good people trying to do something to solve some of the problems of the 1970s. But I think that we know now, after it was in statute or in the constitution for 25 years, that it wasn't the problem or it wasn't, excuse me, it wasn't the solution. The campaign for I-300 on the ballot was the threat of corporate farming to family farms and family farms were as American as you can get, and we have to protect the family farms because that's what this country was built

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around. And that's all true. And so the voters voted for Initiative 300 hoping that that would solve some of the problems. And like I say, hindsight now would say that that wasn't the solution to the problems of that time because nothing was done by I-300, in my estimation, to help production agriculture. It was stated also that family...nonfamily corporations raped the soil, polluted our air and water. Some truth to that, but I am not proud to stand here and say that family farmers also rape the soil and pollute the waters. That's not something we can be proud of. But I think it points out the fact that conservation of our natural resources is not how the production entities are formed; it's the managers and the owners of the entities that are involved in farm production that determine the level of conversation (sic) of the unit. I think what the I-300 ban did do was remove from the farmer's tool box one of the tools that is needed to be successful, bring non-ag money into the ag sector, and get other people involved in production agriculture. I-300 did not stop a certain person that we all know... [LB1174]

SENATOR AGUILAR: One minute. [LB1174]

SENATOR BURLING: ...who bought hundreds of thousands of acres of Sandhills ground, did not stop that person from buying a lot of farmland. That person is not an ag producer, and we know who that is. I also believe that we are more conservation conscience now than we were 25 years ago for various reasons. And I think we don't need LB1174 today like we thought we did then. And also, why do we treat agriculture different than other industries and companies in the state as far as limiting their ability to use any entity they need to, to accomplish their purpose? In short, I'm just saying, regardless of what's in the bill--and I thank Senator Dierks for his... [LB1174]

SENATOR AGUILAR: Time. [LB1174]

SENATOR BURLING: ...attempts to compromise--I just think the bill is unneeded. Thank you very much. [LB1174]

SENATOR AGUILAR: Thank you, Senator Burling. Senator Dubas, you are next, you are recognized. [LB1174]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I rise in opposition to the floor amendment, in support of the underlying amendment. As I've worked on this issue for many, many years, one of the recurring questions and objections that I would hear to I-300, as well as this bill, is the inability for unrelated farmers to partner. Raising capital is a challenge for all of us to stay in business. Related, as well as unrelated, farmers and ranchers need to be able to pool their resources and expand their ability to...not just gain access to those resources but access to markets. I don't think this bill tells anyone that they can't operate in Nebraska; it just removes the protection of the corporate shield, except as prescribed by this introduced legislation. My mail, as well as the list of testifiers on this bill, tells that there is an obvious difference in philosophy. And

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all of the people who have contacted me in the recent weeks, as well as over the years that I've worked on this issue, have been very passionate. And we're all passionate in the same direction. We're all passionate because we believe in production agriculture and livestock in this state. Agriculture and livestock production is the life blood of our state. It's in all of our best interests to promote agriculture and those who are involved in the business. I'd like to share with you a little bit of information out of a report done by Rick Welsh dealing with the effects of anticorporate farming laws on states in the United States. His research has shown him that anticorporate farming laws are not necessarily intended to slow down or impede many of the changes occurring in U.S. agriculture--he fully recognizes the changes that have occurred over the years--but rather, the laws are designed to regulate or proscribe the entry of particular types of organizational forms based on ownership arrangements, most commonly nonfamily corporations, into production agriculture. He goes on to talk about anticorporate farming laws are effective vehicles for managing the degree of corporateness of a state's farm sector to the extent that it is considered desirable. And finally, in a 2005 study, he found that limiting the industrialization of agriculture through anticorporate farming laws can have positive impacts on rural communities. We talk quite often on this floor about how we can encourage and grow the businesses in our state. How can we attract businesses to our state? How can we attract high-paying jobs and people to come to...not just only stay in our state, but come to our state and work? It's not quite as easy to use that same approach to grow agriculture and livestock production. I wholeheartedly support any programs that can encourage the promotion of farmers and ranchers and the work that they do. As I stated earlier, agriculture and livestock production is the lifeblood of this state. It's my lifeblood, it's the lifeblood of my family and has been for my family for generations. There isn't anything that I would do intentionally to hurt the very industry that I believe in so passionately. I am a proud farmer and rancher. My husband is a fourth generation farmer, and we're working hard to bring that fifth generation into the fold. We're working hard to keep our farm and ranch viable and to keep our son and his wife on the farm with us. We need to find ways to encourage partnerships between retiring farmers and beginning farmers. We need to find... [LB1174]

SENATOR AGUILAR: One minute. [LB1174]

SENATOR DUBAS: ...those incentives. We need to create a package of thoughts and ideas that will promote agriculture, that will promote livestock production, that will help us grab ahold of that common objective that we all have and work in that direction. We need farmers and ranchers to be profitable. We need to have access to good markets. We need to come together collectively and work towards those objectives. We saw the effects when large insurance companies came into our state and bought up very fragile land and tried to squeeze every drop of potential out of that land. And that was the birth of Initiative 300. And while we might be able to stand here and say I-300 didn't do everything that it was set out to do, I would also say I-300 didn't do everything that it was accused of doing, and that we still are... [LB1174]

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SENATOR AGUILAR: Time. [LB1174]

SENATOR DUBAS: ...one of the leading states in the nation as far as livestock and ag production. Thank you. [LB1174]

SENATOR AGUILAR: Thank you, Senator Dubas. Senator Wallman, you are next, you are recognized. [LB1174]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I find it ironic, and I'm supporting Cap Dierks's bill here and the amendment. And you know, we're talking about production agriculture and we're talking about foreign markets, food safety. What happened to some of that food that came from China to the dog foods a while back? You know, this is a way different issue than anything else. So if we want to keep production agriculture in the hands of family farmers, local people, and we did help expand this, and I got a letter from a farmer in my district here. And the hog production in my area has went down tremendous and they blame this on Initiative 300; I blame it on vertical integration of the packers. Now hogs in my area are going to Mexico. They get a lot better price. My cousin takes his hogs to Mexico. Even with the high price of trucking, it pays. Why is that? Packing plant doesn't bid up. And this guy says he sold his hogs, a few a while back, and began to notice a significant unexplained drop in recent market revenue. So with papers in hand, I approached the hog buyer, who I always trusted and considered a friend, he himself figured through it reluctantly. I was being shortchanged \$5.84 per head, or \$584 per hundred head, by the vertical integrator he worked for. Doing his best, his final comment to me was that there really wasn't anything that he could do for me, because that's the way this corporate buying system works. My hog check may not be fair, but really, he said, I've seen many a whole lot worse. So why should the state of Nebraska give corporate mega farms a competitive advantage over the family farms and ranchers that are the foundation of our state? Lots of issues: safety, schools, churches. And if we're not stopping the vertical integration of packers, folks, we really have to be careful what we do. There's foreign entities out there that have so much money to spend, they're watching the food. And we all know which countries that we're indebted to. So we should all thank Cap Dierks for bringing this forth. He spent a lot of time on it, Senator Erdman and the Ag Committee, and would appreciate your vote on this without the...with LB1174 and AM2319. Thank you. [LB1174]

