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Banking, Commerce and Insurance Committee  
February 15, 2011

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[LB22 LB132 LB280 LB371 LB493 LB678]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 15, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB22, LB132, LB371, LB280, LB678, and LB493. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Pete Pirsch; and Dennis Utter. Senators absent: Dave Pankonin.

SENATOR PAHLS: Good afternoon and welcome to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls. I'm from Millard of Omaha, and I represent District 31 and I'm the chair of this committee. We will take up the bills as posted. It will be a little bit different twist to them today, and I will go into that. Now, to better facilitate today's proceedings, I'm going to ask you to take a look at the small, white chart over there. Those are the procedures that we need to follow. First of all, the typical turn your cell phone off, and what we have in this hearing room is when you're getting ready to testify, we have some of these front row seats we'd like you to move to that keeps me on top of my game, so I'll know who the number of people that we have, and it just keeps me more awake. Let's put it that way. So I'm going to ask you to move forward. Typically, we have the introducers, and then the proponents, opponents, and neutral, and then the closing. It will be just a little bit different on the first two bills, because we're going to put them together. Now, this is for those people who will be testifying on LB22 and LB132. This is what I'm going to ask of you. If you are going to testify on both of the bills, when you come forth...let's say you would start out on (LB)132. If you are a proponent of (LB)132, be sure that's marked on this, because we need that for the recording, so we know where to place you. If you are also a proponent of (LB)22, you would do the same...your name, but I need two separate, because there may be a case...you may be an opponent on one and a proponent on the other one. So you will come up one time, and you will give us your feelings on both bills if you so choose. Again, I need one for each bill. So if you do not have two of them, if you've only filled out one, because you will need this if you're going to testify, you need to hold up your hand, so one of the pages can come around with another one if you need one. Okay, that's great, that's good. And again, it is important that you do...since we probably have some people new to testifying today, it is important that you spell your name in the initial beginning of your testimony. And I'm going to ask you again to be concise, because it helps the hearing as we move along. And we will need ten copies if you need to hand something to the committee. So, again, if you don't have ten, and you want to make sure that we get...you hold your hand up, and I'll have one of the pages run those copies off for you. Okay, I see nobody needs that. Okay. I'll start over here by our counsel, Bill Marienau. He is the individual who keeps us legally correct. And Jan Foster over there...she keeps us paper and transcriber correct, because it is important that we get everybody's words down, and what you want to be said, said. I'm going to start over here now, having the senators introduce themselves. []

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SENATOR UTTER: I'm Senator Dennis Utter; I live in Hastings and represent District 33 in the Legislature. [LB22 LB132]

SENATOR PIRSCH: I'm State Senator Pete Pirsch. I represent Legislative District 4 which is parts of Omaha and Douglas County. [LB22 LB132]

SENATOR McCOY: I'm Beau McCoy, District 39, Elkhorn and west Omaha. [LB22 LB132]

SENATOR GLOOR: Mike Gloor, District 35 which is Grand Island. [LB22 LB132]

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial. [LB22 LB132]

SENATOR LANGEMEIER: Chris Langemeier, District 23, Schuyler. [LB22 LB132]

SENATOR PAHLS: And we have two pages working with us. We have Tom Kelly, and then we have...I see Matt McNally right here, so those are the individuals who will be taking papers from you, if you so choose. I think today, to get our hearing started, we will start with (LB)132, Senator Dubas. [LB22 LB132]

SENATOR DUBAS: Good afternoon, Mr. Chairman, members of the Banking(, Commerce) and Insurance Committee. My name is Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s, and I'm the senator that represents Legislative District 34. Today I introduce for the committee's consideration LB132 which provides for an opt-out provision for abortion coverage offered through health insurance exchanges. Just like the rest of America, I try to keep up with what will happen as healthcare reform moves forward if, indeed, it does move forward. I knew we would have involvement as state policymakers, but with so much uncertainty, it's hard to know what, if anything, we really need to do yet we can't wait to see how things will play out and then try to prepare our state for what will be required of us. One area that we will be expected to implement by 2014 is a state health insurance exchange. As I read more about what this program could look like, the part surrounding abortion coverage through these exchanges, caught my attention. I knew that having tax dollars involved with providing abortions was something that caused me concern. Further research demonstrated that state legislatures would have the ability to opt out of offering those types of plans. This bill will prevent state and federal dollars from being used for abortion services unless the procedure is necessary for the life of the mother. This bill would help our Department of Insurance comply with federal accounting requirements to ensure that no tax dollars are used for abortion services in these exchanges. This bill will help our department save time, money, and resources by not having to do excess paperwork to prove where the money is being spent. If we do not opt out, the Department of Insurance will spend a great deal of time and resources dealing with very strict accounting and reporting requirements to, again,

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show that no tax dollars were spent on abortion coverage. As I continued to research this issue, I found existing Nebraska statutes that decree no group health insurance paid for in whole or part with public funds shall include coverage for an abortion unless it is to prevent the death of the mother. The statute does not prohibit the insurer from offering individual coverage for abortions if the cost is borne solely by the employee. In drafting LB132, I used model language from the Americans United for Life. I felt this was straightforward language that already harmonized well with statutes we have in existence, dealing with the prohibition of taxpayer supported abortion benefits. I feel very strongly about protecting the sanctity of life, as well as women's health and safety issues, and protecting Nebraska's hard-earned taxpayer dollars. In visiting over the noon hour with some of our insurance agents asking them questions about these health insurance exchanges and even people who are in the business of insurance are still somewhat confused as to the direction we will be going. So I do understand there's a lot of uncertainty surrounding this issue, but feel that we as a state need to have something in place to have us be ready for whatever may eventually come down the pike, and that's my intention with LB132. [LB22 LB132]

SENATOR PAHLS: Okay. Senator Pirsch. [LB22 LB132]

SENATOR PIRSCH: So, just to be sure and understand, to clarify. Under the federal healthcare law, if we don't pass a bill like this, Nebraska taxpayers could be forced to pay for elective abortions? [LB22 LB132]

SENATOR DUBAS: It wouldn't necessarily cause that to happen, but by not opting out of offering the service under the exchange, then we would have to keep a very strict accounting of what the taxpayer dollars...what types of services the taxpayer dollars were supporting. So, while those dollars wouldn't necessarily be going to support abortion services, we would have to have a very clear record that those dollars were not being spent on abortion services. [LB22 LB132]

SENATOR PIRSCH: And that would have to be maintained then by state workers? [LB22 LB132]

SENATOR DUBAS: That would have to be maintained through the state Department of Insurance, yes. [LB22 LB132]

SENATOR PIRSCH: At the state expense. [LB22 LB132]

SENATOR DUBAS: Yes. It would be their time and resources that would have to be creating that accounting system. [LB22 LB132]

SENATOR PIRSCH: So, ultimately that cost would be borne by the people of the state of Nebraska. [LB22 LB132]

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SENATOR DUBAS: Yes, it would. Yes, it would. [LB22 LB132]

SENATOR PIRSCH: Okay. [LB22 LB132]

SENATOR PAHLS: Seeing no questions, thank you. LB22, Senator McCoy. [LB22 LB132]

SENATOR McCOY: Thank you, Chairman Pahls. I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District. I'm here to introduce LB22 to you this afternoon which seeks to adopt the Mandate Opt-Out and Insurance Coverage Clarification Act. LB22 accomplishes two things. First, it affirmatively opts out Nebraska from allowing health insurance plans that cover abortions from participating in health insurance exchanges that could be potentially offered in our state. This opt-out is permitted under a compromise secured by our senior United States Senator Ben Nelson, and is listed in Section 1303 of the Federal Patient Protection and Affordable Care Act. Five states have passed similar opt-out legislation in 2010--Arizona, Louisiana, Mississippi, Missouri, and Tennessee. Second, LB22 prohibits private health insurance sold in Nebraska from providing elective abortion coverage except through an optional rider where the premium is paid solely by the insured. The issuer of the health insurance plan or policy may not provide an incentive or discount if the insured elects to purchase the additional rider. The only exceptions allowed in LB22 are to prevent the death of the mother or treat medical complications arising from an abortion. This is not a new concept. The same language is found in Nebraska state statute 44-1615.01, prohibiting the use of public funds in abortion coverage. And that says, this section shall not prohibit the insurer from offering individual employees special coverage for abortion if the costs for such coverage are borne solely by the employee. Currently, Idaho, Kentucky in 1984, Missouri in 1983, North Dakota in 1979, and Oklahoma in 2007 have laws limiting private insurance coverage for elective abortions. All five states allow an optional rider as proposed in LB22. Almost 30 years ago to the day, February 9, 1981, Banking, Commerce and Insurance Committee heard LB125 which became state statute 44-1615.01, prohibiting the use of public funds to pay for health insurance coverage for abortions. I believe LB22 continues what LB125 began in 1981, and that is, the Nebraskans who morally object to abortion should not be forced to pay for the elective procedure through their tax dollars or insurance premiums. Thank you, and I'd take any questions, if there are any. [LB22 LB132]

SENATOR PAHLS: Seeing no questions, thank you, Senator. [LB22 LB132]

SENATOR McCOY: Thank you. [LB22 LB132]

SENATOR PAHLS: Okay. Again, I want to go over the procedures since we are hearing both bills. If you're going to come up and testify on both bills, I need the numbers on

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each different bill whether you're a proponent or opponent, whatever, I need that. And we will have our lights on today...green, five; amber, one; and then red, after awhile you will hear me say, please wrap it up. Okay? Now, just so I have a feel, how many speakers will we have or testifiers will we have on today's bill? One, two, three, four, five, six...about six. Okay. You're ready to come forth. It's a little harder today to find a place to sit up, so if you could, it'd be helpful. [LB22 LB132]

GREG SCHLEPPENBACH: (Exhibit 1 and 2) Good afternoon, Senator Pahls and members of the committee. My name is Greg Schleppenbach. That's spelled S-c-h-l-e-p-p-e-n-b-a-c-h, and I'm here on behalf of the Nebraska Catholic Conference to express our support for the important public policy embodied in LB22 and LB132. Although public opinion about the practice of abortion and its legality may shift from time to time, a strong, clear majority of Americans has consistently supported measures that prohibit public funding, support, and entanglement with abortion. This belief of the American people is clearly enshrined in federal and state law as well as various court rulings. For example, in our own Nebraska statutes, 28-325 is a preamble to our abortion laws, states "that the members of the Legislature expressly deplore the destruction of the unborn human lives which has and will occur in Nebraska as a consequence of the United States Supreme Court's decision on abortion of January 22, 1973." It also states that it is "the will of the people of the state of Nebraska and the members of the Legislature to provide protection for the life of the unborn child whenever possible." And as Senator McCoy just mentioned there is, furthermore, Nebraska law with regard to funding or prohibition on public employee health plans providing coverage for abortion. On the federal level, specifically the Hyde Amendment, has been in place since the late 1970s prohibits funding of abortion and health plans that include coverage for abortion. This policy has been incorporated into the State Children's Health Insurance Program or SCHIP and the Federal Employees Health Benefits Program to create a consistent federal policy. Wherever federal and nonfederal funds are combined to purchase a health benefits package, that package may not cover elective abortions. That policy was consistently applied until 2010, when it was contradicted by the final version of the Patient Protection and Affordable Care Act. However, this act explicitly permits states to prohibit coverage of abortion in insurance plans offered through a health insurance exchange created under the act which is, of course, the purpose of these two bills. As for abortion jurisprudence, even courts insisting on a constitutional right to abortion have said that this alleged right "implies no limitation on the authority of a state to make a value judgment favoring childbirth over abortion." The U.S. Supreme Court itself stated in a 1980 ruling, Harris v. McRae: "By subsidizing the medical expenses of indigent women who carry their pregnancies to term while not subsidizing the comparable expenses of women who undergo abortions (except those whose lives are threatened), Congress has established incentives that make childbirth a more attractive alternative than abortion for persons eligible for Medicaid." The court goes on to say, "These incentives bear a direct relationship to the legitimate congressional interest in protecting potential life. Nor is it irrational that

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Congress has authorized federal reimbursement for medically necessary services generally, but not for certain medically necessary abortions. Abortion is inherently different..." this is the court speaking, "Abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life." These public policies and court rulings, in addition to our strong opposition to the injustice of abortion, form the basis of the Nebraska Catholic Conference's support for both LB22 and LB132. However, because LB22 applies this public policy to all healthcare plans offered in Nebraska, not just those offered in state exchanges established under the federal healthcare law, we do prefer LB22. Thank you. [LB22 LB132]

SENATOR PAHLS: Okay. Just your last sentence, I just want to make sure the difference...because you are supporting both of them, but it is the way one is written with the state exchanges. Is that what separates? [LB22 LB132]

GREG SCHLEPPENBACH: Yes. They both would prohibit abortion coverage in the state exchange as established by the federal healthcare bill. LB22, however, also applies that prohibition to private health insurance plans. [LB22 LB132]

SENATOR PAHLS: Okay, okay. Seeing no questions, thank you for your testimony. [LB22 LB132]

GREG SCHLEPPENBACH: You're welcome. [LB22 LB132]

SENATOR PAHLS: Next testifier? [LB22 LB132]

