

JANUARY 27, 2005

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FLOOR DEBATE

January 27, 2005 LB 441, 707

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our acting chaplain this morning is Senator Wehrbein, from District 2. Senator Wehrbein.

SENATOR WEHRBEIN: (Prayer offered.)

SENATOR CUDABACK: Thank you, Senator Wehrbein, for doing that for us. We appreciate it. I call the sixteenth day of the Ninety-Ninth Legislature, First Session, to order. Senators, please check in. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Any corrections for the Journal, Mr. Clerk?

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Messages, reports, or announcements?

CLERK: Mr. President, your Committee on Agriculture reports LB 441 to General File, that report signed by Senator Kremer. I have a hearing notice from the Nebraska Retirement Systems Committee, signed by Senator Stuhr. Mr. President, the...received...the Clerk's Office has received reports from the Department of Administrative Services, the Auditor of Public Accounts, and the Health and Human Services Systems. Those reports are on file and available for member review. And finally, Mr. President, the lobby report is required by statute to be inserted in the Legislative Journal. That's all that I have. (Legislative Journal pages 375-376.)

SENATOR CUDABACK: Thank you, Mr. Clerk. First agenda item is a motion to withdraw. Mr. Clerk.

CLERK: Mr. President, Senator Cornett would move to withdraw LB 707.

SENATOR CUDABACK: Senator Cornett, you're recognized to open on your motion to withdraw.

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SENATOR CORNETT: I move to withdraw bill LB 707.

SENATOR CUDABACK: You've heard the motion by Senator Cornett to withdraw LB 707. Any discussion on that motion? There are no lights on. Did you wish to close, Senator? She waives...

SENATOR CORNETT: I waive to close.

SENATOR CUDABACK: She waives closing. It does require a majority of those voting. The question before the body is, shall LB 707 be withdrawn? All in favor of the motion vote aye; opposed, nay. Record please, Mr. Clerk.

CLERK: 28 ayes, 0 nays, Mr. President, on the motion to withdraw LB 707.

SENATOR CUDABACK: The motion was successful. LB 707 is withdrawn. We now go to General File, LB 118. Mr. Clerk.

CLERK: Mr. President, LB 118, a bill by Senator Cunningham. (Read title.) The bill was introduced on January 6, referred to the Banking Committee, advanced to General File. The bill was discussed yesterday, Mr. President. At this time, I have no amendments to the bill.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Cunningham, if you'd give us a quick review of what took place yesterday, please.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. This is a very simple bill, actually, dealing with an equipment dealer when they want to sell their business. And they give notice to the manufacturer, and the manufacturer needs to respond within 60 days if they do not want to renew the contract to the new owner. Basically, that's it. And they have to put it in writing, the reasons they do not want to renew the contract. It's agreed upon by both sides, the equipment dealers and the manufacturers. Quite a simple bill, and I would urge your support.

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SENATOR CUDABACK: Thank you, Senator Cunningham. At the review, we will now go on to discussion of advancement of LB 118. Open for discussion. Senator McDonald, followed by Senator Beutler.

SENATOR McDONALD: Mr. President and members of the body. I have a question for Senator Cudaback...or, excuse me, I'm sorry, Cunningham.

SENATOR CUDABACK: Senator Cunningham.

SENATOR CUNNINGHAM: Yes.

SENATOR CUDABACK: Thank you.

SENATOR CUNNINGHAM: Unless Senator Cudaback would like to answer it.

SENATOR CUDABACK: I'll pass.

SENATOR CUNNINGHAM: I might refer Senator Chambers' questions to you, Senator Cudaback.

SENATOR McDONALD: (Laugh) Senator Cunningham, this situation that you're talking about, I understand that the dealer that was going to purchase this property was in my district. Is that true?

SENATOR CUNNINGHAM: I believe that to be true, yes.

SENATOR McDONALD: And how was this all resolved? Did...was this...did this sale move forward? Or has it...was it not allowed, just because the dealership chose not to utilize the manufacturer?

SENATOR CUNNINGHAM: Well, as I understood it, it initially, I believe, was denied by the manufacturer. But I believe, with the passage of this bill, it will move forward. That's the way I understand it. Now, I'm not absolutely certain about that, Senator McDonald.

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SENATOR McDONALD: So was the business allowed to sell? Or is he still waiting?

SENATOR CUNNINGHAM: No, the business is still there, and they're still waiting.

SENATOR McDONALD: Oh, they're still waiting...

SENATOR CUNNINGHAM: Yes.

SENATOR McDONALD: ...for enactment of this legislation.

SENATOR CUNNINGHAM: Correct.

SENATOR McDONALD: Can we as a state pass this into law, and would it hold up in court? I'm concerned about that part of it. I think it's a great bill, and I support it wholeheartedly. That's my only concern. Can we force a manufacturer to do that? Do we have the power to do that?

SENATOR CUNNINGHAM: Well, I think we can, Senator McDonald. And I would tell you, the language for this bill was drawn up by the manufacturer, actually. So the manufacturers are in agreement with the bill. And it just makes them give reasonable...supply reasonable reason why they will not let the contract go on.

SENATOR McDONALD: Has this situation happened before, in these types of events? Is there any history behind this? Because I know that lots of our implement dealerships have gone out of business, whether they've been purchased by another company or not. But does the manufacturer...have they denied that in previous sales?

SENATOR CUNNINGHAM: Yes, I believe there's...I can't give you a lot of specifics, but I believe there is a lot of instances in other states. And if I'm not mistaken, I believe South Dakota has passed a much stricter law than this.

SENATOR McDONALD: So it is being done in other states, and it's been of help?

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SENATOR CUNNINGHAM: Yes. And I believe...and I don't know the specifics, again, but it's also being done in...with car dealers.

SENATOR McDONALD: Okay. So this...

SENATOR CUNNINGHAM: So car dealers have...

SENATOR McDONALD: ...is a bigger picture than just the manufacturers of the implement dealerships? We're looking at car dealers?

SENATOR CUNNINGHAM: Well, this only deals with implement dealers. Car dealers have their own statutes in place that are somewhat different.

SENATOR McDONALD: Okay. Well, I do support this endeavor of Senator Cunningham. I think that many times we look at our rural stability. We have to make sure that those businesses maintain their existence. And if a private owner wants to sell them, we certainly hope that there is a buyer. And that buyer needs to be able to sell the same type of manufacturing equipment that was there previously. We would certainly hate to lose our...I'm sure that they would hate to lose their business to South Dakota. And it appears that they have wanted them to maintain a dealership through South Dakota. So we need all the revenue that we can here in the state of Nebraska. We need all the economic development that we can sustain. And I do support your bill, Senator Cunningham. Thank you.

SENATOR CUDABACK: Thank you, Senator McDonald. On with discussion of advancement of LB 118. Senator Beutler, followed by Senator Chambers.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature. Senator Cunningham, I'd like to pick up, if I could, with the conversation we were having yesterday.

SENATOR CUDABACK: Senator Cunningham, would you yield?

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SENATOR CUNNINGHAM: Yes.

SENATOR BEUTLER: Again, with the view to discussing some things that may be potential weaknesses of the bill, to bring them to your attention and to see what...how you feel about them, and perhaps to discover some way of improving the bill, either through amendment or through your statements of intent on the floor, which then become a part of the legislative record and, as you know, are used by the court...may be used by the court to interpret language that is capable of being interpreted in more than one way. And as you know, lawyers usually discover a way that they can interpret things more than one way. I want to go back, again, to the question I asked you yesterday, to at least get a fuller statement of intent with regard to the matter, Senator. But just to remind the body a little bit, we're talking about a provision here where the supplier is required to approve or deny a request to transfer, within 60 days after receiving a written request from the dealer. The request also says, "shall" include certain types of information, reasonable financial information, personal background information, character references, and work histories. My question to you yesterday was, what if one of those categories was entirely left out? So fact number one, the request is in, a category is entirely left out, and the supplier makes no reply. Is that deemed to be approved in that instance, or not approved? Because the request was inadequate in terms of what it was to supply.

SENATOR CUNNINGHAM: Well, at least, my intention here would be that it would be on the back of the supplier at this point, if he got the request, if he wasn't happy with the information that was in the request, to respond and to ask for more information or clarification.

SENATOR BEUTLER: Okay. That's helpful. Let's say then that he does request additional information. Now, the original time line was 60 days. And it was 60 days after receiving the written request. Now, would it be your intention in this instance that if a request for additional information was made by the supplier, that a new 60-day period would run from the time that the dealer supplied the additional information?

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SENATOR CUNNINGHAM: I can see your...

SENATOR BEUTLER: Or should we put something in there about that possibility? Because that's a very...that's probably a very likely possibility, isn't it?

SENATOR CUNNINGHAM: Yes, I can see there would be a concern in that area. I would hate to get into the situation where the supplier would wait until close to the end of the 60 days to send back a request for more information, and then have it start all over again at that time. I'm not sure what the answer is. If...but there maybe could be another answer rather than just the way it is in the bill. But I would sure hate to have the time line start over again...

SENATOR BEUTLER: Okay.

SENATOR CUNNINGHAM: ...at the time of the request.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: Okay. Maybe we can take a look at that. I have a couple of other questions, Senator. But I think I'll begin them with a different...with a new time period. Thank you.

SENATOR CUNNINGHAM: Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Chambers, on the advancement.

SENATOR CHAMBERS: Mr. President, members of the Legislature, and friends all, including Senator Cunningham, this is a bill whose underlying purpose is one that I can readily agree with. I just want to be sure, to the extent that I can obtain an assurance, that when we have a similar set of circumstances, where you have Superman on one hand and Pee-wee Herman on the other, that we're going to help Pee-wee Herman. If the only time we're going to do this is if it's a dispute between Captain Marvel and Captain Marvel Jr., it doesn't sway me, because those

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two are able to battle on a relatively equal basis. There may be some disparity, but one is not so completely overmatched as is the case that I mentioned between Superman and Pee-wee Herman. That might be an overstatement itself, so let me carry some of my older colleagues here back to the days when we looked at comic books. And there would be a frail little fellow on the beach with this beautiful young lady, and the bully would always come by and kick sand in his face, and the little fellow was unable to protect the woman if she was menaced, nor to vindicate his own manhood, because he was weak and afraid. So he would send off to Charles Atlas a request for some information on an exercise program called dynamic tension, which is where you just tense up every muscle in your body, to the extent that you can, and make the ugliest face that you can. Well, people thought it was going to make them bigger and stronger, like Charles Atlas. But all it really did was taught them how to make uglier faces than everybody else, and you would frighten people in that way. But what I want to get to, with reference to my concerns on this bill, is that we have other sets of circumstances in this society where people are disadvantaged to a greater degree than happens in the situation Senator Cunningham is presenting us with. And those are the situations where I'm going to be very forceful and determined in advocating for those individuals, for those groups. I am not unwilling to listen and be persuaded by Senator Cunningham, listen to Senator Cunningham and be persuaded by him if he can accomplish that. But I do believe more language is being utilized in the bill as it's drafted than would be necessary to accomplish his purpose. The Speaker is looking at the macrocosm, the big picture. He deals not just globally, but universally, in the sense of the universe with all of those galaxies, all of those unmeasurable amounts of vast space. But a mere ordinary member of the Legislature, such as myself, who has to deal with the smaller things of life in the legislative process, will have to take a less ambitious approach. Whereas Senator Brashear, as Speaker, lays out the broad strategy, there do have to be ground troops, who slog through the mud and operate on a tactical or small-scale level to bring about success...

SENATOR CUDABACK: One minute.

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SENATOR CHAMBERS: ...to the ultimate strategy. So what I would like to do on this bill is maybe offer some language that could at least put it in shape to do what Senator Cunningham is trying to do. And after that is done, if he agrees to the amendment, I would then talk about these philosophical issues that I think nevertheless have to be discussed on this bill before it moves. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion. Senator Hudkins, followed by Senator Beutler.

SENATOR HUDKINS: Thank you, Mr. President and members of the body. Senator Cunningham, if I might ask you a question?

SENATOR CUDABACK: Would you yield, Senator Cunningham, to a question from Senator Hudkins?

SENATOR CUNNINGHAM: Yes, I would, thank you.

SENATOR HUDKINS: With the discussion that we have had so far today and yesterday, I don't know that I understand the bill. Let me tell you what I think it does. If you have "ABC" implement dealer in whatever town, and because of age or infirmness or whatever the reason, they want to sell their business and retire, if there is "XYZ" implement company that is willing to buy this one, there has to be approval, currently, from the manufacturer. Is that correct?

SENATOR CUNNINGHAM: Yes, that's correct.

SENATOR HUDKINS: And what your bill would do is to say that the manufacturer...right now they have to give permission. Is that right?

SENATOR CUNNINGHAM: Yes, that's right.

SENATOR HUDKINS: Okay. And your bill would say that if they don't give permission, there has to be a written reason why they don't give permission?

SENATOR CUNNINGHAM: Right. It allows...the equipment dealer

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that's trying to sell has to provide notice to the manufacturer that they want to sell. And they have to provide financial information and all reasonable information about the new buyer that the manufacturer looks at. And then, if they deny the new contract, if they're going to deny it, they just have to provide the reason why they're denying it. It just can't be "just because."

