

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

Banking, Commerce and Insurance Committee
February 05, 2018

[LB726 LB1105]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 5, 2018, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB726 and LB1105. Senators present: Brett Lindstrom, Chairperson; Matt Williams, Vice Chairperson; Roy Baker; Tom Brewer; Burke Harr; Mark Kolterman; John McCollister; and Paul Schumacher. Senators absent: None.

SENATOR LINDSTROM: "Alrighty," we'll go ahead and get started. As I do my intro we'll kind of wait for the other senators to trickle in here. So, welcome to the Banking, Commerce and Insurance Committee. My name is Brett Lindstrom, I am from Omaha and represent District 18 and chair this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members will come and go during the hearing. We have to introduce bills in other committees and are called away. It is not an indication we are not interested in the bill being heard in this committee, just part of the process. To better facilitate today's proceedings, I ask that you abide by the following procedures. The information is posted on the chart to your left. Please silence or turn off your cell phones. Move to the front row when you are ready to testify. The order of testimony will go introducer, proponents, opponents, neutral, and closing. Testifiers, please sign in. Hand your pink sign-in sheet to the committee clerk when you come up to testify. Please spell your name for the record before you testify. And we ask that you be concise. It is my request that you limit your testimony to five minutes. If you will not be testifying at the microphone but want to go on record as having a position on a bill being heard today, there are white tablets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We will need ten copies. If you have written testimony but do not have ten copies, please raise your hand now so the page can make copies for you. To my immediate right is committee counsel, Bill Marienau. To my far left at the end of the table is committee clerk, Jan Foster. The committee members with us today will introduce themselves and we will start on my far right.

SENATOR SCHUMACHER: Paul Schumacher, District 22, that's Platte and parts of Colfax and Stanton Counties.

SENATOR KOLTERMAN: Mark Kolterman, District 24, which is Seward, York, and Polk Counties.

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR BREWER: Tom Brewer, District 43, 13 counties of western Nebraska.

SENATOR WILLIAMS: Matt Williams, District 36, Dawson, Custer, and the north parts of Buffalo Counties.

SENATOR HARR: Burke Harr, Legislative District 8, representing parts of Omaha as well.

SENATOR BAKER: Roy Baker, District 30, southern Lancaster County and all of Gage County.

SENATOR McCOLLISTER: John McCollister, District 20, central Omaha.

SENATOR LINDSTROM: And our page today is Alyssa Lund from Woodbury, Minnesota. The committee will take up the bills in the order today and we will now open the hearing on LB726. Senator Wayne, whenever you're ready. Good afternoon. [LB726]

SENATOR WAYNE: Good afternoon. I think this is the first time I'm appearing before this committee, so we'll see how it goes. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, I represent District 13 which is north Omaha and northeast Douglas County. When I first introduced this bill it was because I ran across friends of mine who had to do IVF. And in the process of finding out how expensive it was, anywhere from \$10,000 to \$15,000 each cycle, plus \$3,000 to \$5,000 for medication each cycle, it showed me that we have some kind of inequity, what I think, in our system that only people who have certain income levels can be afforded this opportunity. Approximately 12 percent of the United States' women who are of childbearing age receive some type of infertility assistance. Since the 1980s, 15 states have adopted similar provisions of the one I'm proposing, both from what we would deem liberal to very conservative states, such as Arkansas and Texas. I won't go into all the details because late Friday, early over the weekend, and then this morning I got the great fiscal note. And after I saw that, I obviously changed out my approach to this conversation. But I do think that it's interesting that the Department of Insurance indicates that under the Affordable Healthcare Act (sic: Affordable Care Act) if state law mandates insurers to cover benefits that are not included in the essential benefits in the final U.S. Health and Human Services' essential benefit list, then the cost of benefits on the list must be paid for by the state. So at the federal level there has been protectionism established in the insurance industry that even if we were to apply this to nongovernmental agencies, it would still cost the state roughly \$1.3 million, because each payer would have to contribute. So, unfortunately, I think this is an issue as a state who struggles with growth, who is looking to bring more people to the state. I know we lost a family who actually moved to Texas and this was part of their reason, is that their employer down there covers it and they moved down there so they could have children. And I'm happy to announce they have two wonderful kids. But this is a issue that younger generations are looking at and I think Nebraska should be a part of it, but

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

Banking, Commerce and Insurance Committee
February 05, 2018

I do understand the fiscal reality that we face in this Legislature. It's just unfortunate we probably won't be able to come up with \$8 million to figure it out. I will try to stay for closing, but I do have another bill among my 32 bills that I've introduced this year in Transportation. [LB726]

SENATOR LINDSTROM: You're busy. Thank you, Senator Wayne. Any questions from the committee? Seeing none. [LB726]

SENATOR WAYNE: I just want you to know if you can't tell, I am disappointed by this one. This one kind of shocked me, so I do appreciate you guys being here. [LB726]

SENATOR LINDSTROM: Thank you, Senator. We'll now move to proponents of the bill. Proponents. Seeing no proponents, we'll now move to opponents of LB726. [LB726]

MICK MINES: Mr. Chairman, members of the committee, my name is Mick Mines, M-i-c-k M-i-n-e-s. I am a registered lobbyist for the National Association of Insurance and Financial Advisors of Nebraska or NAIFA. We oppose LB726 because it mandates coverage and NAIFA historically always opposes mandates that affect the plans that we plan to offer to our clients. Again, it's a longstanding opposition to mandated benefit plans or mandated benefits and especially for the treatment of conditions and illnesses that will increase the cost of premiums for all consumers and ultimately make healthcare insurance unaffordable for most employers, as it probably is right now. We believe insurers should be allowed to offer the lowest cost benefit plan, which are exempt from costly benefit mandates. With that, we encourage the committee to indefinitely postpone this bill. I'll be glad to answer any questions. [LB726]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Senator Williams. [LB726]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. And thank you, Mr. Mines, for being here today. Do you have any idea what it would increase the cost of the underlying policies if this coverage (inaudible)? [LB726]

MICK MINES: For all insured? I don't. We've got the insurance folks behind me that may have that information, but that's a good question. [LB726]

SENATOR WILLIAMS: Okay. Thank you. [LB726]

MICK MINES: Thanks. [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR LINDSTROM: Any other questions? Senator McCollister. [LB726]

SENATOR McCOLLISTER: Thank you, Mr. Mines. [LB726]

MICK MINES: Certainly. [LB726]

SENATOR McCOLLISTER: Thanks for coming and braving the snowy weather. [LB726]

MICK MINES: Thank you. [LB726]

SENATOR McCOLLISTER: How many states mandate similar coverage? [LB726]

MICK MINES: Well, I think you heard Senator Wayne say there are maybe 15 states that have mandated benefits for in vitro fertilization. [LB726]

SENATOR McCOLLISTER: Paid by the state? [LB726]

MICK MINES: Paid by the state, I believe. [LB726]

SENATOR McCOLLISTER: Okay. [LB726]

SENATOR LINDSTROM: Any other questions? Seeing none, thank you. [LB726]

MICK MINES: Thank you. [LB726]

SENATOR LINDSTROM: Next opponent. [LB726]

RON SEDLACEK: Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, here on behalf of the Nebraska Chamber of Commerce and Industry. Over the years, just as the previous testifier indicated, we are another association who has historically opposed additional mandates...health insurance mandates that go beyond the federal ERISA requirements. And that's because so many of our employer-sponsored plans are actually under ERISA, but those that are not and those who are paying on an individual basis, which essentially this legislation would cover, are going to face increasing costs and additional potential availability issues in regard to health insurance coverage. And I say historically Nebraska had been a, what I

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

Banking, Commerce and Insurance Committee
February 05, 2018

would call, a little bit more of a low-cost state. That was before, of course, all the changes on the federal level. And that was because Nebraska was one of the states in the nation that did not enact every different mandate that was offered to it like a handful of states had done. We were pretty conservative in that regard and that was able to keep our health insurance rates lower and more competitive. In the meantime, of course, we've had the changes in the federal level. We continue to believe that we're representing our businesses who are consumers of the insurance product. The insurers can obviously pass on whatever costs the Legislature decides to enact, but we are the consumers quite often of these products. And to see legislation that could potentially...and it looks like from the fiscal note just its effect on state government would dramatically affect the cost of businesses throughout the state, we remain in opposition. We have never opposed the actual mandate itself. So many of them are well meaning, we understand that, but our goal is to maintain an affordable product. And that concludes my testimony. I'd be happy to answer questions. [LB726]

SENATOR LINDSTROM: Very good. Thank you. Any questions from the committee? Seeing none, thank you. Next opponent. Good afternoon. [LB726]

JOHN LINDSAY: Senator Lindstrom, members of the committee, for the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of Blue Cross and Blue Shield of Nebraska. We're here to testify in opposition to LB726's requirement that Nebraskans buy coverage for IVF. By way of background, Blue Cross Blue Shield of Nebraska is a Nebraska-based, mutual benefit company. We have over 1,100 Nebraska employees. We pay taxes, but exist as a not-for-profit entity. Over 75 years ago we were founded to serve our members, not to generate profits for shareholders. We continue operating under that principle today. Beyond some of the issues related to the specifics of IVF that you have heard or will hear today, I'd like to tell the committee about some of the broader concerns that bills like this pose for the state budget, as well as for the broader market. As a result of the Affordable Care Act, Nebraskans who buy coverage in the individual and small group markets are now required to buy coverage for services that they may not choose to purchase on their own. For example, Nebraskans have protested to us at Blue Cross and to their elected officials about being required to purchase maternity coverage or contraceptive coverage, even when they are beyond childbearing age or have no plans to have children. This bill would similarly require Nebraskans to buy coverage that they may have no interest in purchasing. AM2773 will broaden the reach of the Affordable Care Act in Nebraska. An additional requirement to buy coverage will have a cost to the state, both in its role as an employer and also under the Affordable Care Act. Section 13-11(d)(3)(B) of the Federal Patient Protection and Affordable Care Act requires states to pay the cost of mandates exceeding the essential health benefits for all qualified health plans. Qualified health plans are individual and small group health plans in Nebraska. Coverage in this bill would exceed the essential health benefits chosen by the state, thereby requiring the state to pay for those costs of coverage. Last, it's important to remember that the state does not have jurisdiction over a broad

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

Banking, Commerce and Insurance Committee
February 05, 2018

portion of the insurance market. There are many incentives for employers and individuals from state regulated products to federally regulated products to avoid, in part, state requirements that add costs to policies such as the bill in front of you today. Based on the most recent data from 2014, under federal law the bill will not apply to the 14.8 percent of Nebraskans covered by Medicare. The bill, by its own term, does not include Medicaid recipients or 10 percent of Nebraskans. Most importantly, the bill does not apply to the 33 percent of Nebraskans who get their coverage through self-funded plans, which are beyond state regulation under the federal ERISA law. Further, the latest draft regulations on association health plans will give people another means of leaving the state regulated market. As a side effect, the state of Nebraska does not receive premium tax revenue from any of these other healthcare finance mechanisms. So not only do these required purchases increase costs for Nebraskans under state regulatory jurisdiction, it would also give them further incentive to exit the state regulated market. For these reasons, Blue Cross is opposed to LB726. I'd be happy to try to answer any questions. [LB726]