SUZANNE GAGE: Good afternoon. My name is Suzanne Gage, S-u-z-a-n-n-e G-a-g-e. I am the state director for Americans United for Life which we've already spoken of earlier. We're the model legislation that these bills are based upon. We are a national public interest law firm with a practice in abortion and bioethics law. I do appreciate this opportunity to speak before you and testify on the constitutionality of LB22 as well as LB132, the need and the permissibility of either under the Federal Patient Protection and Affordable Care Act, and why both are consistent with Nebraska law and public policy. First, I would like to address the constitutionality of both bills. The opt-out provision in both bills is constitutional. The United States Supreme Court has repeatedly affirmed the constitutionality of federal and state restrictions on public funding for abortions. My predecessor at the mike referenced Harris and McRae. I'd like to just abbreviate that. The court upheld the constitutionality of the Hyde Amendment, a federal appropriations rider, that restricts the use of federal and state matching Medicaid funds for abortion. The court's decision in Harris is particularly relevant because the Hyde Amendment, like LB22 and LB132, restricts federal subsidization of insurance plans that cover abortions. The insurance restriction provision in LB22 is also constitutional. The Supreme Court has repeatedly affirmed the constitutionality of federal and state laws

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that favor childbirth over abortion. In Planned Parenthood v. Casey, the court held that the Constitution does not forbid a state or city from expressing a preference for normal childbirth. Further, the Eighth Circuit Court of Appeals held that Missouri's restriction on insurance coverage of elective abortion did not place an undue burden on a woman's ability to obtain an abortion and was, thus, constitutionally permissible. The insurance coverage restriction in LB22 is substantively similar to the Missouri law upheld in the Eighth Circuit Court. Second, LB22 and LB132 are permissible under the PPACA. Section 1303 explicitly provides a state may elect to prohibit abortion coverage in qualified health plans offered through an exchange in such state if such state enacts a law to provide for such prohibition. LB22 and LB132 do exactly what section 1303 permits a state to do. It prohibits insurance plans within the state's exchange from covering abortions. Third, an opt-out like LB22 or LB132 is necessary to prevent insurance plans that cover abortions from receiving federal subsidies in the Nebraska state exchanges. The PPACA provides that qualified health plans may provide abortion coverage to enrollees. In contrast, the Hyde Amendment and other federal laws prohibit federal subsidies from supporting insurance plans that cover abortions regardless of whether the federal dollars are used to directly pay for abortions. President Obama's Executive Order 13535 fails to apply the Hyde Amendment to the exchanges. Therefore, the state of Nebraska must enact a law to prevent insurance plans that cover abortions from participating in exchanges operating within the state. Fourth, the state of Nebraska does not currently prohibit insurance plans offered with the state from offering elective abortions. LB22 would ensure that its citizens do not unwillingly or inadvertently pay for abortions with their insurance premiums. Finally, the law and public policy in the state of Nebraska support opting out of permitting abortion coverage through state exchanges, and prohibiting insurance plans within the state from offering elective abortion coverage. Citizens of the state of Nebraska, like other Americans, oppose the use of public funds, both federal and state, to pay for abortions. Existing laws, within the state of Nebraska, restrict the use of public resources for abortion coverage. It, therefore, makes logical sense for the state of Nebraska to enact LB22 or LB132. In conclusion, given public or private insurance coverage of a procedure like abortion generally leads to increased usage of that procedure, Nebraska should move swiftly to enact LB22 or LB132. [LB22 LB132]

SENATOR PAHLS: Seeing no questions, thank you for your well-organized testimony. Thank you. [LB22 LB132]

SUZANNE GAGE: Thank you. [LB22 LB132]

SENATOR PAHLS: Next. Good afternoon. [LB22 LB132]

SANDY DANEK: (Exhibit 3) Good afternoon. My name is Sandy Danek, and that's S-a-n-d-y D-a-n-e-k. And I'm the president of Nebraska Right to Life, the state affiliate to National Right to Life Committee. And I appear before you today in support of LB22.

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LB22 reflects the longstanding policy at work in the Hyde Amendment that federal dollars are not to be used to fund health plans that cover abortion. And without this legislation, federal dollars will flow to subsidized plans that cover abortion in our state. The Obama healthcare law specifically authorized the states to ban use of federal dollars to cover abortions within the state's exchange, writing, "A state may elect to prohibit abortion coverage in qualified health plans offered through an exchange in such state if such state enacts a law to provide for such prohibition." Americans agree that abortions should not be paid for with tax dollars. Polls consistently show strong majorities of Americans oppose taxpayer funding of abortion. LB22 does not prohibit a woman from obtaining an abortion, it merely reflects the will of the people to not use tax dollars to fund coverage for a procedure they fundamentally disagree with. Nebraska Right to Life's preference is that LB22 becomes law, because it encompasses both the public funding aspect, as well as the private insurance plans. While we also support Senator Dubas' LB132 and want to go on record in support of her effort, we do prefer Senator McCoy's approach in LB22, because it goes beyond the public funding aspect of the state's exchange. Thank you. [LB22 LB132]

SENATOR PAHLS: Any questions? Yeah, I just want to reinforce LB22, you support...you support both (LB)132 and (LB)22, but you prefer (LB)22. [LB22 LB132]

SANDY DANEK: Yes. [LB22 LB132]

SENATOR PAHLS: Okay. Thank you. [LB22 LB132]

SANDY DANEK: Again, for the private insurance aspect. [LB22 LB132]

SENATOR PAHLS: Okay. Thank you. [LB22 LB132]

SANDY DANEK: All right. Thank you. [LB22 LB132]

DAVID BYDALEK: Chairman Pahls, members of the committee, my name is Dave Bydalek, for the record. That's spelled B-y-d-a-l-e-k. I'm the executive director and legal counsel for Family First, a nonprofit research and education organization, located in Lincoln, Nebraska. I appear before the committee today to signify our support for both LB22 and LB132. The United States Supreme Court has stated on numerous occasions that states are free to make value judgments favoring childbirth over abortion and to implement those judgments in concrete ways. As Mr. Schleppenbach has already stated, the Nebraska Unicameral explicitly made such a value judgment in Chapter 28, Section 325, the Nebraska Statutes, which provides that it is the will of the Nebraska people to provide protection for the life of the unborn child whenever possible. LB22 and LB132 provide an important opportunity for the Unicameral to recommit to supporting Nebraska's stated preference for supporting childbirth over abortion. The national healthcare bill will allow the government to subsidize insurance plans that cover elective

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abortion in departure from longstanding federal policy, section 1303(b)(1)(A), allows a qualified health plan, one that participates in an exchange and is available to individuals who receive tax credits to cover part of their insurance premiums to include abortion coverage. Therefore, insurance plans that cover elective abortions will receive these federal subsidies. Fortunately, the healthcare bill also allows for states to opt-out of allowing insurance plans that cover abortions to participate in these insurance exchanges within that state, and thereby prohibit taxpayer money from subsidizing plans that cover abortion. LB22 and LB132 provide the vehicle needed to ensure that Nebraska will not fund health insurance plans which cover abortion through their exchanges. Thus, Family First respectfully asks the committee to act decisively and meaningfully on the state of Nebraska's longstanding policy of favoring childbirth over abortion by sending either of LB22 or LB132 to the floor for General File debate. Thank you. [LB22 LB132]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB22 LB132]

KAREN BOWLING: (Exhibit 4) Good afternoon, Chairman Pahls and Banking and Commerce and Insurance Committee. I am here testifying on behalf of Nebraska Family Council. It is a state organization, public policy and education. Nebraska Family Council wants to be on record for our support of both LB22 and LB132. In 1981, Nebraska Revised Statute 44-1615, which prohibits healthcare coverage plans paid in part or in whole by public funds from covering abortions, except when the life of a woman is in danger or when the cost of such coverage is borne entirely by the insured individual. That bill, LB125, called for prohibiting the use of public funds to purchase group health insurance programs which cover abortion. Section 1303 of the federal Patient Protection and Affordable Care Act explicitly permits each state to pass laws prohibiting qualified health insurance plans offered through a health insurance exchange created under the act in such state from offering abortion coverage. Such section allows the state to prohibit the use of public funds to subsidize health insurance plans to cover abortions. Both LB22 and LB32 (sic: LB132) are an extension upon the existing Nebraska statute. Nebraskans historically care deeply about this issue and continue to be a pro-life friendly state. Our citizens don't want their insurance premiums to help fund an elective abortion whether through private or the federal health exchange. LB22 would reaffirm and extend this principle in response to changes in the insurance market in two ways. First, it would opt out of allowing plans with abortion coverage from participating in health insurance exchanges in Nebraska created by the Affordable Care Act. And, secondly, it would limit the coverage of abortion in all health insurance plans in the state. LB132 would provide Nebraskans protection also, and I've cited here just a poll that was taken where 60 percent of Nebraskans which has an error margin of 4 to 4.5 percent of Nebraskans have cited that they do not want abortion being covered in healthcare exchanges. As a proponent for both bills, we do believe that LB22 is more comprehensive than LB132, as it encompasses both public and private insurance funding. It allows individuals to be assured that they are not paying indirectly public

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funding or directly private funding into a plan that would fund abortions. This is the same principle. Public funds paid to the insurance industry come from taxpayers, but so do private funds. LB22 would ensure that no Nebraskan would involuntarily fund abortion. And as I mentioned in section 1303 of the federal Patient Protection and Affordable Care Act, it gives us an opportunity to opt-out, and so therefore, I encourage you to advance this legislation before the full legislative floor. Thank you. [LB22 LB132]

BILL MARIENAU: Did she state her name? [LB22 LB132]

KAREN BOWLING: I don't think I did state my name. I apologize. Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g. Thank you. [LB22 LB132]

SENATOR PAHLS: Thank you. Seeing no questions, thank you for your testimony. Any other testifiers? [LB22 LB132]

ALAN PETERSON: I'm an opponent of these two bills. [LB22 LB132]

SENATOR PAHLS: Right. I understand that. Right. [LB22 LB132]

ALAN PETERSON: (Exhibit 5) All right. Chairman Pahls, members of the committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. I'm a registered lobbyist and an attorney. I represent ACLU Nebraska. We oppose these two bills. ACLU Nebraska has as its sole goal not any political side, not any political party; we're apolitical, nonpartisan. The thing we do and the thing we stand for is the Bill of Rights which usually means the first ten amendments to the United States Constitution and then the 14th Amendment, especially the due process clause. That 14th Amendment was passed right after the Civil War and provided, without defining the word liberty, that no person's liberty may be taken away nor their property nor their life without due process of law. This state has a fine and important history in enforcing that idea of liberty. The U.S. Supreme Court has defined liberty under the 14th Amendment clause to include, not as an absolute right, but as a right, the rights of women to choose with respect to this very difficult issue of abortion, not absolute, as I said, and there are limitations and the courts have been arguing about what are the appropriate limitations ever since. These two bills we oppose, because it appears to ACLU Nebraska that they try to create additional and very substantial barriers between individual people--women, usually, under families, and something that they have a constitutional right to choose with regard to a medical service. And I am referring to a terminated pregnancy or abortion. The bills, one is LB132, makes the limitation only as to governmentally financed medical services for abortion. It is the less extreme of the two. LB22, on the other hand, reaches out and says no insurance company selling a policy in this state as a group policy may even cover abortion in the general provisions. It allows if someone thinks they want to buy abortion coverage separately and perhaps whether they're pregnant or not, to buy that separately under what's called a rider. I hope I'm representing those two bills correctly. I

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believe I am. The problem, though, is that the barriers that can be put up to abortion by any state are limited by that 14th Amendment, and to some degree, perhaps, the 9th Amendment, the 4th Amendment regarding search and seizure and other so-called shadows or emanations from parts of the Bill of Rights. But mainly, we're talking about what is the liberty? In this state, clear back in 1923, in a case called Meyer v. Nebraska, the U.S. Supreme Court first took a look at that 14th Amendment language about liberty and said that matters of marriage, matters of raising a family, teaching your children, education, these are the kinds of liberties that are protected even though they're not listed right in the 14th Amendment, that's what the word liberty means. It said they derive clear back from centuries of common law. All right, Roe v. Wade relied primarily on the 14th Amendment liberty concept. It indicated and it talked about privacy, but most people believe that that case relied primarily on the 14th Amendment due process clause. The case of Casey that has been referred to earlier today has talked about a test that says, a state may legitimately put some burdens on the right to choose an abortion. But it said they have to be tested against the right to have an abortion. In other words, the state's right to choose that policy discouraging abortion is okay, and they may, in fact, do concrete things. We think that these bills, and particularly LB22, go much too far. Think about it. If a person decides just to buy a private policy, a group policy, are they going to, in advance, plan to have an abortion? I suggest to you almost no woman or no woman plans to have an abortion. Things can come up, difficulties during pregnancy, or an unintended pregnancy arising from, God forbid, a rape or incest where abortion is a legitimate answer. To squeeze off the possibility of paying for that medical remedy by saying no insurance is going to be available for it is in my view, and the ACLU's view, an undue burden. We prefer that both these bills be killed, but certainly the more extreme, the one that interferes not only with insurance that might come through one of these insurance exchanges in about three years, but even covers starting, I believe next year, even covers private policies between a private company and a private individual. That's where the government is reaching in, grabbing a piece of the 14th Amendment, and crumpling it up and tossing it away. I suggest to you while the Eighth Circuit has a decision, to some degree, from Missouri on this issue, the U.S. Supreme Court has not so ruled, and the ACLU feels that this would be an undue burden to pass either of these bills, but particularly LB22, and I do appreciate the chance to testify to you. [LB22 LB132]