SENATOR HUDKINS: Just a blanket. All right. So if there is a dealer in, let's say, northeast Nebraska, that wants to retire, and there is another person also in northeast Nebraska, maybe 20 miles away, that wants to take over this dealership, but the manufacturer says, no, I want this dealership to go to South Dakota, is that allowed now?

SENATOR CUNNINGHAM: Yes, that's the way it would work right now.

SENATOR HUDKINS: It does work that way right now. All right. So perhaps nothing would change. The manufacturer would still have the ultimate say, wouldn't they?

SENATOR CUNNINGHAM: If it came right down to the end, it could become a court case, Senator Hudkins. That's what I would assume. But there would be valid reason. The manufacturer would have to at least have a valid reason for denying that claim. Like, in the case that I'm talking about, I have an implement dealer that's a very, very viable dealership. Someone wants to buy it because it's been very profitable. But they're not able to sell it. They've just finished a \$200,000 renovation of that dealership to do warranty work for the manufacturer, and now they can't sell their business.

SENATOR HUDKINS: Is there any way that the dealer that has done this renovation can recoup any of those expenses?

SENATOR CUNNINGHAM: Not to my knowledge.

SENATOR HUDKINS: So if the manufacturer says no, then they're just out?

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SENATOR CUNNINGHAM: Correct. I mean, the dealer could...I mean, he could continue as a business. But if he...in the case...say, if he's a John Deere dealership, if John Deere would not give him the contract, he couldn't sell John Deere tractors or machineries anymore. He couldn't do warranty work on John Deere equipment. He could still do other mechanical work and sell used equipment and all of those sorts of things. But it takes away from the value of that dealership when he can't continue as he was.

SENATOR HUDKINS: All right. Then based on what...and I did understand the bill, then, after all. But based on the...

SENATOR CUDABACK: One minute.

SENATOR HUDKINS: ...the discussion that we have had, I...and Senator Chambers, I don't have much time left, but I fail to see the correlation between Superman and Pee-wee Herman in the way you used it. I see what we're looking at is Pee-wee Herman, the implement dealer, is dealing with Superman, the manufacturer, and we should be in this to support this local dealer. After all, he's the one that brings in the revenue to the community. He provides the jobs to the local residents. And so I support your bill. But I was having trouble following some of the things that Senator Chambers was referring to. So, thank...take the rest of my time if you'd like.

SENATOR CUNNINGHAM: Thank you, Senator Hudkins. And in the case that I'm talking about, if this doesn't go through, there's a good chance that there's going to be 25 jobs left...lost in the community. So we do need to pass this bill. And I believe it's a compromise between both parties, and will just...

SENATOR CUDABACK: Time.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Cunningham and Senator Hudkins. Mr. Clerk, motion on the desk.

ASSISTANT CLERK: Mr. President, Senator Chambers would move to

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amend with AM0136. (Legislative Journal page 377.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on AM0136 to LB 118.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, because it may not be on your gadget yet, I'll tell you, for the record, what it says. You don't tug on Superman's cape, you don't spit into the wind, you don't pull the mask on the ol' Lone Ranger, and you don't mess around with Jim. Well, now that I have your attention, that is not really what the amendment says. But I want to clarify what my intent was the last time I spoke. In my analogy, the supplier is the one that I did mean was playing the role of Superman. The person with the...I meant the manufacturer was. And the franchisee was Pee-wee Herman. And I said, I see the disparity, and I want to help that person at the local level. I have no problem with that philosophy. But I don't want us to apply it only when we're dealing in a business context, where a business operation is going to be benefited. I want that philosophy to follow through when we have a mere individual, or a discriminated-against group, relatively small in number, lacking in political power or clout or those things needed to have a meaningful voice in the formulation of policy. I want the philosophy we're embracing here today to help a business operation to be embraced when we have individuals who are having to confront a stronger employer who is being unfair. I can appreciate a philosophy which is applied across the board in that manner. So to finish my analogy...then I'll touch on what the amendment does, because you have ten minutes to open when you're offering the amendment. When we have the dealer being protected from injustice at the hands of the supplier, I do not want to let the dealer turn around and deal oppressively with an employee, in the way that the dealer did not want to be dealt with oppressively by the supplier or the manufacturer. If the purpose of the Legislature, as it always has been, is to spring to the defense of a business or money-making operation and protect them, but when we get down to the level of the individual they develop a blind spot, moral amnesia, and will say, you cannot interfere and make businesses do what they don't want to do, I say that is a flawed application of a worthwhile

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philosophy, and I will fight against that. But since the only thing before us this morning is the situation that Senator Cunningham's bill presents to us, I'm going to support it. Because it is putting in place that philosophy, that position on the part of the Legislature as a policy, that the weak should be defended against the strong. Although I don't come up here in the morning, I have my monitor on downstairs so I can determine when all the ceremonies are over and we're starting to check in, and I can come up and deal with the business we're here to deal with, which is legislation, not salvation, I notice that many of my colleagues, probably the majority, are following my wise example and absenting themselves from this Chamber when the prayer, or whatever they choose to call it, is going forth. Why go through the charade...or, as I heard a Britisher pronounce it, talking about another subject, the "charodd," as though the latter part of the word is "o-d-d." Why go through that? Because form rules over substance in this place. If the fine words articulated by people who stand up there and presume to pray were guides for conduct, a lot of the kind of bills we have wouldn't even be in here, because they are oppressive and unfair to those people who cannot help themselves. Practically everybody who stands up there and intones and sermonizes is doing it in the name of Jesus. I don't know whether there was a Jesus. Why should I bring this up on the floor? Because you all bring him in here every day. And if you don't want me to talk about him, don't bring him in here. Any subject that you all introduce to this Legislature, I'm going to talk about. So what I say about Jesus, whether he was an actual person is of no moment, whether he represents the gathering together of a lot of traits from different people who lived at different times, they're combined into an entity, coalesced, and given the name Jesus, is of no moment to me. If you look at the stories that are told about ..whether this is a person or a concoction, when you look at the stories told about this individual, the aim seems to be to teach people lessons about how to live their life and, in living their life appropriately, how to treat other people. And the ones that concoction spent a lot of time speaking on behalf of are those who are not given consideration by this Legislature, even though somebody stands up there and prays every day to him. And one of the statements he made was in the form of a question: Why do you call me Lord, Lord, and

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you don't do what I say? Why do you pretend that you believe in me and what I say, and you don't even practice it, and you have the power to do it? Those who are without means may be allowed to visit those who are imprisoned. They may sympathize and commiserate with the widows and the orphans and the poor. But you all can do something. You can make sure that those who are imprisoned are not imprisoned unjustly. But you don't care. You can make sure that those poor women struggling to rear those children, whom some of you all want to compel her to bring into the world...you won't help her. You are not concerned about prenatal care for poor women, postnatal care for poor women. You're not concerned once those poor children, who did not ask to come into this world, are here. You do not show concern for those children. So why do you even waste my time, calling my name, taking it in vain? So I think every time one of those prayers is uttered, it is a reproach to those who listen. And it's like a byword to people such as myself, who observe the announcing of these fine words, and then will watch them violated on the floor of the Legislature, almost every day, when we deal with the interests of those that the one you pray to expressed so much concern for. Now, I am going to take what I can get from this Legislature, when it comes to moving in a direction that is appropriate. I know that when this bill is supported, the motivation is not to do what I would like to see the Legislature do as a policy--namely, look out for all of those who are without the means to look out for themselves. Now, let me tell you what this amendment does. It should be on your gadget now. On page 3 of the green copy, if you look in line 25,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...starting with the word "approve," you strike all of that language. You eliminate it. Then you turn to page 4. And if you follow me, it will be easier to look and understand it, if you follow me as I tell you. In line 1 on page 4, the first two words, followed by a period, "deemed approved," will be stricken also. Then you come down to line 6, beginning with the word "a." You strike all of that language, through line 10. And the next time I have the opportunity to speak, I will read what remains, so that it's clear for the

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record what it is that we're doing. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on AM0136. Open for discussion on that amendment. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, for continuity purposes, I'd yield my time to Senator Chambers, so he can finish the explanation of the amendment.

SENATOR CUDABACK: Senator Chambers, you have almost five minutes. We'll give you five minutes.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Beutler. And I will not take all of your time. I want to read what the bill will say if you adopt this amendment. "If a supplier has contractual authority to approve or deny a request for a sale or transfer of a dealership or an equity ownership interest in a dealership, the supplier shall neither unreasonably deny nor unreasonably withhold its response to such a request. The dealer's request"...and then you can read the rest of it, what that request must include. But it eliminates the language about the 60 days and so forth. With that having been said--and I think you can follow what the amendment does now--I return Senator Beutler's remaining time. And I appreciate the fact that he gave it to me.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I think that the amendment certainly improves on the situation with regard to two or three potential problems with the bill. One that we haven't talked about--and perhaps the lawyers have addressed it, but with the amendment, it would certainly be addressed--and that is the question of whether a current contract can be modified by a subsequently passed law, without an impairment of contract. That may depend, I think, on exactly how a particular contract is worded. And it may depend on other circumstances. But that is certainly one question that most people would raise in a situation like this. That situation, I think, would be corrected by Senator Chambers' amendment. And

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with that, I think I will...although I have one more hypothetical that I wanted to track through with Senator Cunningham, I think I'll wait until I have a new five minutes, Senator Cudaback. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Hudkins, followed by Senators Cunningham, Chambers, and Beutler. Senator Hudkins.

SENATOR HUDKINS: Thank you, Mr. President and members of the body. Senator Chambers, I would like to ask you a question.

SENATOR CUDABACK: Senator Chambers, would you yield?

SENATOR CHAMBERS: Yes, I will.

SENATOR HUDKINS: Okay. Senator Chambers, I have your language up on the computer, and I understand what the amendment does. The only question I have is, how do you define "unreasonably"?

SENATOR CHAMBERS: Senator, you ask the perfect question. If a dispute arises, it's going to go to court, just as the language that exists in the bill now would require a court resolution if the dispute arises. But at least you now have a standard that the courts recognize. When you say "reasonable" or "unreasonable," they usually will say--although it's not any more precise, but it carries a meaning to the courts--what a reasonable individual would do under these circumstances.

SENATOR HUDKINS: So in the original language, it is your feeling that the heavy hand is being dealt by the local implement dealers, and what your amendment would do...well, let me back up. You think that in Senator Cunningham's bill, that then the local dealers would have more power than you really want them to have? Is that...?

SENATOR CHAMBERS: No.

SENATOR HUDKINS: No?

SENATOR CHAMBERS: No. What I'm saying through all of

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this...the first comments I made was to lay out the disparity between the one Senator Cunningham is aiming at and the one he's trying to help. And I'm not opposed to him trying to close that gap. But the method chosen, with this language about the request within the 30 days, receiving a written request, and then, if it's not responded to, certain things come from that, all of those elements could lead to litigation. Senator Beutler touched on it when he said, if a request is made but it doesn't contain every item that the statute lays out, would that be considered a request which, if the supplier did not respond to, it would be deemed approved? Well, that would go to court. So if we eliminate all of these specific items, each of which by itself could lead to a challenge, we use the terms that would require the supplier to behave in a reasonable manner in replying or disapproving, then if the dealership feels that what the supplier did was unreasonable, the only issue for the court to look at is what happened between the supplier and the dealer, and did the supplier behave in a way that was reasonable.

SENATOR HUDKINS: All right. Well, that's what I meant.

SENATOR CHAMBERS: Okay.

SENATOR HUDKINS: So thank you very much.

SENATOR CHAMBERS: Okay.

SENATOR CUDABACK: Thank you, Senator Hudkins. Senator Cunningham.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. Thank you, Senator Hudkins. You clarified the question I was going to ask on "reasonable." Senator Chambers, would you answer a question, please?

SENATOR CUDABACK: Senator Chambers, would you yield to a question?

SENATOR CHAMBERS: I will answer four questions.

SENATOR CUNNINGHAM: Anything for me, right?

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SENATOR CHAMBERS: Yes, within reason.

SENATOR CUNNINGHAM: Oh, within reason.

SENATOR CHAMBERS: Well, we're talking about being reasonable here, so I just thought I'd carry it over.

SENATOR CUNNINGHAM: Right. To put on the record, what would be the time frame that you would envision in this? I mean, we're taking out the 60 days. I mean, do you have any thoughts on what would be a reasonable time frame?

SENATOR CHAMBERS: No. Here's what you do. You adopt this language. The purpose of a law is to give notice to everybody who is doing anything in that area that the law deals with. The manufacturers or suppliers will know about this law. The dealers will know, or should know, and they can get legal counsel. With the law in place, they then write their contract, and they can put as many specifics as they want to. They could write in the contract a 60-day time frame, 30-day, to whatever. But then, it's because the minds have met. The supplier may not have the same kind of contract with every dealer. So instead of writing the things in the statute that ought to be hammered out between the ones contracting, we just subject everything that the supplier does to the standard of reasonableness. And the court understands what that means, and knows how to apply it.

SENATOR CUNNINGHAM: Okay. Thank you, Senator Chambers. And I would like to correct one thing I said earlier when Senator Hudkins asked me a question. We were talking about a particular dealer, and we talked about, if they would...I don't remember how the question went exactly. But I think I misled you a little bit. The dealer I was talking about would be able to stay in business with his contract at this time. It's just that he couldn't sell his business. And so I'm not sure if I misled you or not, but I wanted to clarify that. And with that, I'll turn my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Cunningham. Senator Chambers, on your amendment, AM0136.