SENATOR AGUILAR: Thank you, Senator Wallman. Senator Rogert, you're next and recognized. [LB1174]

SENATOR ROGERT: Thank you, Mr. President. I would like to engage in a little conversation with Senator Erdman, please. [LB1174]

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SENATOR AGUILAR: Senator Erdman, would you respond? [LB1174]

SENATOR ERDMAN: I will yield to questions. [LB1174]

SENATOR ROBERT: Thank you, Senator Erdman. You mentioned...a little bit ago you were talking about restrictions that this bill would place on marketing for grain and livestock. Can you expand on that a little bit for me, please? [LB1174]

SENATOR ERDMAN: I don't believe I've got to that point yet, Senator Robert. I was referring generally to the organizational structure of the unrelated producers. That might have been someone else, but... [LB1174]

SENATOR ROBERT: Okay. Well, I heard somewhere in there, it was mentioned about marketing contract restrictions. Can you tell me a little bit about that? [LB1174]

SENATOR ERDMAN: Yeah, I'll tell you what I did say. The "Structure and Finances of U.S. Farms," which is a family farm report, 2007 edition, said that two-fifths of all agricultural producers in the country use production contracts in their ventures. There are provisions in this act that, depending upon whether you're a qualified entity or not, you may be subject to the two-week livestock production restrictions that are found in the subsection (o) of...I'm not sure which section it is, maybe Section 4. [LB1174]

SENATOR ROBERT: Okay, thank you. Would Senator Dierks yield to a little conversation, please? [LB1174]

SENATOR AGUILAR: Senator Dierks, would you yield to a question? [LB1174]

SENATOR DIERKS: Yes. [LB1174]

SENATOR ROBERT: Senator Dierks, I just had a couple questions. Maybe you can just kind of channel some dialogue with me here. If I wanted to...I don't farm now and I wanted to start farming and in order to do that, I don't have the capital to do so, could I ask for investment from two good friends of mine who are interested in agriculture that do not farm? [LB1174]

SENATOR DIERKS: I think for you to have an investment from friends of yours to be involved in an agricultural entity, they would also have to also be involved in an agricultural entity... [LB1174]

SENATOR ROBERT: So... [LB1174]

SENATOR DIERKS: ...of their own or with you. [LB1174]

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SENATOR ROBERT: So under this bill, I couldn't have...I couldn't go to three or four individuals that do not farm, form a corporation that I would run on a day-to-day basis... [LB1174]

SENATOR DIERKS: Under this bill, they would have to be active farmers or ranchers. Now that doesn't mean you can't go to the bank and borrow the money. But...you see what I'm getting at? [LB1174]

SENATOR ROBERT: Okay. Yeah. Okay, thank you, Senator Dierks. [LB1174]

SENATOR DIERKS: You bet. [LB1174]

SENATOR ROBERT: I have some serious concerns with this portion of the bill. I've been in agriculture all my life. This is what I do for a living, and I deal with folks that have trouble coming up with capital for one reason or another, land prices are double what they were five years ago, fertilizer is triple what it was five years ago, fuel is double what it was, machinery is extremely expensive. For me to be able to do that myself, going to the bank I would have to borrow a half a million dollars to a million dollars to even start an operation; that would not happen. Under this bill, I could form at best a partnership with folks that have capital, if they're not related to me and not involved in farming, to start a farming operation. That concerns me as, if I were to go down, I would take them with me, instead of just being me. If this were a situation where this bill allowed for those folks involved in the operation that have invested, if it would allow them not to be farmers,... [LB1174]

SENATOR AGUILAR: One minute. [LB1174]

SENATOR ROBERT: ...that would be way more supportive to me. I could understand that one of the folks in this operation has to be involved in the day-to-day operation. But the fact that all five of those or less that put your capital together and have to be involved in the operation, that does concern me. I only have a few seconds, but I want to close by saying that this bill has actually disappointed me in the ag community. There has been misinformation flying around for days from both sides of the fence, and that disappoints me. And I hope that in the future when these agricultural groups that I've been a part of for a long time try to create legislation to help the family farm and the farmers of Nebraska that we can do a better job of it than we've done today. Thank you, Mr. President. [LB1174]

SENATOR AGUILAR: Thank you, Senator Robert and Senator Dierks. Senator Dierks, you are next, you are recognized. [LB1174]

SENATOR DIERKS: Thank you, Mr. President. I believe it was Senator Hansen that asked the question about...Senator Hansen or maybe Senator Wightman about an

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entity acting as a trustee in regard to agricultural land held in a trust. I believe it was Senator Wightman that asked that. And, Senator Wightman, if you look on page 7, the language at part (p) addresses that situation. It says, "The interest of an entity acting as trustee with regard to agricultural land held in a trust for the benefit of an individual or entity that qualifies to own such land under this section." And that is an exemption. And for Senator Rogert, actually, the language that you are having difficulty with, the five or more, is a great improvement over what Initiative 300 said prior to this. This really provides for many people to get involved in agriculture that could not have under the original Initiative 300. So we think we're...I do think we're providing a very good avenue for people to get involved and be an entity under Initiative 300, and even someone from, in your case, I suppose, Iowa could be one of your partners. Somebody from another state can be involved with it. This adds to our philosophy on trying to avoid difficulty with the Interstate Commerce Clause. How much time do I have, Mr. President? [LB1174]

SENATOR AGUILAR: Three minutes. [LB1174]

