

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 27, 2025
Rough Draft

JACOBSON: Well, welcome to the Banking, Commerce and Insurance Committee. My name is Senator Mike Jacobson, North Platte, representing the 42nd Legislative District. I serve as chair of the committee. The committee will take up the bills in the order posted. The public hearing is your opportunity to be part of the legislative process, and to express your position on the proposed legislation before us. If you are planning to testify, please fill out one of the green testifier sheets that are on the table at the back of, of the room. Be sure to print clearly, and fill it out completely. When it's your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify, but would like to indicate your position on a bill, there are also yellow, yellow sign-in sheets back on the table for each bill; these sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name, and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents of the bill, and finally anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer, if they wish to give one. We will be using the three-minute light system for all testifiers. When you begin your testimony, the light on the, on the table will turn-- will be green. When the yellow light comes on, you have one minute remaining. The red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may and-- may come and go during the hearing. This has nothing to do with the importance of the bills being heard; it is just part of the process, as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring them up, at least 12 copies, and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room; such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees state that written position comments on a bill may be included on-- in the record must be submitted by 8:00 a.m. the day of the hearing. The only acceptable method of transmission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person

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before the committee will be included on the committee statement. I will now have the committee members with us today introduce themselves, starting on my left with Senator Riepe.

RIEPE: Merv Riepe, Legislative District 12, which is Omaha, and the fine little city of Ralston.

von GILLERN: Brad von Gillern, Legislative District 4, west Omaha and Elkhorn.

BOSTAR: Eliot Bostar, District 29.

HALLSTROM: Bob Hallstrom, Legislative District 1. Otoe, Pawnee, Nemaha, Richardson and Johnson Counties in southeast Nebraska.

HARDIN: Brian Hardin, District 48, in the real west where we fall off into Wyoming.

WORDEKEMPER: Dave Wordekemper, center-- District 15, Dodge County and Western Douglas County.

DUNGAN: George Dungan, LD26, northeast Lincoln.

JACOBSON: Also assisting the committee today, to my right is our legal counsel, Joshua Christolear, and to my far left is our committee clerk, Natalie Schunk. Our pages for the committee today are Ayden and Kathryn, both students at UNL. Also our-- assisting with the committee is our vice-- and our vice chair is Bob, Bob Hallstrom. Senator Hallstrom. Well, with that we will begin today's hearing with LB21. Senator Cavanaugh, welcome to the Banking, Commerce and Insurance Committee.

J. CAVANAUGH: Thank you, Chairman. Good afternoon, Chairman Jacobson and members of the Banking, Commerce and Insurance Committee. My name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. The Sunshine District. I'm here to introduce LB21, the Uniform Law-- Unlawful Restrictions in Land Records Act. For many years, well into the 20th century, home sales were commonly restricted on the basis of race. Until the United States Supreme Court ruled in Shelley v. Kraemer in 1948 that enforcement of racially restrictive covenants was-- were unconstitutional. And the Federal Fair, Fair Housing Act of 1968 explicitly prohibited the practice. It was commonplace for a deed to

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contain language that said a home could not be sold to people of certain races, usually black people. This practice contributed to the generations of housing segregation. Despite the fact that these restrictions are illegal and no longer enforceable, they remain a part of property records for many homes. LB21 provides for a simple process to amend land records to make clear that such restrictions are unlawful and unenforceable while preserving the historical record. This helps clean up title records and avoids confusion for home buyers and sellers. The Uniform Unlawful Restrictions in Land Records Act was approved by the Uniform Law Commission at their annual meeting in July of 2023; I introduced this bill as LB914 last year, and it was advanced unanimously to General File from the Judiciary Committee, but we ran out of time in the short session to debate the bill. I want to thank the committee for your time, and I'd ask for your support to move this bill to the floor for your consideration for the full Legislature. I'd be happy to take any questions.

JACOBSON: Questions from the Committee for Senator Cavanaugh? Yes, Senator Riepe?