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SENATOR CHAMBERS: Mr. President, members of the Legislature, in case anybody missed it when Senator Beutler was talking, he made a very important point. If a contract already exists, and what we would put into the law without my amendment...or with my amendment, although my amendment, if it's adopted, would not have the impact that the current language would. If a law is passed after a contract is in place, that law cannot impair or change the requirements and obligations created by that contract. The U.S. Constitution has put up that protection for people who have entered contracts, so that legislators who may come along later and decide they want to harm one party or the other, will alter the contract or attempt to nullify it. A lot of people don't realize it, but when the U.S. Constitution was being hammered out, the dispute was not just between big states and little states, as they say. There is a very great amount of discomfort in this country about racism and the existence of slavery, so they will not face head-on the impact that slavery--meaning the enslavement of people of my complexion and derivation, so that we could be treated like cows, pigs, and chickens, owned as property, treated as property, disposed of as property, but without the protection of animals. In those days, it was against the law for a man to have sex with an animal, but it was not against the law for any white man to force sexual activity on any black person, male or female, even little girls. Thomas Jefferson would have been deemed a pedophile today, and have committed statutory rape. And it probably was forceable rape. And they don't want to talk about it, but I do. So it was know that with the attitude that existed in the South and in the North, that there could be attempts by the legislatures to do things that would modify contracts that they didn't like for a political, a racist, or any other reason. The legislatures were going to be made to stay out of that. So that provision about nonimpairment of contracts obtains in the area that I'm talking about, even though, if you read the history of that particular provision, you may not get from it what I'm telling you. But if I'm the one whose foot is under a 500-pound table, I know what pain is produced thereby in injury. If you're sitting there at the table eating, you don't know that there's any pain. You ask me, Ernie, what you hollering about? I say, man, I'm hurting. And you say, well, I'm not hurting. Well,

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yeah, because you're not in my circumstances. And you're unable, because you haven't developed your human qualities to that point, to look at somebody who is in pain and understand what they're feeling. Unless it happens to you or yours, it does not exist. Well, much that exists in the constitution, the laws, the Supreme Court decisions, in the United States of America, are driven by racism. The only thing that the U.S. Constitution dealt with which that constitution itself said could not be amended was the slave trade. The slave trade. The only thing that you'll find where the constitution said cannot be amended, before a certain date. You can do away with the right of trial by jury, you can do away with the two houses of the Legislature, you can do away with the Supreme Court,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...you can do away with the right to vote, you can do away with anything in the constitution except that which is most sacred to this country, and that's the right to trade in my people. And you all wonder why black people are dissatisfied when we hear about America trying to impose what they call democracy on Iraq, halfway around the world, and we in this country who are black and fought in every war this country ever had, never betrayed this country, do not have rights and freedoms to this day? I got to make you all understand some things. You don't know how difficult it is for me to be sane and function rationally in this Legislature. But I manage. And that's why you'll never hear me talk about, for myself, equality with white people. For me to be equal to the white people I'm aware of, I'd have to lower myself and my standards, and I shall not do it. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On with discussion of AM0136 to LB 118, Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature. Senator Cunningham, again, if I might have a short conversation with you, and while you're getting back to your place, indicate to you that, as per our conversation off the floor, I do think it's a good amendment, I do think the bill should go forward to

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Select File here shortly, and it can be certainly put into shape to do good for the dealers. I wanted to run by you a hypothetical. And I discussed this a little bit with you off the floor. This is not to trap you. It's pertinent to this bill, very pertinent to the bill and the green copy. It goes away, mostly, with the amendment. But I want to reiterate it, or describe it to you, because it does have relationship to some thinking we will all be doing on a particular subject later in the year. Let's say, in terms of this bill, that there is a written request for approval sent by a dealer to the supplier. Let's say then that 100 days pass, so that the 60-day period has passed, and you, the dealer, receive nothing in the mail whatsoever. You close the deal with your new buyer, based on the fact that you received nothing, and that therefore the supplier had approved. So you're working with a new buyer of your dealership, and you close the deal with him, and he is the owner, or she. Two days later, that new buyer calls you back, and reports that the supplier didn't approve the transfer. And you say, what do you mean he didn't approve? He didn't reply, and under the law, he approved by operation of law. So you call the supplier back, to see what the heck he's up to. And he says, I sent you a denial, and have a copy of it right here, but it must have got lost in the mail. Got lost in the mail. Whose responsibility is it at that point, Senator? Is the new buyer protected? Or is the supplier...or does the supplier have a real argument in that case? How would you interpret that, for purposes of this bill?

SENATOR CUDABACK: Would you yield, Senator Cunningham?

SENATOR CUNNINGHAM: Yes, I would. Senator Beutler, I actually did think of that this morning on this particular bill. And only good business would send certified return mail for important issues that have...are time-sensitive. So I thought maybe that even needed to be included in this bill. But at this point, that didn't happen. And I think I know the issue that you're probably referring to, later on. You know, I don't know what the answer is, Senator Beutler.

SENATOR BEUTLER: So...but your answer, if it were the answer for this bill, would be that--assuming you weren't going to

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amend the bill further, and the bill passed in its green copy--would be that it ought to be the responsibility of the supplier, knowing the importance of the reply, to send it by certified mail, or UPS, or Federal Express, or some such more sure manner. Is that accurate?

SENATOR CUDABACK: One minute.

SENATOR CUNNINGHAM: Well, it would be accurate that I think the supplier should have sent certified mail. But I also think the dealer, when he sent in the initial request, should have also sent certified mail.

SENATOR BEUTLER: Well, let's say he did.

SENATOR CUNNINGHAM: Okay, well,...

SENATOR BEUTLER: He sent it certified mail.

SENATOR CUNNINGHAM: You know, if it's not...

SENATOR BEUTLER: Okay.

SENATOR CUNNINGHAM: ...specifically spelled out, it's going to go into the court system. And you know, I don't know what would happen at that...in that case. But I do think the...

SENATOR BEUTLER: You think there definitely should be a court hearing on such a matter?

SENATOR CUNNINGHAM: You said you weren't going to trap me.

SENATOR BEUTLER: I'm not, Senator. I just want to make the body aware that this very same issue is an issue in the matter of the Blank-Hergert race for the regency in the 7th district. And precisely what is being put in place in law here raises the question of what kind of expectation there is or should be in a situation where a very important document can have a dramatic effect...

SENATOR CUDABACK: Time, Senator.

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SENATOR BEUTLER: ...on a number of people. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Beutler. On with discussion, Senator Cunningham, followed by Senator Beutler. Senator Cunningham.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. I'd like to ask Senator Chambers a question, if I might.

SENATOR CUDABACK: Senator Chambers, would you yield to a question from Senator Cunningham?

SENATOR CHAMBERS: Yes. And after I answer this, he still has two left that he can ask me.

SENATOR CUNNINGHAM: Thank you, Senator Chambers. On this...on your amendment I'm very inclined to want to support this amendment and move this on to Select File, with the idea that I would tell you that the original bill, again, that the supplier and the dealers were in agreement on this bill. I'm not certain where they stand on this amendment. I'd like a chance to visit with them and to sit down and visit with you and Senator Beutler, and yesterday Senator Landis had some questions, anybody that's interested. If we were to move this on in the amended version, if you would consider sitting down with us and visiting before Select File.

SENATOR CHAMBERS: Senator Cunningham, I'm more than willing to do that. Because another position I hold is that contained in the words: Come, let us reason together. And since we're talking about being reasonable in my amendment, the only reasonable thing I could do is to discuss it further with you.

SENATOR CUNNINGHAM: Well, I thank you. And with congeniality in mind, with...everybody knows you don't like to argue with people, and I sure as heck don't like to argue with people, I think we should amend this and go on to Select File, if we could.

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SENATOR CUDABACK: Thank you, Senator Cunningham. Senator Beutler, on AM0136. Senator Beutler waives the opportunity to speak. There are no further lights on, Senator Chambers. You may close on AM0136, if you care to.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you for your reasonableness, Senator Cunningham. And I promise you, I will reciprocate, in terms of talking about it. But ultimately, the final decision on legislation is ours. If we come to the conclusion that the bill as amended by this amendment is the most prudent way for the Legislature to go, if we are going to legislate on the issue at all, this is the form that the proposed law will take. If we don't hold to this amendment, we're going to run squarely into the problem that Senator Beutler brought to us, about the possible impairment of contracts. If it would be argued that nobody wants this bill to apply to existing contracts, it doesn't anyway, but to rescue it from being unconstitutional, you'd declare it. But we don't have to do that. Because if the bill in its present form was agreed to by both sides of the issue which is in dispute, the bill as amended, I believe, should be accepted by both of those sides. There is no way to draft a bill which becomes law that is guaranteed not to result in litigation. If we adopt the amendment, we have a clearer standard for resolving litigation, and we have a guideline that can be used by the two sides when they write these contractual agreements in the first place. Senator Cunningham is trying to address a problem. I'm not opposed to what he is trying to achieve. But I'm looking at the methodology. And as the session wears on, I will do what I can to help facilitate us in our work. And I feel...not feel, I am convinced...not convinced, I know that when bad legislation is proposed, I am facilitating our legitimate processes when I do everything I can to stop it, if it means bringing the Legislature to a halt for the rest of the session. Because for our processes to be legitimate, those processes must result in legislation that is wise, good, just, and fair, and well-crafted. So when I can support something, I'm going to support it. Whatever can be achieved around here that is worthwhile by a smile, when those things come up, I will give a smile, even if it's only from the teeth out. But when it comes to those issues where a smile is not going to do anything,

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you'll see that the only difference between a smile from the teeth out and a snarl is the motivation and the sound that accompanies it. I am as reasonable as anybody will allow me to be. I will work with anybody on any issue which I have the time and the ability to work on with them. But because I tried to work with people on issues, I don't want my gentleness of spirit, my sweetness of nature and disposition, to be mistaken for weakness and simplemindedness. The amendment has been agreed to by Senator Cunningham. That should be sufficient basis for the body to adopt it, even if you didn't hear a word of what I said. Because you...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...want to get off this bill; you want to get to other things. Brothers and sisters of the Legislature--and to steal a very calming opening that Senator Preister used to use but does no longer--and friends all. I used to like to hear Senator Preister say that, because it put me in mind of those gatherings of people who don't have harsh, rigid doctrines, not exclusive dogmas, but an open-minded, open-armed approach to anybody who wanted to come and join the gathering and contribute, even if it was only by silence. I'm asking that you adopt this amendment. Then we can go on with our process. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the closing on AM0136, offered by Senator Chambers to LB 118. Question before the body is, shall that amendment be adopted? All in favor vote aye; opposed, nay. The question before the body is AM0136, offered by Senator Chambers, which is an amendment to LB 118. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment.

SENATOR CUDABACK: The motion was successful. The amendment has been adopted. Before we...

CLERK: I have nothing further on the bill, Mr. President.

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SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors introduced.) On with discussion of advancement of LB 118. There are no lights on at this time. Senator Cunningham, you're recognized to close, if you care to.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. As we've said earlier, this is a simple bill. I appreciate everyone that's weighed in on it. Senator Chambers, we appreciate your working with me on this. And we'll be getting together and visiting with you at a later date. And at this point, I would urge your adoption of LB 118 in the amended form.

SENATOR CUDABACK: Thank you, Senator Cunningham. You heard the closing on advancement of LB 118. The question before the body is, shall LB 118 advance to E & R Initial? All in favor of the motion vote aye; those opposed, nay. The question before the body is advancement of LB 118 to E & R Initial. Have you all voted who wish to? Record please, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB 118.

SENATOR CUDABACK: The motion was successful. LB 118 does advance. Mr. Clerk, items for the record, or messages?

CLERK: Mr. President, I have hearing notices from the Agriculture Committee, and from the Urban Affairs Committee, those signed by their respective chairs. I have confirmation report from Natural Resources, signed by Senator Schrock. And your Committee on Natural Resources reports LB 32 to General File; LB 508, General File; LB 137, indefinitely postponed. Revenue Committee, chaired by Senator Landis, reports LB 499, General File. Health and Human Services Committee, chaired by Senator Jensen, reports LB 87 to General File; LB 85 to General File with amendments. And Mr. President, two new resolutions--LR 33 by Senator Byars, and LR 34 by Senator Louden. Both of those will be laid over at this time. That's all that I have, Mr. President. (Legislative Journal pages 377-380.)

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SENATOR CUDABACK: Thank you, Mr. Clerk. Next agenda item is LB 119. Mr. Clerk.

CLERK: LB 119, introduced by the Banking, Commerce and Insurance Committee and signed by its membership, relates to insurance. (Read title.) Bill was introduced, Mr. President, on January 6 of this year, at that time referred to the Banking, Commerce and Insurance Committee. Bill was advanced to General File. I have no amendments...I do have committee amendments pending, Mr. President. (AM0016, Legislative Journal page 309.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Mines, as Chairman of the Banking, Commerce and Insurance Committee, you're recognized to open on LB 119.