SENATOR PAHLS: Senator Langemeier. [LB22 LB132]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. Mr. Peterson, you bring up some interesting thoughts. You have brought up the 14th Amendment a number of times and liberty, and I didn't quite keep track, but I think you said it 34 times (laughter)--liberty... [LB22 LB132]

ALAN PETERSON: (Laugh) I believe it was about that much. [LB22 LB132]

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SENATOR LANGEMEIER: ...and you talk about this affecting the liberty of someone to not have this coverage. And so, with national healthcare where I am bound to have coverage, isn't that a violation of my liberty to decide whether I want healthcare or not? [LB22 LB132]

ALAN PETERSON: We take no position on the bill over on national healthcare overall... [LB22 LB132]

SENATOR LANGEMEIER: Because it's not... [LB22 LB132]

ALAN PETERSON: ...I know that courts are fighting hard about that, Senator. You raise a terrific question. [LB22 LB132]

SENATOR LANGEMEIER: So you take no... [LB22 LB132]

ALAN PETERSON: That's one of the things they're fighting about. [LB22 LB132]

SENATOR LANGEMEIER: So you take no position on that, because it's going the way your nonpartisan group thinks it should? You don't... [LB22 LB132]

ALAN PETERSON: Thinks. [LB22 LB132]

SENATOR LANGEMEIER: You don't...I would assume you support national healthcare as ACLU. [LB22 LB132]

ALAN PETERSON: No, as...I personally, as Alan Peterson, may support parts of it. But ACLU takes no position on national healthcare, but we're talking about strictly here is this new restriction on the availability of abortion to be paid for by ordinary health insurance in the one bill, and then even in policies that are not part of the insurance exchange in LB22. That's the sole issue we're here on. We really are nonpartisan. [LB22 LB132]

SENATOR LANGEMEIER: But my question is, is you're stepping in to fight a liberty issue as you so eloquently said, today on LB22. But yet on another liberty issue, you choose to be silent. I don't quite grasp why one would be different than the other if liberty is truly why you're here. And then your other statement in your testimony was that this just goes too far. Is there some point that tipped this over too far or is there some point in the middle that isn't too far? [LB22 LB132]

ALAN PETERSON: You know, it's a vague term, isn't it? Too far...the language in the Casey case talked about an undue burden without giving us all very much help as to what that means. But if you make...given the real facts of a person who may be thinking about an abortion, for one reason or another, and there is going to be no payment

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available for it. Let's assume it's a situation where a medical complication has occurred partway into the pregnancy, a terrible one, perhaps. The decision should not come down to whether or not this person can get insurance for it to pay for the...it may be a very expensive situation. Some people are being told, well, there's no coverage. I'm sorry we can't do that for you free. They may say, well, let me try to raise it. Maybe in three weeks or a month I can do so. That isn't available in these situations. So I think for basically, insurance coverage to become unavailable for abortions in Nebraska is a major burden. It may be a financial burden that is the tipping point. I realize it's a vague issue, and I don't envy the task of this committee or any lawmaker. But if it's a tipping point, it is going to be...let's call it determinative that may well be an undue burden. [LB22 LB132]

SENATOR LANGEMEIER: Thank you. [LB22 LB132]

ALAN PETERSON: Yes. [LB22 LB132]

SENATOR PAHLS: Senator Pirsch. [LB22 LB132]

SENATOR PIRSCH: So, I just want to clarify a point that you made. There was two aspects of the one bill, LB22, and you disfavor both, right? [LB22 LB132]

ALAN PETERSON: Yes. [LB22 LB132]

SENATOR PIRSCH: Do you disfavor both because you find both unconstitutional in your analysis? Or, do you disfavor both, saying, it's policy decisions, we just don't like the policy? [LB22 LB132]

ALAN PETERSON: You know, I think the constitutionality of restricting the use of governmental funds has been upheld. So while I might argue still that it's an unconstitutional burden, I would probably lose under the current law. So it's mainly a policy decision on LB132. On LB22, which also goes after private arrangements between companies and individuals, no government funds, I think that's unconstitutional. [LB22 LB132]

SENATOR PIRSCH: And with respect to...you referenced an Eighth Circuit decision, right, out of Missouri? [LB22 LB132]

ALAN PETERSON: Yes. [LB22 LB132]

SENATOR PIRSCH: And you said that went adverse to your argument. That was with respect to the exchanges, correct? [LB22 LB132]

ALAN PETERSON: I heard that testimony, and I don't believe that was. I believe...if I

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remember that case, it was referred to by one of the prior witnesses. I believe it's a case that's talking about the right to forbid or prohibit coverage of abortion in regard to private, nongovernmental funds. So that case, I think, goes against what I'm arguing. As you... [LB22 LB132]

SENATOR PIRSCH: So that's the second prong of LB22 of which you speak... [LB22 LB132]

ALAN PETERSON: Yes, that's correct. [LB22 LB132]

SENATOR PIRSCH: ...and you're saying, that's on the issue of, would you take more... [LB22 LB132]

ALAN PETERSON: A strong constitutional argument can be made, I think, that that's going too far. Yes. [LB22 LB132]

SENATOR PIRSCH: But currently, the state of the Eighth Circuit is such, and we're in the Eighth Circuit, correct? [LB22 LB132]

ALAN PETERSON: Yes, we are. [LB22 LB132]

SENATOR PIRSCH: Okay. So it's...in our jurisdiction, that's governing law. Right? [LB22 LB132]

ALAN PETERSON: Well, actually, that governs the federal courts only in our district. [LB22 LB132]

SENATOR PIRSCH: Well, we look to it as instructive, do we not, in the state? [LB22 LB132]

ALAN PETERSON: Absolutely. [LB22 LB132]

SENATOR PIRSCH: Yeah. And so, with respect to that then, that does deal with the second prong of LB22 which deals with the private insurance, not with the exchanges, right? [LB22 LB132]

ALAN PETERSON: Yes. I believe that is correct. I would want to reread it, but I believe that is correct. [LB22 LB132]

SENATOR PIRSCH: Okay. You believe then that, if you pocket the national healthcare...well, no I don't think you did. You said that you don't believe that it's unconstitutional. You just take exception with the first prong of LB22, and you would...you're saying you hope that we're perfectly within the constitutional right to

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decide that. As a policy you hope that we don't decide that as a policy then, correct?  
[LB22 LB132]

ALAN PETERSON: I think that's fair. I think the courts right now would uphold the opt-out. Congress did pass it. I think it allows you to do what Senator Dubas' bill proposes. [LB22 LB132]

SENATOR PIRSCH: Okay. That's all the questions I have at this time. [LB22 LB132]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB22 LB132]

ALAN PETERSON: Thank you, Senator. [LB22 LB132]

SENATOR PAHLS: (Exhibits 6, 7) Thank you. Any more testifiers? Let me just read into the record a couple of letters from the National Association of Social Workers, Nebraska Chapter. They oppose LB22 and LB132. And Nebraska State Tea Party Patriots support LB22. I think now we're ready for closing. [LB22 LB132]

SENATOR DUBAS: Thank you very much, committee, for your serious attention. This is a very important issue and important matter that we will have to deal with one way or another, sooner or later. I introduced LB132 as what I thought was the most simple and straightforward manner to take advantage of our state's right to opt out of providing abortion services through state insurance exchanges. I feel it harmonizes well with existing state statute, law, and practice. And while I certainly do understand the intention of LB22, my only concern is if abortion coverage becomes more difficult to obtain, could we possibly revert to back alley methods? In the research that I did on working on this bill, in Philadelphia the Women's Medical Society uncovered a doctor who was taking advantage of low-income women. And the stories of damage that he inflicted on these women was absolutely horrendous. He performed hundreds of abortions and made untold amounts of money off of these women who had no health insurance. I have consistently said that the best way to stop abortion is to make sure that women feel they have other options available, and the support that they will need to make those alternative choices. Every one of these babies deserves to be born, but the women who are facing circumstances that are truly beyond our understanding need our support and our understanding also. I believe LB132 addresses our pro-life beliefs without the very real possibility of a Philadelphia horror. I thank you for your consideration and your support. [LB22 LB132]

SENATOR PAHLS: Any questions? Seeing none, thank you, Senator. [LB22 LB132]

SENATOR McCOY: Thank you, Senator Pahls. I would like to close and briefly make a couple of points on LB22. It was discussed earlier that the Eighth Circuit Court of

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Appeals in that case, and the Missouri law that is very similar to LB22 and much of the language in LB132 as well was upheld by the Eighth Circuit Court of Appeals as mentioned earlier, and we have those Missouri statutes to back that up if anyone would so wish. Just one...I guess the thing I'd go back and comment on, I mentioned in my opening, but Idaho, Kentucky, Missouri as is mentioned, North Dakota, and Oklahoma have had laws limiting the private insurance coverage for elective abortions, some of them going back, again, North Dakota to 1979. So clearly, the second prong as it's mentioned of what we seek to do in LB22 is not a new concept. It's been around for a long time and has, to our knowledge, had not had any challenges as far as constitutionality goes. With that, I'd close, if there are any questions. [LB22 LB132]

SENATOR PAHLS: Seeing none, thank you, Senator. That will close the hearing on LB22 and LB132. Senator Schumacher, we are ready for LB371. Good afternoon. [LB22 LB132]

SENATOR SCHUMACHER: Good afternoon, Senator Pahls. Senator Pahls, members of the committee, I'm Paul Schumacher, S-c-h-u-m-a-c-h-e-r, and I represent District 22 in the Legislature. Right after getting elected to the Legislature with the usual congratulatory notes and begging for forgiveness from the lobbyists and the associations that didn't support me, I also received another communication, and that communication was from my umbrella insurance carrier. And it says, because of your new occupation, we're not going to renew your umbrella insurance. And I thought, well really, that's unusual, and I contacted the Department of Insurance and said, you know, is this kosher? And they said, they'd check into it, and got back in touch with me, and said, yeah, insurance companies could deny a person coverage based upon the fact that they were a public official. Apparently, we're all pleased to know that we fall in the same category as professional athletes and movie stars, at least for purposes of some insurance companies. I checked into it a little bit and found that this was not a new instance for this insurance company, and in fact, other states--Texas, Oregon, and Florida had said, you know, this is kind of like some of those other categories you can't look at when you're doing insurance grading. It's just against public policy. And so, insurance companies, this is not a fair way to rate the insurance applications. In following up a little bit more, I had talked to some folks down here and asked whether or not this particular item had ever come before this committee before, and whether or not it was an area of concern at all. And it apparently had not. In the process, I became inquisitive as to whether or not it may not be a good idea to bring it to the committee's attention and try to ascertain how widespread this practice was, whether it reached down to city councils and NRD boards, and perhaps it was just the misfortune of this one insurance company to trip across somebody who had run for the Legislature. I was insured (sic: assured) by various members of the industry that this was just a weird bird of an insurance company and nobody locally would do such things, and kind of resigned myself to the fact that if this was just an unusual situation, it probably didn't merit any legislation if it had been taken care of internally, and/or maybe we should just have a

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little interim study and get some facts as to how far down this reached until this afternoon at lunch. And the insurance and financial industry advisers, they had a little lunch, and I was talking to the folks there and they inquired as to what this was about. And one of the people there said, well, our company won't insure public officials either on their umbrella policy. So this may be a little bit deeper a situation than might at first appear. I think that I'd like to call this to the attention of the committee. If the committee sees fit to advance this bill, that would be good. If we need more study, maybe some understanding with the industry as to whether or not they are...or are intending on excluding from coverage public officials, then I think it's time for some legislation, because clearly, this type of segregating out public officials who are at various levels of government for the purpose of insurance coverage is against the public interest. And the risk taken on by any insurance company, because they have a public official as an insured, certainly it cannot be much more different than having a preacher who is outspoken as an insured, a prominent banker as an insured. But when you're running for public office, and you're elected to a public office, this type of discrimination against public officers, I don't think is right, and I think it's an unfair practice, and that's why I brought this bill. Be perfectly happy to participate in any interim study to get to the depth of it or to argue its case on the floor should you advance it. I have nothing further. [LB371]

SENATOR PAHLS: Senator, let me ask you a question. I'm just curious. Your noon session, did the person who you discussed this with, did they give you any rationale why their company follows this procedure? [LB371]

SENATOR SCHUMACHER: This is the way she puts it. She says, I'm not going to swear on a stack of Bibles that our company does it, but I think it does. And the rationale that she gave me, as the rationale from the vice president's company is, that there's just increased risks that we're just public officials are more apt to be sued and have their insurance under their umbrella policies come into play than ordinary people. So that was, I think, the rationale. [LB371]