SENATOR DIERKS: I'm going to just read you part of a letter I got from a friend of mine. He starts out saying: Misdirection is one of the key elements of the magician's art. It is also key to the arguments on many political issues. Misdirection, as well as outright falsehoods, are being used to oppose the restriction on packer ownership of cattle. Many argue very simply that it's about freedom. A man by the name of Fisher Ames, who was one of the lesser known founding fathers, said in a speech in 1788 that, quote, the known propensity of a democracy is to license licentiousness, which the ambitious call and the ignorant believe to be liberty. He recognized that some would say that liberty included the license to do as one pleases, including fulfilling all their ambitions. Just because someone calls it freedom does not mean that it really rises above simple license to that sacred right of liberty. There is no question in the discussion about the Agriculture Advisory Committee of the Commodity Future's Trading Commission, there was no question in their discussion but that the integrity of the market as a whole trumped the freedom of individual participants. We think we want to...as much of both freedom and integrity as we can possibly get. But when there is a conflict, integrity trumps. Thank you, Mr. President. [LB1174]

SENATOR AGUILAR: Thank you, Senator Dierks. Next up is Senator Stuthman. [LB1174]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I want to continue a little bit on as to what Senator Erdman was talking about. And I did have two handouts that were handed out by the page. And one of them has a lot of the red lines, but it's the other one that I want to draw your attention to. And it was in a report to the legislative Ag Committee, UNL professors of law. Anthony Schutz and Dave Aiken reported that 13 states have some restrictions on corporation activity in the agriculture sector, 9 of these states have corporate farming restrictions--Iowa, Kansas, Minnesota,

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Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin. Four others--Texas, West Virginia, South Carolina, and Arizona--have other restrictions related to corporate involvement in agriculture. Proponents of LB1174 argue that the bill is needed to keep large, nonfamily, out-of-the-state corporations from squeezing family farmers out of agriculture. The bill would prohibit nonfamily corporations from owning agricultural land and engaging in farming and ranching. Is there a risk of large, nonfamily, out-of-state corporations taking over Nebraska agriculture? The data below would suggest there is not. And the tables below show some of the percentages, and I would like to go over some of those to get them on the record. States with corporate farming restrictions--Nebraska, individual or family corporations, 86.8; family, this is individual or family, just operations and family corporations were 6, and then nonfamily corporations, .2 percent; Iowa, very similar, 86.8 individual, family corporations of 5.4, and nonfamily corporations of .4. Then we can also go down to the bottom where the states without any corporate farming restrictions--Colorado, 87 percent individual or family, compared to our 86.8, and then the family corporations of 4.6, compared to our 6, and nonfamily corporations, Nebraska had .2, and Colorado has .5. I would also draw your attention to the other map, and the red lines are individual or family, and then the blue is family corporations, and then the nonfamily corporations. So you can see here that, you know, that what we have, you know, in the past is individual or family, is still what is happening. And we've got it divided out between the corporate farming restrictions and without the corporate farming restrictions. They're very, very similar. I would also like to bring up the fact that since I-300, you know, was voted on, was petitioned in and voted in 1982. And in 1982 we had 60,243 farms. Now if that was the mechanism to keep the family farms we should have not dropped very much. But in 2002, we had dropped down to 49,355 farms. So we lost about 11,000 farms during the time that we had Initiative 300. And Initiative 300 was to keep the family farms. [LB1174]

SENATOR AGUILAR: One minute. [LB1174]

SENATOR STUTHMAN: I mean it...the size of farms and everything increased, but we really haven't changed the structure of agriculture even with Initiative 300. So I feel there is no need to go back to something like that which, in my opinion, restricts opportunities for young producers. I think what we have. We've got a totally different environment now, you know, in the rural areas as far as how farms are operated. We don't have, like when I was, you know, younger days. We had 100 sows farrowing, we had a few chickens, we had a few sheep, we had 1 milk cow, and we had about 20 stock cows. But it isn't that way anymore. It isn't that way anymore. You can't survive on a 100-sow, farrow-to-finish operation. It just isn't that way anymore. We have... [LB1174]

SENATOR AGUILAR: Time. [LB1174]

SENATOR STUTHMAN: ...got to...thank you, Mr. President. [LB1174]

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SENATOR AGUILAR: Thank you, Senator Stuthman. Those waiting to speak are Senators Harms, Wightman, Erdman, Hansen, Burling, Raikes, Loudon, and Nantkes. Senator Harms, you are recognized. [LB1174]

SENATOR HARMS: Thank you, Mr. President, colleagues. I've watched I-300 from the very beginning of time when this started. And you know what? I've never been convinced that I-300 helped the family farm. Just as Senator Stuthman brought out, we were losing farms then and we're going to lose them now and we'll lose them in the future, unless we find a solution, unless we find a way to infuse cash into these farmers and give them the help and the opportunity they need to have. We cannot grow, we cannot develop the family farm unless you have outside cash coming in. And that's the issue. We cannot get into research, we cannot get into development, we cannot get into marketing because it hinders us, it stops us from developing into the kind of farm community that we need to be to be competitive in a whole new world of global economy. Times have changed since this was created and it's time to adjust to the new world. We have not saved the small farmer or the family farmer. That was our dream, but it hasn't worked. And if we're going to be competitive in the future, we have to make the adjustments now. Partnerships is what it's about, partnerships is what will move our agricultural communities forward. Partnerships will help the people that are in the cattle feeding or hog feeding or whatever they might be involved in if they can infuse cash and front with more than five, maybe, companies or five individuals. I don't think this is the way to do it. I never thought it was the way to do it. And quite honestly, when I look at all the letters that I've gotten from Scotts Bluff County, I've made every attempt to talk to people, I've made every attempt to talk to our chamber, I've made every attempt that I had the opportunity on the radio to talk about I-300, to encourage people to communicate with me. And you know what? I've got a lot of correspondence and very few people support I-300. They say very clearly it has not done what they said it would do. In fact, they feel it has hindered them. In fact, it feels like it has slowed them down. And in fact, in some cases, they feel like it has destroyed the creative market that we should have in the agricultural community that we don't have anymore. So if we're going to go ahead and limit agriculture, well, how would you think...what do you think about real...what do you think about retail or manufacturing or other parts of the world that's open to global competition and a global economy? This country can produce. You give the farmers an opportunity, you give the farmers some cash where people can invest, they will be successful, they will make it happen. But I don't think putting a limit on it is the appropriate way to go. Thank you, Mr. President. [LB1174]