SENATOR MINES: Thank you, Mr. President. For the new colleagues with us today, if you've not had the pleasure of the introduction of the insurance bill, you may settle back and enjoy the show. (Laugh) It...much of this is technical. There are 17 provisions included in LB 119. And this bill, as mentioned, is being introduced by Banking, Commerce and Insurance Committee at the request of the Nebraska Department of Insurance. Over the interim, all parties came together--the insurance industry, the Insurance Department, as well as the committee legal counsel--and this is what has been recommended and advanced for your consideration. I'll take each one of the 17 and give you a little bit more of an explanation of what they do, and I...let me start with number (1). It's a Pre-Need Act, and under the Burial Pre-Need Act, the department is responsible for oversight of funds held by licensees, who are small funeral homes. In Sections 1 through 4, they grant the director the authority to fine and suspend licensees, rather than merely revoke their licenses, and that gives the director some alternatives for resolving administrative violations. Section (2) is a credit for reinsurance. In Sections 5, 7, 8, 23 through 31, and 36, they all implement a recodification of the credit for reinsurance statutes that set the standards by which the department evaluates the impact of reinsurance on an insurer's insolvency. There's no substantive change intended, but rather a reorganization of these statutes follow the order set forth in the model act provisions. Section (3) is separate

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accounts. Section 6 explicitly establishes the authority of an insurer to guarantee the value of assets held in a separate account. This authority is currently being found in the insurance regulations and in the statutory codification of accounting principles. Separate accounts are variations of the deposit administration pension plan arrangements in which pension funds are segregated, so that the account assets are not commingled with insurers' general assets and can be invested separately. TMJ revisions: In Section 9, it revises provisions requiring health insurance policies to provide treatment for temporomandibular disorder. Don't ask me to do that three times in a row. The proposal clarifies that this mandate only requires to the offerings of coverage for TMJ and nothing else. Section (5) is breast reduction (sic) after mastectomy mandated benefit, and the reform...it reforms current Nebraska mandate to comply with federal law, the Women's Health and Cancer Rights Act of 1998, by specifying that this provision applies to individual plans. Additionally, it adds specific provisions of what plans are exempted from the mandate, such as long-term care and Medicaid (sic) supplemental coverage. Number (6) is a holding company's statement filing deadline. In Sections 11 and 12, it changes the filing date for Form B holding company statements from March 1 to May 1. This avoids filing these documents at the same as the annual statement filing to allow for more efficient department forms handling. Number (11) (sic) is liquidating trusts. Section 13 clarifies the director's authority as receiver under the Supervision, Rehabilitation, and Liquidation Act, to sell the licenses held by insolvent insurers to maximize the value of the insurer's assets in the event of insolvency. Section (8) is clearing corporations in Section 14 and 15. It incorporates new standards to allow insurers to use broker-dealers to hold securities owned by domestic insurance companies, and this authorizes domestic insurers to use modern systems for holding and transferring securities without taking physical delivery of those security certificates. Number (9) is the investment code change, and in Sections 16 through 20 it gives Nebraska domiciled insurers the same ability to engage in real estate lending as issuers who are domiciled in other states. It would increase the permitted loan-to-value ratio for insurers investing in mortgages from 75 percent to 80 percent, and these are...this is the amount allowed currently in

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California, Illinois, Iowa, New York, Texas, New Jersey, and many other states. Number (10) is the Utilization Review Act clarification. In Section 21, it is amended, the definition sections in the Utilization Review Act, to specify that the act does not apply to automobile medical payments coverage, of uninsured motorist coverage, underinsured motorist coverage, and bodily injury liability coverage. Because there isn't a mechanism for certifying utilization review agents for these lines, the act would not have applied. This is a clarification of that point. Number (11) is Surplus Lines Act, licensee in state records requirement. Section 22 deletes the requirement in the Surplus Line Act, 44-5505, requiring licensees to maintain an office in this state, as this is no longer allowed pursuant to the Gramm-Leach-Bliley Act, and this change is to conform with the statute the Legislature passed in 2002. Number (12) is a Mutual Holding Company Act. Sections 24 and (sic) 26 give Nebraska domiciled mutual holding companies the same authority to engage in merger and acquisition and other investments as insurers or as mutual holding companies that are domiciled in several other states. Number (13) is the Property and Casualty Rate and Form Act. You'll hear it referred to in later discussion as the "file and use act." This is a change in public policy and we will hear discussion on either side, and I think that discussion is warranted and welcome. Sections 27 through 30 would essentially reintroduce the version of LB 1185 from last year that are reflected in the committee's statement, AM2485. What this does is change the process under which the department regulates property and casualty insurance rates for policies sold to personal lines, consumers, such as homeowners and automobile insurance. The process changes the...from a prior approval, under which the rates cannot be charged until they've been approved, to a file and use process, under which can be charged as soon as they're filed with the department. Number (14), Interstate Insurance Policy (sic) Compact: Sections 37 and 38 adopt the Interstate Insurance Product Regulation Compact. If adopted into statute, Nebraska would join the National Association of Insurance Commissioners Interstate Insurance Product Regulation Compact. Let's shorten that to "commission." Under the current regulation...regulatory environment, such state Insurance Department has jurisdiction over the approval of policies issued to insured residing in

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their state. An insurance company must file and wait for an approval from the Insurance Department for every state where they do business. Obviously, it delays the company's product introduction and increases their cost of doing business. The commission that is proposed would be made up of insurance commissioners of all the adopting states. Number (15), the retaliatory application of Nebraska health insurance mandates in Section 39 specifies that Nebraska law applies to certificates issued by out-of-state benefit trusts domiciled in states which specifically specify that their insurance laws do not apply to out-of-state certificates. Number (16) is the P & C actuarial opinion model. This NAIC model law, found in Section 40 through 42, requires actuarial opinions for property and casualty insurers to be filed, and requires that supporting documentation be available for filing, upon request. It states the documentation is public, and that which is private. And number (17), workers' compensation residual pool rule-making authority. Section 43 would grant...

SENATOR CUDABACK: One minute.

SENATOR MINES: ...the director rule-making authority over the workers' compensation assigned risk pool. There have been issues with eligibility, in particular, which could and should be addressed through the rule-making process. The absence of clear rule-making authority causes problems for department...for the department when it seeks to exclude parties from this pool. Thank you for your patience. I would urge passage of LB 119.

SENATOR CUDABACK: Thank you, Senator Mines. You opened on LB 119. (Visitors introduced.) On with discussion. The committee amendments, as Chairman of the committee, Senator Mines, you're recognized to open on them, AM0016, to LB 119.

SENATOR MINES: Bear with me, Mr. President.

SENATOR CUDABACK: We are with you.

SENATOR MINES: (Laugh) Thank you. Bill, do you have that? That's where you put it.

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SENATOR CUDABACK: You may proceed.

SENATOR MINES: Yeah, Mr. President, thank you. I just found it. The committee amendments would do two things. It would strike the bill's Section 9, that would amend Section 44-789 regarding mandated coverage for TMJ disorder; and, number two, it would strike the section of the bill 21, which would amend Section 44-5418 to specify explicitly that certain coverages are not included in the definition of "health benefit plan" for purposes of the Utilization Review Act. This is the only section of the bill to which there was opposition on the record in public hearing. So, in summary, the committee amendment strikes both Sections 9 and 21 from the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Mines. You heard the opening on the committee amendments offered by the Banking Committee to LB 119. Open for discussion on the committee amendment. Senator Janssen, followed by Senators Chambers and Beutler. Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. Senator Mines, just a couple of questions, if you would...if you would respond.

SENATOR CUDABACK: Senator Mines, would you respond?

SENATOR MINES: Yes, Senator.

SENATOR JANSSEN: Senator Mines, anywhere in the committee amendment or in the bill itself, has there been any changes in reinsurance? I noticed...

SENATOR MINES: No, there hasn't.

SENATOR JANSSEN: ...I heard you mention it a couple of times about reinsurance.

SENATOR MINES: No, Senator, no, I don't believe there was any definition or change in reinsurance.

SENATOR JANSSEN: Okay. Thank you. I'm quite concerned about

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that. I serve on a mutual insurance company board of directors and that's been one of the driving cost raises is our reinsurance. It is...it has made the companies change their rates to compensate for reinsurance, and this was caused, I understand, by 9-11. That has had a direct effect on reinsurance companies throughout the whole United States. And I...thank you, I just needed to know if there had been any changes at all in the structure.

SENATOR MINES: There are no substantive changes. Legal counsel just informed me that there's a recodification and realignment, but there's no substantive change in the statute.

SENATOR JANSSEN: Thank you. I appreciate that, Senator Mines. That'd be all. I return the rest of my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Janssen. On with discussion of committee amendments, Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, and Senator Mines especially, I had never really listened carefully to the presentation of an insurance bill and it was quite exciting. In fact, the only thing missing was the sex and violence, but I'm going to listen to see if that will come later. Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. On with more discussion, Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, Senator Mines, again, I'd like to have a conversation with you about certain parts of the bill.

SENATOR CUDABACK: Senator Mines, will you yield?

SENATOR MINES: I do.

SENATOR BEUTLER: And I preface the discussion by saying, obviously, I cannot have possibly digested all of this in a short period of time, and even the committee, I'm sure, was dealing with an awful lot of material. So I don't expect an

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answer to everything, but I would like to get a sense of what's happening in certain particular areas. And I'd like to direct your attention, first of all, to Section 37, which begins on page 81, and which then extends through, well, at least 113. But that particular section, as you know when you turn to it, deals with this new compact that we're entering into.

SENATOR MINES: Yes.

SENATOR BEUTLER: And, like most compacts, once we enter into this compact we usually have a representative of some sort who represents us in this compact. And oftentimes we give that representative the power of making law; that is, we say whatever he or she determines, acting within the organizational body of the compact, becomes the law of the state of Nebraska. Now, first of all, let me ask you this. Is that an accurate description of this compact where, as I understand it, our Director of Insurance will be our member on this compact and, as that member, will have certain lawmaking authority that used to reside in this body? Is that accurate?

SENATOR MINES: As I understand it, Senator, yes, the Director of Insurance is assigned to...as a director of the compact, and has administrative, as well as direction for the insurance compact. And I think I would agree with you. There would be some administrative and legislative oversight that may infringe on what we do today.

SENATOR BEUTLER: Okay. I only point that out to highlight what seems to be a continuing development in our...in our country's political evolution in the sense that more and more powers are going away from the Legislature and into these little pockets here and there, many of which of those pockets are called compacts. And we do it for a variety of reasons, and in this particular instance I suppose the good reason is that we don't want the federal government determining what our insurance law is, so instead we're going to form an independent contract and try to resolve the problem that insurance companies have with state law; that is, that they have to comply with so many different jurisdictions, and yet, try to retain more control than we would have if we let it go over to the federal

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government. Is that a fair statement of what's happening here?

SENATOR MINES: Now, I can't defend the compact from a legal perspective, but I...

SENATOR CUDABACK: One minute.

SENATOR MINES: ...obviously, its intent is so that insurance products and vehicles become more uniform throughout a region of the country, and they are, in turn, brought to market a lot faster than they would be by individual states approving whatever might be offered. I can't tell you if federal law supersedes our law in a compact arrangement. I don't...is this governed by federal jurisdiction, the compact itself?

SENATOR BEUTLER: Well, the compact is not under federal jurisdiction, as I...

SENATOR MINES: That's...that's...

SENATOR BEUTLER: ...understand it from a...

SENATOR MINES: ...right.

SENATOR BEUTLER: ...brief reading. And I assume that this is our effort to convince the federal government that we're resolving the complexities of different states' laws, that is the complaint of the insurance companies, in a manner that would be more satisfactory...

SENATOR CUDABACK: Time.

SENATOR BEUTLER: ...than our simply handing over the matter to the federal government.

SENATOR MINES: I think that's fair.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Connealy, the committee amendment.

SENATOR CONNEALY: Thank you, Mr. President, members. I wanted

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to comment on the bill itself, but I guess I could right now, at this time, because we're talking about the bill in general, too. There's a 40 percent variance on workers' comp allowed under this bill that's new that could help some industries in certain applications. I've got a constituent who's actually a home mover. There's only three of them in the state. And because of the class he's in on a national basis, he's in an extremely high workers' comp pool. And this would actually allow some, at least, argument to his insurer that he's below the risk that that pool is, and so that maybe he could get a 40 percent reduction in workers' comp insurance that probably is justified under his work experience and the application of his job here in Nebraska. So I approve of that section of this bill and thank Senator Mines for that.