SENATOR LINDSTROM: Thank you, Mr. Lindsay. Any questions form the committee? Seeing none, thank you. [LB726]

JOHN LINDSAY: Thank you. [LB726]

SENATOR LINDSTROM: Next opponent. Good afternoon. [LB726]

JANIS McKENZIE: Good afternoon. Thank you, Senator Lindstrom and 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, I am executive director and registered lobbyist for the Nebraska Insurance Federation. I believe all of you know from past testimony that that association is a group of the Nebraska domestic insurance companies, including life, health, property, and casualty, as well as title insurers. We have historically opposed bills that require certain products being sold by companies in competition with each other and to make available to the consumer a wide array of choices at cost points to include specific mandated coverages, whether it's in the property casualty, life, or health lines. I've been I guess before this committee in various faces and in various years for many years before the Affordable Accountability Act (sic: Affordable Care Act), yearly on mandated benefit bills. But we have had very few since that point in time because of the essential benefits package. I'll also tell you that our market for health insurance in Nebraska now is really rather limited, especially for folks over the age of 50 who are self employed in rural Nebraska, so it is a concern to continue to price a product out of reach of folks who are trying to buy on their own, don't get it from an employer. I'd answer any questions you might have. I apologize for my croaky voice. [LB726]

SENATOR LINDSTROM: Thank you. Senator Kolterman. [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. Thank you for coming today. Do you know, are there any domesticated companies in the state of Nebraska that sell individual health insurance? [LB726]

JANIS McKENZIE: I believe the only insurer we have right now that is Nebraska domestic that did sell individual products was Blue Cross Blue Shield and they no longer offer that. So we have other companies selling in Nebraska, licensed to sell in Nebraska, but they're not domestic. [LB726]

SENATOR KOLTERMAN: But they're not domesticated, are they? [LB726]

JANIS McKENZIE: No. [LB726]

SENATOR KOLTERMAN: Thank you. [LB726]

SENATOR LINDSTROM: Senator Schumacher. [LB726]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. And thank you for appearing today again in opposition to mandates. [LB726]

JANIS McKENZIE: Thank you. Same song, same song. [LB726]

SENATOR SCHUMACHER: That's right, different verse. Three, four years ago we had I think a trio of bills that I think you and others appeared against for mandates and the song was the same. It's just going to drive insurance costs way up and it'll be terrible. And if I remember right, one of those had to do with milk for babies who couldn't digest some form of milk. Another one had to do with cancer treatments so people wouldn't have to drive a bunch of miles in order to get intravenous cancer treatment, they could have a pill of some kind instead. And I think there was a third one in there along the same lines. Maybe Senator Harr would remember what it is because I think he was instrumental in dealing with that issue on the floor. But there was three of them and the Legislature basically did a dance to the tune and mandated in part or all those three mandates. Are you aware of any study that's been done to see just how many rocks fell from the heavens because we did that and what impact they had on prices? [LB726]

JANIS McKENZIE: Good questions, Senator, but I do not. You would need to talk to one of the companies who sell products in Nebraska, such as Blue Cross, to be able to answer that question. Or United Healthcare or... [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR SCHUMACHER: But that was a very similar situation and it was a...I think there were tremendous figures of how it would heighten insurance. And I'm just wondering whether or not the music is played at too high of a volume sometimes for what it really would cost. [LB726]

JANIS McKENZIE: To be honest, I'm not sure any of those coverages are included now under the essential benefits package. As I recall, that was prior to ACA being implemented. [LB726]

SENATOR SCHUMACHER: No, it wasn't. It was just three or four years ago. If you don't know, then you can't answer. Thank you. [LB726]

JANIS McKENZIE: I don't know. I don't know. [LB726]

SENATOR LINDSTROM: Thank you. Any other questions form the committee? Seeing none, thank you. [LB726]

JANIS McKENZIE: Thank you. [LB726]

SENATOR LINDSTROM: Next opponent. [LB726]

TOM VENZOR: (Exhibit 1) Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Tom Venzor, that's T-o-m V-e-n-z-o-r, I'm the executive director of the Nebraska Catholic Conference, which represents the mutual public policy interests of the three Catholic bishops serving in Nebraska. The Catholic Church is certainly aware and empathizes with the difficult circumstances that many couples experience when trying to conceive a child. The church recognizes that infertility for whatever reason can be a devastating and tragic reality, one that can often shatter the hopes and dreams of those seeking to raise a family. As a church, we seek to accompany couples through these trying times, offering spiritual, moral, and psychological guidance and counseling. We also seek to help couples find ethical ways to address issues of infertility. By doing so, we respect the dignity of marriage and the human person. LB726, however, does not provide an ethical means or solution to address a problem of infertility that is faced by many couples. While a medical intervention that helps or assists the marital act, the sexual act, to achieve pregnancy could be considered morally good, an intervention that replaces a marital act in order to bring about human life cannot be considered a moral good. This disrupts the marital union between spouses. Additionally, the IVF process invariably brings about the creation of several embryos, that is human life in its earliest form. But not all embryonic human life is used during the IVF process. The general practice is that only the "healthy" or "strongest" embryos are implanted. The rest are frozen or, worse yet, discarded as garbage. This is a direct attack on human life, in her most vulnerable stage, a point

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

Banking, Commerce and Insurance Committee
February 05, 2018

at which the tiny little human can do nothing in its own defense. Embryos are also frequently experimented upon and subsequently discarded. Again, another egregious attack on human life at its earliest stage. Further, there are many times when multiple embryos are implanted into the biological mother or the surrogate. Not infrequently, to avoid having too many babies, additional embryonic or fetal life--depending on what stage of human development we are at—is selectively reduced. In other words, if there are too many babies, there will be an abortion of the babies that are not desired. The babies that are typically aborted are those that are deemed least desirable, for example, least healthy, girl or boy, etcetera. This is not to say that children who are born through the IVF process are less than children conceived through natural processes. These children, like any other child, are beautiful and deserving of love. Like every other human being, their human dignity ought to be fully recognized and valued. LB726 goes even further to promote IVF by mandating insurance companies to cover such procedures. As with any insurance pool, there could be any number of individuals who would have moral objections in their premiums funding such procedures. Yet, such individuals would have no assurance that their funds are not assisting with IVF. Finally, LB726 attempts to provide a religious exemption, but the language of the exemption is problematic. While we appreciate the recognition of possible religious objections to the general mandate of LB726, the proposed exemption requires improper digging into whether objections to IVF are a central part of the religious beliefs of a bona fide religious denomination. But the Establishment Clause of the U.S. Constitution generally forbids government investigation into whether particular beliefs are central to a religious organization's overall beliefs. The religious exemption contained in LB726 is likely unenforceable by the courts. Governments may not question the centrality of one's beliefs, as already discussed. If the proposed religious exemption is unenforceable or unconstitutional, objecting religious organizations may be subject to the general mandate of LB726. That is because even though LB726 lacks a severability clause, courts may deem the religious exemption severable if, among other factors, the bill operates in a workable manner without its invalid provisions, and if such provisions were not an inducement to passing the bill's general mandate. For these reasons, the Nebraska Catholic Conference opposes LB726 and urges this committee to not advance this legislation and hold it in committee. Thank you. [LB726]

SENATOR LINDSTROM: Thank you. Senator Baker. [LB726]

SENATOR BAKER: Thank you, Chairman Lindstrom. Mr. Venzor, you're here representing Nebraska Catholic Conference, is that correct? [LB726]

TOM VENZOR: Correct. [LB726]

SENATOR BAKER: I happen to like you, so I'm saying this next thing totally tongue in cheek. Are you aware that Nebraska is a Protestant state? [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

TOM VENZOR: I'm not sure what you mean by that, to begin with. [LB726]

SENATOR BAKER: Well, there's more Protestants than Catholics, we must be a Protestant state. That's totally tongue in cheek. [LB726]

TOM VENZOR: Sure, yeah. [LB726]

SENATOR BAKER: Because it's been declared Nebraska is a pro-life state. You see the connection I'm making? [LB726]

TOM VENZOR: Yeah. [LB726]

SENATOR BAKER: All right, thank you. That's all. [LB726]

TOM VENZOR: I think I want to comment on that, just because I think it's important to value and recognize the beliefs of people who do hold pro-life values. And I think under LB726, one doesn't need to be pro-life or pro-choice to recognize that, unfortunately, in the IVF process there's a destruction of human life that occurs during that process. And, again, I think as a state who doesn't want to directly violate the life of another human being, especially an innocent unborn human life, I think that's something we can all value, whether we're pro-life, whether we're Catholic, whether we're Protestant, you name it. But thank you. [LB726]

SENATOR LINDSTROM: Thank you. Senator Schumacher. [LB726]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Thank you for your testimony today. You introduced some religious and philosophical principles into your testimony today and from a perspective of an establishment of religion. Now, one of the things you alluded to is a religious belief that the minute the sperm penetrates the ovum, that it is an entity is created that is entitled to full human rights. Is that correct? [LB726]

TOM VENZOR: What I said, Senator, was that at the moment...I didn't say this directly, but you're getting to it. At the moment when the sperm and the ovum meet you have a unique, unrepeatable human life at that point. That's not a philosophical belief. In fact, I thought about printing it off but I didn't. But that definition for human life could be found in the embryology textbook that's used by UNMC here in our state. So the claim I made was that you have a human life at that moment of fertilization. I think the argument you're trying to make, to me, is whether that human being or that person has all the rights that any other human person would have. And I think you're correct in identifying that that is a moral question. The question preceding that is, is

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

Banking, Commerce and Insurance Committee
February 05, 2018

it a human being? That's a biological question and that's a fundamental fact of human embryology. [LB726]

SENATOR SCHUMACHER: Okay. But am I correct in thinking that you would think it's also a human being? [LB726]

TOM VENZOR: I think that's correct. And I think...again, I could give you the textbook pages on that in the embryology textbook that...that's a basic... [LB726]

SENATOR SCHUMACHER: But not only the embryology side, but the philosophical side that it is a life in being that is worthy of the state intervening to protect. [LB726]

TOM VENZOR: Yeah, so that would be...I think what you're getting at is distinction between a human being and a human person. And when we talk about a human being having a legal personhood, we mean that it comes with all sorts of rights when those are given. And, yeah, that is correct, that the Catholic Conference would hold the view that at that moment when a human being comes into existence they have an inviolable human dignity. And certainly, that's a moral, philosophical... [LB726]

SENATOR SCHUMACHER: But are they a person? I mean, let's not split hairs because it was always my impression that the whole abortion debate centered around "bingo" that happens when the two sets of chromosomes unite. [LB726]

TOM VENZOR: Yeah, because we would recognize that that's a human being and, therefore, they have human dignity and human value, therefore, they have rights. They're a human person at that moment. That's a simultaneous reality. [LB726]

SENATOR SCHUMACHER: And that life should be protected by the law? [LB726]