SENATOR AGUILAR: Thank you, Senator Harms. Senator Wightman, you are next and recognized. [LB1174]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I think Senator Harms probably hit the nail on the head. We want to take, apparently by Initiative 300 or by LB1174, and we want to take a lot of progressive farmers and we want to say, we're

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going to limit you, you aren't going to have the same tools in your arsenal, you aren't going...you're going to have a lot of restrictions in the way you operate. Some of this is in farm ownership, some is in marketing. But as Senator Harms says, we're operating in a much different environment today than we were in 1982. We are trying to compete on a global scale. We're trying to compete in a global economy. And I think agriculture is a little different than any other industry. If we took a retail business and said, we're going to take limited liability companies and limited liability partnerships, a whole arsenal of methods of ownership and of corporate structure or business organization structure, we're going to remove them from your arsenal that can make you competitive in the global market, whether it's industry, whatever it is, we've really limited that industry. And yet here we are suggesting that agriculture ought to have such limits. Most of the people that I talk to that are opposed to Initiative 300 are farmers. They're not outside corporations that want to buy Nebraska farm real estate--we had some of that in the eighties--but most of them are farmers that don't want those types of restrictions on their organizational structure. They think they ought to have the same ability to organize and to have a full range of organizational structures that anyone else has, and they think this would be very limiting to them. I go back to...and we certainly saw the farm crisis in the 1980s. Of course, some of that was tied to high interest rates. But we saw, I think, a lot of people withdraw from the land market, admittedly some of those would have been outside corporations that might have come here to buy our pasture land and some of our farm land. But we saw a deeper depression, I think, in farm real estate prices than maybe any state around. We certainly had a very great reduction of farm values. I think that was worsened by Initiative 300. We look at what the population has done in outstate Nebraska. I don't know that we've seen any stemming of the population decrease in outstate Nebraska as a result of Initiative 300. I realize that's very hard to measure. But I think we have to give our farmers the full ability to operate with a global economy. They have to have the same business organizational structures that everyone else has. And to tie one hand of one industry behind their back, which it seems to me we're doing with Initiative 300, makes it very difficult for them to operate on the economy that they need to operate on. Thank you, Mr. President. [LB1174]

SENATOR AGUILAR: Thank you, Senator Wightman. Senator Erdman, you are recognized for your third time to speak. [LB1174]

SENATOR ERDMAN: Thank you, Mr. President. I need to correct. I was looking at the green copy of the bill that had that subsection (o) that dealt with the impairment of contracts that we took out. So the subsection (o) that's currently in subsection (4), excuse me, Section 4, I believe it's subsection (2) of the committee amendment, provides an exemption for livestock futures contracts, which is an advantage, not a disadvantage, to livestock producers in the state. The previous language of LB1174 potentially could have impaired contracts that were currently in place and may have impacted those. And so it was an issue that was in the committee amendment. And I misspoke earlier when I explained the answer to Senator Rogert. Just so that we're

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clear, and then I'll...I've had a request of explaining some differences between I-300 and LB1174. But so that we're clear, LB1174 has nothing to do directly with packer ownership; it does not. LB835, that was passed by the Legislature in 2000, prohibits packers from owning cattle if they process 150,000 head a year. That's in a different law. That's in statute. We can talk about packer ownership, we can talk about all of those things. All of those things have a peripheral impact on this conversation, but they're not directly affected, because they could still own the land, they just couldn't own the livestock. That's a restriction in the statute, not under this language. There are other things that potentially impact that--just as there are other factors that affect family farmers, owner-operators, nonfamily farms, and agriculture in general--than this law. But the ability to cope with those factors are impaired or impacted, depending upon where you draw that line. Let me walk you through, as best that I can and to the best of my ability, the differences between LB1174 and Initiative 300. LB1174 is, as closely as can possibly be represented, Initiative 300. Under Initiative 300, as long as a majority ownership of the stock of a family farm LLC was held by the entity or the individual, the family, that was providing the day-to-day labor and management, you could have 49.9 percent of that stock held by anybody that you wanted to, didn't matter. There were unrelated options there, but the reality was that you had to have two things. You had to have the family or the individual own a majority of the stock and they provide the day-to-day labor and management. So you could have those business arrangements. The restrictions came on what labor and management meant, and it was both--labor and management. The courts have ruled that labor literally means labor. The supporters of Initiative 300 and the state argued before the Nebraska Supreme Court that labor literally meant you're out scooping manure in the pens, you're actually doing physical labor. And so those restrictions had been argued to ensure equal protection in other issues would be upheld under the interpretation of the law, but those are potentially things that were problematic for the state in front of the federal court on Americans with Disabilities Act, because you had a class of citizens that were protected because of their disability. And that was one of the issues that came up, was the Americans with Disabilities exemption or the issue. The second issue was that we had discriminated, and this was a determination made by the court, summary judgment at the federal district court level and upheld by the Eighth Circuit Court. We were discriminating against family farms in other states in favor of Nebraska family farms. So the differences between I-300, and this is just the Cliffs Notes version, the differences between I-300 and LB1174 are mainly two. Everything else is pretty much the same. The mechanics, the way that it works is pretty much the same. There's an exemption or there is a process... [LB1174]

SENATOR FRIEND PRESIDING [LB1174]

SENATOR FRIEND: One minute. [LB1174]

SENATOR ERDMAN: ...for an individual who is disabled to have the ability to still take

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advantage of the law otherwise. So they have an ADA exemption in the bill. The second provision allows any family farm in any state, if they qualify as a family farm under the definition in their state, they qualify under the family farm LLC in Nebraska. So if they're a family farm that would meet our definition and they live in North Carolina, they can be an absentee landowner in Nebraska and operate under an LLC and be afforded those protections, because that's the box that the court has put us in. Under the Dormant Commerce Clause, we have to treat similarly situated...or under those rulings, whether it's the Dormant Commerce Clause, Equal Protection, those things, essentially we have to say family farm corporations in other states are entitled to the same structural benefits and rights that family farm corporations in Nebraska would be afforded.
[LB1174]

SENATOR FRIEND: Time. [LB1174]

SENATOR ERDMAN: Thank you, Mr. President. [LB1174]