RIEPE: Thank you, Chairman. Thank you for being here. One of the questions I had-- and I'm a newbie, so bear with me. In Section 3, it talks about "remove the unlawful restriction." I'm trying to figure out why do you have to have a law to remove an unlawful restriction?

J. CAVANAUGH: That's a great question, Senator Riepe. So you can already remove them, but it's cumbersome. So you'd have to probably hire a lawyer, and, and the fee can change-- vary based off how much-- like, how long your title is, and things like that. So the intention of this is to make-- create a uniform process that somebody can just go and do it themselves with a form, and pay a flat fee to clean up their title so you don't have to go and hire the services of a lawyer.

RIEPE: OK. Thank you. Thank you, Mr. Chairman.

JACOBSON: Other questions from the committee. All right, seeing none, thank you. You'll hang around for close?

J. CAVANAUGH: I will.

JACOBSON: All right. First proponent, Mr. Ruth. And I understand that you've-- spoke to me ahead of time; you're going to kind of walk us through a little bit about the Uniform Commission and what it's all

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about, and so, you may take a little bit more than the three minutes to get through it. I'm willing to grant that to you since you're educating us.

LARRY RUTH: Thank you very much. And just assuming there are folks here who say "Uniform Law Commission? What in that world, is that?" So, I'll tell you--

JACOBSON: And if you could state and spell your name.

LARRY RUTH: Yes, my name is Larry Ruth, L-a-r-r-y R-u-t-h. Larry Ruth. Well, thank you very much. And I, I want to, of course, support the bill, but we have someone else here who will testify that-- on that. The Uniform Law Commission of Nebraska is a commission of state government. And it was actually created in 1948, 1949, and then, it joins with other states which have uniform law commissions of their state, and belongs to something called the Uniform Commission-- Uniform Law Commission out of Chicago. And this is out of Chicago, but we've all taken part in the drafting of this, and in the approval process, which is very laborious; takes several years, usually, to study the issue and then come up with a uniform draft. Why a uniform draft? Well, there are a number of issues which, if the states are going to be involved with them, makes a great deal of sense for them to have similar or even identical legislation as other states so that you don't get into different interpretations and understandings. What are the types of things that we've done in the past? Well, those of you who are involved with banking, as some of you are, or business, generally speaking, you know that businesses work across state lines. And when something takes place that needs to go to the courts in Montana or Colorado, they're going to look at the Colorado law; here, they'll look at the Nebraska law. There are some times that it's very advantageous for the litigants to be able to see what a uniform act is on it, and-- so they know what some of the language means. So, in the area of business law, for example, we have this book here called the Volume 6 of the Red Books, and it is all one large compendium of laws on the Uniform Law-- the Uniform Commercial Code. And that is sort of the Bible for commercial transactions and commercial law. I only raise this-- this is the only one that I know that has a full volume dedicated to it. But this has all been done over the years by this commission. Likewise, if you would happen to look at your driver's license, you might see something, another type of law that we work on. And that's those cuts-- kinds of laws, outside of business, but

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dealing with individuals. My driver's license has a little red heart on it. Do you know what that means? It means that you have-- I have decided that my body and parts should be under the uniform-- the Uniform Anatomical Gift Act, that I've decided to give my organs away. Now, that doesn't mean that everybody has to do that, but that's something that everyone is given the chance to do when you get your driver's license. It's a uniform law that done-- is adopted in all the states, so that when you're traveling somewhere else, you have an accident, and you find the driver's license with a heart on it, the EMTs know, hey, we better contact the organ reheav-- retrieval people. It's just things like that that deal with areas of the law where it is of some great advantage to the public and to business to have uniformity. I see my red light is on.

JACOBSON: Do you want to go ahead and finish up? We'll give you [INAUDIBLE]

LARRY RUTH: Well, I have would just-- only a comment that the commission is made up of judges. We have Judge Arlen Beam, retired Eighth Circuit Court. Professors: Professor Harvey Perlman, former law school chancellor and, and Chancellor, University of Nebraska-Lincoln; Steve Willborn, who's here today, he's a former law school dean; Pat Borchers, of Omaha. He's the former Creighton Law School dean. Myself, a practicing attorney. Don Swanson from Omaha. And Joanne Pepperl, your former employer, when you knew her as the Revisor of Statutes, the fount of wisdom on statutory construction and so on. That who-- that is who we are, what we do and why we do it.