TOM VENZOR: Yes, that's the stance of the Catholic Conference. [LB726]

SENATOR SCHUMACHER: So that being the case, there's obviously fertility clinics all over the world and there are people that take the various eggs, mix them with the sperm, and they have fertilized eggs. And then they put them in test tubes in liquid nitrogen and freeze them. Is that correct? [LB726]

TOM VENZOR: Correct. [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR SCHUMACHER: Okay. Now, we have all over the world test tube upon test tube upon test tube full with all these little human beings and it's pretty cold below zero at the temperature of nitrogen. So do we not then have a state obligation to get those eggs into a situation where they can be gestated and born? [LB726]

TOM VENZOR: I think you're raising a very important question about what are sometimes called snowflake babies. And the obligation we would have, in other words, to bring those life further into their developmental process from being embryonic to being fetal to being a baby. I think that's a great question you raise and it's certainly a question that a lot of people wrestle with and I'm certainly happy to have that discussion further if you want to pursue it. [LB726]

SENATOR SCHUMACHER: So, well, maybe it could be even in the context of this bill. It kind of opened the subject. Should we conscript women to carry those babies to term? [LB726]

TOM VENZOR: I don't think you should conscript women. You're still going to have to do a moral analysis and you're probably not going to find that you can just conscript other people to carry out that development process. [LB726]

SENATOR SCHUMACHER: Why should women not have the choice to carry those babies to term? Why should they be able to say no any more than in days of army conscription people had to go to war whether they liked it or not, because it was an interest to protect life? [LB726]

TOM VENZOR: Well, again, that individual is going to have their own fundamental free will and that free will should be respected. [LB726]

SENATOR SCHUMACHER: Okay. So why do they have a choice then? A choice to say, no, we won't...we shouldn't be forced to carry those babies to term? Why should they have a choice? [LB726]

TOM VENZOR: Because, again, fundamentally they have their free will. We do run into situations and this is people who kind of deal more with this issue, especially on the moral side of it, you deal with situations where families or individuals or women may want to adopt those embryos. Families who maybe do have infertility or maybe are going through other situations where they would want to adopt those embryos and parent those embryos and bring them further into the development of their humanity. So we certainly have people out there who are interested in that, but I think you're getting into a whole other ball of wax in terms of conscripting and mandating individuals to do that, which would lead to issues about their free will and whether they should be able... [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR SCHUMACHER: Don't we do that anyway when we say that we control whether or not or want to control whether or not someone has got to carry a pregnancy to term? [LB726]

TOM VENZOR: Again, the means does not justify the end. And what you have a situation here is an individual, an unborn human being who deserves both legal protection, their humanity, their human value, their human dignity ought to be respected. You cannot take the life of...you cannot directly take the life of that innocent unborn child for any reason. That's a fundamental principle. [LB726]

SENATOR SCHUMACHER: But if we don't take them from a test tube and put them in a uterus, at some point the test tube could get warm and they die or disintegrate through time, so we've got to do something pretty quick, don't we? [LB726]

TOM VENZOR: Yeah, I think the question you're raising is a fundamental problem about what we've put ourselves into with in vitro fertilization and the creation of embryonic life at that early of a stage where we have now gotten to a point where we decide that, well, we have too much of it here, so we're going to freeze it or we're going to put it away or we're going to discard it. And you've created what some call the throw-away culture or a culture of use where we just keep those...keep the baby around if it has a value to us and if it doesn't we'll throw it away. And I think this shows some of the fundamental problems we've run into where we're freezing human life in test tubes. [LB726]

SENATOR SCHUMACHER: So in looking at the balancing act here, the life in the test tube is worth less than the woman's choice not to participate in our program of conscription. [LB726]

TOM VENZOR: Sir, could you repeat that just so I make sure I heard you? [LB726]

SENATOR SCHUMACHER: So in the balancing act here, you're basically saying the life in the test tube is worth less than the woman's choice not to participate in a program of conscription. [LB726]

TOM VENZOR: Not to participate in a program of inscription sounds to be... [LB726]

SENATOR SCHUMACHER: Conscription. [LB726]

TOM VENZOR: Conscription sounds to be... [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR SCHUMACHER: We're taking you and you're going to do this because it's such a high need. [LB726]

TOM VENZOR: Yeah, that sounds a bit oxymoronic in its statement. But I guess...yeah, I'm not here to advocate whether you can conscript a woman or not. You're trying to take me down a rabbit trail and I know you are, so that's fine. I'm not going to answer "yes" to that. [LB726]

SENATOR SCHUMACHER: Let's go one more step down the rabbit trail here. Basically, folks with money right now can do this, they don't have to worry about any insurance, right? [LB726]

TOM VENZOR: It seems like it, yeah. [LB726]

SENATOR SCHUMACHER: Okay. So, basically, this really kind of...what we have now is kind of a good positive eugenics program, isn't it? If you can afford it, you can reproduce this way. And if you can't afford it, you're out of luck. [LB726]

TOM VENZOR: Yeah, I think you raise a good point there, which I raised in my testimony. That's another problem with the IVF process, is you begin analyzing and looking at each one of these embryonic lives and determining which ones are of value to implant and which ones are not of value to implant. This one may have some chromosomal issues, so therefore we're going to discard it because it's not the human being that we want. Furthermore, when you get to the point of implantation whether the biological mother or the surrogate decides to have those embryos implanted, you may have a situation where they've decided to implant four or five embryos. And then the question is, does the woman want to carry all of those children to term? And then you have the issue of selective reduction. Well, which ones are you going to selectively reduce or abort? And then you begin to look at the child, which one...maybe it's a boy or maybe it's a girl, why don't...I have enough boys or I have enough girls. Or maybe you run into issues where you can find out now with earlier testing on prenatal testing, whether it's for things like Down Syndrome or otherwise, and you make a decision. Well, this child has Down Syndrome, the other child doesn't, so we're going to selectively reduce or abort the child with Down Syndrome. So the issue of eugenics is very much at the forefront of this issue, which is highly problematic. [LB726]

SENATOR SCHUMACHER: So are you suggesting we outlaw IVF? [LB726]

TOM VENZOR: We don't think it's a moral good in a public policy that should be promoted, either in policy or as a culture. [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR SCHUMACHER: Thank you. [LB726]

TOM VENZOR: You're welcome. Any time, Senator. [LB726]

SENATOR LINDSTROM: Senator Harr. [LB726]

SENATOR HARR: Is the Catholic Church against procreation? [LB726]

TOM VENZOR: No. [LB726]

SENATOR HARR: I'm confused then, because I see here that they're against IVF for fear that it might create too many babies and there might be abortions based on who is more or less desirable. But that could occur just as easily through natural conception as it could through IVF. [LB726]

TOM VENZOR: Yeah, again, the Catholic Church, as I'm sure you know, Senator Harr, from your many years of Catholic schooling, does recognize that every parent has that fundamental right and duty to raise their own family, to space children accordingly. But you always have to do these things within ethical boundaries. And, again, IVF is not doing that type of...is not taking on that kind of responsibility within ethical bounds, for many of the reasons I talked about. And it's not about there being too many babies. What I'm doing there was quoting what ends up happening for some individuals, where they have quote unquote too many babies because they've implanted three or four or five embryos, but really they only want one child or two children. So they end up, again, going through some sort of selective reduction process where they abort a few of those children because they either don't need them or they don't want them or etcetera. And that's where you end up violating that child's fundamental human dignity, by directly attacking their life. [LB726]

SENATOR HARR: So the fact that my mother had three children in a year, is that too many children? You said they selectively use three or four. Is three in a year too many or are three at one time too many? [LB726]

TOM VENZOR: No. Again, that's going to be up to... [LB726]

SENATOR HARR: I'm confused again. And that was all natural, not to tell you too much about my parents, but it was. [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

TOM VENZOR: Yeah. And, again, that's going to be up to that individual couple to determine and to figure out how they want to raise their family, how they want to bring about their family, etcetera. That may be based on means, that may be based on things like fertility, etcetera. There's going to be all sorts of factors that go into that, so I can't answer the question about your mother. And I'm happy she did that. [LB726]

SENATOR HARR: It's not necessarily any more or less likely due to IVF births versus natural causes. I mean, conception is conception. Life begins at conception, it doesn't really matter...if you're saying you don't like this because there may be selective reduction, there's nothing that prevents that in natural birth as there is in IVF. If it's going to occur, it's going to occur. And so should we just outlaw all natural reproduction as well? [LB726]

TOM VENZOR: I'm really not...I think... [LB726]

SENATOR HARR: Well, let me take a step back. [LB726]

TOM VENZOR: Well, I think you're conflating terms, for one, to begin with. So you're using two terms in two different ways and trying to make them synonymous. You're trying to trap me with a question. [LB726]

SENATOR HARR: Okay. Well, let me take a step back. Okay. If a baby is born in marriage, it is not worth any more or conceived in marriage it is not worth any more or less morally than one born, say, out of wedlock. Is that correct? [LB726]

TOM VENZOR: Yeah. All human beings have equal dignity and value. [LB726]

SENATOR HARR: So taking it a step further, a baby conceived in a test tube--we used to make fun when we were kids and call them test tube babies, which is pretty insensitive, but we did--is worth no less than a baby conceived out of wedlock or conceived through marriage. Is that correct? [LB726]

TOM VENZOR: Correct. Same fundamental human dignity and equal value. [LB726]

SENATOR HARR: Okay. Now, a baby conceived through wedlock, a parent could easily decide...well, let me take a step back. Your argument is that a baby that is implanted through in vitro fertilization... [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

TOM VENZOR: In vitro fertilization. [LB726]

SENATOR HARR: ...that parent may decide to have selective reduction. Is that correct? [LB726]

TOM VENZOR: Yeah. We find out that frequently that can be the case. [LB726]

SENATOR HARR: And because of that, you think that that's one of the reasons you're against IVF. Is that correct? [LB726]

TOM VENZOR: That's one of the reasons, yes. [LB726]

SENATOR HARR: Okay. By that logic, isn't a baby who is conceived in marriage, a parent--right or wrong--may decide to have selective reduction. True? They could. [LB726]

TOM VENZOR: So if those parents decided to have an abortion of their child that they naturally conceived of, would that be a problem? Yes, we do believe...we do... [LB726]

SENATOR HARR: They could decide that, too, right? They may. [LB726]

TOM VENZOR: They could, yeah, they could decide that and we would....if I could... [LB726]

SENATOR HARR: But you're not against natural conception, are you? [LB726]

TOM VENZOR: No, we're not against natural conception. But the problem here...if I could finish my statements instead of trying to...again, trying to trap me, which I don't appreciate. Again, fundamentally, in both of those scenarios you have the selective reduction, you have an abortion, which is the direct attack on a human being. That is never acceptable. [LB726]

SENATOR HARR: So the wrong is selective reduction, correct? [LB726]

TOM VENZOR: It's one of the wrongs, yes. [LB726]

SENATOR HARR: So the wrong is selection reduction, correct? [LB726]