SENATOR CUDABACK: Thank you, Senator Connealy. Senator Redfield, on the committee amendments to LB 119.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. Senator Beutler is absolutely correct that the impetus behind the interstate compact was in fact a concern about the federal government taking over the regulation of insurance. Many of the state representatives that have been meeting, whether it's NAIC, which is the insurance commissioners, or whether it's NCOIL, which is the insurance legislators, have been concerned about that issue. The impact actually...or the contract for the interstate compact actually was proposed by the NAIC members when they met together and looked at this problem, and they really felt like they were rewriting the U.S. Constitution, in a sense; that they were looking for a mechanism which allowed small states to have a voice, large states to have a voice, and you remember those arguments back in the early days of our history, how we balanced the needs of both of those. And so the interstate compact language actually says it won't go into force unless we have a certain percentage of states participating and percentages of the industry, so there is a real balance within that. I will also say that I am one on the committee who voiced my concerns about giving our authority to a quasi-governmental entity, because, in fact, these people will not be elected and they will not be appointed, in a sense, by our own Governor. Only our representative would be appointed by

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our Governor in our system in Nebraska. So there is some concern about that. But the value is that in fact the industry would be allowed to go to this one place; they would be able to submit a form, a product, and they would be able to move those lines into the marketplace at a much greater rate. And that in fact would lessen the pressure on the federal government takeover of the regulation of insurance. Now, the way the compact is set up, Nebraska would still be able to look at any particular product that might come to us out of that compact and say, no, we the Legislature don't like it. We could legislate so that we would not participate in that particular product, but it would be an after the approval of the compact folks. And so still the industry would not have to go to 47 different states, if 47 states were participating, and have to find approval. What we can look at is, say, we like this; we don't like this. We retain our authority in that sense. But it would speed the process up. The downside that I see is that, in fact, we would bear the cost of this, but not directly through appropriations, not even directly through our department, but through the premiums of the people who purchase the policies. Because the costs would be borne by industry, and that cost is always passed on to the ratepayers. So, Senator Beutler, I don't know if that answers your questions, but I thought I would contribute that to the discussion. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Madam...next speaker, Senator Hudkins. Senator Hudkins, you're recognized.

SENATOR HUDKINS: Yes, thank you, Mr. President. I think, if I may ask a question of Mr. McDonald (sic), do we want to do this amendment now or later?

SENATOR CUDABACK: It's to the...

SENATOR HUDKINS: Actually, it's to...we think it's...

SENATOR CUDABACK: All right, Mr. Clerk, go ahead, Mr. Clerk, please.

CLERK: Well, Senator, the draft you provided me, I think, is a draft more appropriately to the bill, as opposed to the

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committee amendment, so...

SENATOR HUDKINS: Then I would prefer to wait until the bill itself is discussed.

SENATOR CUDABACK: Thank you, Mr. Clerk and Senator Hudkins. Next speaker, Senator Beutler, to the committee amendments.

SENATOR BEUTLER: Senator Mines, again, if I may have a conversation with you?

SENATOR CUDABACK: Senator Mines.

SENATOR MINES: Yes, Senator.

SENATOR BEUTLER: I want to continue to follow on this interstate compact that we're entering into by virtue of voting for this bill. Not only are we switching authority away from this body to a body outside the state for a, hopefully, worthwhile benefit, but we are also shifting power within the state to the executive branch, are we not, in the sense that our representatives, the Director of Insurance, I would think you would agree is certainly more accountable to the Governor in this situation than...and that that responsibility to the...what is the relationship between the Governor and the Director of the Department of Insurance and his legislative policymaking in that compact?

SENATOR MINES: Well, the relationship...

SENATOR BEUTLER: I mean, is it...does he have the normal relationship of the Director of Insurance to the Governor? He does what the Governor says?

SENATOR MINES: The Director of Insurance serves at the pleasure of the Governor. He is executive branch, that's correct.

SENATOR BEUTLER: Okay. So we can expect that in this lawmaking compact that we are putting a person there that is not a legislator and not directly responsible to the Legislature, but whose job depends on the Governor. And, therefore, is it a fair

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assumption that whatever decision that director makes is the same decision that the Governor will want made? Is that...do you think that's a fair statement of how things will actually work?

SENATOR MINES: Probably, Senator. I guess the other side of that argument is, who better to serve on a compact than the Director of Insurance? I don't know that a legislator might...one of us, might best serve the citizens of Nebraska serving in that capacity. I think that's one of the arguments.

SENATOR BEUTLER: Yeah, and that's a very interesting argument. We are apparently competent to deal with this bill today in all its complications, notwithstanding our lack of specific expertise in the area, and yet, if I put up an amendment suggesting that one of us should be the representative on the compact, why is not that person just as competent to represent the people as an elected official as we are here today to represent the people on this particular issue?

SENATOR MINES: Well, there are...as we all understand, insurance is a technical industry, and those of us that are citizen legislators are not full-time in a capacity of insurance, as an example. So the argument could be made that the best-qualified person in our state to represent us in a compact arrangement might be the Director of Insurance. I think that would be the response.

SENATOR BEUTLER: So your view would be that with respect to this bill itself, we ought to do what the Director of Insurance says and not be in a position...not put ourselves in the position to ask any questions.

SENATOR MINES: Well, I think as Senator Redfield had pointed out, we do have...we've got a backstop in that the Legislature can, at our discretion, choose to evaluate...

SENATOR CUDABACK: One minute.

SENATOR MINES: ...insurance regulations if we feel that the compact isn't best serving our constituents.

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SENATOR BEUTLER: Okay. Let me ask you one more question just so that the body is more focused on what we're doing. This particular compact, as I understand it, is based on certain national model acts. Is that not the underlying...

SENATOR MINES: That's the way I understand it.

SENATOR BEUTLER: ...premise of it all? And those model acts, as they relate to the compact, are in certain specific areas: individual and group annuities, life insurance, disability income, and long-term care insurance. So, the authority that we're giving to the Director of Insurance to represent us all in this state is limited to those product lines at the current time. Is that right?

SENATOR MINES: Yes.

SENATOR BEUTLER: Okay. And what...

SENATOR CUDABACK: Time, Senator. Next speaker, Senator McDonald, to the committee amendments to LB 119.

SENATOR McDONALD: Mr. President, members of the body, I would like to have some time with Senator Mines.

SENATOR CUDABACK: Senator Mines, will you yield to a question from Senator McDonald?

SENATOR MINES: I'd love to spend time with you. Thank you.
(Laugh)

SENATOR McDONALD: Senator Mines, and I realize this is a very long, complicated bill of over 100 pages,...

SENATOR MINES: Yes, it is.

SENATOR McDONALD: ...with a lot of sections, and I am a licensed insurance agent, so I am interested in this bill. But I'm wanting some questions...or some answers in regards to...I mean, when we look at insurance, we look at insurance, how it

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relates to agents,...

SENATOR MINES: Yes.

SENATOR McDONALD: ...how it relates to insurance companies that we sell, regulations in the Insurance Department. Basically, I'm not seeing anything in here dealing with agents. Is it more in the Insurance Department and the regulations of those?

SENATOR MINES: As I understand it. I don't know that the agents were necessarily part of the conversation. Bill was engaged. He's...the general substance of the bill?

SENATOR McDONALD: Yes.

SENATOR MINES: Or how it all...

SENATOR McDONALD: If it doesn't affect...it doesn't affect agents, per se.

SENATOR MINES: No, I...

SENATOR McDONALD: Basically, it's more the regulation...

SENATOR MINES: No, no, this, I'm sorry, I misunderstood.

SENATOR McDONALD: ...of the Department of Insurance.

SENATOR MINES: No, this is...this is department statute, not relating to agents.

SENATOR McDONALD: And I guess my concern is, I don't want to see what happened in the state of New York, because they're formed just a little bit different, and anything that I deal with basically works for most all the states, but New York is just kind of an isolated area. I don't want to see that we go in that direction,...

SENATOR MINES: Right.

SENATOR McDONALD: ...and I don't see that we are.

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SENATOR MINES: Right.

SENATOR McDONALD: But I will listen and take notes, and I will turn the rest of my time over to Senator Beutler.

SENATOR CUDABACK: Senator Beutler, you have about two and a half minutes.

SENATOR BEUTLER: Senator Mines, again, if we could proceed, and I'm sorry to take so much time, but I want to be sure I understand what we're talking about and that the body who is interested is getting a proper picture of the whole proposed regulatory structure. It says that, under the purposes of the compact, to promote and protect the interest of consumers of these various different kinds of insurance products, the ones that we talked about just a few minutes ago. It says then that they're going to establish uniform standards in these policies, and then it says, "To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact." So, as I understand it, and I'm reading between the lines here to some extent, but correct me if I'm wrong, that the initial uniform standards will be pretty much the model acts that the national group of insurance people have put together that are referenced specifically in this bill,...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...but, of course, none of us know what those model acts are. Once the model acts become the uniform standards, as it needs to be rewritten to do that, then it provides for the prompt review of these insurance products, so that if an insurer down the line, as I understand it, wants to have a new kind of clause or a new kind of paragraph or to alter the overall product in one way or another, he or she, that company, would have to come to this commission and get approval. Is that accurate?

SENATOR CUDABACK: Senator Mines.

SENATOR MINES: Thank you, Mr. President. Senator, that's the

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way I interpret it as well.

SENATOR BEUTLER: Okay. Then I get to a question that's very important to me. It's...

SENATOR CUDABACK: Senator Beutler, we're now on your time, and this will be your third time. Thank you.

SENATOR BEUTLER: It, in Article III, at the beginning, on page 84, line 9, Article III it describes this compact again, and again it says "provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards." Before, in the compact, it talks more about protecting the interest of the consumer. My question is this. When they go to approve these particular proposals by insurance companies and test them against the uniform standards, or if they're going to change those standards, let's say a new product is proposed, does the commission have to give prior approval to that product, or does it approve on a file and use basis? Now, I'm going to...I'm going to reveal my short memory here again, but it's a very important distinction, and what I believe it to mean is this. If it's prior approval, that means you don't use a new product until, in this case, the commission approves it. If it's use and file, then you simply file it and use it and if somebody raises an objection maybe you come back and review it, but you don't necessarily review everything that comes in. In fact, this was my big complaint...I don't know if you were here, Senator Mines...a few years ago when we started using file and use for those lines of insurance that had to do with commercial people, including small business people, and we allowed that to be used on the theory that they were sophisticated people and should know how to read insurance policies and how to protect themselves using lawyers or whatever system they wanted to use. With regard to these policies, which deal, I think, in many cases, with consumers, almost all of...well, obviously, long-term care insurance is a very important contract with some people who probably can barely afford to have this kind of insurance. Is this...is the system that the commission is authorized to use, is it going to be a prior approval system or a file and use system?

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SENATOR MINES: Senator, that's a great question, and in fact committee counsel had to find out. The management council within the compact will determine how they're going to evaluate, whether it's file and use or any other method, so there isn't an answer for you right now.

SENATOR BEUTLER: Senator, I want you to know I'm absolutely against this compact if it's file and use. And I'm also going to file an amendment on Section 28 of the bill, which switches over personal lines of insurance to file and use, which I think is a disservice to the consumer, and we can talk about that more at a later point in time. Let me go back, though, to the compact, and this is going to be an unfair question, but maybe...maybe you happen to know. What consumer protections are built into the NAIC Long-Term Care Insurance Model Act or the long...

SENATOR MINES: I can't answer that.

SENATOR BEUTLER: Okay.

SENATOR MINES: Wish I could. I'm sorry.

SENATOR BEUTLER: That's...you don't have to be sorry. That's not fair.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: Another part of the bill that interests me is just the openness of this whole process. As you, I think, would acknowledge, if power resides in this commission, we can be assured that a lobbying industry will grow up around this commission, and that lobbying commission will not be transparent to you and I, but will certainly work upon the directors of insurance from the various states, if those are the representatives that are being chosen from the various states. And I understand it doesn't have to be our Director of Insurance. Is that...that's accurate, is it not?

SENATOR MINES: That's accurate.

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SENATOR BEUTLER: Okay. So they will be lobbying these directors to do this or that, that may or may not have a lot of consumer protection in it, or adequate consumer...or even adequate consumer protection in it. And so it becomes even more...

SENATOR CUDABACK: Time.

SENATOR BEUTLER: ...important.

SENATOR CUDABACK: Thank you, Senator Beutler. (Visitors introduced.) On with discussion of committee amendments, Senator Hudkins, followed by Senators Redfield, Preister, Bourne, and Mines, and Wehrbein.

SENATOR HUDKINS: Thank you, Mr. President and members. I cannot believe I have spoken three times in one day. That's just not me. But I did have a comment I would like to make. Some of you saw me and have been questioning me, what was the amendment that you just put in? Well, it was an amendment to Section 9, which the committee amendment strikes. In a former life, I was a medical transcriptionist at the VA Hospital here in Lincoln and a word just jumped out at me that was totally misspelled, and I chided Senator Chambers that he hadn't found it before I did. But I would like to call anybody's attention, and especially Bill Drafters', if there's any place else that this word is used, it does need to be corrected. The original amendment I would have said would be to strike the word "temporomandibular" and add "temporal mandibular"; instead of the "o," it's "a-l." Like I said, I'm a stickler for grammar and spelling, and I just would like to call that to someone's attention. I don't know where we would be without insurance companies. I'm sure that most of you in the room have had some occasion for a surgery or a loved one has surgery and you needed insurance, so we cannot do without the insurance companies. We would just like to see their rates come down a little bit, and the same way with nursing homes. My husband just applied for nursing home coverage and, because he had gone to a doctor with a hip pain and then he was asked to consult with an orthopedic surgeon, we were...he was knocked down from the ultra-preferred rate to the preferred rate. So, unfortunately, the nursing

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homes, as well as all insurance companies, are looking for any way they can to save themselves money. Now, I know that has nothing to do with the spelling of "temporal"...can't even say it..."mandibular," but I just wanted to call that to your attention. Thank you.

SENATOR CUDABACK: Thank you, Senator Hudkins. Senator Redfield, on the committee amendments.