JACOBSON: Well, normally I would let the rest of the committee ask questions first, but I'm dying to ask the question. If we had fewer attorneys on this, could we cut back the number of years it takes to fix this? Just curious as to how that works. And you don't have to answer that.

LARRY RUTH: Well, I'm going to defer to the wisdom of the committee on that one.

JACOBSON: Questions from the committee.

LARRY RUTH: Thank you very much.

JACOBSON: Thank you. Proponents?

JANE STERNECKY: Good afternoon. My name is Jane Sternecky. That's J-a-n-e S-t-e-r-n-e-c-k-y. Chair Jacobson and members of the committee, thank you so much for the opportunity to testify today in support of LB21, the Uniform Unlawful Restrictions in Land Records Act. And thank you to Senator Cavanaugh for sponsoring this bill today and providing such a thorough explanation of the history of restrictive covenants. My name is Jane Sternecky; I'm testifying today as legislative counsel for the Uniform Law Commission, and, and here in my capacity as an attorney. So, the Uniform Unlawful Restrictions and Land Records Act was finalized in 2023, following a thorough two-year drafting period as discussed by my colleague. This act is designed to allow Nebraskans to begin addressing our country's history of discrimination in housing. Last year, this act was enacted in Arizona, Colorado, Pennsylvania, Washington State and Washington, D.C. LB21 creates a path for single-family homeowners and condominium, co-op and planned community own-- unit owners alike to remove unlawful restrictions that they encounter in their land records. This issue is currently being studied by the Omaha Spatial Justice Project at the University of Nebraska, Omaha, which is an interdisciplinary research project which is working to document and spatially visualize the impact of racially restrictive covenants throughout Douglas County. This project has processed over 330,000 documents, and in that span, they've identified 2,888 racially restrictive covenant documents. And these range from covering individual properties to covering entire subdivisions. The project estimates that this preliminary set of covenants cover between 20,000 and 30,000 individual properties in Douglas County alone. These racially restrictive covenants began in 1909 and continued to 1953, with some of these covenants aiming to apply all the way through 1999, even though they were negated by the Fair Housing Act of 1968. The project is working on processing the remaining 650,000 property records in Douglas County, and anticipates encountering another 30,000 to 50,000 racially restrictive covenants. This could result in a final number of Douglas County properties that have been affected by racially restrictive covenants at over 50,000. LB21 creates a clear path forward for homeowners in Nebraska, not just in Douglas County, to effectively remove these harmful restrictions when they encounter them in their land records. Notably, this bill does not allow the destruction or alteration of a property's historical records. This policy decision preserves insurability of title, and will allow future generations to study patterns and practices of discrimination by looking at the records for individual

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parcels. Instead, the bill contains a form amendment that single-family homeowners or governing bodies of common-interest communities can record in their property records. The amendment identifies the location of the unlawful restriction without restating the harmful language, and states that the restriction is functionally removed from the property records. LB21 will allow Nebraskans who encounter unlawful restrictive covenants to address the painful history of their homes and create a meaningful path forward for their families. I thank you for your time, and I welcome your questions.

JACOBSON: Thank you. Questions from the committee? All right. Oh, Senator Hallstrom.

HALLSTROM: Miss Stern-- Sternecky, thank you. I just had a question with regard to the definition of unlawful restriction on page 3, and there's a reference to some-- what you might refer to as protected classes. And then, there's kind of a catch-all or other personal characteristics. And as I read that, it's tied to "and in violation of other law." This bill doesn't create protected classes, is that correct?

JANE STERNECKY: That's exactly right. So, it was very important to us from a policy perspective that we not relitigate the protected classes that are recognized by an individual state. So we would rely only on those protected classes that are currently recognized in Nebraska under your Fair Housing Act. So, since Nebraska does not have a significantly more expansive definition than the federal definition, we would not be expanding it.