SENATOR PAHLS: Okay. So you're satisfied with pushing the bill through, if necessary, or through a study for more detail. [LB371]

SENATOR SCHUMACHER: Yeah. I think this should be resolved. If there is...if I happen to hit on a weird bird insurance company, it's one thing. But if this is a practice or inclined to be a practice like when one airplane decides it can charge or company decides it can charge for baggage, and then all of a sudden they're all doing it, because they can, then it needs to be addressed. It's just not fair play to single out public officials for exclusion from coverage. [LB371]

SENATOR PAHLS: Okay. Senator Pirsch. [LB371]

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SENATOR PIRSCH: You know, I appreciate your testimony and bringing it to the attention of the Legislature, I guess, this possible practice. Are there other...in terms of the policy reason, as you understand it, being put forward, is that there just tends to be more litigation, thus you have to, as an insurance company with the duty to defend, on average tend to have to hire attorneys and take other actions and incur more expenses? Is that what was explained to you as the policy reason there? [LB371]

SENATOR SCHUMACHER: Correct. Well, I would guess that that is the situation that since there is arguably some risk, that they shouldn't have to take it on. But, you know, we've crossed this bridge with race issues, religion issues, and said, look at...you cannot look at those kind of things in making your judgments on an application for insurance. And so it's not...would not be unprecedented for the Legislature to say, public officials' status should not be considered when viewing an insurance application. [LB371]

SENATOR PIRSCH: Well, I think you bring a great point that you are much more likely to be sued as a public official for, you know, not...or in ways that I think the majority of people would be abusing the system, so to speak, just because of your status. I'd wonder if it might apply in other situations, affect public officeholders, credit reports maybe. I'm not sure if you incur a great number of suits. I understand when you...there was a public official went to, you know, to qualify for a car and that had a great number of lawsuits owing just to the fact that he served in public office, and had to explain that the reason...sued so often is because of the public office. So, maybe a comprehensive look at, you know, all these things that come with public service may be a good approach. [LB371]

SENATOR SCHUMACHER: Yeah, and it could be. But, you know, we do know that at least Texas, Oregon, and Florida have concluded that the best way to do this is just simply say no, so. I have nothing further. [LB371]

SENATOR PAHLS: Okay, thank you, thank you. Proponents? Opponents? I see two opponents. Okay. [LB371]

JAMES DOBLER: (Exhibit 1) Senator Pahls, members of the committee, my name is Jim Dobler. That's D-o-b-l-e-r. I'm general counsel with Farmers Mutual of Nebraska. I'm also a registered lobbyist, and I appear today on behalf of Nebraska Insurance Information Service which is a state trade organization of property and casualty insurance companies licensed to do business in the state of Nebraska. The underwriting of insurance affects Nebraskans every day, and it affects a lot of Nebraskans. It's an important matter. It is in the public interest, and we fully appreciate that the underwriting of insurance is an item that this committee and the Legislature should carefully review. And we welcome the opportunity to visit with you about this issue and we, of course, would welcome the opportunity to visit further about the issue in an interim study if that's

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the wish of the committee. A couple of points. Every insurance company underwrites differently. None of them are the same. Companies have different resources, and they have different processes that they use to figure out how to underwrite risk. So, we're not all going to be the same. And in that regard, I'd like to point out that my company, Farmers Mutual, we do write umbrellas in addition to homeowners, farm owners, and automobile insurance. We make no distinction between a public official and someone who is not a public official. And I know, over the years, we've written insurance, including umbrellas, for members of the Legislature--doesn't make any difference to us. But that's just our underwriting philosophy, and part of the reality of it there is, we don't employ any actuaries. Our underwriting principles and how we decide to classify risk is based upon loss costs; what's going on in the loss categories with the things we want to insure. And in the area of umbrellas, we write such a small amount of it, that we couldn't develop any statistically credible evidence to show that we should treat a public official different than someone else. But that's just our way of doing it, but that doesn't mean there couldn't be a company out there that perhaps writes on a national scale, and has actuaries that are looking at different categories of risk exposure under an umbrella and reach a different decision. But you know, in a competitive marketplace, there are hundreds of companies who are writing property and casualty insurance in Nebraska, it's good to have choices. And if you don't like how you're being underwritten with one company, my suggestion is, shop around. You'll probably find somebody who will meet your needs. One more point. I had a handout, and this is a company, and they take a little bit different tack on it. They specifically want to write insurance coverage for public officials, and you'll see on page 2 there, I highlighted what they have to say about it. Again, you, along with the athletes and entertainers, but...so they've taken a different tack than we have and a different tack than the company that was underwriting Senator Schumacher. That company, by the way, is a Berkshire Hathaway company. It's not in Omaha, but it is owned by the Berkshire Hathaway group. In conclusion, from our perspective, classification of risk on statistical evidence is the best method to achieve fair pricing and fair underwriting. And with that, I'd be happy to answer any questions. [LB371]

SENATOR PAHLS: Well, I will say when I read that I'm with the celebrity status, you made me feel good for the day (laughter). But I still do the johns, wash the clothes, and mop the floors, so (laugh) not everybody believes that. [LB371]

JAMES DOBLER: Well, I'm envious of you. [LB371]

SENATOR PAHLS: Okay, okay, thank you. Senator Christensen. [LB371]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Thank you. If someone had insurance with your company, got elected, and you didn't notify them, are they still covered? [LB371]

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JAMES DOBLER: Yes. We don't ask that question, so we don't care. So if we were insuring you, and then you are elected to the Legislature, it wouldn't change what we did. Our policy would still be there. [LB371]

SENATOR CHRISTENSEN: Okay. Thank you. [LB371]

SENATOR PAHLS: Senator Pirsch. [LB371]

SENATOR PIRSCH: Jim, do you have kind of an inkling of how...in terms of the industry, what percentage and what not may kind of keep this as a separate account? I mean... [LB371]

JAMES DOBLER: I don't. I would guess...my thought is, there probably would be more than one company that does it that way. And I say that...when you look at the umbrella policy, and I'll just point out the area where I think they're focusing on with regard to the exposure of a public official. In the umbrella, you're providing a broader form of liability coverage than what you do under a standard homeowners policy. It's personal injury rather than bodily injury. And as many of you may already know, part of the definition of personal injury includes libel, slander, misrepresentation, humiliation, defamation of character. And so, while I don't have any firsthand knowledge, I would not say to you that I'm sure that's the only company that does...that underwrites it that way. There may be some more, but at the same time, I...there are companies that don't consider that as an underwriting factor. [LB371]

SENATOR PAHLS: Senator Langemeier. [LB371]

SENATOR LANGEMEIER: Chairman Pahls. Mr. Dobler, I appreciate that Farmers Mutual doesn't think we're celebrities (laughter). I kind of like this company. I'm just kidding. My question to you is, is...do you know of any big...I know of one claim that happened against a politician for a sizable amount. And from what I've heard from the industry is, is that what's sparked all this, is one claim. Yet you talk about a loss ratio, and actuarials--is not that the insurance business to go out and look at those loss rates and keep continuing to cover, but adjust premiums to cover loss rates? It looks to me like we had one loss, and now we're going to run from the subject. [LB371]

JAMES DOBLER: Well, first of all, you could look at loss costs, and that might affect your rate, but I think you could also look at loss costs and decide you want to underwrite the risk exposure differently. For example, let's move to automobile insurance. We don't...generally, we do not underwrite drivers who have been convicted of DWI. It's just an exposure we don't want to get into. It doesn't mean that they can't get insurance, they can. So you're really looking at two things--pricing and underwriting. And then I guess my other point would be, I'm not quite sure what loss involving a public official you might be referring to, but I don't know. I guess I wouldn't think that a company

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would make major underwriting decisions based on one incident. I don't know if that helps you, but. [LB371]

SENATOR LANGEMEIER: Appreciate it. Thanks. [LB371]

SENATOR PAHLS: Thank you for your testimony. [LB371]

JAMES DOBLER: Thank you. [LB371]

KORBY GILBERTSON: Good afternoon, Chairman Pahls, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America. Mr. Dobler covered a great deal of the issues in LB371. I wanted to touch on just a few more. PCI does represent the company that Senator Schumacher's policy was with, and one thing I wanted to point out that this is as, Mr. Dobler pointed out, a different company, and they do just umbrella policies, and they do do them all across the United States. It's a very small niche product that is intended to be a very inexpensive umbrella policy for very low-risk policyholders. We did do a check, and Mr. Dobler gave you the copy of the ability to buy the umbrella policy through other companies. And we've done checks with other companies that are also members of the PCI, and did not find others that made the decisions to just write for those certain groups. So I had a nice conversation with Senator McCoy on the issue, and I did assure him that we'd be more than happy to come to the table this summer to work on this issue to provide the committee with more information. So we'd ask that you hold the bill and allow us to do that. [LB371]

SENATOR PAHLS: You said that this...the policies written...are these policies written for low-risk individuals? [LB371]

KORBY GILBERTSON: Yes, and their underwriting principles are that they do not write for celebrities, for sports, for athletes, or for elected officials. That's their business model. [LB371]

SENATOR PAHLS: Okay. So, the good senator, before he...he was a low risk before he became a senator. Okay, that's a good compliment for him. Thank you. [LB371]

SENATOR PIRSCH: Just trying to get an idea of how many companies are in your consortium? [LB371]

KORBY GILBERTSON: I'm not sure of the total number of companies. It's about 40 percent of the P&C insurance in Nebraska. I'm not sure of how many actually right in Nebraska, but I can find out the specifics on how many write for us. [LB371]

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SENATOR PIRSCH: A goodly number you're saying, and none of them you're saying... [LB371]

KORBY GILBERTSON: From when we sent the information out, we could only identify not even a handful that would look at different underwriting principles, that this is just a very specific product that's, obviously, for a niche market. [LB371]

SENATOR PIRSCH: That would seem to suggest the vast majority of it does not distinguish between... [LB371]

KORBY GILBERTSON: Right. [LB371]

SENATOR PIRSCH: ...celebrities and... [LB371]

KORBY GILBERTSON: And I think there's different underwriting principles, obviously, when you have a company that writes more than one policy for you. For example, if they have your homeowners and your automobile insurance, they obviously can look at what your overall risk would be as opposed to a company that just writes one single umbrella policy. It's a little harder to judge that when you're selling that type of policy. [LB371]

SENATOR PAHLS: Senator Langemeier. [LB371]

SENATOR LANGEMEIER: Chairman Pahls, thank you. Ms. Gilbertson, if it's your testimony that there are plenty of companies out there writing this,... [LB371]

KORBY GILBERTSON: Um-hum. [LB371]

SENATOR LANGEMEIER: ...and Senator Schumacher happened to be in that one company that doesn't,... [LB371]

KORBY GILBERTSON: Um-hum. [LB371]

SENATOR LANGEMEIER: ...and going with the intent of the opening that Senator Schumacher brought, yet you said you'd be willing to work in an interim study in the...what would be the point of an interim study if plenty are offered, he was the one unique one. The senator has already said, if he's the unique one, he'll live with it and move on. What do you think that could come from an interim study? [LB371]

KORBY GILBERTSON: Senator McCoy asked if we would be willing to sit down during the interim to discuss this further. At the time, it was my understanding that Senator Schumacher was going to ask the committee to hold the bill to discuss it during the interim. [LB371]

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SENATOR LANGEMEIER: Okay. Thank you. [LB371]

SENATOR PAHLS: Thank you for your testimony. [LB371]

KORBY GILBERTSON: Thank you. [LB371]

SENATOR PAHLS: Any more opponents? People in the neutral? Good afternoon. [LB371]

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k, and I'm neutral on this bill and (LB)22 that all pertain to abortions. Abortions are on the cheap. Palin has plenty of money to take care of her child. The state should be required to take care of her child, but the state is the cause of it if they don't allow abortions. Anybody that has experience with animals knows that not all animals' mothers are capable of being a mother. Human variate are the same way. Not everybody is good for a mother or either a father. Most of the payers are against paying for schools let alone healthcare for other people's children. I would like to hear people defending care of the living, not necessarily to be born. [LB371]

SENATOR PAHLS: Okay, thank you for your testimony. Thank you. Senator Schumacher. [LB371]

SENATOR SCHUMACHER: Thank you, Senator Pahls and members of the committee. Basically, in closing, I'm almost becoming convinced this is a halfway decent little bill. (Laughter) It appears that in Farmers Mutual, and they're no small fry company, the risk factor involved here is so low that it doesn't even come up on the radar screen in their calculations, that most companies find it not to be a big issue at all, and will write the insurance. And maybe it's just time we nipped this in the bud if this is starting and not put people elected to the learning community or to city councils or county boards or the Legislature or constitutional office, through the hassle of having to pay a few extra dollars from insurance and going through a bunch of insurance applications in order to find alternative coverage. If it's a very, very, very miniscule risk which it appears to be in Nebraska since we're apparently not that big a celebrity, then let's just nip it in the bud, and just like Texas, Oregon, and Florida have done, and go on with life. And that would...if there's any questions, be happy to answer them, and that's my story, and I'm sticking to it. [LB371]

SENATOR PAHLS: Thank you, Senator Schumacher. [LB371]