TOM VENZOR: That's one of the wrongs you have in this situation. That's one of the unfortunate consequences of in vitro fertilization, is a reality that selective reduction often

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

Banking, Commerce and Insurance Committee
February 05, 2018

occurs. But you could create a situation, I guess, in a theoretical world where you had a perfect IVF system where you never would have a situation where you have a selective reduction. Let's say every...let's hypothetically think that in every situation you could implant an embryo and it's a perfect embryo and it's the exact one or the exact two or three that the parents want. Even then, the process, we believe, of in vitro fertilization has other fundamental problems with relationship to the marital act into the union of husband and wives. [LB726]

SENATOR HARR: But you could have that just as easily through natural reproduction as you could IVF. Senator Kolterman over here, his brother is a Nebraskaland of the Year. He is a state senator. I'm sure if his mother knew what would happen 25 years later... [LB726]

SENATOR KOLTERMAN: She'd have got rid of me? [LB726]

SENATOR HARR: Yeah. Well, yeah, she may not have. So I guess my question is, you can have natural selection just as easily through natural production with twins as you could through IVF. And so I think the fact that how they're conceived...I am with you 100 percent that selective reduction is bad. Okay? I don't disagree with you there. I just disagree that how that baby is conceived leads to more or less likely or makes the fact that one can do it both ways, doesn't mean you should get rid of either one of them. [LB726]

TOM VENZOR: To be very honest, this is probably my...I'm not quite following your train of thought. [LB726]

SENATOR HARR: All right. [LB726]

TOM VENZOR: Your statements are actually kind of confusing and so... [LB726]

SENATOR HARR: And maybe I am confusing. I'm sorry. And let me try a third approach at that then. The problem isn't IVF. You don't like the results of IVF. [LB726]

TOM VENZOR: I never said that. We have problems fundamentally with IVF, itself, and the consequences of IVF. [LB726]

SENATOR HARR: All right. I think I made my point. [LB726]

SENATOR LINDSTROM: Any other questions? Senator Williams. [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. And thank you, Tom, for being here. It's my turn now. In your testimony...and I just would like you to expand on this so I can understand it. Reading from your testimony, "while a medical intervention that helps or assists the marriage act, a sexual act, achieve pregnancy could be considered morally good, an intervention that replaces the marital act in order to bring about human life cannot be considered a moral good." And this is the next sentence. "This disrupts the marital union between spouses." Can you help me understand what you mean by "this disrupts the marital union between spouses"? [LB726]

TOM VENZOR: Yes. We would believe and hold the belief that the sexual act is a very beautiful thing between husband and wife and it's that act that brings about the gift of children. And we think that's a good and a beautiful act and is the normative act that spouses should engage in, especially when it comes to the procreation of children. [LB726]

SENATOR WILLIAMS: Are you suggesting that these parents that are trying to have children are not engaging in that act? [LB726]

TOM VENZOR: I didn't say that they aren't engaging in that act at that point. But when they're not engaging in that act through in vitro fertilization to create a child, that's what's problematic. So by its nature in vitro fertilization doesn't involve the physical union of husband and wife other than through bringing sperm together and an egg in perhaps a petri dish or some other laboratory. [LB726]

SENATOR WILLIAMS: In the next paragraph of your written statement you say, embryos are also frequently experimented upon. Is that in Nebraska? [LB726]

TOM VENZOR: Yeah, I believe that there's experimentation of embryonic life occurring in this state. I believe years ago there was a big battle in the Legislature over things like the funding of embryonic research. [LB726]

SENATOR WILLIAMS: So your contention is that's still going on? [LB726]

TOM VENZOR: My understanding is it's still going on, yes. [LB726]

SENATOR WILLIAMS: Next to last thing, in Senator Wayne's bill on page 3, line 4, he has in here a provision to create a religious exemption. In the number of years that I've been here there have been other attempts to create a religious exemption and I think, if memory serves me, in each one of those you or someone representing the Catholic Conference has argued that it didn't

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

Banking, Commerce and Insurance Committee
February 05, 2018

get there. It hasn't created a religious exemption. Do you think there is language that could create a viable religious exemption in this or any other legislation? [LB726]

TOM VENZOR: I think in a variety of contexts you can write religious exemptions that would be interpreted through law as being sound and reasonable and constitutional. Of course, the use of each one of those religious exemptions, the merit of it is going to depend on the circumstances. But certainly you can, in any number of pieces of legislation, you could write some sort of exemption. [LB726]

SENATOR WILLIAMS: I just find it interesting that in my experience with these, each time it has not elevated itself to the level that you, the Catholic Conference, would agree that it's providing that. If you're concerned with that, I would hope you would be willing to help a bill drafter in coming up with the language that would meet that, because I think Senator Wayne and others in their bills are legitimately trying to...it might not remove your underlying dislike for this legislation because of the other things that you've said. Last comment that I will make, having some direct experience with this issue myself, are you aware that at least what I'm aware of, that the counseling that goes on with a mother and father about the potential reduction about how this...the choices that a potential father and mother have in how many will be implanted and what the risks are and all of that. Are you aware that that counseling goes on in depth? [LB726]

TOM VENZOR: Yeah. We are...I am aware that that counseling goes on in depth. And by no means do I mean to undermine the care and intention that a family might go through in thinking about those issues of how many embryos should we implant, should we engage in selective reduction or an abortion. I by no means am calling into question whether those are thought through, whether in those instances the couple may be seeking sort of their best intentions. Again, what I am raising though is the fundamental that in the selective reduction the abortion process you are engaging in a direct attack on unborn human life. An unborn human life that, like you and me, is worthy of full protection and has equal dignity, like you and me. And so we, none of us, have a right to engage in that activity and nor should we have a legal right nor should we have a process that allows for it. [LB726]

SENATOR WILLIAMS: This is the banking committee, so I'll leave it there. [LB726]

TOM VENZOR: Thank you. [LB726]

SENATOR LINDSTROM: Senator Schumacher. [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Just one follow-up question. If I understand you right, you have some fundamental opposition to IVF. Let's say a young couple, don't have any kids, madly in love. And it turns out that the woman has got a medical problem that requires basically her ovaries to be removed. Okay? And prior to removal they do some things to produce a number of eggs and harvest them for use afterwards. They do it to save her life. And now they've got a little vat full of eggs. They've got a petri dish with the necessary ingredients and they...you would be opposed to mixing those eggs with the sperm so that that couple could reproduce? [LB726]

TOM VENZOR: Again, Senator Schumacher, I mean I should be clear, up front. We certainly...like I said in the beginning of my testimony, that's a horrible situation for that couple. I doubt that woman ever wanted to go through anything she had to go through, whether it was some sort of hysterectomy or some other issue, that's very tragic. And we certainly, in our work in the church, we do everything we can to counsel and work with couples in those situations in order to walk with them, because those are the tragedies of life that we all experience in some way, shape, or form. Again, going back to our fundamental moral belief here that we think crosses and transcends religious belief or philosophical belief, but it's a fundamental truth that bringing that life together through the in vitro fertilization process is not a good for society, period. I mean, that's a tough stance, but there's moral reasoning to back that up and some of it I've outlined here. But, again, to go back to the situation, that's certainly very tragic and I've had those friends myself who have gone through that type of situation and it's sorrowful. And we mourn with them and we do feel the sorrow in our own heart, the hurt that that can cause. [LB726]

SENATOR SCHUMACHER: You would deny them the right to reproduce because of religious ideology? [LB726]

TOM VENZOR: Again, you've reduced my position to a religious ideology, which I have flatly stated is not a religious ideology, it's a moral belief that transcends religious idea or philosophical idea. So if by reducing it to a religious ideology you can make your statement true, but again it's not a religiously ideological belief. It is, however, consistent with the beliefs of the Catholic faith. [LB726]

SENATOR SCHUMACHER: Thank you. [LB726]

TOM VENZOR: And I should add to that, I think we get into another issue here about the right to another person. You're saying the right to reproduce. And certainly in the Catholic view we would view that reproduction as a gift. It's a gift that we also believe comes from the Creator, from God. And sometimes those are the situations in life where that becomes difficult where that

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

Banking, Commerce and Insurance Committee
February 05, 2018

gift may not be there, for whatever reason. And so, again, I think we have a fundamentally different view here in terms of whether they have a right to that child or whether that child is a gift. And I think there's a very different world view and a pretty big gap between those two world views. [LB726]

SENATOR SCHUMACHER: If we disregard the progression of time, that child that was made by IVF exists throughout the future and as a person in the future. And so you're denying that person the right to become a person. [LB726]

TOM VENZOR: I'm not quite following you a little bit there, but feel free to explain it more. [LB726]

SENATOR SCHUMACHER: Unfortunately, this isn't "Philosophy Committee" (inaudible) the rest of the committee. [LB726]

TOM VENZOR: No, I'm happy to further that...I'm happy. I've got a master's in philosophy, so I'm happy to talk about it all day long and certainly I'd be happy to engage in a conversation even more, Senator. [LB726]

SENATOR SCHUMACHER: Thank you. [LB726]

SENATOR LINDSTROM: Any other final questions? Seeing none, thank you. [LB726]

TOM VENZOR: All right. Thank you for your time. [LB726]

SENATOR LINDSTROM: (Exhibits 2, 3, 4) Any other opposition? I do have three letters of opposition: Joshua Keepes, with America's Health Insurance Plans; Robert Hallstrom with National Federation of Independent Business; and Jay McLaren with Medica. We will now move to neutral testifiers. Good afternoon. [LB726]

MEGAN MIKOLAJCZYK: (Exhibit 5) Good afternoon, Chairperson Lindstrom and members of the committee. My name is Meg Mikolajczyk, M-e-g M-i-k-o-l-a-j-c-z-y-k, and I am the associate general counsel and senior public affairs manager at Planned Parenthood of the Heartland. Planned Parenthood of the Heartland is a multistate sexual and reproductive healthcare provider with health centers in Nebraska and Iowa. Our Nebraska health centers are located in both Lincoln and Omaha, although we do treat patients from across the state. We offer a variety of health services, including education, counseling, and healthcare regarding family planning. Planned Parenthood of the Heartland is committed to helping Nebraskans choose if,