HALLSTROM: Thank you.

JACOBSON: Other questions? All right. Seeing none, thank you for your testimony.

JANE STERNECKY: Thank you.

JACOBSON: Other proponents?

JOY KATHURIMA: Good afternoon, Chairperson Jacobson. My name is Joy Kathurima. J-o-y K-a-t-h-u-r-i-m-a, and I'm testifying on behalf of the ACLU of Nebraska in support of LB21. First, we'd like to thank Senator John Cavanaugh for introducing this bill in pursuit of a world free of discrimination and a Nebraska that is true to the state motto

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of equality before the law. The ACLU of Nebraska strives to educate and empower the public on a variety of issues. LB-- LB21 adopts the Uniform Unlawful Restrictions in Land Records Act. Racially restrictive covenants were found to be void by the U.S. Supreme Court in Shelley v. Kraemer in 1948. Discriminatory, restrictive covenants have hampered the ability for marginalized communities to build wealth through property ownership. If someone were to purchase a home with a restrictive covenant, they would have to initiate the process of removing the covenant, which can both be time consuming and financially draining. By adopting the Unlawful Restrictions in Land Records Act, future home buyers and current homeowners will be able to buy homes and search for homes, secure in the knowledge that a discriminatory covenant will not be present in their deeds. For these reasons, the ACLU of Nebraska offers its support for LB21, and we urge its advancement to General File. Thank you, and I'd be happy to answer any questions.

JACOBSON: Thank you. Questions from the committee? Yes, Senator-- Senator Bostar.

BOSTAR: Thank you, Chair Jacobson. Thank you for being here. I just-- listening to your testimony-- currently, in order to purchase the home, someone would have to remove the covenants?

JOY KATHURIMA: Not to purchase the home, because Shelley v. Kraemer made the covenants avoided. Like, restrict-- like discriminatory covenants are no longer legal under the Supreme Court.

BOSTAR: I just wanted to clarify, because that would--

JOY KATHURIMA: Yes. Yeah. Yeah, but they would-- they-- the covenant is still present in the document of the paper, so they would still be able to view it, if they're going through, you know, the history of how their home has been transferred.

BOSTAR: Got it. Just wanted to make sure. Thank you very much.

JOY KATHURIMA: Yes. Yeah.

JACOBSON: Other questions from the committee? All right. Seeing none, thank you for testimony.

JOY KATHURIMA: Thank you.

JACOBSON: Thanks for being here today. Further proponents? Anyone else want to speak as a proponent? If not, are there any opponents to this bill? Opponents? OK, then let's go to neutral testifiers. No neutral testifiers. All right. Well, there were-- oh, we do-- oh, yes. Senator Cavanaugh, you're, you're welcome to close.

J. CAVANAUGH: Thank you, Chairman. I don't have anything to add. I just wanted to say thank you to all the folks who came and spoke, especially Miss Sternecky, who came from Chicago, I believe. Is that right? Chicago? Yeah. To enlighten us about the context of some of these things. Basically, you know, this bill just-- you already have a right to take this off your property, but there's this-- it-- there is a cumbersome and expensive process, and there are, you know, scars on our history caused by these things, and this does not seek to erase those. It preserves the history, but allows someone to, to say that their property no longer has that in force and effect in the document, but it would still be there for the historical record. So it achieves both the rec-- the objective of, of cleaning up our past, but also preserving that part. And so, I'd ask this committee to vote favorably on this bill and get it to General File. I'm happy to take any other questions.

JACOBSON: Thank you. Questions? Senator Riepe.

RIEPE: Thank you, Mr. Chairman. I want to understand the art of the deal here. On page 2, Section 2(a) says "establishes a governing body," which implies that it's new to-- at least in my way of thinking. And yet, when I look at the fiscal note there, ten pages with four zeros, I don't know-- that's, that's an exception to what generally happens here in the, in the Legislative Chamber, is that you get a ten-page fiscal note with no cost. It's pretty impressive.