SENATOR FRIEND: Thank you, Senator Erdman. Senator Hansen, you're recognized.
[LB1174]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I want to thank Senator Erdman for bringing up the topic again of packer ownership. In Nebraska, they're not packer owned cattle, but they are packer controlled cattle. And just to give you a little background on how we got into this situation, as Senator Dierks said, it was 35 percent in Nebraska is packer controlled cattle, and in Kansas and Texas it's higher than that. Normally, in Nebraska it's about 25 percent, in Texas and Kansas it's usually about 65 percent. So it's really not a shortage of the cattle we have, but probably actually a supply and demand situation that we're in that the packers find themselves controlling more of the cattle. I'll tell you...give you a little background on how we got those...got into this situation. There were producer initiatives years ago when we had a glut of cattle, we had more supply than demand actually was there. We asked the packers to forward contract our cattle for a particular date, and we wanted room in their line, room in their processing facility for our cattle. We knew when they were going to be done, we knew what the average daily gain would be, we knew the market weight we wanted, so we would contract with them on a forward basis to say we'll sell you cattle at the week's average on this date if we can have room in your line. Well, that continues yet today. Our operation put cattle on feed last December, and entered into a contract with...I don't know...the name of the group that we're in with is Power Genetics, and they contracted with a packer. So we're in that situation right now where our cattle will go sometime in June. The ones that qualify, the ones at grade choice, will end up in the Power Genetics program, and they will probably be headed for Japan. What this means to me is that in June...we have an \$88 market right now. We sold those calves on the futures market, plus what Power Genetics would pay us, and what that is right now is a \$98 market. So we're on a \$10 per 100 market on an \$88 market of June. What's that

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mean? A hundred and forty dollars extra money in my pocket. Whoops, wait a minute, nope, we're losing \$200, so I'm only losing \$60. But to lose \$60 instead of \$200 is a big thing to me. And this is how we protect ourselves, we forward marketed those calves. These calves are age and source verified and, if they qualify, they'll be headed for Japan or somewhere in the Asian rim anyway. Since I-300 was initiated, we had a gentleman come to the state, and I think it was Senator Stuthman wouldn't name him, but Ted Turner came. He's got over 400,000 acres in the state of Nebraska and looking for just a few more to make his holding in the United States at 2 million acres. He owns over 400,000 in the fragile Sandhills of Nebraska. Another group...and Ted Turner is not a corporation. Ted Turner is an individual, probably writes a lot of checks on Turner Broadcasting software, but still he is not a corporation, the name is not a corporation. He raises buffalo. Maybe to you buffalo are part of the ag community, they're really not to me. They're a wild animal. He feeds them, he gets them to eat a little bit of corn and then he sells them through restaurants. So it's certainly a large niche market for as many as he has. Another group in the state of Nebraska not affected by I-300 is the Mormon Church. [LB1174]

SENATOR FRIEND: One minute. [LB1174]

SENATOR HANSEN: They also own about 400,000 acres in the fragile Sandhills of Nebraska. They are a cattle outfit and they are for-profit, pay taxes, so does Ted Turner. So those are two groups, two individuals and a church that has had a great effect. I think we need to keep in mind why we want LB1174 to pass. And I think those reasons just aren't there. I think we need to have flexibility in our operations. We need to do things that we think are the right things to do. We need to ask the next generation, can you help us along? Thank you, Mr. President. [LB1174]

SENATOR FRIEND: Thank you, Senator Hansen. Senator Burling, you are recognized. [LB1174]

SENATOR BURLING: Thank you, Mr. President, members of the body. Again, I just had a few comments I wanted to make about things that I've heard. I've heard it said that LB1174 needs to pass because it's the will of the people. Well, obviously it was 25 years ago. In the last eight years I have visited with a lot of people about this issue. And 100 percent of those who told me they voted for I-300 in 1982 said they wouldn't vote for it today. Why? That's because it never accomplished what they thought it would. So they realize now that it wasn't necessary. There's other ag states in this country that have never had anything like I-300. Their ag sector hasn't suffered any worse than ours has. So that shows, I think, that it didn't do the job. So if it was so wonderful for Nebraska, why didn't other states make an attempt at passing something like that in their state? Statistics have been shared with us about Nebraska's place in the nation, and that's something we can all be proud of, regardless of which side you're on, on this issue. We can all be proud of Nebraska's standing in the nation regarding ag statistics. I

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would just share with you that I would be of the opinion that those statistics would be even better than they are had it not been for I-300. But that's a matter of opinion. That's something that we'll never know. In short again, I think we just don't need this bill, it's not necessary. I'd turn the rest of my time over to Senator Erdman. Thank you. [LB1174]

SENATOR FRIEND: Senator Erdman, 3 minutes and 15 seconds. [LB1174]

SENATOR ERDMAN: Thank you, Mr. President, members. Let me...let me go back to the differences or the similarities between I-300 and LB1174. We have entities in the state of Nebraska that were organized before 1982. Those entities are still operating. I have some in my district, and now I have some entities and we're informed of other entities that have organized since the state of Nebraska was enjoined from enforcing Initiative 300. Initiative 300 does two things, and LB1174 furthers those two restrictions. One, it restricts the corporate structure of an entity. In other words, it restricts who can form an LLC or other corporate body for the purposes of production agriculture. It further goes on to restrict the activities of those entities. So even though you may not be restricted, you may have been grandfathered in, in the process of when you were organized, you still potentially are restricted as an entity, based on the provisions in the law. Because, depending upon your organizational structure, you may have an impact on what you're able to do or not able to do. And I can tell you examples of those businesses that are agricultural businesses in my district that are unrelated producers, but they are producers just the same--they're bona fide producers--that, because of the way the land is held or because of different requirements that were in Initiative 300, they were precluded from doing certain activities. And so there are two things that I-300 does and that LB1174 would in turn do with the proposed changes, and they relate to the two sides of this scale. One is the entity structure and what opportunities you have as an entity as far as when you can form. But then the other side is what you're allowed to do as an entity. And the second part of that is a lot more generous if you're a qualified entity under the language than if you're not. The other thing that I think is important to realize is that Initiative 300 isn't the reason for any of the problems that we have, and it's not the reason that we had less of a problem. It was a part of the policy. And there's a number of things that affect the outcomes of family farms, of owner-operated facilities of... [LB1174]

SENATOR FRIEND: One minute. [LB1174]

SENATOR ERDMAN: ...agriculture in general. So it was never presented to the state that Initiative 300 was going to solve all of our problems. Depending upon what side of that issue you were on, you may have tried to argue that or against that. But the reality is, is that it was part of a process, part of a policy. This year the Agriculture Committee has advanced LB1027 with LB875, which provides additional incentives for beginning farmers to seek opportunities in agriculture and to partner with additional entities in securing agricultural land for their production. Those are the promotions, the incentives,