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

Banking, Commerce and Insurance Committee
February 05, 2018

when, and how to start and grow their families. We applaud Senator Wayne's efforts to increase access to health services aimed at helping people plan their families, particularly for those families who may have had some challenges in doing so. We support the general intent of LB726. I am testifying neutrally today, however, because we are hopeful that there may be some additional changes to the current wording of LB726 that would expand access beyond heterosexual married couples with a few very specific infertility challenges. We would like this bill to create access to insurance coverage for all Nebraskans who want to start or grow their families, regardless of their sexual orientation, marital status, gender identity, or health condition requiring the in vitro process. Our vision at Planned Parenthood is to have communities where sexual and reproductive rights are basic human rights and where every person has the opportunity to lead a healthy and meaningful life. We believe that includes tearing down barriers to all Nebraskans who want to have children, and making healthcare services as accessible as possible. There are many reasons women may experience infertility beyond the conditions listed currently in the bill: pelvic inflammatory disease, uterus polyps, fibroids, scar tissue, a prior ectopic pregnancy, ovulation disorders, and issues related to age and genetics. It's our hope that some changes to the bill language will open up insurance coverage for those Nebraskans with such conditions who are experiencing complications getting pregnant. Planned Parenthood of the Heartland also supports the rights of same sex couples to have children if and when those couples choose to do so. The language of LB726 currently limits the qualifying preconditions for coverage to heterosexual married couples, specifically as seen in lines 19 and 20 of page 2, where it talks about fertilization of the patient's spouse's sperm. An easy fix to this restrictive language would be to simply remove it. The same could be done for the language immediately thereafter that attempts to specify the exact conditions of infertility that would qualify for coverage. I do think there's an interesting conundrum happening in the Nebraska Legislature today. On the one hand, we don't want to help low-income people or people who are having a hard time get pregnant have access to the medical care that would let them have children. On the other hand, we also don't want low-income people in our state to have access to birth control to not get pregnant when they don't want to get pregnant. And I'm just sort of confused at this point where we sit and what this all really means. So I would ask you to take another look at Senator Wayne's bill and also think about other health service access issues in front of the Legislature as well. I appreciate the opportunity to testify. Also, on a personal note, my husband had cancer and we had to consider IVF for us having a family. One of the things I knew since I was very little was that I wanted to have a family and I wanted to do it any way I had to. So this is a very real problem for a lot of people. And I appreciate your time. [LB726]

SENATOR LINDSTROM: Thank you, Megan, for your testimony. Senator Schumacher.
[LB726]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. In your organization, have you been able to determine whether or not the tendency of people to postpone childbearing because

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

Banking, Commerce and Insurance Committee
February 05, 2018

of need for education, because of the need for having a stable economic situation at home, has increased the need for assistance in conceiving a child? Are people, because they're having kids older... [LB726]

MEGAN MIKOLAJCZYK: Later? [LB726]

SENATOR SCHUMACHER: Right. [LB726]

MEGAN MIKOLAJCZYK: I don't know that we've seen any information like that. We do see a lot of people postponing until their late 20s and early 30s, but we also know that women up to about the age 40 are completely fine having pregnancies that are healthy without a lot of issues. Forty is about the age where we know people need more assistance in having healthy pregnancies and getting pregnant. [LB726]

SENATOR SCHUMACHER: Thank you. [LB726]

SENATOR LINDSTROM: Any other questions from the committee? Senator McCollister. [LB726]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Did I hear you correctly? Are you saying that same sex couples are excluded from having family coverage in the state? [LB726]

MEGAN MIKOLAJCZYK: Under...they would be excluded from having in vitro coverage. So if you take a situation where there's two women who are or aren't married but are partnered who want to have a baby, under the current way this bill is written, you have to have a spouse's sperm and that's an impossibility. [LB726]

SENATOR McCOLLISTER: I see. But they're eligible for other family coverage (inaudible). [LB726]

MEGAN MIKOLAJCZYK: That's outside the scope of anything I can testify about today. [LB726]

SENATOR McCOLLISTER: Thank you. [LB726]

SENATOR LINDSTROM: Senator Harr. [LB726]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR HARR: Thank you. Thanks for coming. Are you aware of any study or data out there that says a baby conceived through IVF is more likely to be aborted than a baby conceived through natural conception? [LB726]

MEGAN MIKOLAJCZYK: I am not aware of any such study and I would actually believe the exact opposite is probably the truth, because those are absolutely intended pregnancies and they're very expensive to have. [LB726]

SENATOR HARR: Okay, thank you. [LB726]

SENATOR LINDSTROM: Any other questions? Seeing none, thank you. [LB726]

MEGAN MIKOLAJCZYK: Thank you. [LB726]

SENATOR LINDSTROM: (Exhibit 6) Next neutral testifier. Seeing none, we have one letter of neutral testimony from Bruce Ramage, Nebraska Department of Insurance. Senator Wayne, you're welcome to close. [LB726]

SENATOR WAYNE: Thank you, Chairman Lindstrom. I thank you, committee. Obviously, when I introduced this bill I was thinking about the friends that I know who went through this process and not all the other issues that came up through this hearing. But I do want to give you an interesting fact. Nebraska hit 1 million people in population in 1890. Over 100 years we still haven't been able to get to the 2 million mark. We have to figure out ways to help families grow, whether naturally or through IVF. And this is just one way that I think we can solve a problem that quite honestly plagues people from middle- to low-income. I was going to waive hearing (sic: closing), but I started to get more and more emotional as I listened because there was a bill in Judiciary on Friday, LB795, that dealt with surrogate mothers and promotion of surrogacy. But yet the Catholic Conference did not come in and testify in opposition, nor did they send a letter. If it's a fundamental principle, which I believe it is, then let's be fundamentally consistent. If IVF is the issue, then be consistent across the entire board. I wanted to raise that to say, you do with it what you may, but I think it's important that we have consistency. I think it's important that if we can promote surrogacy or stand neutral for surrogacy we should be able to support...which again surrogate mothers aren't even in the family. Doesn't even protect the sanctity of marriage or any other argument that was used could apply to that bill. That committee didn't hear any such thing. But because we're offering a mandate, if that's what they want to call it, to help middle- and low- and working families-income people have families, I think it's inappropriate. I think it's inappropriate when somebody is dealing with that kind of decision in their family, the amount of money they have to use. People take loans out, people take...lose their houses over this. People don't even afford to buy a house because they saved up \$50,000 to buy a

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

Banking, Commerce and Insurance Committee
February 05, 2018

house when they got married and decided they wanted to have a family instead. We can at least have a conversation about it. We can at least talk about what's best for Nebraskans. And the other part I want to bring up, when the Affordable Healthcare Act (sic: Affordable Care Act) was decided, I don't recall this body having a conversation about what is the essential benefit list. Had I known that was in the law back then, I would have been down here saying, what is our essential benefits? And if the state has to pay for that because we didn't have the conversation back then and we have to have it today, then so be it, because we didn't have that conversation. So we need to look at our essential benefit list and decide what should be covered and what shouldn't be covered and what are we willing to pay for? With that, I appreciate you all and thank you. [LB726]

SENATOR LINDSTROM: Thank you, Senator Wayne. Senator Schumacher. [LB726]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. In regard to the essential benefit list, this committee I suppose five years ago or so crossed that bridge or didn't cross that bridge, because it was easier not to cross that bridge. But the federal government had a list of like ten essential benefits that had to be included as part of the ACA. And by this committee not selecting the ten essential benefits, I think it was the Governor defaulted to the federal list. We did not add anything to the federal list, because we would have had to pick up the tab. And so the essential benefits basically dittoed in on a mandatory basis from the feds. [LB726]

SENATOR WAYNE: Thank you for that education. [LB726]

SENATOR LINDSTROM: Any other final questions? Seeing none, thank you, Senator Wayne. [LB726]

SENATOR WAYNE: Thank you. [LB726]

SENATOR LINDSTROM: And that will close the hearing on LB726. We will now move on to LB1105. Senator Vargas. [LB726 LB1105]

SENATOR VARGAS: Good afternoon, Vice Chairman Williams and members of the committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s, I represent District 7, the communities of downtown and south Omaha. I'm here today to talk to you about LB1105, a bill to address the many troubling issues that Nebraskans are having with the payday lending industry. Now, LB1105 amends the Delayed Deposit Services Licensing Act with one simple change. Under current law, loans can be issued for a maximum of 34 days. LB1105 changes loan periods to a minimum of 34 days. Just to recap for you, this is how payday loans work. An individual shows

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

Banking, Commerce and Insurance Committee
February 05, 2018

up at a payday store front with a post-dated check and a pay stub and can borrow a maximum of \$425 and they're charged \$75 in fees for that loan. So they write a post-dated check for \$500. The check is post-dated to the date of the borrower's next paycheck, so if they get paid every two weeks, that's how long they have to pay back the loan, hence the name. And that's a lump sum payment of \$500 due in two weeks. The average borrower makes about \$30,000 per year, so their bi-weekly paycheck would be somewhere around, let's say, \$1,000. That means that 50 percent of their next paycheck would be consumed by paying this loan off, 50 percent. Now, for most borrowers this isn't affordable, but the lender has a post-dated check, they're going to cash it on that day regardless. So the borrower is in a tight spot. So then what happens is the borrower will go back into the payday loan store and take out another \$425, plus the \$75 in fees and post-date another check for two weeks from that date. This is called loan churn and it's how too many Nebraskans end up getting sucked into the cycle of debt. Now, if you calculate out the profit over the course of a year with this happening, the lender ends up profiting 461 percent from that borrower. Now this is part of the problem that LB1105 is trying to fix. Borrowers clearly need more time to pay their loans off. I think that's something that we can all generally agree on. Now by changing the law from a maximum of 34 days to a minimum of 34 days, the loan churn is cut in half for many borrowers and their time to repay doubles. The Legislature has had many, many conversations about payday lending reform over the last decade. And just less than a year ago I was here, as you all remember, introducing LB194, a bipartisan compromise legislation to prevent borrower abusers by enacting reasonable consumer protections while maintaining consumer access to small dollar loans. Now I'm sure you also recall at that hearing--not for you, I think, Senator Harr, this is your first year on the committee--there were a dozen or more Nebraskans, service members, we had mothers, we had families who took their time out of the day to share their stories with this committee. Kids came and testified about their parents' experience about how that financial stress impacted their families. A senior citizen came and talked about how the loss of Social Security income after her husband died left her unable to make ends meet and how a payday loan of \$500 quickly turned into thousands of dollars of debt. A young employee of a bank came and talked about being unable to afford medication and how it took him months to pay the money back. It cost him \$525 to borrow \$500. A woman came and testified that one \$500 loan for new tires on her car cost her more than \$10,000 over the eight years it took her to finally repay it. Those are just a few of the stories, but there are literally thousands more out there about people who have been having trouble with this specific payday lending industry. Now there are too many Nebraskans in every corner of the state, rural and urban communities, low- and middle-income alike, who have been so negatively impacted by the usury of payday lenders who profit off the backs of people in tough financial situations at a rate of 461 percent annual interest. Now I can't put this issue any more simply than this. This is usury that is protected in state law and we've had this conversation. This problem that is catching these thousands of Nebraskans in a cycle of debt is a problem of our own creation and I believe we have to fix it. A few weeks ago there was also debate on the floor, LB384, which would have raised interest on installment loans from 21 percent to 29 percent. That bill was IPPed. But here

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

Banking, Commerce and Insurance Committee
February 05, 2018

we're talking about an interest rate of 461 percent. So my question is, do you think that's too high, too? LB1105 for one reason...I introduced it for one reason and one reason only. We need to keep talking about the payday lending reform. I have every intention of pushing this issue forward until something is done about it. LB1105 isn't a perfect solution to this problem, it's just not. I don't like it. And the lenders certainly won't like it, since this one, unlike LB194, actually will decimate their industry. But we have to keep talking about a way to fix this, especially for consumers. Now I've said this before, this is not going to be the last time I say this, it is not my intention nor will it ever be to put people out of business. But I do believe that we were elected and all of us were elected in the same way, from our constituents, that we need to balance that concern with the very real issues that borrowers are facing. And that's what I'm asking the committee to do here. So I want to thank you, because we've been having conversations about this issue. And I want to thank you for being so open minded about this, because clearly there's something that needs to be done. And I know that we've been having this conversation because people are open minded to making sure we do something. With that, I'd be happy to answer any questions. [LB1105]