J. CAVANAUGH: Well, it's-- so, I'm-- thank you, Senator Riepe, for the question. This is in the instance where somebody does do those things. It doesn't-- the bill doesn't establish a new governing body; it would be a, an instrument that does establish a new governing body.

RIEPE: Oh, OK. OK. When I read it, it looked like it was new to me. OK. I still don't know how you can get a fiscal note with nothing. I've never been able to pull it off.

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J. CAVANAUGH: Well the-- yeah, in theory, there should be no cost to doing this, or, or a de minimis cost to the counties when they do process the request.

RIEPE: OK. As long as I know it's not popularity. Thank you.

JACOBSON: Thank you, Senator Riepe. Other questions from the committee? All right, seeing none. Thank you.

J. CAVANAUGH: Thank you, Mr. Chair, and the committee.

JACOBSON: --and thank you for bringing the bill. We had five proponent letters, no opponent letters, and no neutral letters. So with that, that concludes our public hearing today on LB21, and we'll move on to LB187. Senator Dover, welcome.

DOVER: Thank you, Chairman Jacobson, and good or-- good afternoon, committee. For the record, my name is Robert Dover. R-o-b-e-r-t D-o-v-e-r. I'm the represent District 19, which is Madison County, south half of Pierce County. I've introduced LB187 on behalf of the Nebraska Real Estate Commission. It seeks to accomplish four goals. First, it will require as written buyer agency agreements if consumers were using a buyer's agent. In a series of landmark settlements, the antitrust cases against the National Association of Realtors and several large brokerages, settlement agreements entered into last year required affected agents and brokerages to enter into a written buyer agency agreement upfront, to provide more transparency and the opportunity for consumers to be aware of and negotiate commissions. LB187 makes these written buyer agency agreements a requirement for all licensees in a residential transaction, providing better disclosure of commissions and agency duties and responsibilities for all agents, and avoiding the confusion of having different standards for written buyer agents' agreements, depending on whether a licensee is subject to the settlements or not. Basically, this is ac-- the National Association of Realtors, which represent about 80% of the licensees in the state of Nebraska, are under the settlement and there's another 20% of licensees that aren't Realtors that aren't. And this provides consistency and the disclosure is a good thing. Secondly, the bill increases pre-license education requirements for real estate; salespersons' initial 30-clock-hour class for the salesperson license can be completed in a week if classes are taken on consecutive days or online. The total pre-license education

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requirements can still be completed in less than a month under the new requirements. The commission saw an unprecedented increase in complaints in 2024, with nearly 60 sworn complaints being filed on-- averaging 40 to 50 a year over the last several years. There were also an increased number of licensees cycling through and trying out the real estate career. The increased education would better prepare agents with an understanding of license act and agency requirements. The new law would make Nebraska similar to surrounding states for pre-license education requirements. Thirdly, the bill would end an unintended consequence of recently-passed wholesaler, or "flipper" legislation, LB892 from 2022. Clarifying such laws did not appeal where the-- excuse me. Does not apply to the sale of options and vacant lots, which often occur in the normal course of business between builders and developers. In LB892, what it did was-- you'd enter into a purchase agreement and while I-- while the contract before the close was still pended, you couldn't then try to sell the option on that contract. And luckily, they snagged the builder-developers, which-- in many cases, a, a builder-developer will option a lot, where he basically puts the money down on that lot, contingent upon getting an acceptable price on a new construction. So we kind of snagged that, so we're fixing that also. And lastly, the bill clarifies the payment of compensation to out-of-state licensees who do not hold a real estate license is allowed to-- [INAUDIBLE] who do not hold a Nebraska real estate license is allowed for the payment of a referral fee only, that out-of-state licensees may not participate in a Nebraska real estate transaction without a Nebraska real estate license. So, basically you can't collect a fee, but you can-- you know, because you're not really-- what is it? So you can't do real estate in the state of Nebraska unless you have a real estate license. And this clarifies that you can get a referral. So basically-- [INAUDIBLE] one second, my phone's going to my hearing aid here, so. So what happens is there's referral groups in other states where you have your license as a license, and it's warehoused by a brokerage firm that's basically for referrals. So this still would allow that real estate licensee, say, in Arizona, to call in Omaha and refer a buyer to a real estate company, but they can't do anything that's required to-- a, a license is-- well, is required by license. Joe Gehrki, director of the Nebraska Real Estate Commission and others will follow me in their testimony. After they have spoken, we will be happy to answer any questions. Thank you for your time.