SENATOR SCHUMACHER: Thank you. [LB371]

SENATOR PAHLS: Appreciate...that closes the hearing on LB371. Now we are ready for LB280. Senator Lathrop. [LB371]

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SENATOR LATHROP: I thought they were here to talk about discretionary clauses. Now we're down to the hard-core insurance people (laughter). That's my crowd (laughter). All right, well, we're going to learn something today about something you've probably never even thought about. Good afternoon, Mr. Chair and members of the Banking and Insurance Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I am the state senator from District 12, and I'm here to introduce LB280. And I have to tell you this is a little bit dry, and it's a little bit...it's a little piece of insurance law, and my guess is none of you ever heard of a term of a policy that reserves discretion to interpret the terms of a contract. So I want to explain to you why this means something to people that buy insurance in the state or get it. LB280 is going to provide that these terms...or this phrase cannot be found in a policy, and I want to tell you why, but I want to tell you what it does first. And the only way I can do that, I think, is to explain or to contrast two different disability policies. Let's take the disability policy that you buy from an insurance salesman at the strip mall. He's got a sign out, and he sells auto, life, and disability insurance, and you buy that as an individual policy. That is not controlled by ERISA, and I assume the committee is familiar with ERISA--income retirement and securities act (Employee Retirement Income Security Act). It's a federal statute that deals with employee benefits, okay? So you buy a policy from somebody at the storefront not controlled by ERISA. If you get a disability policy through your employment, that's controlled by ERISA unless you work for the state or a political subdivision that are exempt from ERISA. What I'm going to talk about on these clauses are found in the ERISA controlled disability and health policies. Now, let me tell you how it works. If you have reserved as an insurance company, and I'm going to use disability since I'm familiar with it...if in a disability policy that is issued to a group through...in an employment situation, if that reserves the discretion to interpret the terms of a plan, sounds harmless enough. But it affects the review you get when you make an application. Let me give you two examples. The storefront, the non-ERISA controlled disability plan, you make an application, and let's say that you have had a back surgery that went bad. And now, you can't be a laborer anymore. And you make an application to the insurance company. The insurance company looks at it, and they say, well, you know, it looks like...we don't think you're totally disabled. We think you can go back to work in construction even though you've had a two-level back fusion with a bad result. If you don't like that you can go to court, and you can file a lawsuit against the insurance company and say, you know what, I'm here at the courthouse to have a jury or a judge determine whether or not I'm totally disabled. Pretty straightforward. It's consistent with American jurisprudence and a long line of the way we resolve disputes in this country. And, by the way, that's the way it is if you don't like what State Farm has done to you, if you don't like what your homeowners has done to you, you can file a direct action against the insurance company. But when you get that plan through work and it's controlled by ERISA, and they have a term or a phrase in the policy that says, we reserve the discretion to interpret the terms of the plan, here's how it works. You file an application for disability benefits or it could be health benefits with your own insurance

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company, and then the people that pay the bill, if you get benefits they're the people that have to pay it. They're also going to be the people that decide it. All right. And you go well, of course, they're going to do that on the first time. Then you have to appeal the decision to the same company who's going to have to pay if they lose, and they decide your appeal, and then...and this is where this term is important. If you don't like the decision, then you can go to federal court, okay? You can go to federal court, and this is what you get. You get to go to federal court, and the judge in the federal court doesn't have a trial; you'd never see a jury. The only thing the judge in federal court will do is to review the claims file of the insurance company, okay? And you're thinking, well, that's not bad so far...what's the problem? The judge will only overturn the insurance company if they've demonstrated that they are arbitrary and capricious. Now, stop and think about that for a second. The people that pay on the claim, if it's approved, decide it. They decide the appeal, and when you go to federal court to have a judge look at the case, you don't get to have a trial; you just get to have the judge look to see if they were arbitrary and capricious. What has happened because of that...because of the standard of review being arbitrary and capricious if this language is in your plan is, these cases come down to...literally come down to whether or not this is in there. And it's now in all of them, because it is a bonanza for insurance companies. And all I'm saying with the bill is...and this is a model act, we're not the first person to do this. The inequity of this process is evident to anybody who practices in this area. All I'm saying is the person who...we don't even need to have a trial, and I'm not asking you to have a jury trial or even a full trial in front of a judge. All I'm saying is, if we get in front of a judge, just let the judge have a de novo review, which is to say, the judge is going to look at the evidence and say, well, you know what? I agree with the insurance company or I don't, but they can't. That's not the standard of review. The only way they can overturn the insurance company, who has a financial interest, is if they conclude that they've been arbitrary in the handling of the claim. By prohibiting this clause in a policy issued, and a disability or health policy issued, all we're doing is leveling the playing field when you get to a judge. Insurance company still gets to decide the claim; they still hear the appeal, but if you take it the next step in front of a judge, the judge gets to start fresh. He doesn't have to give deference to...does not have to give deference to the health or disability insurance company who has a financial interest in it. It is really, in my experience as a practicing lawyer, 30 years of doing this, it is the most unfair system that there is in all the law, and it is a function of ERISA, and it's a function of a discretion to interpret the terms of the contract clause, and we ought to join the states that have outlawed it, and that's what LB280 does. And I'm sorry for the long explanation, but I didn't know how to...I've tried to explain it to people in the office who are like, I don't get it. Even when Bill and I were talking about it, it's almost hard to comprehend that a system can be set up that's that unfair. [LB280]

SENATOR PAHLS: Senator Langemeier. [LB280]

SENATOR LANGEMEIER: Chairman Pahls, Senator Lathrop, I'm going to...normally,

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this question I get to ask when you do your closing, but I think it's safe to say that it'll happen is, is the first person that comes up to oppose this will say this is an ERISA plan, and the state can't do anything about it. I've heard it a thousand times in this committee. What's your thoughts on that? [LB280]

SENATOR LATHROP: Actually, even ERISA law...ERISA preempts, but it does not preempt the regulation of state insurance law. So the state is still free to interpret...or to regulate in this area, and this model act has actually been adopted in other states. I'm not trying to get you to blaze a new trail. [LB280]

SENATOR LANGEMEIER: Okay, thank you. [LB280]

SENATOR PAHLS: Senator Pirsch. [LB280]

SENATOR PIRSCH: Yeah, I don't think that's an issue as to whether or not...and then I'll wait for the other testimony as to whether or not the state has the ability to act in this area. I think the question is just as to what sound policy is. But as a percentage, how much...and when we're talking about the people out there who have a disability policy, then how many fall under this category when you...? [LB280]

SENATOR LATHROP: You know, I would say, Senator Pirsch, in my experience that most companies that offer benefits will offer disability insurance as an incidental benefit. I know our office has health insurance and the disability benefit is actually quite inexpensive to offer for a lot of reasons. Mostly, because people don't get disabled that often, and there's a lot of offsets in these policies that get them down to...that's another subject, but the offsets in disability policies get them down to...you think you're getting 60 percent of your income covered, and by the time they deduct what you're getting from work comp or from Social Security, they're paying a fraction of what they appear to be offering you. [LB280]

SENATOR PIRSCH: And so, you wanted these to know just for the edification of the committee to know if it just means a trial is if (inaudible)... [LB280]

SENATOR LATHROP: Right. After...ERISA requires that you go through the insurance company that has to pay if they lose, the application and the appeal. And all I want is, when we get to the judge, let the judge use his or her own judgment on whether he ought to win or lose, and not have an arbitrary and capricious standard. And as a lawyer, you'll appreciate that's a really, almost insurmountable burden for somebody to overcome. [LB280]

SENATOR PIRSCH: I appreciate your answers. Thank you. [LB280]

SENATOR PAHLS: See no questions. Thank you, Senator. [LB280]

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SENATOR LATHROP: All right. I'll stay to close. [LB280]

SENATOR PAHLS: Okay, okay, because you're next up also, next. Proponents. Opponents. Can I just...a show of hands how many that would be? I see four. Okay. Anybody in the neutral? Okay, I see four people testifying. Thank you. [LB280]

TOM JENKINS: (Exhibit 1) Good afternoon. I'm Tom Jenkins. I'm general counsel Blue Cross Blue Shield of Nebraska. I'm glad to get the chance to talk with you today. You've got a letter coming around, and it's late in the day, and I will not read that. I'm just going to highlight a few points. It sounds like, from Senator Lathrop's opening, that I'm a little off the center of the target, so maybe I shouldn't be talking first. But we write...Blue Cross Blue Shield of Nebraska, as you know, writes health insurance, not disability income insurance. But the principle here, as laid out, in LB280 would apply to both. I've got just about three points to make. First of all, this law is not needed and is really detrimental to the larger body of policyholders, of consumers, that is the ratepayers. We all, as people come before you, we can picture ourself as a claimant, but just...we need to remember that we're also premium payers. The clauses that are in insurance policies that call for insurers to make the cut on a claim, to make a decision on a claim, are for the benefit of the policyholders as a whole. Just as you in your budget capacity have a little different job than your provision of government services capacity. You've got to weigh those things, and that's the task that you're hired for. It's the task that we're hired for. I'm pretty proud to say, I think we generally do a good job with that, and it does require some trust with our policyholders, our members. We think we honor that, and when we don't, or when any insurer doesn't, there are remedies. First of all, you've got a fine Department of Insurance in this state, they can regulate abusive claim practices. You've got the courts, and it's just...it just is not correct that these provisions make lawsuits unlosable for insurance companies. I wish I could say the opposite, but we lose insurance...or lawsuits from time to time. But, by and large, what you've got is a number of laws in Nebraska that already deal with claims practices. You've got the Unfair (Insurance) Claims (Settlement) Practices Act and an Unfair (Insurance) Trade Practices Act. You've got a very extensive appeals process in the (Nebraska Health Carrier) Grievance Procedure Act, and now you've got some new federal overlay of additional external appeals that will kick in, in a couple of years. The second thing I'd like to say is that the enforcement mechanism in this bill is functionally inappropriate. So what the bill comes forward and does is prohibit certain language provisions and then it says, that to include such a provision makes...shall be an unfair trade practice under Nebraska law. Well, if you think about it, if the Legislature was to adopt such a prohibition, the insurance department, who is required to pass judgment on policies before we can sell them, they would just reject the policy. That's the appropriate mechanism, the unfair claims practices approach, or unfair trade practice approach really is not the right mechanism at all. And I think that combines and becomes important in the sense that once I point out to you this next fact, and this is the third and

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final one, is that there is some ambiguity here. And Senator Lathrop described a discretionary clause as only a rule of court, burden of proof on analysis. But if you read this bill, that isn't what it says, and quoting from LB280, with respect to the health insurance provision, no policy, contract, certificate, or agreement offered in the state by a health carrier shall contain a provision purporting to reserve discretion to the healthcare or to interpret the terms of the contract, or to determine eligibility to receive benefits...nothing about a court in there. And if you think about how a claim comes in, we get claims in the door, both by our contract and by law. We have a certain amount of time to perform certain tasks and apply judgment to that, and that's what we're talking about here. So, if the insurance company doesn't determine eligibility to receive benefits, who will? That really is the job that's placed with the insurer. So, for example, you get a claim, and you know, 95, I think, percent of the claims or a higher percent...I didn't come prepared to tell you today, a very large percentage of our claims pass through without the need for an application of judgment. But when you've got certain categories of medical benefits in the area of medical necessity, investigative decisions, somebody has to make those decisions, and that's entrusted by our policyholders. Don't just pay everything, because I can see what would happen with my premiums. We want you to apply some judgment. Am I claiming that every consumer out there has that consciousness about them? No, but how does it work in the market? This company is cheaper than this company or all the companies are too expensive. I'm looking for somebody that can get my premiums down, so we do try and apply judgment to cases. We have medical staff that helps us in deciding those things and recognizing what treatments are worthwhile, worth paying for, which ones are, for example, cosmetic. What do you do with various categories of, you know, infertility treatments or gastric bypass claims. You've got a lot of decisions to be made there, and I think if nothing else, the wording here is overreaching. But, again, what I'd like to conclude with, finally, is that we don't feel there's a need for such a bill as this, that you've got adequate mechanisms in place to control the abusive insurers, if there was evidence of some. But that beyond that, this is what the carriers get paid for; it's hard work just like you and your budgeting authority, budgeting and public services are. So, we'd ask you to hold or kill this bill. [LB280]

SENATOR PAHLS: Senator Pirsch. [LB280]

SENATOR PIRSCH: And I'll be brief, but I was trying to get a...you threw out some examples, and I'm trying to get a sense of, are there a typical type of...I think you said infertility, gastric bypass, and cosmetic surgery. Is that what you're talking about generally with these types of disputes? [LB280]

TOM JENKINS: Well, I think, actually, the most or a common one is in the area of...and, again, this would be different for disability insurers, so I'm only talking about health insurance here. But say in a given treatment of a certain type of oncology type of claim, where is the cutting edge versus the bleeding edge? What technologies haven't been