SENATOR LINDSTROM: Thank you, Senator Vargas. Thank you for reminding me of LB384 and the IPP motion on that. Appreciate it. With that, any questions from the committee? Seeing none, thank you. [LB1105]

SENATOR VARGAS: Thank you very much. [LB1105]

SENATOR LINDSTROM: We'll now move to support of LB1105. Good afternoon. [LB1105]

JULIA TSE: (Exhibit 1) Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Julia Tse, J-u-l-i-a T-s-e, and I'm here on behalf of Voices for Children in Nebraska. We are here today because we believe that children do better when their families are thriving economically, and research shows that children's outcomes are in fact linked to family income. A systemic approach to easing the impact of poverty on children would address their immediate needs, while also building up financial stability and savings among families. Voices for Children in Nebraska supports LB1105 because it takes a first step in protecting Nebraskans from a loan product that forces families deeper into poverty and endless cycles of debt. With some of the highest allowable loan rates in the nation, payday lending laws currently hurt families and drain money from local communities. The consequences of these policies are most acutely experienced in our most high poverty neighborhoods, as many storefronts tend to be concentrated in these areas. We need to work to ensure that families are empowered to work towards investing in their children's futures. At the same time, we also need to ensure that financial institutions operating in Nebraska are serving consumers in a way that is ethical and mutually beneficial. Nebraska can't afford inaction in policies that trap families in a

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

Banking, Commerce and Insurance Committee
February 05, 2018

cycle of debt. New child development research links parental unsecured debt to poor socioemotional development in children. We must work towards commonsense policy that are responsible and based on a borrower's ability to repay, instead of a system that diverts family resources and attention away from positive investments in children. A recent AARP survey showed extremely strong public support for payday lending reform in Nebraska. Of the 950 Nebraskans surveyed, 77 percent were in support of laws that would cap an APR at 36 percent and 72 percent agreed that monthly fees should be an affordable share of the borrower's monthly income. We are supportive of the intent of LB1105 in reviving a serious discussion about this issue, but we would also urge the committee to consider additional protections. The extension of a loan to a minimum of 34 days ensures that borrowers can have more time to repay, but we would also recommend policies that reduce churn by ensuring that payments and fees are proportional to a borrower's income without having to take out an additional loan. We would also recommend requiring that payments be affordable and incremental, while limiting the allowable fees and charges to be a reasonable share of the size of the loan. Secondly, we would recommend a maximum loan term of 45 days to align the payday lending industry in Nebraska with the recent federal final rule that passed through the CFPB. When enacted, this rule would put in place sensible protections for consumers, including a requirement that lenders first figure out whether a borrower is able to repay this loan without taking out an additional loan. And it also sets limitations on the number of loans that a borrower can take out with a single lender. Finally, we would recommend the closure of the CSO loophole, which would ensure that payday lenders do not migrate to another area of state law. We've seen this happen in other states where lenders become licensed as brokers of loans through the CSO act, which was originally written in order to protect consumers so that they can repair and improve their credit. Currently, CSOs are regulated by the Secretary of State and not the Department of Banking and Finance, which we view as a problem because the frequency of noncompliance found in payday lenders is an extreme outlier when compared to other financial institutions. In closing, Nebraska still has a crucial role to play in protecting its residents from harmful lending practices, and meaningful reform must address the endless cycle of debt. Sixteen jurisdictions have prevented short-term lending and more than half of all states have capped interest rates on longer term loans. It's clear that Nebraskans understand the need for payday lending reform. We all benefit when more Nebraska families can get ahead and invest in our children. We thank Senator Vargas for his continued leadership on this issue and the committee for their time and attention on this issue. Thank you. [LB1105]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you. [LB1105]

JULIA TSE: Thank you. [LB1105]

SENATOR LINDSTROM: Next proponent. [LB1105]

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

Banking, Commerce and Insurance Committee
February 05, 2018

JAMES GODDARD: (Exhibit 2) Good afternoon. My name is James Goddard, that's J-a-m-e-s G-o-d-d-a-r-d, and I'm the director of the Economic Justice and Healthcare Access programs at Nebraska Appleseed. Despite working hard, many Nebraskans struggle to make ends meet and some turn to payday loans like the folks this committee has heard from in the past. What's being passed around right now is a transcript from the proponents from last session's LB194, just to refresh the committee's memory on the concerns shared by Nebraskans about payday lending. In Nebraska, payday loans are made for a flat fee of about \$15 per \$100 loan and are due back during the next pay period in one lump sum. As has been mentioned for the average borrower who makes about \$30,000 this means repaying one-third of their paycheck in a lump sum within a short period of time, 34 days or less. Many borrowers struggle to pay this much in a short period of time and pay the rest of their bills. This is why 80 percent of borrowers take out a new loan within two weeks of their previous loan and the average borrower ends up in debt for five to six months. To learn more about borrowers we conducted a survey in a focus group in Nebraska, a survey in Lincoln, and a focus group in Norfolk. This helped confirm a number of things, including that borrowers say they simply need more time to repay the loans, that the loan period is just too short in duration. Out of the 220 surveyed respondents, 40 percent indicated they did not have enough time to repay their loan and meet their other expenses. LB1105 would attempt to address this issue by changing the maximum number of days a loan is outstanding to a minimum number of days. Specifically, loans could not be due in fewer than 34 days. This change is intended to help people have a more reasonable amount of time to repay a loan, something that borrowers have indicated would help them. With that, I'll conclude and answer any questions if I can. [LB1105]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Seeing none. [LB1105]

JAMES GODDARD: Thank you. [LB1105]

SENATOR LINDSTROM: (Exhibits 3, 4) Next proponent. Seeing none, I have two letters in support: Michelle Zych with Women's Fund of Omaha; and Connie Benjamin, with AARP of Nebraska. We will now move to opponents of the bill. Good afternoon. [LB1105]

BRAD HILL: Good afternoon, Chairman. Senators, my name is Brad Hill, B-r-a-d H-i-l-l, I'm the president of Nebraska Financial Services Association. We're the organization that represents payday lenders and check cashers in the state of Nebraska. I'm also an employee of MM Finance, headquartered in Bellevue. We have nine stores in Nebraska. And I'm here today to be in opposition to this bill. It seems arbitrary. Thirty-four days is not good, but thirty-five days is good? There's a minimum term. There's no maximum term. Are we supposed to hold checks into perpetuity? Senator Vargas on one hand says he doesn't want to put us out of the business, but

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

Banking, Commerce and Insurance Committee
February 05, 2018

then on the other hand he says this bill would put us out of business, so I guess I'm a little confused by this legislation, to be quite honest with you. Our product is a choice that a large number of Nebraskans like. They vote with their feet, they keep coming in. No one forces them to, so I don't see the need for this legislation. Thank you. [LB1105]

SENATOR LINDSTROM: Thank you, Mr. Hill. Any questions? Senator Schumacher. [LB1105]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. The recurring theme behind this kind of legislation seems to be that after it's all said and done the interest rate is like 400 percent or some very, very high level due to the fees and the churning. And once trapped in the system people find it very hard to get out. And we've been down this road now for several years. What can you suggest we do to fix the problem without doing something so radical as would put you or a large number of folks in your business out of business? Four hundred and some percent is pretty high. [LB1105]

BRAD HILL: Well, I think it's a little misleading. It's \$15 per \$100. It's a two-week product or a 30-day product. But that being said, I think the senators know that there's...we're welcome to negotiations with Senator Vargas. We're open to negotiations. We've offered a plan of our own, so we're ready and able to sit down and talk about it. [LB1105]

SENATOR SCHUMACHER: And the plan of your own, how is that comparatively advantageous to whatever we've heard so far? [LB1105]

BRAD HILL: Well, it's more of an installment loan proposal, to where it would be a longer term of six months and a lower APR, which seems to be a concern to people. [LB1105]

SENATOR SCHUMACHER: Has that been reduced to writing at all? [LB1105]

BRAD HILL: Yes. [LB1105]

SENATOR SCHUMACHER: Thank you. [LB1105]

SENATOR LINDSTROM: Senator McCollister. [LB1105]

SENATOR MCCOLLISTER: Welcome, Mr. Hill. [LB1105]

BRAD HILL: Thank you, Senator. [LB1105]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR McCOLLISTER: The bill that we heard last year, Senator Vargas' bill, there have been three or four iterations or amendments to that bill and the discussions have not been fruitful yet so far. Is that correct? [LB1105]

BRAD HILL: I would say as of today that's accurate. [LB1105]

SENATOR McCOLLISTER: The amendment that Senator Vargas brought earlier this year you told me was even more stringent than the Colorado legislation. Is that correct? [LB1105]

BRAD HILL: That's correct. [LB1105]

SENATOR McCOLLISTER: Has anything happened so far that would put Nebraska in a situation of being a little more generous than Colorado that would make a significant difference in payday lending in the state? [LB1105]

BRAD HILL: Well, Senator Vargas made a proposal a few days ago, but I don't think it moved the needle, no. [LB1105]

SENATOR McCOLLISTER: Is it more generous than Colorado? [LB1105]

BRAD HILL: No. It's not as generous as the bill last year, from our point of view. [LB1105]

SENATOR McCOLLISTER: Really? [LB1105]

BRAD HILL: Yes. [LB1105]

SENATOR McCOLLISTER: What factors made that the case? [LB1105]

BRAD HILL: Well, I really came prepared to testify today on (LB)1105. I certainly can have that conversation, but I want to be more prepared if we go into that. [LB1105]

SENATOR McCOLLISTER: Okay. Thank you very much. [LB1105]

SENATOR LINDSTROM: Any other questions? Seeing none, thank you, Mr. Hill. [LB1105]

BRAD HILL: Okay. [LB1105]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR LINDSTROM: Next opponent. Good afternoon. [LB1105]