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the beginning farmer ideas that Senator Dubas was talking about. They're not in this bill. They're a complement to other public policies that we may adopt. And so we are at a point which is essential, that this is part of a possible policy, but it can't be the only policy. And there are other things that we need to be doing as well in the state to ensure that agriculture is successful. And I'm hoping that we'll get that opportunity yet this session. Thank you, Mr. President. [LB1174 LB1027 LB875]

SENATOR FRIEND: Thank you, Senator Erdman. Senator Raikes, you're recognized. [LB1174]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I'm struggling, I think, with some of the basics here, first being what problem are we trying to solve with LB1174? One thought that comes up is that I-300 was passed in the early 1980s. The court overturned it so, therefore, we must pass something to replace it. Well, I dispute that. I think several people have made the point that things have changed a lot since then. Another point in that regard, Senator Dierks made the point that LB1174 is less restrictive than I-300 was. Well, is that consistent then? If we have to harken back to what the voters said in the early 1980s, is it fair for us now to make it less restrictive? And if we do, will we have violated that effort to replace I-300? The other question that's raised is, has it worked for us? Has I-300 worked for us? And the answer I've gotten is, well, I don't know, we don't have a disaster now, so it must have worked. I don't think that's very good evidence that it did work. There have been points made that, I think really since I-300, you've got the Turner operation and other very large agricultural operations that have come into being in the state of Nebraska. So if the objective was to prevent that sort of thing, well, certainly it didn't work. The other thing that I'd mention at this point, I looked at the intent language and there are statements or inferences in there which I assume come from some place, although I doubt if they're solidly research based, if you will. For example, we have less poverty if agricultural operations are owned or operated by owner-operators. Well, I suppose there are instances when that happens, but surely you could come up with instances where they're not. Operators are more likely or owners are more likely to take good care of their agricultural asset resources if they don't have benefit of the corporate shield. Well, again, you might argue that you can point out some instances where that's true, but no doubt there are lots when that isn't true. And it does bring up an interesting question. We're certainly, I think rightly, very concerned about agricultural communities and agricultural land, agricultural resources, but we're also, as a state and as a Legislature, very interested in other enterprises and activities. For example, I would guess that, in terms of importance to the state, that day-care or early childhood centers are very important to the state. We're very insistent that they be well taken care of. Should we, on the basis of this, insist that they have to be owner-operators, and that they cannot be organized as corporations? Or take it a step further. Business tax incentives, if we're so down on corporations, why in the world would we give a business tax incentive that... [LB1174]

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SENATOR FRIEND: One minute. [LB1174]

SENATOR RAIKES: ...that could be used by a corporate structure? These are questions that I have that suggest to me that the problem that we're trying to wrestle with here is very unclear, or in fact I wonder if it's really a problem at all? I'll stop there. Thank you, Mr. President. [LB1174]

SENATOR FRIEND: Thank you, Senator Raikes. Before we continue, Mr. Clerk, you have items for the record. [LB1174]

ASSISTANT CLERK: Thank you, Mr. President. New A bills. (Read LB911A and LB1154A by title for the first time.) Amendments to be printed: Senator White to LB1001; Senator Erdman to LB846; Senator Janssen to LB895; Senator Cornett to LB895; Senator McDonald to LB895; Senator Raikes to LB965. New interim study resolutions: LR370 by Senator Cornett; LR371 by Senator Kopplin; LR372 by Senator Friend...LR372 and LR373 by Senator Friend, as well as LR374 and LR375 by Senator Friend. Thank you, Mr. President. (Legislative Journal pages 1237-1248.) [LB1174 LB911A LB1154A LB1001 LB846 LB895 LB965 LR370 LR371 LR372 LR373 LR374 LR375]

SENATOR FRIEND: Thank you, Mr. Clerk. Members, we are discussing FA252, proposed amendments to the Agriculture Committee amendments, AM2319. Senators wishing to speak are Louden, Karpisek, Harms, Stuthman, Rogert, Kruse, and others. Senator Louden, you're recognized. [LB1174]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look at this bill and the discussion that's went on about it and Initiative 300, if we're trying to save family farming and ranching or (inaudible), I don't think LB1174 matters a whiff whether or not it's around to save any family farming and ranching. Where you're saving these family operations has to go a lot deeper than that. If some of you were around, oh, about 25 years ago when they did a lot of consolidation on your school districts, the reason for that was to get the ag land into the K-12 districts to support those schools. They done that. If you will notice, from about then on farming and the rural industry has been in a lot worse shape than it ever was with that, mostly because they were on a stiffer tax structure. Those were one of the problems that probably has a lot to do with your family farming and ranching. Another one was about 15 years ago or so when the federal government brought in these 1031 tax-deferred sales. As development went along the front range in a lot of those areas they could sell that land by the foot and buy it by the acre in Nebraska for about the same price. So there was a lot of land that came in and was purchased with these 1031 tax-deferred sales, not with the intentions of that...that it would be a way of making a living off of what they were paying for that land, but the fact that they were saving the taxes, the income taxes that went with it. In other

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words, they could carry their equity they had in the land they sold, they could carry it on into the land they bought. That was something that made it impossible then for the local people to increase their holdings of any size. Large farmers could probably go in there, providing they borrowed a lot of money someplace. If they was smaller family operations, wanted to buy smaller tracts of land to join them or was close by, they probably had to sell something someplace in order to make it work, in order to get the same tax-deferred sales tax advantage that everyone else was getting. Part of it, we closed the schools in the rural areas. You don't have any schools out there, the people move out. They're not going to stay there if they don't have education problems. You go through the Sandhills, we went through that several years ago, now we're in the process of going through it again. How many of you have gotten e-mails from people that are talking about, instead of the busing, now they're going to have to start homeschooling? So now you went through another process, putting the problems under the rural areas and this is where you're talking about trying to set it up so that they can have some family operations out there. Right there you've put another stumbling block on it. Your transportation, we built a lot of roads, poured a lot of concrete around the metropolitan areas. What have you done out in rural areas? You guys saw some pictures I circulated the other day on the roads that I'm trying to get different standards for, for these rural roads. That's what a lot of it is. If you don't have transportation to haul your product out, you don't do nearly as well because you've got to have it...get it in and out. The railroad system now is nonexistent as far as local transportation. You couldn't get a carload of feed into one of these towns to save your soul. [LB1174]