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proven yet? That's one...I don't want to say common, because as a percentage, we're generally in agreement with the medical community in Nebraska. And, in fact, we have a committee that makes those calls generally for this type of treatment, that type of treatment, or medical policy committee. And it consists of our own medical director, but also five Nebraska practitioners that are not in the employ of Blue Cross except for...they get paid for being on the committee, but they're neutral on it. So, anyway, types of technology that are proven is what they're looking for. There are also, you know, very small...just as another example, there are a small minority of practitioners who might have a...either a pecuniary interest in selling you some age--turn-the-clock-back type of treatment, pain relief, repetitive therapy procedures without any apparent benefit. So, at some point, we are paid, we feel, to step in there and say, this is not a good use of the rest of our policyholders' premiums. [LB280]

SENATOR PIRSCH: Yeah. And I understand that your purview is a little different, off the beaten track of the disability that we're talking, so thank you. I just wanted to get a sense of that. Appreciate it. [LB280]

TOM JENKINS: Thank you, Senator. [LB280]

SENATOR PAHLS: Thank you for your testimony. Next opponent. [LB280]

JIM HALL: (Exhibit 2) Chairman Pahls, members of the committee, it's nice to be here again. My name is Jim Hall. I'm with the American Council of Life Insurers. That's a national trade association, and it's representing the life insurance industry. We have about 300-member companies, and they hold over 90 percent of the life insurance in force in America today. However, a number of these companies also write disability insurance, and so I'm here to represent that aspect of our membership. The ACLI and its disability writing members oppose the bill for many of the same reasons as you heard from the previous witness. We are here, because the policies that are written by those companies on group employer plans that are governed by ERISA are plans that, many of which contain these discretionary clauses. And ERISA specifically permits...well, they don't prohibit, let me put it that way. They don't prohibit discretionary clauses, and we don't think that the state should prohibit them either. LB280, it may resemble a model, but it is not the model, and that is one of the first portions that we object to is the breadth of the language, specifically, the language determining eligibility to receive benefits. You cannot include a phrase that would allow you to determine eligibility to receive benefits, and as the previous witness testified, how else do you get the benefits paid if you can't determine eligibility? That's how the benefits get paid is by determining it. The discretionary clauses don't have anything to do with how the claim itself is rendered. It has to do, as the proponent testified, how the judge looks at the claim once it's challenged in litigation. This bill would amend the Unfair (Insurance) Trade Practices Act. We don't think that's the appropriate place. The Unfair (Insurance) Trade Practices Act is an act that has to do with how you sell the insurance. Do you lie

about selling it? Do you misrepresent things? Do you misrepresent facts about a competing insurance company, it's how you sell the product? The Unfair (Insurance) Claims (Settlement) Practices Act takes care of the types of mistakes that are made in claims, the inappropriate behavior in claims, and so, a different act would be more appropriate if you were going to carry this bill at all. There are...that gets us, finally, to the substance of our objections, and that is that whether or not you have a discretionary clause, makes no difference in how the claim itself is rendered. You're still going to look at the number of facts that are presented in the claim and the types of situations that are covered by the policy and see if they match. If they do, the claim would get paid, and if they don't, the claim would not. There is adequate protection in both ERISA and the state Unfair (Insurance) Claims (Settlement) Practices Act for the consumers. Under ERISA, an insurer is acting as a fiduciary, and it has the duty to act prudently and solely in the interest of the plan participants. The ERISA framework mandates that where discretion is granted, claims decisions cannot be arbitrary, capricious, or an abuse of discretion. Moreover, when the plan administrator is also an insurer, the court will consider whether a potential conflict of interest is a factor in determining whether there has been an abuse of discretion. There is the internal appeal procedure that the person can avail themselves of, and then avail themselves of the courts, if the internal appeal procedure is not to their satisfaction. And that internal appeal procedure with the insurer, ERISA requires that it must be decided by a fiduciary who is not the initial claim reviewer, or who is a subordinate of such person. The appeal cannot give deference to the original claim decision. The claimant has the right to be represented at that appeal, and the claimant has the right of access to certain specific information. Those are the ERISA protections. On top of that, you have the state's Unfair (Insurance) Claims (Settlement) Practices Act, which has standards that permit neither unfettered discretion nor disregard of contractual commitments by insurers. If litigated, even when discretion is granted, a court must find that there was a reasonable basis for the insurer's claim decision, or it will be overturned. Thus, claim decisions must always be reasonable, and, in all cases, are appealable. The only thing we get into, as the proponent testified, with the discretionary clause is, and I guess by way of analogy I can say, when I was a criminal prosecutor and we would convict a defendant, the defendant would appeal and the appeal would go to the Court of Appeals. The Court of Appeals would then look at what the record was at the trial court level, just that record. The appeal court would not call new witnesses; they would not ask for new evidence; they would not hear testimony of any kind. They looked at what the record was. The discretionary clause in the insurance contract creates an analogous situation when there is an appeal from the insurance company's decision. The trial court and the trial judge will look at what the record was in front of the insurer when that decision was made and decide whether or not, given what the insurer had in front of it, was that reasonable? And under ERISA, did the insurer behave arbitrarily or capriciously in saying, no, we don't think that's covered by the policy? So, this type of clause which, again, is permitted by ERISA, is something that reins controls on the litigation process to make sure that everyone under that plan, under ERISA, is treated the same way by the courts, and that you don't get

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different results from different courts, from different types of litigants and different types of plaintiffs' attorneys running in the different types of litigation that you'll see. The discretionary clause which is permitted by ERISA is something that provides a structure to how these claims are adjudicated once they get to litigation. And, obviously, if they're dissatisfied with the trial court's decision, they can appeal that as well to the Court of Appeals of a particular state. But when you have multiple people in the same ERISA plan that are governed in that way, this provides a consistency and, thus, control on the costs of both sides. And so, this was why we think that these are beneficial that most states still permit them, and that it would be unfortunate if Nebraska became one of the states that prohibited these clauses. I'll stand for questions. Thank you. [LB280]

SENATOR PAHLS: Okay. Senator Langemeier. [LB280]

SENATOR LANGEMEIER: One quick question. Thank you, Chairman Pahls. Mr. Hall, you said this shouldn't be in this particular act if it's going to be advanced. What act...where should it be? [LB280]

JIM HALL: Well, if you're dissatisfied with the way claims are being paid, you've got an Unfair (Insurance) Claims (Settlement) Practices Act. If you're dissatisfied with terms in a policy, you have a healthcare statute that talks about permitted provisions in the policy. Also, the insurance department reviews, and has say-so over what types of provisions are allowed in policies and what provisions are not. And that's not disability--that's any policy that is filed with them. They have the authority to reject, I think, a provision that they disapprove of. [LB280]

SENATOR LANGEMEIER: Very good. Thank you. [LB280]

SENATOR PAHLS: Seeing no more, thank you for your testimony. [LB280]

JIM HALL: Thank you, Chairman Pahls. [LB280]

SENATOR PAHLS: Yeah. [LB280]

GALEN ULLSTROM: Chairman Pahls, members of the Banking, Commerce, and Insurance Committee, my name is Galen Ullstrom. That's G-a-l-e-n U-l-l-s-t-r-o-m. I'm senior vice president of Mutual of Omaha Insurance Company, appearing today in opposition to LB280. I don't have a lot to add. We do not write medical insurance, but we write disability insurance now. I think Mr. Hall explained the reasons we think that the allowance of discretionary clauses provides for uniform benefit determination in employer plans under ERISA, so you don't get contradictory rulings with people that might have the exact same fact situation, because they went to two different courts and were tried, not on the record, but de novo. We also feel that there are adequate remedies existing in Nebraska law, the Unfair (Insurance) Claims Settlement Practice(s)

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Act, the appeals process, both within the policy and ERISA. And we have not seen testimony in virtually any state that has looked at this, that has pointed out that there are significant abuses that are not being handled by the process that currently exists. So, we would ask the committee to not advance the bill, and I'd be glad to try to answer any questions. [LB280]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB280]

GALEN ULLSTROM: Thanks. [LB280]

JAN MCKENZIE: (Exhibit 3) Senator Pahls, members of the Banking, Commerce and Insurance Committee, for the record, my name is Jan McKenzie spelled J-a-n M-c-K-e-n-z-i-e, here in opposition to LB280. I'm a registered lobbyist and executive director for the Nebraska Insurance Federation which are your Nebraska domestic companies. Those members of the federation, who are disability writers and health insurers, voted unanimously to oppose LB280. I've been asked to distribute a letter from America's Health Insurance Plans, our national health insurance trade association, for your consideration, also in opposition to the bill. I'd answer any questions if you have them. [LB280]

SENATOR PAHLS: See no questions. Thank you. [LB280]

JAN MCKENZIE: Thank you. [LB280]

SENATOR PAHLS: Anyone in the neutral? Senator, we're ready for you. [LB280]

SENATOR LATHROP: Okay. I would like to respond to some of what you heard, but let me talk about the bill itself. I chose the language that you find in LB280, because it's a model act. Okay? And if I would have come in here with something that wasn't a model act, they would have said, well, no one has ever done this before. You'd be the only state doing this. You know, I got to tell you, I'm not really worried about the way we get to it. I don't care if we make it an unfair claims practice. If we just prohibit it from showing up in a policy that's written in the state, I'm good with that. Make it unenforceable if it's found in one. I'm good with that. But here's the thing, and I'm repeating myself, but understand the process. You buy insurance, and by the way, a lot of these employees are paying part of the premium, and they look at the policy, and somebody has promised them that they're going to replace 70 percent of their income if they become disabled. Okay? And you file the claim, and they say, no. And you go, okay, who do I appeal it to? It's the same guy. They walk it down the hall, or they take it down a floor to a different person, but it's the company that has to pay that then hears the appeal. And this is what these clauses do, and Mr. Hall is exactly right. The only effect they have on the entire process is this: that after the company that has to pay has turned you down twice, and the only thing you're left with is going to federal court, I'm

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asking you to let the judge and the federal court start out with the scales even. And why would you give them a leg up and tip the scales like this to the company that has to pay if the decision is adverse? It'd be like going to your mechanic and saying, well, I got a rattle in my car. He says, well, you need a new transmission. I don't think so. It wasn't even that part of the car. But he fixes it; he replaces it. And then the only appeal you have is to the same mechanic, and you say, well, that was wrong. And he said, well, no, it wasn't. And it is, you know, I will...and I should say this, Blue Cross Blue Shield and Mutual of Omaha are great corporate citizens in the state, and particularly, in the city of Omaha. I like those guys, Tom...Tom is a friend of mine. These are good people, and I'm not trying to say anything disparaging. They're operating inside of a system that is tilted way against Nebraska citizens. And all I'm saying is, take out these clauses from these ERISA control policies and let people go to the courthouse and have a judge...there's no trial. The judge simply reviews the claims file and says, you know what, insurance company? You were right. Yeah. This is a big deal. It's a big deal to people that are totally disabled, and they think they're getting something, and what they don't understand is that the entire process to decide whether they get their benefit or they don't get their benefit is slanted way in favor of the insurance company. I do not do health insurance claims, but they're controlled by the same thing, and Mr. Jenkins said, well, cosmetic surgery is a perfect example, and so I'll use that analogy. I could have brought in a whole load of people that I've represented along the way that have been denied benefits, and maybe if this doesn't work, next year I will, so that you see the faces of the people that don't get benefits, and you see them hobble in here with total disabilities that have been denied. But if it's a cosmetic surgery question, right? Blue Cross Blue Shield makes the decision. You don't like it, you can appeal to their appeals tribunal, and if you don't like that, then you go to court, and all this would do is say, Judge, review it, and tell us if you think Blue Cross was right or not instead of saying, well, the only way I can reverse this as a judge is to conclude that Blue Cross was arbitrary and capricious. And that is the end of the game. That is an almost impossible burden to overcome, so essentially, the claims practice...and the idea that there are other remedies that I can go to the insurance commissioner? No, that's not a remedy at all. The insurance commissioner is going to say, well, the court didn't think they were arbitrary, so there is no other remedy to resolve what I believe is an inequity unless you level the playing field when you get to the judge. And the only way you can do that is to...by whatever language you choose, and I'd be happy to help work with you on that, is to outlaw those provisions in a policy issued in the state. That's it. [LB280]

SENATOR PAHLS: I just have one question. How many other states are aligned with your thinking, just a rough number? I mean, do...would that... [LB280]

SENATOR LATHROP: Do you remember? Bill and I talked about this, and it seems like there were...I want to say 16 or something like that, that have done this... [LB280]

SENATOR PAHLS: (Exhibit 4) Okay, okay. I just wanted to know what the (inaudible) is.