SENATOR REDFIELD: Thank you, Senator Cudaback. Members of the body, when Congress passed Gramm-Leach-Bliley, it was a shot over the bow and it certainly got the attention of states, because in fact states were given a limited amount of time to respond and to prove to the federal government that we could bring uniformity into the insurance marketplace. The issue that was at hand was producer licensing. We saw many times that insurance companies, as they're crossing state lines, their agents were finding that in fact it was very burdensome--different forms, different deadlines in every different place they were actually conducting business. So, in fact, states had to put together some kind of uniformity piece for producer licensing. Now, the only way that could happen was for states to meet together on a national level and put together what they felt was a standardized criteria so that our forms could be similar and meet all of the uniformity standards. Then the scramble began, as legislatures meet at different times in different places, and some legislatures don't even meet every year, for us to actually adopt that at the legislative level in every single state, and we had a minimum number of 20-some states that had to meet this deadline. I believe that Congress was surprised because the states did it. It showed that we could do it, but it took us a couple years, actually, to get enough states on line, and then even more time before we saw the majority of states. So this is what we're talking about here, is that kind of uniformity. And there's no good reason why one state might want an agent to have more stringent standards than another. I think that all states would have a vested interest in ensuring that all of their agents were meeting good standards. So we came together on a national level, the commissioners were coming together, everyone was looking at this and trying to put together a product, a form and a mechanism

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that was very uniform. Senator Landis was involved during that process. He was the Chair of our Banking and Insurance Committee, and he was involved with NCOIL as well. So that's the kind of situation that we're looking at with product lines. We're looking at speed to market, so that in fact we can meet the insurance needs of the people. I agree, Senator Beutler, I think that there is always concern when you have a quasi-governmental agency looking at these things, but I can also assure you that even legislators have to meet together at a national level if you're going to bring uniformity into the workplace. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Preister, on AM0016 to LB 119.

SENATOR PREISTER: Thank you, Honorable President, back by popular demand, friends all, Senator Chambers. I would yield my time to Senator Beutler, if he would like it.

SENATOR CUDABACK: Senator Beutler, you have almost five minutes.

SENATOR BEUTLER: Senator Mines, if I might, I'd like to come back to the question of the openness of meetings. We just discussed, as you may recall, the fact that these commissioners would have the power to make laws that have full force and effect in the various states, that they will be...that they will be subject to an independent lobby on these issues and they will be meeting to make decisions. And in Nebraska, as you know, with respect to anything other than some narrow categories related to personnel matters, litigation underway, all of our meetings, state level, local level, are all open to the public. And the public and, more importantly, the newspapers can pick up on the discussion, can pick up on who voted for what, and can publicize exactly how a particular body is operating. I think that becomes even more important in a body like this, because these directors of insurance who are in this position are typically people who are hired by the insurance industry shortly after they serve on these insurance bodies. That happens with a great deal of frequency, as you probably already know. The potential for corruption is substantial, and one might argue

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then that there is an enhanced case for public meetings in this compact. Having said that, here's the language I'm concerned about, on page 90, lines 10 through 14: The commission may meet in camera--"in camera" means in secret, right?--may meet in camera only after a majority of the entire membership votes to close a meeting in whole or in part. And then it has some other language that says, as soon as practical will reveal some information. Now, my problem is this. In Nebraska, we don't say that a body can just decide when they want to go into a secret meeting. There are very specified, narrow limitations as to when this can happen. But my question to you, Senator, is, is this provision that allows that body just to decide by majority vote if they're going to be in secret session or not, is that the only provision of this agreement that deals with public meeting law, or is there something in here that could quite easily have overlooked?

SENATOR MINES: I've not seen anything either, Senator Beutler, that would address your concern. I wish I...there isn't anything else.

SENATOR BEUTLER: Okay. The...let me...let me give that some additional thought then.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: The reason that I have renewed concern about this is simply the ease with which...with provisions and changes that are not particularly obvious to people, great damage can be done to a large number of consumers. And let me say that also, backing up a little bit, that I am in favor of this legislation because the federal government does a worse job at this than we do as states and probably as I think this compact would do under this sort of arrangement. So I'm overall in favor of the bill. But my renewed anxiety about this kind of thing derives from the examination last summer of the National Warranty debacle. And, as you are aware, as I am aware, that debacle occurred because of some very loose,...

SENATOR CUDABACK: Time.

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SENATOR BEUTLER: ...damaging and inappropriate regulatory provisions at the federal level.

SENATOR CUDABACK: Thank you, Senators Preister and Beutler. On with discussion. Senator Bourne, followed by Senators Mines, Wehrbein, Chambers, Fischer, and Preister. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. Senator Mines, I think you've got a good piece of work here and I appreciate you bringing it to the body. I am trying to ascertain what Senator Beutler's concerns are, and I'm not quite sure what he is saying as far as this compact and commission and that. But I will tell you that our Department of Insurance is the gold standard for the entire United States of America. Every state should be so fortunate to have the Department of Insurance that we have here in this state. It is as good as it gets from both an industry and a consumer's perspective. Senator Mines, in his bill, he has the file and use provisions, which I absolutely support. I think it brings the insurance industry into the...this century. It is not anticonsumer to have this type of thing. It absolutely relies on the market. There's mechanisms in there for the department to protect the consumer. And I support it. It makes sense. It's efficient. It's the right thing to do. And I know Senator Beutler has some concerns with it. He has in the past. I don't share his concerns. I just thought I would put that out before we get mired down in a series of amendments. But I think this is good legislation, I think it's progressive and, again, I think that we have the absolute standard as it relates to the Department of Insurance. Any state should be so lucky to have what we have here. And I don't believe...I don't know if Senator Beutler is attributing some of these problems that are...or we're seeing throughout the country, I don't know if he's attributing them to the state of Nebraska, but if he is, that's inappropriate. I'm going to continue to listen to the debate. I'm not quite certain what he's talking about as far as the compact goes, but I am supportive of the rest of the information in the bill and I thank you, Senator Mines, for bringing it to us.

SENATOR CUDABACK: Thank you, Senator Bourne. Senator Mines, on the committee amendments.

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SENATOR MINES: Thank you, Mr. President. This discussion is worthwhile, and I think it serves us all to understand the concerns, first of all, of a compact. And I might make note that the Director of Insurance has told us that they will consider insurance on a prior approval basis, rather than file and use, and, you know, I think that may do what Senator Beutler is asking for at that level. Certainly, in any arrangement or any gathering of states for a common purpose, we need to be watchful and we need to have a wary eye of what exactly they're doing on our behalf, and that's why I welcome this discussion. And I have...I guess I've been personally assured, and I feel comfortable, that placing our Director of Insurance in a position where he represents the state of Nebraska and our constituents in matters of insurance seems like the appropriate thing to do, but I, again, certainly welcome discussion on it. And if Senator Beutler would like the remainder of my time, I would yield.

SENATOR CUDABACK: Senator Beutler, about a minute and a half have elapsed.

SENATOR BEUTLER: Senator Cudaback, Senator Mines, thank you. Let me respond just briefly to statements on the floor. I don't think anybody has heard me say anything negative about our Department of Insurance. I don't feel that way. I tend to agree with Senator Bourne that it's a very good one. However, Senator Bourne is well aware that we don't make laws for this Department of Insurance or this Governor or this Legislature or this agency here and there. We make laws for all time. We make laws that are going to be there until we change the laws, and we rely upon Directors of Insurance, the character of which and the intelligence of which and the goodwill of which we don't know today because they won't be chosen until 4 years from now, 8 years from now, and 12 years from now. So we best make the laws, if we want to pay attention to our history and to human nature generally, we best make the laws assuming that we may have somebody in that office someday who is corrupt, who is not honest, who does not have the consumer in their...in their sight, and that's how I approach things. Senator Bourne, I hope you heard me indicate with regard to National Warranty that that

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was not a problem of our Department of Insurance, that it was a federal problem, and I stand by the statement that the federal government made a mess of that whole situation. They have not cleaned it up to date. There's a continuing problem of these kinds of organizations continuing to exist in Vermont and elsewhere, and the consumer is still not properly protected with regard to those risk assessment types of organizations. And there were many, many consumers in this state who were not able to collect and who, in fact, were hurt by the collapse of National Warranty. And somehow we need to learn from those lessons and try to take a balanced course, in my opinion, when we come to the next problem relating to insurance and how it operates. I will prepare an amendment for Select File explicitly putting into this bill prior approval, and that seems to be what they have agreed to, and that's wonderful. I'm glad that that will be the method of operation. Now,...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...we have established here, at this moment, that prior approval and consolidated action with our other states is a good method of operating, and I want to turn briefly to Section 28, next opportunity I have, because that's the section where you're taking away prior approval without the protective advantage of a commission like this or a uniform standard or any of the protections that would adhere in a statutory framework, such as the one that's being suggested here. And I want to make and demonstrate a relationship between what's going on here and what's going on in another part of the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler and Senator Mines. On with discussion, Senator Wehrbein.

SENATOR WEHRBEIN: Mr. President, members of the body, I wasn't going to say much because this is beyond my area, but I do recall that I thought the point wasn't made strong enough that if we don't do this, at least it's my understanding from previous discussion...and I'd like to ask Senator Mines to comment on it. Senator Redfield made some good points and I think Senator Beutler is making some good points, but the issue

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really is, if we don't do something along this line, the feds are going to do it for us, is my understanding, or at least will get their fingers in it more, and I'm very uncomfortable with that, as long as we can maintain some kind of process ourselves that we are comfortable with. And Senator Beutler did make that point, that he's going to support the bill. If Senator Mines has any more comments on that, I'd appreciate it, because I...that's the only reason I punched in several minutes ago, is I didn't think that point was made strong enough at that time. Senator Mines can have the rest of my time.

SENATOR CUDABACK: Senator Mines.

SENATOR MINES: I don't know how better to say it. This compact and this process has been implemented to stave off federal intervention and federal control. So, Senator Wehrbein, you're right on target with that.

SENATOR CUDABACK: Did you wish to have your time back, Senator Wehrbein? Senator Fischer. We're discussing the committee amendments, AM0016, to LB 119, the Banking, Commerce, Insurance Committee. Senator Fischer.

SENATOR FISCHER: Thank you, Mr. President. I would like to yield my time to Senator Beutler.

SENATOR CUDABACK: Senator Beutler, you have almost five minutes.

SENATOR BEUTLER: Senator Fischer, thank you very much. Well, Senator Mines, let me explore with you a little bit the relationship...again, the relationship of our representative who is, by this bill, designated to be the Director of Insurance, the relationship of that person with the Legislature. Is it correct to say that right now, at least, there is no formal relationship between that person and the Legislature, except insofar as personalities may seek to create that kind of relationship at any given moment in time? There's no legal requirement for the representative to relate to us as a legislative body. Is that accurate?

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SENATOR MINES: It's my opinion...

SENATOR CUDABACK: Senator Mines.

SENATOR MINES: I'm sorry, Mr. President. Thank you. Senator, it's my opinion that, and I've stated that, that the Director of Insurance is and does serve at the pleasure of the Governor, so he has no direct reporting responsibility to this body.

SENATOR BEUTLER: What would be your opinion if an amendment was suggested that this person, who's in the executive branch of government, should consult with, and act in accordance with that consultation, consult with the Banking Committee of the Legislature?

SENATOR MINES: On all...I'm a little bit...I'm sorry, I need a little bit more explanation on...

SENATOR BEUTLER: I'm...

SENATOR MINES: ...how you might see that.

SENATOR BEUTLER: Yeah. I'm interested in establishing legislative control, and I'm interested in establishing that control because this body is making laws that have full force and effect in the state of Nebraska, unless we withdraw from this compact or withdraw from a uniform standard, which is not an easy procedure as I view the politics of all that. So in order to tie this person closer to the Legislature, or maybe even to make them an instrument of the Legislature, what would be wrong with saying this person shall act in accordance with the majority opinion of the Banking Committee and this body with regard to any decision he or she may make in their position before the commission?

SENATOR MINES: Well, Senator, I don't know that...and just philosophically, I don't know that you want to hamstring a representative to any multistate task force or consortium where they have to, before any action can be taken, good or bad, must consult with a committee that only meets while we are in session or we call special meetings. It feels clumsy to me. I mean,

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that process feels very clumsy and cumbersome.

SENATOR BEUTLER: Um-hum. Is it troublesome and clumsy because it's somewhat unusual and we don't want to take steps to protect our own sovereignty and rights? Or is there really some sort of imperative there that would require that this person have more agility? Let me ask you this. With regard to the type of...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...contracts that are being put under the jurisdiction of this body, I assume they have nothing to do or no jurisdiction or authority over the merging of companies, over bankrupt companies that produce these product lines. What is the extent of their jurisdiction in terms of what they can deal with? Give me some examples of any sort of emergency action that they might want to take that would make it clumsy for them to be in consultation with the Banking Committee of the Legislature.

SENATOR MINES: My summation of what you just said would be that, you know, first of all, the Legislature and the citizens of Nebraska, I think, in here are protected because we can opt out of regulations; that the department can review insurance or rules that...

SENATOR CUDABACK: Time, Senator.

SENATOR MINES: Thank you.

SENATOR CUDABACK: Senator Preister, you're recognized to speak on the committee amendments.

SENATOR PREISTER: Not for the moment.