SENATOR FRIEND: One minute. [LB1174]

SENATOR LOUDEN: It's all long-distance hauling. We had, as Senator Hansen mentioned, some of the individual owners with these large tracts of land. These are all things that have come about, and whether or not you have LB1174 I don't think will make a bit of difference. I think the die is cast by the way we react with other issues. I think you have to look at transportation, you have to look at the way your school system is funded, you have to look the way your school system is handled. Those are all things that make it so that people live out in these rural areas. It isn't whether or not we can make money. We can go out there and make money. But the problem is, you can't get anybody to live out there to do it. Thank you, Mr. President. [LB1174]

SENATOR FRIEND: Thank you, Senator Louden. Senator Karpisek, you are recognized. [LB1174]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I would like to say again that we've gotten off base here, but FA252 I oppose. I don't think the cultivation is only meant for a cultivator when you turn the ground, I would say. I didn't look it up real quick what the definition is. But I would say moving the earth would be called cultivating. I think the actual debate here is vertical integration and horizontal

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integration. We've talked about that a little bit, but the horizontal is if any of us wanted to go in together to be partners in a corporation. That doesn't scare me. I think Senator Dierks, when he has the amendment to go to five people to be able to incorporate, has really stepped out and tried to put his hand out to try to find some common ground. I don't think it's been met with...well, I know it hasn't been met with anything other than opposition saying, well, why not six; well, why not ten. If it would have been me, I wouldn't have gone with as many as five, but I think it's a good bill and we'll go where we need to get it passed. Both sides of this issue also want to keep family farms. Both sides talk about family farms. We just disagree on how to get there, how to keep them. We talk about land values. I hear Ted Turner over and over. Yeah, that is not a good situation. I don't know exactly what we can do about that. But this is a start. If you think land is high now, you can't outbid your neighbors, try to outbid a megacorp. Try to outbid Tyson or Monsanto, some of those big guys. You might as well not even show up. You're going to get blown out of the water. They do this stuff to make money. They have money to invest. What they'd like to do, in my opinion, is to keep you on the farm. Keep you there and say, oh, here, why don't you put up some hoop buildings and tend our hogs and bring them to our plant; we'll give you a couple bucks a head. I heard Senator Chambers talking about that we're all a bunch of rubes. Well, I think that's what they think about us on that issue. Why don't you do all the hard work, we'll give you a little bit of money. But who's going to make all this money? What's going to happen to any kind of competition? If you don't go in with them, your neighbor will. He'll raise all the hogs or the cattle. How do we know that I-300 didn't work? Did it do what everybody thought it would? Was it the magic silver bullet? Of course not. I don't think that there is such a thing. Did it make it worse? In some situations. Did it make it better? In some situations. It was a vote of the people and I don't know how many times people took swings at it, but it stood for a long time and it stood against a lot of opposition and a lot of lawsuits. Finally, someone found a way to get it out of here. I have to give Senator Erdman all the credit in the world. I know that he's not a big I-300 supporter but in committee he really stood up and tried to get this out to the floor... [LB1174]

SENATOR FRIEND: One minute. [LB1174]

SENATOR KARPISEK: ...thank you, Mr. President...so we could talk about it out here. That takes a lot, in my opinion. Even when you don't agree with it, get it out here on the floor and get it talked about. I don't know, again, how much I-300 helped, hurt, or indifferent, but I do know that we don't see these huge megacorp farms that take up sections that are right across from a hog production or a beef production plant. Why are those plants here? Because we've got the water. If you think it's for any other reason, you're wrong. They're shipping them in here from Kansas, Oklahoma, wherever they can bring them because they have a bunch of rubes growing them for them. I think we need to seriously consider this. I think it's good for our state. I think it's good for the family farm. Thank you, Mr. President. [LB1174]

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SENATOR FRIEND: Thank you, Senator Karpisek. Senator Harms, you are recognized. [LB1174]

SENATOR HARMS: Thank you, Mr. President and colleagues. You know, I've listened to the debate in several different...on several different days about rural America and watching people move from rural America to urban America. And I will tell you, the way to battle rural decline isn't by putting more options on farmers. In fact, that has increased the process of people moving from rural America. What rural America needs is more, not fewer, tools and opportunities to capitalize on current and future business opportunities. Right now we don't have that. Our state--and I want to qualify this, I am not an expert in agriculture, but this is how I view this--our state is moving away from commodity agriculture to value-added agriculture. This includes biorefineries. This includes branded beef products. This includes grain, niche grain products. These higher value niches, colleagues, need to have the opportunity to grow and to develop. Farmers need to have the opportunity to increase their opportunities to be in a new market. What farmers need now is not LB1174. What they need now is the opportunity to partner, the opportunity to make that transfer to where we are today. Because if we're unable to do that, I will guarantee you in the next decade Nebraska will not be a player in the production of agriculture. That's how critical I think this is. And I think if you go back and start to look at the decline in rural America as population base, you'll find that it's parallel with I-300. So I would urge you to give serious thought to not passing and pursuing LB1174. I think there's a lot more at risk here than what we think. Senator Erdman, would you yield to a question? [LB1174]

SENATOR FRIEND: Senator Erdman, will you yield to a question from Senator Harms? [LB1174]

SENATOR ERDMAN: I will. [LB1174]

SENATOR HARMS: Senator Erdman, you sent out to our colleagues a map of the counties that voted against I-300 in '82. Would you kind of walk us through this, because some of them may not have had the chance to see that. My aide happened to pick that up on my computer. Would you walk us through that and let us know where that vote took place, what part of rural America fought this and said no, but still lost? [LB1174]

SENATOR ERDMAN: I will, Senator Harms. It was actually two items that you can refer to. Senator Dierks had provided a document that was headed "Initiative 300 and LB1174--Highlights." In that same packet, it also had the vote by legislative district. The e-mail that I sent out did have the map. The red counties were the ones that voted no on Initiative 300. The green counties were the ones that voted yes. And then you got a copy of the vote on the November 2, 1982, constitutional amendment election. And it lists those out. Generally, what happened was that as you went further west it became

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less popular. One of the things that you know well, Senator Harms, is that in Scotts Bluff County I believe it received the lowest support of any county in the state. Less than 39 percent of the people in Scotts Bluff County voted yes on Initiative 300. [LB1174]

SENATOR FRIEND: One minute. [LB1174]