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Any questions for the senator? Seeing none, I think that will close on LB280. You're sitting there. We'll let you start with LB678. [LB280]

SENATOR LATHROP: All right. LB678 is a very simple bill and, oh, pardon me, my name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12, and I'm pleased, Mr. Chairman and members of the committee, to introduce LB678. And it very simply is a prohibition against any act or practice in connection with the issuance, underwriting, rating, renewal, cancellation, or denial or any other action related to a property or casualty insurance policy that has the effect of discriminating against a consumer because of their race, creed, national origin, or religion. It's that simple. I don't think our underwriting practices should have the effect of discriminating, and I'd like that to be a prohibited act. [LB678]

SENATOR PAHLS: Any questions? Seeing none, we are ready now for the proponents. [LB678]

SENATOR LATHROP: Thank you. [LB678]

SENATOR PAHLS: Yes. Are you going to stick around, Senator? [LB678]

SENATOR LATHROP: Oh, yes. [LB678]

SENATOR PAHLS: Okay. Proponents? Opponents? [LB678]

ALEX HAGELI: Good afternoon, Mr. Chair, members of the committee, my name is Alex Hageli, H-a-g-e-l-i. I'm here on behalf of the Property Casualty Insurers Association of America as a director of personalized insurance. Let me begin by saying, insurance is unique in American business, because it cannot price its products like other industries with full knowledge of the costs. Insurers face the challenge of measuring risk. They need to know whether to accept the risk and how much to charge. Since rates are determined before all future costs are known, the insurance pricing function is more difficult than in most other businesses, making it among the most important and intricate company operations for insurers. Because insurance deals with the future, and no individual's future can be determined with accuracy, insurers need to place people into various groupings for the purpose of evaluating their risk levels. From a statistical standpoint, the larger, more homogeneous the group, the closer each member's expected loss will be to the average expected loss as a whole. The selective criteria used to develop these groups, known as risk classifications, were determined from collecting and analyzing many years of insured loss experience. There's no other business where group distinctions have such a necessary and relevant role as in the business of insurance. For property casualty insurers, the determined price is as equitably as possible. They need to be able to make underwriting and rating distinctions between those who are low risk and those who are high risk. LB678 would prohibit

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property casualty insurers from discriminating against anyone on the basis of race, creed, national origin, or religion. First of all, let me assure the committee that insurers do not use race, creed, national origin, or religion or any other factor that is already prohibited by regulation of statute. They don't even collect this type of information nor do they have access to it. Decisions pertaining to underwriting, rating, nonrenewals, and cancellations are based on risk predictors that are blind to race, ethnicity, religion, or income. The need to make underwriting and rated distinctions in insurance means the need to discriminate based on statistical indicators of potential probability, the severity of an insured event. As defined in the standard dictionary, the word "discriminate" simply means to differentiate, categorize, or to recognize differences. Unfortunately, the term "discrimination" carries both good and bad connotations. For example, a discriminating shopper is one who's careful in his or her choices. A discriminatory employment policy is one that results in not hiring somebody based on some arbitrary preference. Insurance statutes do permit discrimination among risks, as long as it is done fairly. However, insurance companies are very aware of the statutory requirement that rates cannot, shall not, and cannot be excessive, inadequate, or unfairly discriminatory. For this reason, insurers do not unfairly discriminate. Insurance companies currently use a variety of distinctions for underwriting and rating purposes. None of these are race, creed, national origin, or religion. In auto insurance, they use age, gender, marital status, credit history, miles driven, place of garaging, and so on to help them determine the loss potential of the policyholders. In homeowners' insurance, risk factors include the age of the house, its construction, where it's located, the effectiveness of fire protection, and so on. These criteria are not only objective, clear, and unequivocal, but they are also clearly based on statistical data. Actuarial equity is based on fairness, and in order to be fair to the entire bulk of insured, those presenting statistically higher risk should pay their fair share of the burden or even be nonrenewed or canceled if he or she is considered an uninsurable risk to the insurer. Risk factors should be relatively accurate indicators of accident or loss propensity. There is no evidence to indicate that race, creed, national origin, and religion are even good indicators of loss. As such, they are not relevant factors for risk classification, and therefore, insurers do not rely on these variables to help them predict loss likelihood. I would also like to add that, as I'm sure you are all aware, insurance is one of the most regulated industries in the country. I did a quick search before coming here. I found at least three laws--I didn't do the regulations, but I found three laws that already do what the statute would do. Therefore, there's no need to pass this legislation. [LB678]

SENATOR PAHLS: So you're saying it's already in place. [LB678]

ALEX HAGELI: There's at least three co-provisions, (section) 4475.08, relative to rate filings; (section) 4475.09, dealing with premium adjustments; and (section) 4475.10, dealing with risk classifications that all prohibit these data elements from being considered. [LB678]

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SENATOR PAHLS: Okay. Senator. [LB678]

SENATOR LANGEMEIER: Chairman Pahls, Mr. Hageli, thanks for your testimony. If this is already a law in three places, and the use of race, creed, national origin, or religion does not help you in your rating, what's the harm of putting this in? [LB678]

ALEX HAGELI: Are you a lawyer? [LB678]

SENATOR LANGEMEIER: No. [LB678]

ALEX HAGELI: I'm sorry, I didn't mean that in a bad...I just... [LB678]

SENATOR LANGEMEIER: No, I'm proud of that. (Laughter) No offense. [LB678]

ALEX HAGELI: No, no. I didn't mean that. I didn't mean that. I didn't mean that. I didn't mean it that way. I'm sure if there's any other...if there's lawyers on the committee that you've read cases where a judge in attempting to interpret statute, where you have two statutes that essentially say the same thing, the judge is sometimes forced to conclude that two things can't be the same thing. So then he's...he or she is lead into another area that was not intended by the legislation that was enacted. And that's a concern. [LB678]

SENATOR LANGEMEIER: Now I'm really glad I'm not a lawyer (laughter). Thank you. [LB678]

ALEX HAGELI: I didn't mean it that way. (Laughter) I didn't mean it that way. [LB678]

SENATOR PAHLS: Senator Gloor. [LB678]

SENATOR GLOOR: Thank you, Chairman Pahls. I stayed at a Holiday Inn last night. That's about as close as I get to being an attorney. But you used the term statistical indicators, and I see no reference to a specific term of statistical indicators in Senator Lathrop's bill. It is a very specific discrimination against the consumer because of his or her race, creed, national origin. The same argument as far as you're concerned? I mean, your concern is your reference statistical indicators need to be used. I'll make that...I agree. I think statistical indicators protect me, given the fact that I'm a mild-mannered, older citizen with a safe driving record, living in a relatively safe part of the state. I like statistical indicators when it comes to renewing my insurance, but I don't like discrimination of consumers, based upon the issues that are pointed out here. So, I'm looking and making the same argument... [LB678]

ALEX HAGELI: Right. Well,... [LB678]

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SENATOR GLOOR: ...Senator Langemeier is that it doesn't seem to me that there's any harm in this. [LB678]

ALEX HAGELI: Oh, yeah, well, that was my point that there is no statistical indicators from these data elements. That's why they're not considered. But if you're to pass another law, saying what's already said in law, then it causes that potential for a judge to interpret the statute in a way that the committee and the legislator did not intend. You know, I've seen it. [LB678]

SENATOR GLOOR: Same argument. Okay. Thank you. [LB678]

ALEX HAGELI: Okay. [LB678]

SENATOR PAHLS: Thank you for your testimony. [LB678]

ALEX HAGELI: Thank you. [LB678]

MARK JOHNSTON: (Exhibit 1) Good afternoon, Chairman Pahls and members of the committee, my name is Mark Johnston, M-a-r-k J-o-h-n-s-t-o-n, and I'm the state affairs manager for the Midwest region for the National Association of Mutual Insurance Companies. I also have a statement here that I'm passing around from the State Association of Mutual Insurance Companies of Nebraska, the farm mutuals. The statement, I think, might answer the question that we've seen by what's the difference between current law and this law? And that is, this law here would prohibit actions that have a discriminatory effect. The problem versus actions that are direct discriminations are pretextual discrimination. First, we'll point out SAMIC members don't discriminate. In fact, the reason we have farm mutuals is because people needed to move into areas...pardon me, people needed to get coverage that were in areas that had been avoided for years by larger insurance companies. As Mr. Hageli said, current laws prohibit discrimination based on race and other factors, but what LB678 does, which is different, is it says you can't discriminate in effect, which means that every underwriting or rating decision basically is suspect, and that's because everything has an indirect discriminatory effect. For example, our members at the farm mutual said, their rates in the suburban and urban areas are more expensive than the rates are in the rural areas, and that's for a number of factors, including the cost of repairs. It's just more expensive in the urban areas. But that has a discriminatory effect if you think about it in the sense that there's a higher concentration of minorities in urban areas than there are in rural areas. And if this law were to pass, I would think that an argument would be made that the rating between Omaha and a rural county would have to be equal. Otherwise, it's discriminating against people who live in more expensive areas. Another thing, SAMIC mentioned is that they don't write homes for people over...homes with a value of, I think, more than \$1.2 million, and I'll be the first to admit that I don't think rich people are a protected class under the Civil Rights law, and they can take care of themselves very

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well. But if you read the statute literally, certain people of certain races are going to be more likely to have a home worth \$1.2 million than other people are. And, again, this law doesn't say invidious or protectoral discrimination. It talks about any act or practice having a discriminatory effect. Mr. Hageli went over where the state law touches on this. I just want to say that the state law has a balanced approach. The department can rule out factors that are protectoral under the statute that they don't go into this effect area. And my final comment is, I want to point out also that this LB678 uses slightly different terminology than you're going to find in the rest of the insurance code. For instance, the insurance code tends to talk about either individuals who are...these are people who are contemplating insurance or actual insureds. This law talks about consumers which is a broader class. The things that are prohibited in the insurance code are things like rating, refusing an issue, how much insurance you're going to provide. This bill talks about any and all acts, and whenever that door is opened, we don't know where it will lead to in the future. So we would urge the members of the committee to not support the bill, and I am happy to take any questions. [LB678]

SENATOR PAHLS: I do not see any questions. Thank you for your testimony. [LB678]

MARK JOHNSTON: You're welcome. [LB678]

COLEEN NIELSEN: (Exhibit 2) Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Coleen Nielsen spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I'm the registered lobbyist for the Nebraska Insurance Information Service, and I'm testifying in opposition to LB678. We oppose the proposed changes in this bill, because we believe they're unnecessary, ambiguous, and poor public policy, harmful to the consumers in Nebraska. Existing law in Nebraska does provide clear and ample protection against unfair discrimination for the protected classes of race, creed, national origin, and religion, and as stated before, is located in several sections of the Nebraska Revised Statute including the section which provides that no risk classification or grouping may be based on race, creed, national origin, or the religion of the insured. So that's current law and in place. Second, the bill is ambiguous, particularly as it relates to the effect of discrimination, and that's what the previous testifier was talking about. We know that intentional discrimination is already unlawful, but what we don't know by the language of this bill is whether or not it is prohibiting a disproportionate effect or disparate impact on a protected class. So we agree that the former intentional discrimination should be prohibited, but the latter is an inappropriate test to apply to the business of insurance. The average driving safety record of persons within a demographic group would be somewhat different and, thus, even the rating factor driving safety record might fail the test. So, the question is, you know, should someone with DUIs pay the same car insurance for some driver that doesn't have a DUI or should some 16-year-old driver be priced the same as some old lady like me? That's the question. So, (laughter) so if the draft language were to mean the latter, then it conflicts with the existing language in our rate and form law as it relates to permitted

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classifications with different claim loss costs. Different groups together will have different loss results. These would include rate classifications and rate differences based on factors such as driving safety record and driving age. Effectively, a disproportionate impact test would ban risk-based insurance prices and underwriting and revert to a pricing system which would charge everybody the same price regardless of risk. So, you know, it's our opinion that this would set back Nebraskans of all races, creeds, national origins, or religions. Furthermore, even if use of a rating or underwriting factor were to have a disproportionate effect and the language in this bill was interpreted to mean that it is per se unlawful discrimination, it would force race, creed, national origin, and religion to be used in Nebraska insurance underwriting and rating plans, even though we currently don't collect that information. So most insurers would likely try to comply with the requirements to eliminate disproportionate effects or impacts on the basis of a protected factor like race or ethnicity. Insurers would be required to start collecting that information, and they would take the protected factor into account in rating and underwriting in order to temper or eliminate any disparate or disproportionate effects which the current rating and underwriting plans might have, even though they don't consider that protected class or those factors. Simply stated, insurance risk models don't intentionally discriminate against race, creed, national origin, or religion as factors, and insurance risk models do not predict or track those characteristics. What insurance risk models effectively predict is future insurance risk. And finally, if this bill is intended to prohibit or further limit the use of credit information or geographical risk location, it is inappropriate because it's poor public policy harmful to consumers. Studies show that more consumers pay lower insurance rates because of the use of credit or other risk factors than pay higher premiums. Insurers should be able to continue to use the relevant information as currently provided under Nebraska law to provide lower rates to groups of low-risk consumers who are expected to have lower cost. Fairness results when consumers pay into a system according to the risk each poses to that system. And so, for these reasons, we respectfully ask this committee to refrain from advancing LB678, and I'd be happy to answer any questions. [LB678]

SENATOR PAHLS: Senator Langemeier. [LB678]

SENATOR LANGEMEIER: Chairman Pahls, Coleen, thank you for your testimony. [LB678]

COLEEN NIELSEN: Yes, yes. [LB678]

SENATOR LANGEMEIER: You are talking about LB678, right? [LB678]

COLEEN NIELSEN: Yes. [LB678]

SENATOR LANGEMEIER: This bill is ten pages long... [LB678]

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COLEEN NIELSEN: Yeah. [LB678]

SENATOR LANGEMEIER: But there's only wording on page 6, and as I read that, I don't understand where the idea of credit reports comes into that. [LB678]