SENATOR CUDABACK: Are you waiving your time? Thank you. Senator Beutler, and you have spoken three times, Senator. Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. I would draw your attention to the section of law dealing

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with the interstate compact on page 89. It talks about, "Each compacting state shall have and be limited to one member." So it doesn't give us the freedom to send someone else in addition to our one member. They shall be entitled to one vote. Now, I believe that Senator Beutler is wanting to direct that vote through the Banking and Insurance Committee of the Legislature. And certainly, the legislators that I know are not shy about giving their opinion, and certainly would give the Insurance director some direction as to how they believe he should be conducting himself. However, there are only 14 members. On page 91, it tells you the terms of the management committee of the compact. It's only 14 members and there is no guarantee that Nebraska would be one of those management members. So on the day-to-day operation of the interstate compact, we may or may not have a representative. That's just the nature of a compact. Otherwise, you get a body that's so large and unwieldy that you can't do business. So I don't think that there is anything in the language that prohibits us from directing the insurance commissioner from Nebraska to represent our vote. But at the same time, we have to recognize that we are only one voice, one vote out of all the members of the compact and, therefore, would not be able to control the agenda with that one vote, no matter how outspoken we might be. With that, I will give up my...the remainder of my time to Senator Beutler, if he would like it, and I will weigh in again on the bill itself. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Beutler, did you wish to use the rest of Senator Redfield's time?

SENATOR BEUTLER: Senator Redfield, thank you.

SENATOR CUDABACK: About two and a half minutes.

SENATOR BEUTLER: I didn't get into the management section of the bill yet. I haven't had a chance to read it. But I would ask you quickly, if you know, with regard to the uniform standards and the basic modifications to product lines, can the management group make decisions and changes there, or do they have to come back to the body as a whole in order to make those

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more important kinds of decisions? I assume, because it's a management committee, that they do the mundane and come back to the body for the more important things.

SENATOR REDFIELD: You are correct.

SENATOR BEUTLER: Okay. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield and Senator Beutler. Senator Mines, there are no further lights on. You're recognized to close on AM0016, the Banking Committee, committee amendments to LB 119.

SENATOR MINES: I waive closing. Thank you.

SENATOR CUDABACK: Senator Mines waives closing on the committee amendments. All in favor of adoption of the committee amendments to LB 119 vote aye; those opposed, nay. The question before the body is committee amendments, offered by the Banking, Commerce and Insurance Committee to LB 119. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: The motion was successful. The committee amendments have been adopted. We're back to the bill itself. Mr. Clerk, motion on the desk.

CLERK: Mr. President, Senator Beutler would move to amend the bill. The amendment, I might indicate, will be available on your laptops in just a moment. Senator. (FA3, Legislative Journal page 380.)

SENATOR CUDABACK: Senator Beutler, you're recognized to open on FA3 to LB 119.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, for those of you who wish to follow this in any detail, my amendment basically strikes Section 28, which starts on page 61 of the bill and goes to the top of page 63. Now, again, I want

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to be sure, in a discussion with Senator Mines, that I'm understanding essentially what this section does, and once we are sure we are on the same path in terms of an understanding of what the section does, I want to impose upon you my objections to this particular section. Senator Mines, if I could engage in a dialogue with you again, first of all, let me preface the dialogue by going back and, for those of you who are new in the body, giving you a piece of history that occurred shortly...a short time ago. Time seems a short time ago to me these days. It may have been two or three years ago. In any event, what we did at that particular point in time was adopt some language that was in another of these large Insurance Department bills which approved the process of file and use. File and use means insurance company comes in, they file the language that they want to use or the policy they want to use or the changes they want to make, and then they go ahead and use them, and the Insurance Department does not review those changes ordinarily until there is some kind of consumer complaint. The other method of dealing with the situation was the method that we had a few years ago which they called prior approval, and that is they have a person at the Insurance Department who, every time something comes in, they look it over quickly to see if it's something new or different or has some pernicious effect that might be to the disadvantage of consumers in Nebraska. So the issue here was whether consumers needed and wanted that person looking over insurance policies that were allowed to be used in the state of Nebraska, or whether it was okay to let people file these changes and assume that the marketplace would preclude any sort of adverse or pernicious policy or document hurting consumers in the state of Nebraska. So those were the two options back then, and back then, on the floor, if I'm remembering it correctly, the argument was, we're just doing this for commercial lines of insurance and this is okay; we don't need to protect people who run big stores and big businesses, well, and even little stores and mom-and-pop operations; we don't have to protect them because they're sophisticated buyers of insurance policies; they ought to be able to read through that policy and find...and determine, as among different policies, which one is best, and they ought to spend the time to do that; they ought to get a lawyer, if they have to; we don't need to protect them; we don't need to protect

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them and, not only that, but it's easier for insurance companies, which is a valid argument, the latter. Now you're faced with Section 28 of this bill, and I submit to you, this is not good for consumers because it's proposing to change over consumer lines of insurance to file and use. I submit to you that insurance policies these days, a great many of them, are almost like medicines. The public can't be expected to know what's in every medicine or what's in every policy. The public doesn't want to spend time reading through voluminous insurance policies. They don't even usually read the one you give them, do they, Senator Engel? But we're saying that the body of consumers who don't want to and aren't going to be reading through these policies are going to be called to account to do that at their own risk because we're allowing insurance companies to put out policies and put them into use and circulate them and sell them to consumers with no independent third party looking at them. In my opinion, it is a proper role of government and a necessary role of government in certain types of instances to protect the public, and one of the areas where the public needs protection is in the area of insurance policies. National Warranty is the latest example of that. It even makes economic sense, if you think about it, to have the taxpayers paying for one person in government who will review all these things on behalf of everybody, than it does for 10,000 consumers to be spending their evenings and their weekends reading through insurance policies to be sure their kids are protected. That doesn't make sense to me. What makes sense to me is to have our Department of Insurance protect us at least with some reasonable review of product insurance lines when they come before the department. Now, this bill is most interesting, because what does the national...the state national insurance regulators, what do they really think? When they gave you this model act, which we just discussed, they said...what did they say? File and use? No. Prior approval they said. This national group, this new compact, they're going to work under the law of prior approval, which indeed, I submit, does help protect the consumer. So how is it that in this same bill where they're advocating prior approval under a compact do they turn around and, in Section 28, wipe out prior approval? It makes no sense whatsoever. And so I submit to you that we do one or the other, and that the one that we should do is prior approval. We

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have it in the compact section. Strike Section 28 and the existing law will continue to be, and that law with regard to personal lines of insurance, the insurance that goes to protect our kids' health insurance, our automobile insurance, our home insurance, all of those types of policies will be protected, to some extent at least, by a prior approval system. And we now know, with the enactment of this compact, as we will surely do, that these compacts are forthcoming and that these lines of insurance that we today approve and that are being taken outside of our jurisdiction, that next year it will be another form of insurance, maybe automobile insurance, next year it will be another form of insurance, until finally all insurance is in this compact or in some other compact and out of our direct hands. And if, as a result of that process, we get both the satisfaction of efficiency for our insurance companies...

SENATOR SCHIMEK PRESIDING

SENATOR SCHIMEK: One minute.

SENATOR BEUTLER: ...and protection for our consumers by prior approval, then we will have gone in both...for both reasons along the right path. But meanwhile, temporarily, I think we should continue to protect our consumers by striking Section 28 and retaining prior approval for personal lines of insurance. Thank you.

SENATOR SCHIMEK: Thank you, Senator Beutler. Senator Chambers, your light is next.

SENATOR CHAMBERS: Madam President, members of the Legislature, unlike my good friend Senator Bourne, I have no trouble whatsoever understanding what Senator Beutler is saying, and I strongly agree with what Senator Beutler is saying. Maybe the people who are willing to take from this Legislature, which was elected to represent the interests of the people of this state, the power to have a meaningful say-so in such a matter as important as insurance, maybe the people who take that position have never experienced or knows nobody who has experienced problems with insurance companies, even under the present system, who don't want to pay off on claims which they ought to

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pay off on. And people will retain a lawyer, which is an additional expense, and sometimes be able to get that company to do what it ought to have done in the first place. Insurance companies are so powerful that even the federal government has trouble dealing with the insurance industry. The insurance industry bullies everybody. Why do you think there's a move afoot in Congress to limit the amount of money that can be recovered by a person who has suffered a grievous injury as a result of the negligence of a physician, even if it is gross? Because of the insurance industry. And how does the insurance industry wield that tremendous power? It tells doctors, we're not going to sell you insurance unless you find a way to get these legislators to say that we're not going to have to adequately compensate people when they're injured as a result of medical malpractice. States individually are not going to be able to be a match for the large insurance companies. If you look at all of the things that these insurance companies can do, and the states will go along with it, you'll understand what I'm talking about. But since you don't live in an area or represent an area of the kind that I live in and represent, that Senator Preister lives in and represents, you're not aware that because of the mere fact that a person lives in a certain geographic area of the city, rates can be higher on your automobile, having nothing whatsoever to do with claims made or claims made by the specific individual, but the area is redlined, something banks are not legally allowed to do. You redline it for the purpose of discriminating. The insurance companies can do it. Why? And Senator Bourne doesn't understand this; because they have such power. It is not that they present a persuasive argument. They say, we're going to do this, and the Insurance Department says, okay, that's okay. Suppose there are policies sold. And Senator Beutler is right that people don't read insurance policies. Insurance salespersons know this, so they make representations to the person about what the policy says and what it will cover, and everybody who has ever entered into a contract or read about a contract will know that there are provisions which will say, no representations outside this contract are binding, but it doesn't say, no such representations will be made. Courts will say that you stay within the four corners of the contract, the written agreement. So bad insurance is sold to the people of Nebraska,...

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SENATOR SCHIMEK: One minute.

SENATOR CHAMBERS: ...whom we are supposed to represent. And after the fact, maybe somebody says, well, maybe we should close the barn door. But in the meantime, people have been ruined. That's what this Legislature wants to do? I know this subject is not that compelling as far as engaging your mind and your interest and your imagination, but it is important enough to cause you to think about what you came here to do in terms of representing the best interests of your constituents. And not one person who is supporting the bill as it's written has explained why it is bad to have some evaluation made before these policies are sold to the public, who, by and large, don't understand the policies even that they have now. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator Chambers. Senator Redfield, your light is next.

SENATOR REDFIELD: Thank you, Madam President, members of the body. I am going to urge the body to vote against the Beutler amendment, and I will tell you why. We are talking about property/casualty insurance. We're not talking about medical insurance here. We are talking about file and use. It's the order of examination that our department is going to look at these products. And I would submit to you that if you want to protect the people in Nebraska best, you should put the bulk of your resources into market conduct examinations so that, in fact, our Insurance Department can put the manpower into the field to examine, in fact, that insurance carriers are providing exactly what they claim to do. The file and use has become a national model. I can tell you that as I have looked at the numbers, the states where file and use has been in practice, that the rates on P/C insurance has declined considerably, that the markets have opened up and there are more companies entering into the marketplace. The competitive market is advantaging the purchasers of these products. In the states that have been reluctant to move in this direction we have, in fact, seen the opposite. We have seen the delay in delivery of products to market actually impede the competitive marketplace so that, in

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fact, there are fewer products available to people. And less competition means the prices go up and the consumer is disadvantaged. I am an advocate of the file and use model. I believe if we're going to protect our citizens we want to put our resources where they can help them the best, and that is in the examination of the market conduct and how our insurance industry is conducting itself. I would urge you not to vote for the Beutler amendment; to vote no. Thank you.

SENATOR SCHIMEK: Thank you, Senator Redfield. Senator Mines, you are next.

SENATOR MINES: Thank you, Madam President. I, too, stand in opposition to FA3, and I think Senator Redfield has outlined why there's an advantage to the marketplace directing and dictating what products in the insurance categories are brought to market, as well as the pricing. I do think that Senator Beutler offered some compelling arguments for a prior approval, and certainly government can do a good job, and can and should be the...a responsible party in protecting the rights and privileges of those in the public that hire them to do that. The problem is, practically, the Insurance Department has several people that read every single filing that comes into the office. There can be...there can be 1,000 insurance companies file forms. The Insurance Department is not at the pleasure...does not serve at the pleasure of the Legislature. Again, it's an executive branch that is acting as scribes to simply read. They must read every word of every page that comes in. And the department has suggested they'd rather use those personnel in a more efficient way, in...as Senator Redfield described, in regulatory matters as opposed to reading every document that hits their door. This is really the issue, really the part of the bill that I feel is most important--do we let the market determine how our consumers, how our constituents, are served with insurance, or do we rely on government to read every line? And, as I understand, the Insurance Department is inefficient at doing that and this is clearly the direction that we ought to go. So, therefore, I do oppose FA3. Thank you.