SENATOR ERDMAN: That was generally the trend in the Panhandle and in the western part of the Sandhills, beginning with the line west of Cherry County down to Lincoln County, and there were three counties west of that line that actually voted yes, but it was a close vote. Excuse me, no, three counties west of the line that voted yes and the rest voted no. This is a regional issue as much as it is of other issues. And the difference is, is that you well know from being from western Nebraska as I am that agriculture is different throughout the state. You have different interests, you have different markets, you have different opportunities. And as you and I know, there are opportunities in Torrington and in Colorado as well that are different than in eastern Nebraska and where they generally market their products. [LB1174]

SENATOR HARMS: Senator, how much time do we have? [LB1174]

SENATOR FRIEND: Twelve seconds. [LB1174]

SENATOR HARMS: Well, I (inaudible) give this question. I'll catch up with you later then. Thank you, Mr. President. [LB1174]

SENATOR FRIEND: Thank you, Senator Harms and Senator Erdman. Senator Stuthman, you are recognized. This is your third time on this amendment. [LB1174]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. First of all, I would like to just say thank you to Senator Raikes on the comments that he made. I think they were very valuable. And I also want to deal on another issue, and it has to do with some similarity to what Senator Raikes was. You know, we're concerned about this, the family farm. Yes, I'm very much concerned about that, too, and, you know, how can we help the family farm? But there's another situation that I've been very much concerned about in the past, and that is our small mom-and-pop businesses in these small communities. They're having a real struggle. And why are they having a real struggle? And that is because we have a large corporation that did come to town, and they call that corporation Wal-Mart. Wal-Mart is there. Everybody goes to Wal-Mart. Why do they go to Wal-Mart? They can get it a little bit cheaper. So that just makes it all the worse for those little small businesses in these little communities. But it seems like we don't care about them. Let a big corporation, you know, just take over. But we as family farmers don't want to have regulations on us that hinder young farmers from working with people that have capital that can help them in a business so that they can generate some revenue and young farmers and children can stay on the family farming

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operation. I want to talk a little bit about packer control, packer controls. Senator Dierks was concerned about the packer control, how many cattle are controlled every week by the packers. I think they're not necessarily controlled by the packers. Yes, they know that they've got that many cattle coming in that week. But I think it starts at the beginning. When the individual wants to purchase livestock, he goes to his lending institution and says, well, I'd like to buy 100 head of cattle or maybe 50 head of cattle and be a part of a 200-head pen of cattle, have 50 head or one-fourth of them or a half of them. They say, yes, we will loan you probably 80 percent of the money for those cattle, but you have to have some risk management plan in place. What are you going to receive for these cattle when you sell them? Don't have a clue. But there are the cattle futures that you can work off of and you can work together with cooperation of a packing plant and say--and I'll give you the illustration--we've got cattle that go in June for right at \$1 a pound. And like Senator Hansen said, right now the price is in the upper \$80s. We sold about 40 percent of the cattle that we have to be marketed at that time. That's risk management. That is what's needed for lending institutions to give them the ability to lend you money for your operation. This is a tool. This is a tool that young people can get involved in. I'll give you another illustration. Another illustration is in these hog units. There will be a landowner, will decide to put up a 2,400-head or two 1,200-head finishing units in the corner of a pivot. He puts those up. He owns the buildings. Maybe he does the labor or maybe he has... [LB1174]

PRESIDENT SHEEHY PRESIDING [LB1174]

PRESIDENT SHEEHY: One minute. [LB1174]

SENATOR STUTHMAN: ...a son in the operation that would like to work in that hog unit. Gives him an opportunity to be involved in the farming operation. But the hogs are owned by someone else, probably by some corporation or some investor that has got money invested into a farrowing unit that raises the pigs and they're contracted to this company that has the pigs. Pigs are brought in, the son takes care of the pigs, the pigs are shipped out. They're all contracted, the majority of them are contracted to a packing plant, and that takes place. But the real advantage there is there is an opportunity for a son or daughter or a family member to generate maybe \$20,000 for taking care of those animals. That subsidizes the farming operation. There's a lot of instances when... [LB1174]

PRESIDENT SHEEHY: Time, Senator. [LB1174]

SENATOR STUTHMAN: Thank you, Mr. President. [LB1174]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Members wishing to speak on FA252 are Senator Rogert, followed by Senator Kruse, Senator Hansen, and Senator Wallman. Senator Rogert, you're recognized. [LB1174]

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SENATOR ROBERT: Question. [LB1174]

PRESIDENT SHEEHY: I do have a call for the question. Do I see five hands? I do see a sufficient amount. The question before the body is on the question to cease debate. All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB1174]

ASSISTANT CLERK: 25 ayes, 2 nays to cease debate, Mr. President. [LB1174]

PRESIDENT SHEEHY: Debate does cease. Senator Stuthman, you're recognized to close on FA252. [LB1174]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I think we've had good debate on this issue. I think we have pretty well brought out some of the concerns of the issue. And I think we've had some real good discussion. I think at this time I'm going to withdraw this amendment and all of the following amendments that I have filed. [LB1174]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Stuthman withdraws FA252. (FA253, FA254, and FA255 also withdrawn.) [LB1174]

CLERK: At this time, Mr. President, I have nothing further pending to the committee amendments. [LB1174]

PRESIDENT SHEEHY: We will return to...Speaker Flood, you are recognized for an announcement. [LB1174]

SPEAKER FLOOD: Thank you, members. We're going to adjourn at this time, come back tomorrow morning. This will be the first bill up on the agenda. We will be dealing with the Nebraska State Fair issue Thursday morning at 9:00 a.m. Just a little heads-up on a major issue coming in a couple days. Again, we'll be adjourning at this time. Thank you, Mr. President. []

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, items for the record? []

CLERK: Mr. President, amendments to be printed: Senator Raikes to LB1154. (Senator Kopplin filed an amendment to LB911; Senator Fischer filed an amendment to LB911.) A reminder for members of the Transportation and Telecommunications Committee: there will be an Executive Session tomorrow morning at 8:45; 8:45, Transportation and Telecommunications. (Legislative Journal pages 1248-1250.) [LB1154 LB911]

And Senator Flood would move to adjourn until Tuesday morning, April 1, at 9:00 a.m. []

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PRESIDENT SHEEHY: You've heard the motion to adjourn until Tuesday, April 1, 2008, 9:00 a.m. All those in favor say aye. Opposed, nay. The Chair adjourns. []