COLEEN NIELSEN: Well, a credit report is a factor that insurance companies use in rating... [LB678]

SENATOR LANGEMEIER: But this says right in here, not to discriminate against. [LB678]

COLEEN NIELSEN: Right. [LB678]

SENATOR LANGEMEIER: Race, creed, national origin, or religion... [LB678]

COLEEN NIELSEN: National origin. [LB678]

SENATOR LANGEMEIER: Are you expecting an amendment or? [LB678]

COLEEN NIELSEN: No. No, what I guess... [LB678]

SENATOR LANGEMEIER: I don't follow where you're going on that. [LB678]

COLEEN NIELSEN: Okay, I'm sorry. What I'm trying to say here is that we don't understand what the term, effects of discrimination, means. And if it means that any of the rating criteria that we use, whether it be age or driving record, or whatever, has some sort of disproportionate impact on, let's say, race regardless of whether they intentionally mean to discriminate, then we can't effectively underwrite any longer, because it's our contention that any of the relevant factors used in underwriting may have some disproportionate impact. But right now, Senator, we can't tell that, because we don't collect that information. [LB678]

SENATOR LANGEMEIER: So your thought, and I got to put that...and I'm going to resay this, so my brains grasp it. But you think if the use of credit reports, for example, you're using them now, and you look at you denied 200 people because of their credit report. If someone then was to take that denial of those 200 people and analyze it, and there happened to be a certain percent or a high percent of a certain race that were denied, do you think that gets extrapolated out where this would put you in violation? [LB678]

COLEEN NIELSEN: That's what I'm saying, but can I make one correction? The use of credit isn't used to deny somebody. The use of credit is used to appropriately price the premium for that individual. Just a clarification. [LB678]

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SENATOR LANGEMEIER: Okay, so let's back up. If you...okay, we got those same 200 people. You didn't deny them; you just charged them a higher rate. [LB678]

COLEEN NIELSEN: Or a lower one. [LB678]

SENATOR LANGEMEIER: Or a lower rate. How am I going to find those people to make an analysis to determine whether they're some particular nationality, origin that makes up a high percent of those? How do you find them? [LB678]

COLEEN NIELSEN: The only way to do that, Senator, is to collect the data to try to determine it, and one state has done that...Texas has done it, and in the end, they basically said that the business necessity of classing the risk and appropriately pricing is far more important than the disproportionate impact that they may have found. [LB678]

SENATOR LANGEMEIER: Okay. Thank you. [LB678]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. Just by a show of hands, how many more? Okay. Thank you. [LB678]

TAD FRAIZER: Good afternoon, Chairman Pahls, members of the committee. My name is Tad Fraizer, T-a-d F-r-a-i-z-e-r, local representative for the American Insurance Association, another national trade association of property and casualty firms. In the interest of time, I won't repeat much of what's been stated before. I think it's been well touched on. I would just like to point out, I think the key provision that brings the most concern is the phrase, and you can find it on page 6 of the green copy, line 19...in a manner that has the effect of discrimination. The bill, as written, doesn't say specifically that you discriminate on the basis of the various protected classes, it's this in a manner that has the effect of. And the concern is that this opens the door to a wide variety of claims of discrimination. For instance, if a car insurer feels it's an appropriate time for a rate increase, if you can somehow show that an increase in an insurance rate of any sort has a disproportionate effect on a poor community, and a poor community is more likely to be a minority community. Are you all of a sudden in violation of this act? If you give a good student discount, and you can somehow show that because of educational opportunities, there's less educational achievement among certain minority groups, are you, therefore, in violation of the act, because it has the effect of? Obviously, direct discrimination is barred by existing laws, but it's what you open the door of, has the effect of. That gets very much to be an in the eye of the beholder situation. If you look at the current insurance statutes, and I should have brought a listing, every single reference to discrimination throughout the insurance code, but it's generally phrased in terms of unfair discrimination. Obviously, in one sense, as a previous speaker said, the essence of insurance, in one sense, is discrimination in the sense of you have to categorize individuals or companies or whatever in terms of risks, exposure, past loss

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experience. It's when you get to...and I think the term in the older civil rights cases was invidious discrimination or in the terms of the insurance code, unfair discrimination that isn't related to appropriate insurance criteria that you're really concerned. Just the way Americans are, we tend to shorten language in what used to be invidious discrimination in the older civil rights cases is now kind of shorthanded as discrimination. But we're specifically concerned with unfair discrimination within the context of insurance, and that's where we bring forward these concerns. And I'd be happy to try to answer any questions you might have. [LB678]

SENATOR PAHLS: Okay. Senator Christensen. [LB678]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. If the wording on line 19 just struck a manner that has the effect of, left the rest to the discriminating against the consumer. Would that remove the opposition? [LB678]

TAD FRAIZER: I can't guarantee it, but I think that phrase is one of the key phrases that concerns us. I think the...again, the question of unfair discrimination within the basis of insurance would still be key. I suppose you could imagine certain health conditions that might be prone to one genetic or ethnic group that might or might not have some effect along the way. You'd have to see exactly how it was written, but I think that language is probably the most troublesome language that we see in the bill. [LB678]

SENATOR CHRISTENSEN: Thank you. [LB678]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB678]

JAN MCKENZIE: Senator Pahls, members of the committee, for the record, my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e, testifying in opposition to LB678. I want to just make one clarifying statement while not specifically included in the language of this bill, but issue of the credit history, credit score, credit check. Well, if you recall in the past, what we've talked about is an insurance score based on a credit history, and a number of other factors. So I just wanted to make sure that we were clear on that. And also, just for your personal entertainment on this afternoon, I thought you might be interested in knowing that I looked up what a creed was--the difference between a religion and a creed. And I found that quite fascinating, because it's a term...a phrase we hear used all the time...creed, national origin, religion, and yet creed, by its very definition, is nothing more than a strongly-held belief. And it can be any strongly-held belief. Every religion is a creed, and many of our religions have their own specific creeds that are recited. A religion is a creed that has a basis in supernatural or spiritual, so I just thought it was very interesting. I had never looked it up or thought about it, but I think that alone maybe adds a little concern about how do we define what a person's creed is? So just something different. Thank you. [LB678]

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SENATOR PAHLS: Those of us who are very religious, we understand what the word creed means (laughter). Seeing no questions, thank you for your testimony. [LB678]

JAN MCKENZIE: Thank you. [LB678]

SENATOR PAHLS: (Exhibit 3) Any neutral? Okay, I do have one letter in support from the Nebraska Psychological Association in support of LB678. [LB678]

SENATOR LATHROP: Well, that was an interesting hearing (laughter). All I wanted to do is stop the practice that has the effect of discriminating, and they came up and talked about credit scoring. And they came up and talked about...Mr. Johnston came up and said, we don't write policies for people that live in \$1.2 million houses, and we know who that is, and who that isn't, so we're discriminating, and we don't want to get caught up in this which is to suggest the recognition by the insurance industry that still...and I'm not making a judgment about our society, but still, as a practical matter, you're going to find more Caucasians among the affluent, and you're going to find more minorities among the poor in our society, and we mandate the auto insurance. This isn't something people can choose to not buy. We mandate the auto insurance. So when we make people buy this stuff, it ought to be fair. And two years ago, I offered a bill to stop credit scoring, and the same group of people, many of whom are my friends, came up here and told you, this does not affect minorities adversely, right? You remember it. You might have watched it on TV, Senator Utter, but that's what they were saying two years ago. And today, I put a bill in that says, don't do something that has the effect of discriminating, and they came up and said, well, don't stop me from credit score rating. Well, that's an interesting thing to be sensitive about when the bill is about discriminating. And it's interesting that someone would come up and say, don't stop me from not writing on a house worth more than \$1.2 million where you know who lives...white people. It is about credit scoring, and three years ago, when we had this bill before the committee, there was a trail of people that came up here and said, careful people have better scores. And they handed out the material, and I read the material carefully, and the material said, no, people with better credit are more likely to not use their insurance. And you'll remember, I talked about my daughter who hit a car when she was 16 and then backed into another one. And I wrote a check and made it go away, so my insurance premiums wouldn't go up. That's who they're trying to find in this process, right? And what's the effect? The effect is, that if you are poor, which is predominately going to be minorities, not strictly, but it's certainly going to have that effect. If you're poor, we're going to put the greater load on you which is mostly a minority population, not exclusively, but mostly, or disproportionately. We're going to put a heavier load on you when it comes to paying for all of the insurance or all the casualty claims in the state and for you, the guy with the good credit, that lives in the \$1.2 million house who's most likely not a member of the minority, we're going to give you a break. And we balance it out by charging the poor who's mostly or more disproportionately minorities. And that might be fair except that we mandate the insurance, and it's up to this committee to make sure that when we

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underwrite and when we have premiums that they're done in a fair way. The Texas Department of Insurance did a study, and they concluded that credit scoring has a disproportionate effect on minorities. When I suggested that, the folks that you just heard in opposition said, oh, that's not true. You don't understand, Lathrop. The white people all have bad credit, too, and this affects them the same, but it doesn't. And I think the testimony that you heard today, the fact that they're sensitive about credit scoring, with respect to this simple language, answers the question for you. And, if it's already in statute, if we've already addressed it somewhere, put it in there. Why would anybody come up here and oppose it unless it does something different than the three statutes that you recited earlier? I do think this is about mandatory auto insurance in the state. I do think it's about a practice that disproportionately affects minorities, and it's as simple as saying, stop doing it. And you have my permission to amend the bill to stop credit scoring. And I'll take any questions you have. I am a lawyer, by the way (laughter), and I don't mind that (laughter). Thank you. [LB678]

SENATOR PAHLS: Well, I've told you my sister is one, too, and I still love her (laughter). Thank you. [LB678]

SENATOR LATHROP: It's always good that I'm reminded of that when I come here (laughter). [LB678]

SENATOR PAHLS: Thank you, Senator. [LB678]

SENATOR LATHROP: Thanks. [LB678]

SENATOR PAHLS: (Exhibit 4) That will close the hearing on (LB)678. Now we'll open on (LB)493. [LB678]

SENATOR McCOY: Senator Pahls. [LB493]

SENATOR PAHLS: Good afternoon, committee. My name is Rich Pahls, P-a-h-l-s. I represent District 31, Millard of Omaha. Our health insurance industry requested introduction of LB493. This bill would provide for state implementation of a portion of the federal Patient Protection and Affordable Care Act as amended. The federal healthcare act reform law requires that insurers and employers providing dependent coverage to children must make that coverage available to adult children of enrollees up to their 36th (sic: 26th) birthday. This requirement becomes effective for plan years beginning September 23, 2010. LB493 would reflect these federal requirements in state law. Nebraska already had continuation of coverage for dependents up to age 30. That is found in section 44-7103 which was enacted as LB551 in 2009. Under that section, effective January 1, 2010, an employee may elect to continue coverage to age 30 for a dependent child who would otherwise lose coverage when he or she ceases to meet the plan's student criteria or change in age which exceeds the plan's limiting age. Both the

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federal and state requirements are effective in Nebraska and health plans are complying with both, but doing so gets unnecessarily complicated. Accordingly, LB493 would repeal the state's requirement in section 44-7103 and follow the federal requirements to operate exclusively. The industry...the representatives will be following me, and I think they will give the direction that this bill should take. [LB493]

SENATOR McCOY: Thank you. Questions for Senator Pahls? Seeing none. Proponents for LB493? [LB493]

JAN McKENZIE: Thank you, Senator McCoy and members of the committee. For the record, my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e, I'm executive director and registered lobbyist for the Nebraska Insurance Federation. I want to thank Senator Pahls and Bill Marienau for introducing and drafting this legislation on behalf of the industry. As you recall, we were very supportive of LB551 two years ago, when Senator White had introduced it, and at that time, a number of my companies thought it was a good idea, and it had been an idea that had been floated around. And it was such a good idea, it ended up in the PPACA legislation, which created a little bit of a controversy between our statutes and the federal statutes as theirs ends at 26 and does not require continuous coverage, and ours went to, basically, 30 and required that you were continuously covered or 29. I'd have to double-check. Since we've had a recent ruling in Virginia regarding the constitutionality of the overall act, Senator Pahls and I have discussed what we should possibly do with LB493, and I would be recommending to the committee that, at this point in time, we just hold the bill in committee and wait and see what direction we might want to take as we head toward next year. We do have a few Nebraskans who are over 26, who are currently covered, and I know I talked to a number of committee members who had concern about just dropping those folks off if we went to the federal preemption. So my understanding is, they will still continue coverage under Nebraska's act. And we are allowed to go beyond what the 26-year was in terms of the federal preemption, but at this point in time, I would just ask the committee to please hold the bill. And I'd answer any questions. [LB493]

SENATOR McCOY: Thank you. Questions for Ms. McKenzie. Seeing none, thank you. [LB493]

JAN McKENZIE: Thank you. [LB493]

SENATOR McCOY: Additional proponents for LB493? Any opponents? Neutral testimony? Seeing none, Senator Pahls waives. Turn the hearing back over to Senator Pahls. [LB493]

SENATOR PAHLS: Thank you. That closes the hearing for today. [LB493]