SENATOR CUDABACK PRESIDING

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SENATOR CUDABACK: Thank you, Senator Mines. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. Senator Chambers, it's not that I don't understand Senator Beutler; it's that I don't agree with him. It's that simple. Senator Redfield said this very well when she kind of described the problem or why this is good. This is the national model. This is not anticonsumer. Let me give you a sense of how the system works now. An insurer files with the department a...forms, you know, the actual policy itself, and the rates. And the actuarial rates, they could be hundreds of pages. The law requires the department to read all of those pages of paper verbatim, and you could literally have stacks of hundreds and hundreds of pages of a policy and a rate filing. The law says that they have to read each and every page, and they do so. What they're say...what they are asking for is to go with the national model, and that...it's called file and use. The insurer in the filing states that they are complying with all the laws of the state, and in the first 30 days the department...the burden is on, as I understand it, on the insurer to show that they have complied. If they receive a consumer complaint, the department will then hold a hearing and they will evaluate the filing and they can tell the insurer to cease and desist. So this...I, really, I do not see how this is anticonsumer. It seems to me that what we're doing is taking away the department's quill pens and their paper ledgers and we're giving them computers. That's what we're doing. We're coming into the modern ages with this. This is the national model. It is not anticonsumer. I would imagine that when Senator Loudon buys auto insurance, and again I want...this is property and casualty insurance. This is not health insurance for kids. This is property and casualty insurance only. But I would assume when Senator Loudon or any other concerned or informed consumer buys insurance, they shop around. They get a rate from, say, State Farm or American Family or Allstate, and they pick the rate that is most appropriate to them. And I'll tell you, if you've looked at any auto insurance policies, they're fairly uniform. There's not a heck of a lot of difference between the policies. So, generally, you're buying on rate, and the same thing is true of Medicare supplement insurance and long-term care, Senator Beutler. They're fairly

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uniform policies. Now, when you get into some business policies there's differences, but they're generally uniform. And I...if State Farm is going to charge \$800 and American Family is going to charge \$300 on a fairly uniform policy, who are...who is the consumer going to purchase? It doesn't make sense to me when I hear that this is anticonsumer. It's not. And, Senator Chambers, I will give you that the insurance companies at times in history have been heavy-handed, and that's why there's a whole host of laws and regulations designed to regulate them. This does not take regulation away. It simply allows, as Senator Redfield said well, it allows the Insurance Department to focus on the problems, the auditing of companies, things of that nature. This is not anticonsumer. It simply is an expedited way for a product of a property and casualty product to get on line. And again, I won't accept the fact that this is anticonsumer. If Senator Chambers wants to say it again he's welcome to do so, but it's not. I think that my record speaks for itself in my six years in the Legislature, and I think if Senator Chambers looks at it, he knows I'm as proconsumer as anybody in here, and if this was going to hurt one person I would absolutely oppose this bill; but it's not. It brings us into the modern ages and, again, it simply takes away the department's quill pens and gives them computers. I am opposed to Senator Beutler's amendment and I support the bill as drafted by...

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: One minute.

SENATOR BOURNE: ...Senator Mines. Thank you.

SPEAKER BRASHEAR: Thank you, Senator Bourne. Senator Engel.

SENATOR ENGEL: Mr. Speaker, members of the body, I, too, oppose this particular amendment. This file and use that we're proposing, it's already in place in 28 states in the United States, and it's a way to respond to the marketplace so much faster than our current procedures. As far as if there's a rate adjustment needed, it could be done right away, and it's still overseen by the Insurance Department at a later date if

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necessary. But it's a competitive world out there and it's not going to change the makeup of the insurance companies in Nebraska. I sold for State Farm for 42 years and there's a lot of the smaller companies in this state that could beat our rates day in and day out. So it's not a matter of some big companies taking over the small companies. And again, as far as taking care of your clients, no, they don't read all the fine print in the policies, but in my 42 years, I explained my policies to my consumers. I had a fairly good, decent-sized agency and...but in all those years I never had a complaint filed with the Department of Insurance. So it's not up to the individuals to read every word and so forth. I think it'd take people like Chris Beutler and people in the legal profession to read all that because it all has to be in legalese to protect the client. That's why insurance policies are complicated in their entirety. But in the meat of the policy, it's up to us to explain to them exactly what they are covered for so they understand, when they have a claim, you're covered for it or you're not covered for it. So I believe that this is something, as...the bill itself, I think, is very, very necessary to bring us up to where we should be in the state of Nebraska with...to try to bring ourselves up with the rest of the United States, and so I definitely oppose the amendment, but I do support the bill. Thank you.

SPEAKER BRASHEAR: Thank you, Senator Engel. Senator Louden.

SENATOR LOUDEN: Thank you, Mr. Speaker and members of the body. I, too, raise...rise in objection to this amendment. The file and use is something we've worked on through the summer for workmen's compensation for some of these areas of work that there are in the rural areas, such as your tree trimmers and especially your livestock auction markets. The workmen's comp in those areas, the...to say it best, the premiums are vicious for those people. Something needed to be done and, as we talked to Tim Wagner and those, they thought that perhaps if we went to a file and use for those types of insurance policies it would stimulate more activity in that type of insurance and bring in more companies that would be interested in selling that type of insurance. I don't think this is something we can completely wreck altogether. I think it needs to go forwards with the file

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and use. This is, as Senator Bourne has said, this is something where we're getting into the technology age and we can probably let the Insurance Department monitor these a lot better. They can go ahead and sell...allow a company to come into the state and start selling insurance. If we don't do something like that, then we're going to have to start looking at subsidizing workmen's compensation insurance for some of these areas, such as house moving or your livestock auction barns, your tree trimmers, some of the people that have what is considered high risk, but really the risk isn't that high for them, but the insurance companies don't have enough sales or enough clients to have any kind of data on what the risk ratio is. So I think we need to be very careful about this. I certainly will vote against Senator Beutler's amendment to this. I think Section 28 should stay in the bill such as it is and I think it enhances it. It's...this bill has had a considerable amount of work done on it through the summer. It's something that came out of the Banking, Insurance Committee. We had hearings across the state on various aspects of this and I'm sure even Senator Beutler attended some of the hearings. So I think when it was evaluated and the hearings have, most...there was...wasn't, as near as I can remember, very little objections to it. The only objection I saw to anybody that had any file and use was from an insurance company that didn't even sell insurance in the state, never has and didn't intend to. So that was a case of testimony that I don't think was relevant to what we were trying to do. So I, again, I'd voice my objection to this amendment and I would encourage everyone to vote to advance this bill. Thank you.

SPEAKER BRASHEAR: Thank you, Senator Louden. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature. Senator Redfield, I wanted to use the issue of medical malpractice to demonstrate the power of the insurance companies or the insurance industry, because people are familiar with that having been in the news not too long ago. And, Senator Bourne, as far as quill pens, Shakespeare wrote Romeo and Juliet with a quill pen. The Cat in the Hat was written on a computer and, although Cat in the Hat is very amusing, it doesn't rise to the level of Shakespeare. So I don't think that quill pens should just be cast aside. We're running out of time this morning, so

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I just want to take what little time I have to deal with a frustration that Senator...oh, she's not there...Senator Hudkins caused. She did pick out the misspelling of a word. It was spelled t-e-m-p-o-r-o-m-a-n-d-i-b-u-l-a-r, instead of t-e-m-p-o-r-a-l. And the reason I'm spelling it, because here was the rhyme that I was going to read, which I can't read now: Temporomandibular, that is quite a potent word, / But it's one that neither you nor I have ever heard. / Don't you tell me what I've heard, you you angrily insist. / I apologize, but such a word does not exist. / Yes, it does; you ought to show humility and contrition, / Smarty-pants, I ought to know--I've got that health condition. / Medical transcribing used to be my line of work. / Duty often calls, and from that call I never shirk. / Your condition is not the thing about which I am telling. / I am dealing solely with one thing, and that is spelling. / Temporomandibular is your condition's name. / Any doctor queried will inform you of the same. / I have but one interest, and it's not to start a fight. / I have said and will repeat, I want that word spelled right. But since the provision in which the word existed was stricken from the bill by way of amendment, Senator Hudkins' amendment to correct the spelling was never offered; therefore, I cannot read the rhyme, so that's how I was frustrated. And before I sit down, I have one thing I'd like to say to Senator Bourne. Now, I don't sing well. If I were Senator Landis, I'd go further. But it might go something like this: (singing) Blue, blue, my world is blue. Some may not get the significance of that, but others do. Thank you, Mr. President.

SPEAKER BRASHEAR: Thank you, Senator Chambers. Senator Foley.

SENATOR FOLEY: Thank you very much, Mr. Speaker, and thank you, Senator Beutler, for offering your amendment. I think it does prompt a very constructive discussion on what role we want our Department of Insurance to play with respect to reviewing insurance policies prior to their taking effect on the consumer. Senator Beutler's memory is quite correct. We did just take up this issue in very recent times, took it up, I think, two years ago, a time when I served on the Banking, Commerce and Insurance Committee. And I remember that debate quite well, and we did make a very clear distinction about the role the department

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would play in reviewing policies. And we said, look, you can...commercial customers, you're the sophisticated customer, you got to look out for yourself. And these insurance companies might file a new policy with the agency and immediately it will take effect, and it's up to you to keep track of that, because you've got the talent, you've got the resources, you've got the lawyers, you can figure it out for yourselves. But the little guy, we're going to protect you. Those policies will not take effect until the department has reviewed that policy. I had a call just ten days or so ago from a very distraught woman whose daughter was attending one of our colleges here in the state, and the daughter was under a health insurance policy sold by the college and she was protected under this policy so long as she was a student. But this student got very, very sick, to the point where she could no longer keep up her academic obligations. She had to leave school because she was sick. The insurance company said, ah, you're out of school now, you're not a student; guess what, you're no longer covered under our policy because we only cover students. Well, there's a happy ending to the story. I contact the insurance company and they said, okay, we'll take care of it; we'll cover her. But they didn't have to, because she wasn't a student. Senator Beutler's amendment moves us in the right direction here. We do need proper consumer protection before these policies get changed on a whim. And I understand the insurance companies want to be able to react to competitive pressures. They want to be able to change their policies quickly to react to the changes in the marketplace, and I understand that and I appreciate that. I respect that. I think there may be a compromise here. Why not move to an approach where the insurance companies can file their new policies, require the agency to review those policies, and if they don't do so within 30 days and they don't find a problem within 30 days, if that's the right number, then the policy can take effect at that point in time. I think that's a reasonable compromise. We ought to be talking about that. Thank you, Mr. Speaker.

SPEAKER BRASHEAR: Thank you, Senator Foley. Senator Beutler. Senator Beutler, yours is the only light, if that matters. I'm only trying to be helpful.

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SENATOR BEUTLER: Mine is the only light? Doesn't matter. Thank you, though. Members of the Legislature, there's a lot of inconsistency going around here. You are told, on the one hand, that insurance companies in the past have been heavy-handed. That past is not so distant. It's as recent as National Warranty just last year. And the difficulty in that case, in my opinion, was not necessarily at all our Department of Insurance, but a structure of law that they had to follow that was mandated by the federal government. At least, insofar as I can tell, that's where the responsibility lies. But the point is, things can go wrong. Competition has its downside. Its downside is greed, resulting in competitive actions that are destructive, both for the companies themselves and for consumers before the companies are destroyed. I was in the title insurance business. I know what insurance policies look like. I know that most of the people we sold them to didn't have a good idea of how they would apply in many, many situations. I also know that a man by the name of David Hunter committed suicide and had a title company in Lincoln, and the competitive instinct can lead in the wrong direction, both for a company and for individuals, and it can hurt consumers. The default of State Title hurt consumers all around Lincoln and in the surrounding area. The default of National Warranty, with its bankruptcies outside of the jurisdiction of the United States, which they were allowed to do under federal law, and with vague and undefined responsibilities with regard to reinsurance which ultimately precluded consumers from going to certain entities that they thought were involved in the transaction to recover, they could not recover from. National Warranty itself was bankrupt. These things continue to happen and we have to have a balance. It must strike you as somewhat ironic that in the compact session that we spent the first half of the morning talking about, they said, yes, we will do prior review, prior approval. Why do they say yes there? Do they say yes there even though they don't think it protects the consumers? Of course not. They're saying yes because they know it gives an added measure of protection to consumers, but they're willing to say yes there because they've solved the insurance company problem. They don't have to have separate filings in all these different states, and that's good. But until we get to that place, I argue to you that the better policy is to keep prior approval;...

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SPEAKER BRASHEAR: One minute.

SENATOR BEUTLER: ...that that is a balance that we've had in a law for a long, long time; that, yes, the anxious can argue, oh, it's time to change, that's old-fashioned, dah, dah, dah, dah, dah, dah, and then the next crisis comes along and another industry fails. I notice also in this bill, in another section of the bill, there is a provision. For example, in Section 16 of the bill, on page 29, it talks about an insurer investing in bonds or notes secured by a first mortgage on real estate. And it increases the...

SPEAKER BRASHEAR: Time. Thank you, Senator Beutler. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR 19, LR 20, and LR 21. Mr. Clerk.

CLERK: Mr. President, thank you. I have hearing notices from the General Affairs Committee and from the Executive Board, signed by their respective Chairs. Senator Chambers has an amendment to be printed to LB 20. And your Committee on Government, chaired by Senator Schimek, reports LB 9 to General and LB 55 to General File with amendments. And Urban Affairs Committee, chaired by Senator Friend, reports LB 14, LB 22, and LB 75 to General File with committee amendments attached.

Mr. President, a series of name adds: Senator Loudon to LB 285; Senator Schimek, LB 332; Senator Thompson, LB 347; Senator Redfield, LB 399; Senator Stuhr, LB 439; Senator Pedersen, LB 445. (Legislative Journal pages 381-384.)

And, Mr. President, I do have a priority motion. Senator Redfield would move to adjourn until Monday morning, January 31, at 9:00 a.m.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. You've heard the motion. The motion before you is to adjourn as specified. All those in favor signify by saying aye. Those opposed, nay. We are adjourned.

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