PAUL BENCKER, SR.: Good afternoon. My name is Paul Bencker, Sr., it's P-a-u-l B-e-n-c-k-e-r, S-r. I just want to tell you a little bit about that, and I was here last year and talked to you guys about it. I'm a mom and pop store. I have two stores. The bill that he's trying to modify would totally shut us down. It would me, personally. There's been no needle moved at all. Basically, 80 percent of my clientele does not pay every two weeks, so that fact is wrong. I want to stress that with you. I know most all my customers, I can tell you where they work, what they do, they know my family, they know everything. It doesn't happen. Most everybody...80 percent at my store get 30 days at least, so the interest rate isn't that high, but we do charge \$15 every \$100. But one thing that everybody is forgetting or what Mr. Vargas is forgetting, the credit of our clientele is not the most perfect clientele. Most of our customers probably have a credit rating of below 600. They've got garnishments, they've got child support, they got liens, they have other means. We're not causing them to keep cycling. You have to come in, get one loan, and then pay it off. I don't solicit you. It's up to you if you rewrite or if you don't, so it's not like we're getting them in a cycle of debt. They have medical bills, they have dental bills, they have rent, they have insurance, they have everything just like everybody does. So saying that we're making them a cycle of debt, that's totally wrong. I have my own debt. I pay my own stuff. I'm just kind of telling you that fact. So what he's saying is not always true. So everybody has an opportunity, you and me both. I probably have three, four, five credit cards. So the cycle of debt is on me, how I pay everything. So I just want to stress that with you and that...and remember this, 80 percent of my clientele are over 30 days payout, they're not at 14 days and they're not the most credit people that you would want to write. If you were at Bank of the West or any bank...local bank, they're not going to touch these people. But they're kind of like my friends now. We became friendly. They know my family, my kids, everything that they know they know about me and I know about them a lot. But my store is a lot more personal than other people, because we're locally owned. But the rich are getting richer? That's not right. We just make a basic living, we do a good service for people. And that's what I wanted to tell you guys. That's my story, not anybody else's story. And I've been around for almost 16 years, so that's a fact for you guys to know me more. And I'll end. [LB1105]

SENATOR LINDSTROM: Thank you. Senator Baker. [LB1105]

SENATOR BAKER: Thank you. Help me understand. You indicated most of your clients, customers get something more than 30 days. Is that what you said? [LB1105]

PAUL BENCKER, SR.: The statute says you can hold them up to 34 days. [LB1105]

SENATOR BAKER: Right. And most of yours are over 30 days? [LB1105]

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

Banking, Commerce and Insurance Committee
February 05, 2018

PAUL BENCKER, SR.: They're about 30 to 32, most of them. Eighty percent of my clientele by the numbers when I have a computer report says. [LB1105]

SENATOR BAKER: I just want to understand more. What revenue do you lose if Senator Vargas' bill passes? What revenue do you lose? [LB1105]

PAUL BENCKER, SR.: I will tell you the serious fact. We would drop 66 percent. [LB1105]

SENATOR BAKER: But tell me, specifically, how that works. [LB1105]

PAUL BENCKER, SR.: Okay, I'm going to use some numbers from my store, just so you know, just roughly. Say we do \$10,000 a month in fees. If we change we would go down to about \$3,000, \$3,300 a month in fees. That won't even pay the rent, the utilities, the phone, insurance or anything before you get to payroll and benefits for your staff. So it would drop us, my store, personally, about 60 percent. [LB1105]

SENATOR BAKER: Again, maybe I'm being dense here, but how? Where does that revenue loss occur? In the length of the loan, in interest, in fees? [LB1105]

PAUL BENCKER, SR.: It's the interest rate. The interest rate they're talking about roughly \$3.65 per \$100. So you want to go roughly from \$15 every \$100 down to like \$3.50 every \$100. [LB1105]

SENATOR BAKER: Okay, so interest rates will help. [LB1105]

PAUL BENCKER, SR.: That's how. Your fees will drop from, say, \$72 or \$75 a month down to roughly \$15, \$16, \$17. How can you make a living on that? [LB1105]

SENATOR BAKER: Okay. So the 15 percent, is that an annual interest rate or is that each month? [LB1105]

_____: It's \$15. [LB1105]

PAUL BENCKER, SR.: \$15. [LB1105]

SENATOR BAKER: Fifteen dollars is every month. Okay. [LB1105]

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

Banking, Commerce and Insurance Committee
February 05, 2018

PAUL BENCKER, SR.: Correct, or however your transaction is set up. [LB1105]

SENATOR BAKER: Okay. All right. Thank you. [LB1105]

SENATOR LINDSTROM: Senator McCollister. [LB1105]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Okay, so we've established \$15 a month per \$100. I come in and borrow \$300 from you and I pay you \$45 for that privilege. I write you a check then for the amount I borrowed, less the \$45, correct? [LB1105]

PAUL BENCKER, SR.: Well, it would be like \$345 roughly, depends, give or take how the charge is set up, yes. [LB1105]

SENATOR McCOLLISTER: Okay, I see what you're saying. How about origination fees? [LB1105]

PAUL BENCKER, SR.: There's no fees, no credit check, no nothing. [LB1105]

SENATOR McCOLLISTER: And the normal payment period is 30 days? [LB1105]

PAUL BENCKER, SR.: Well, the state says you can hold it up to 34 days. [LB1105]

SENATOR McCOLLISTER: Thirty-four days. Okay, I come in on that 35th day. What happens? [LB1105]

PAUL BENCKER, SR.: Well, you can't. Otherwise, you'd get a violation by the state. So it's either they...you have to have it in the bank before that and stamped. [LB1105]

SENATOR McCOLLISTER: You've already cashed the check and it bounces. What happens to you then? [LB1105]

PAUL BENCKER, SR.: We get a fee from our bank and then we send a letter out and we charge the customer \$15. That's what the state regulation is. [LB1105]

SENATOR McCOLLISTER: Are your bad debt losses significant? [LB1105]

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

Banking, Commerce and Insurance Committee
February 05, 2018

PAUL BENCKER, SR.: Yes. Our store averages over 9 to 10 percent monthly, at least. Some months are worse, some are less. [LB1105]

SENATOR McCOLLISTER: And how much of that money do you ultimately lose because you just can't recover it? [LB1105]

PAUL BENCKER, SR.: About 37 to 38 percent you just give away, always. That's just the way it is, because there's bankruptcies and other liens and stuff that always are in front of you. [LB1105]

SENATOR McCOLLISTER: Wow. Okay, thank you. [LB1105]

SENATOR LINDSTROM: But first you could access the checking account, correct? You'd have access to their cash funds? [LB1105]

PAUL BENCKER, SR.: Well, you have a returned NSF in front of you and it's up to you how you collect it. You would have to go to the bank personally and try to collect it if there's funds there. I don't ACH or anything like that. I manually drive in my car to each bank whenever I have a bad check. That's how I personally do it. Other corporations are different though. [LB1105]

SENATOR LINDSTROM: Senator Williams. [LB1105]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. Thank you for being here again this year. A couple of questions, just so people understand something here. When you're making these loans to people, whose money is that that you're loaning? [LB1105]

PAUL BENCKER, SR.: My corporation but, personally, it's mine. My money. [LB1105]

SENATOR WILLIAMS: It's your money, right? And so we're trying to tell you how to handle your money. Another question that has been brought up to me that's kind of been a misunderstanding on the part of some people. Do you loan money or do you create these kind of loans to active duty military? [LB1105]

PAUL BENCKER, SR.: You have to...you can if you want to. There's a thing...you have to go out and look at the military site and then they'd get a lower interest loan. I don't actually have any at my store right now, because no one has ever put "yes" as of right now in my store. I'm not in Bellevue, so I don't get... [LB1105]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR WILLIAMS: So active duty military is protected under federal law, correct? [LB1105]

PAUL BENCKER, SR.: Correct. [LB1105]

SENATOR WILLIAMS: So the restrictions, whatever we put them here, they're much lower under federal law. Is that correct? [LB1105]

PAUL BENCKER, SR.: Yes. When they're on active duty, yes. [LB1105]

SENATOR WILLIAMS: You mentioned I think in your testimony that you know most of your customers, as opposed to a larger store that may not have that same ability. What happens if you close? What happens to those customers? [LB1105]

PAUL BENCKER, SR.: I don't know. There's not a place for them. [LB1105]

SENATOR WILLIAMS: You said they won't qualify for bank financing, so what does happen to them? [LB1105]

PAUL BENCKER, SR.: They're probably going to go to pawn shops. They're probably going to borrow more from...try to borrow from relatives. I don't know. They're going to probably be in real problems. I don't know where they're going to go. [LB1105]

SENATOR WILLIAMS: And just to point something out, you are regulated by the Department of Banking and Finance. Are any of those other things that you mentioned, pawn shops, individual loans, loan sharks, are they regulated by the Department of Banking and Finance? [LB1105]

PAUL BENCKER, SR.: No, they're not. [LB1105]

SENATOR WILLIAMS: Thank you. [LB1105]

SENATOR LINDSTROM: Any other questions from the committee? Seeing none, thank you. [LB1105]

PAUL BENCKER, SR.: I just want to thank you for your time. [LB1105]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR LINDSTROM: Thank you for your testimony. Next opponent. Good afternoon.
[LB1105]

JUSTIN BRADY: Senator Lindstrom and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y, I appear before you today as the registered lobbyist for Advance America in opposition to this bill. The main reason I wanted to come up here was there were some questions, Senator McCollister, you had one, Senator Schumacher, you had one, on there was talk about negotiations and an offer. And I just want...figure everybody is here, both the committee, both sides, and I just want everybody to understand. The offer that was made from the industry was we start with the Colorado model which you all heard about last year, which put about 60 percent of the storefronts out of business. We said, okay, let's start with the Colorado model and make three changes to it. You make the origination fee nonrefundable, where Colorado the attorney general ruled it was refundable. You make the loan amount up to a maximum of \$1,000 instead of \$500. And you do a ability to pay piece like as in Senator Vargas' proposal from last year and instead of the 5 percent, you make it 9 percent. And the industry said, we can live with that. That will put stores out of business in Nebraska, but the industry said, we've heard it. We understand that change needs to happen. And they came forward and made that offer. That offer...I heard back from Senator Vargas, not an answer to that offer. I heard an offer of, well, how about we go with my bill from last year with a \$10 fee. That was unacceptable to the industry. But I want you all to understand that the industry does hear you. They've heard the proponents of these pieces of legislation and they've heard you all from this committee that they have to come with something. And I really think they have come with something. If I understand it right, that...Colorado is at about \$108 if you want to talk numbers, at about \$108. You take this proposal, which is right around \$200. So we're going from \$480 in Nebraska offering \$200. We know Colorado puts half the people or 60 percent storefronts out of business. They're willing to come to that point to understand that you all have asked for that. And I say you all as a collective group, the industry, the groups...consumer groups. So I just want everybody to understand that, yes, it has been put out there, Senator. And we aren't willing...we aren't saying, no. We aren't going to continue not to talk. We understand that's how we get somewhere. But I want you all to understand that we are trying and they are coming to the table with, what I'd say, are very reasonable ideas and offers. So with that, I'd try to answer any questions. [LB1105]

SENATOR LINDSTROM: Thank you, Mr. Brady. Senator Williams. [LB1105]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. And thank you, Mr. Brady, for being here. Just to help me remember some numbers that we have talked about over this period of time, and you mentioned those store closures in Colorado. And Advance America, your direct client, I think has stores in Colorado along with Nebraska and certainly other states. Do you remember

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

Banking, Commerce and Insurance Committee
February 05, 2018

about how many stores Advanced America had in Colorado before the legislation and then after the legislation? [LB1105]

JUSTIN BRADY: I don't recall the exact number they had. [LB1105]

SENATOR WILLIAMS: Would it have been in a conversation we had with your client this morning... [LB1105]

JUSTIN BRADY: Yes. [LB1105]

SENATOR WILLIAMS: ...he may have suggested that they had 80 to 90 stores and now they have about 20? [LB1105]

JUSTIN BRADY: Yes, she did. [LB1105]

SENATOR WILLIAMS: In that conversation, too, I think the number was they currently have 18 in Nebraska? I think that's right. [LB1105]

JUSTIN BRADY: Yes, that's correct. [LB1105]

SENATOR WILLIAMS: And how many stores did she say of those 18 would close if we adopted the legislation proposed as proposed now by Senator Vargas? [LB1105]

JUSTIN BRADY: They would all close. [LB1105]

SENATOR WILLIAMS: Thank you. [LB1105]

SENATOR LINDSTROM: Senator Schumacher. [LB1105]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. You've been working the halls of the Capitol for many years. Right? [LB1105]

JUSTIN BRADY: Yes. [LB1105]

SENATOR SCHUMACHER: Any time before have you seen a proposal that would decimate a large percentage of an industry? [LB1105]

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

Banking, Commerce and Insurance Committee
February 05, 2018

JUSTIN BRADY: No. Well, I've seen the proposals, but move forward, no. [LB1105]

SENATOR SCHUMACHER: Well, I mean, if you can recall, what are some of the other proposals that would just do away with an industry? [LB1105]

JUSTIN BRADY: Oh, there's been some proposals that would do away with the alcohol industry, the gambling industry. But again, hanging on your word "proposal," Senator. But actually, as far as something that was moving or that would be advanced by the Legislature and sent to the Governor, no, I don't recall there being a push to say, let's eliminate X percent of an industry. [LB1105]

SENATOR SCHUMACHER: In working with the payday lending industry we're dealing with the question of how do you get credit to people who otherwise would not find any other lender? Have you run across anything which would be a solution to that problem? Because what we're asking is for private individuals to lend their money in a way that no other private individual would and then trying to control the rates that they charge. Have you run across anything that would be a solution to the problem of how you get credit--private credit, since the state doesn't have any money--private credit to people who in the free market cannot otherwise get it except through payday lending? [LB1105]

JUSTIN BRADY: There are two solutions I'm aware of. One would be going to the Internet, which is not regulated by our Department of Banking. The other one would be going to the back alleys, which again is not regulated. It's regulated, just not by the Department of Banking. So those would be the two entities that I'm aware of that are available, but they aren't...I wouldn't say they're viable options for the citizens of Nebraska for this body or for any body to encourage to go down those two avenues of unregulated lender. [LB1105]

SENATOR SCHUMACHER: You got something against "Guido?" [LB1105]

JUSTIN BRADY: No, not today. [LB1105]

SENATOR SCHUMACHER: Thank you. [LB1105]

SENATOR LINDSTROM: Thank you. Senator McCollister. [LB1105]

SENATOR MCCOLLISTER: Thank you, Senator Lindstrom. Just to make sure I heard you correctly, Mr. Brady, any of the bills proposed lately, they would bring into payday lending those on-line lenders? [LB1105]

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

Banking, Commerce and Insurance Committee
February 05, 2018

JUSTIN BRADY: No. We can't...getting to the on-line lenders is more, as I understand it, a federal or even an international, because you've got some of them that sit off...out of this country. By having it...if you eliminate the industry--I guess the argument I was trying to make--is if you eliminate the industry the only place they can go is those on-line lenders or the back alleys. If we have a regulated industry, then at least consumers in Nebraska have the option to go somewhere where there is a regulatory environment to get lending, as opposed to only have to go to the unregulated. The unregulated will stay there no matter what you do. They will exist and, unfortunately, continue to try to take advantage of consumers all across the country, not just in Nebraska. Even states that have prohibitive payday lending there is Internet and back alley lending going on. [LB1105]

SENATOR McCOLLISTER: Typically with higher rates, I suppose? [LB1105]

JUSTIN BRADY: Yes. [LB1105]

SENATOR LINDSTROM: Thank you, Mr. Brady. [LB1105]

JUSTIN BRADY: You bet. [LB1105]

SENATOR LINDSTROM: Any other questions? Seeing none, thank you, Mr. Brady. [LB1105]

JUSTIN BRADY: Thank you. [LB1105]

SENATOR LINDSTROM: Next opponent. Seeing none, we'll now move to neutral testifiers. Seeing none, we would invite Senator Vargas back to close. [LB1105]

SENATOR VARGAS: Thank you very much, Chairman Lindstrom and Vice Chairman Williams and members of the committee. Let's just start off with, I want to thank you all. We've been having this conversation for some time and, again, this has preceded me and preceded us. So I want to clarify a few things, because I'm not a big fan of misinformation. I really love facts as much as possible. The first, if we want to figure out where we started off here, when we first started off with LB194 in its original iteration we were looking at an experienced APR of around 110 percent to the borrower. And where we moved with many of these amendments and through back and forth and through feedback was to 140 to 142 percent experienced APR. What we've heard is that from the data and from statistics and from other research that what this feels like...the current payday loan feels like 460 percent. So I ask you, is that too high? I mean, I know I put this out there a lot, but that's the real question we're asking ourselves. Is that too high? Because the intention of these bills isn't to then be being lengthened out for the year, but

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

Banking, Commerce and Insurance Committee
February 05, 2018

they happen. And that's what it feels like and that's why people are asking for reform. So I'm asking, that's what we're talking about here. The second piece I want to clarify is more of a response to one of the lenders around the 80 percent of my client base doesn't pay...pays...their loan goes to 32 days...over 32 days. Well, if we were to pass this, this would actually help them out because it seems like the problem with that scenario is that people aren't able to pay in a short amount of time. Most of their clients are not able to pay within that time frame and so they would actually benefit and it would be better for both the borrower and the lender if the terms were lengthened out a little bit more so that they can afford it. That's what I'm hearing from this 80 percent. The current proposal...and we'll clarify this because this is important. I'm going to show you articles that clarify that the APR, as interpreted from the lawmakers in Colorado, is not more restrictive than the amendments we're bringing forward. I will get you that article and we can sit down and talk about it. It's not more restrictive. Ours is actually more permissive than theirs. And so here is a little bit of the crux of the conversations. I agree with Mr. Brady. We've had conversations and I've actually appreciated some of the back and forth that we have. And he talked you through one that our model is indeed around 140 percent, which again I think is very reasonable when we're talking about percentage rate for a loan that's making sure that people are provided access to credit and not putting them in a cycle of debt and they're at the 461 percent. And the Colorado model that they're talking about, they're putting at somewhere around 180 percent in their calculations. But it isn't the calculations that they put out, it's lower than that. But they're saying it's 181 percent, so they want to start off with 181 percent. According to the Colorado model, what they want to do is they want to put an initiation...the initiation fee in the Colorado model is \$75 and is refundable. Now think about what we heard earlier. A \$500 loan right now in Nebraska they get \$75. And so they're proposing that on a \$500 loan they get \$75 under the...starting off with the Colorado model. That is nonnegotiable. So we're talking about the same amount up front. That's not entirely different. It sounds different, but it's not entirely different, those two numbers. Now the part that is different, which I really appreciate, is this conversation about the length of the loan. And what they're talking about is, let's make it an installment loan. We've had that conversation. It's a good conversation about lengthening it out. They're talking about an installment loan, six-month minimum, like Colorado, which the model that we proposed was a lengthened out loan, not an installment loan with a set number of months, but based on the ability to pay, based on your annual income, actually your net monthly income, which would make sure that's affordable. The six months doesn't actually take in affordability, this installment loan, like Colorado's, which is why we're not doing Colorado's model. All it does is really take into account that it's six months and that's the minimum and we're lengthening out the loan. So that piece is different. Increasing the principal. What we find is we've had some conversations about increasing the principal, so increasing the principal \$500 to \$1,000 obviously would increase money to the lenders. So we're keeping the \$75 the same and we're just instead of right off the front in the current model in Nebraska is now they're proposing a \$75 initiation fee, nonrefundable. We're increasing it from a \$500 loan to \$1,000. And the part that is a change in addition to the installment loan is they're talking about ability to pay. Now the

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

Banking, Commerce and Insurance Committee
February 05, 2018

research has shown, from Pew and from other states, that 5 percent of your monthly net income is this sweet spot of affordability, because the problem is people can't pay them back in time. Two weeks, they have to pay back half their check. So 5 percent is the affordability. When you're doubling the amount that somebody can pay and you're doubling the principal of the loan, the size of the loan, okay, we're making potentially a loan that is going to be better than what we currently have potentially, but not very marginally better. And it's going to be lengthened out for six months. And we would like the ability to pay to be much, much lower, which is around what research tells us. So there is some negotiation that's going on. However, the terms would still put this in the 300 percent APR, 400 percent. That's a problem that we have. We want to make sure to bring this down to something that is workable for families and consumers. And, again, I ask you again, is 460 percent APR the types of the loans that again that we put on the books that we want to continue to leave out there and not review when there's a good reason? The loans weren't intended to be churned. And we're seeing and we've heard from a lender that they're not being paid back in two weeks. The original intention was for this to be a two-week loan. It's not happening. So let's do everything that we can to make sure that we're putting forward an actual legislation that is protecting consumers as much as we can, providing funding for the lenders, actual revenue for the lenders, okay, and is making sure that we're keeping in business. That's what we're bringing forward. So I wanted to make sure to address some of those, because I didn't want them to just sit there because I want data and real information to be out there as much as possible. We're talking about 142 percent interest rate. We are talking about Colorado's not being actually more permissive than this actual legislation. We're talking about ensuring that this is affordable. And just for the active duty military, I'll remind you from last year we had a JAG lawyer came that had been representing individuals that some lenders are actually encouraging. I'm not saying this lender, obviously, but there's lenders that are encouraging lending to service members at higher rates, not the rate that's protected. And again, this is a reminder. Federally, this is something that you cannot give out to service members, right? If it's...the product is really meeting the needs of the consumer, why is this not being provided to service members? So I want to thank you. We've had this conversation. I will continue to have it. But I wanted to make sure on the record that these things are addressed, because there are...I would love to see more of these facts that we're hearing. And we've asked for them for a year now on revenue. And I appreciate Senator Baker asking these questions, because if we're not hearing the actual facts on the bottom line on how people are making some of the revenue, to better understand what is going to be more feasible, it's sometimes very hard to negotiate around that. However, we're operating off of national data. And as much of the data that we're getting, and what works in other states, models that have worked to then make sure people have credit to the industry, but it also is not going to be predatory or taking advantage of the consumer. And that's what we're talking about. And so I'm more than happy to have conversations more about the actual facts, but I wanted to make sure to right some of those while we're here on the record. And I want to thank you and, yeah, thank you for having this conversation, members. [LB1105]

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

Banking, Commerce and Insurance Committee
February 05, 2018

SENATOR LINDSTROM: Thank you, Senator Vargas. Any questions from the committee? Seeing none, thank you, Senator Vargas. And that will close the hearing on LB1105. And that will end the hearings for the day. [LB1105]