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JACOBSON: Thank you. Questions? All right. If not, thank you. You'll stick around for close?

DOVER: Thank you. Thank you, Chairman.

JACOBSON: All right. Proponents.

JOE GEHRKI: Good afternoon, Mr. Chairman and members of the committee. My name is Joe Gehrki. It's J-o-e G-e-h-r-k-i. I am the director of the Nebraska Real Estate Commission. First, I'd like to thank Senator Dover for bringing this bill forward for the Real Estate Commission. The Nebraska Real Estate Commission is responsible for licensing and educating and disciplining real estate licensees in the state of Nebraska. Currently speaking, brokers and agents are operating under two sets of rules as it pertains to buyer-- representing buyers in a real estate transaction. Licensees that are members of the National Association of Realtors are forced to comply with the terms of the class action lawsuit against NAR, as the sten--senator had stated. That demands that they have a signed buyer representation contract before showing properties. Non-NAR agents don't have to follow this rule, and they don't. As director of the Nebraska Real Estate Commission, passing LB187 would ensure that all licensees in the state of Nebraska are consistently educated in the proper representation of buyers and, when necessary, the Commission can discipline any errors in a consistent manner. As stated, we also are asking for an increase in education to become licensed. It's basically an increase by a third. Currently speaking, the Commission saw an unprecedented increase from complaints in 2024. Right now, I have about 70 complaints from the public on my desk, where typically, in January, we would have 35 or 40. We want to increase professionalism to make sure that home buyers, home sellers are represented properly and in a professional manner in the state of Nebraska. Also, there's some clean-up language to the wholesaler bill as the Senator had stated, and referral verbiage for licensees out-of-state. Basically it. If there's any questions or comments--

JACOBSON: Questions from the committee? Yes, Senator Hardin.

HARDIN: Why the hockey stick? Why double now?

JOE GEHRKI: On the education?

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HARDIN: Well, you were saying normally it's not-- it's about half of the number of complaints.

JOE GEHRKI: So, there's no-- I wish it were, but there-- Senator, but there's no real trend as to why the number of complaints are up. My guess is post-mortgage-crisis of 2008, 2012-13, there was such an influx of individuals into the real estate industry, the experience and the education is lacking. And which, post-COVID, turned into a lot of upset buyers and sellers who are, are looking for a complaint to be filed through my agency.

JACOBSON: Yes, go ahead.

HARDIN: Is there a geographic area that's more troublesome than others in the state?

JOE GEHRKI: Well, obviously, there are more in the eastern part of the state, but there's more real estate transactions, too. So, no, I would say proportionately, by population. It-- it's distributed statewide.

HARDIN: Thank you.

JOE GEHRKI: Good question. Thank you.

JACOBSON: Senator von Gillern.

von GILLERN: Thank you for your testimony. To-- just to add on to the question about the compliance. Is there a trend to those complaints? What, what-- are they-- the complaints mostly ethical violations? Technical?

JOE GEHRKI: Great question, and I know you know a lot about real estate transactions.

von GILLERN: Little bit.

JOE GEHRKI: I wish there were. That way, we could go straight at it. So, as opposed to the buyer representation-- that, to me, is, is fairly simple and straightforward. Currently, every listing in the state of Nebraska has to come with a, a listing agreement. Therefore, I believe every buyer representation could-- should come with a, a buyer contract. As far as trends goes, Senator, no. There's, there's

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no one thing, but I think-- I believe-- education could help me bring my complaints down a little bit.

VON GILLERN: So if you require more education, how do you know where to apply the-- what do we-- what, what additional education are we going to encourage? And more hours is not necessarily going to resolve--

JOE GEHRKI: We're going to encourage law. We're going to encourage law.

VON GILLERN: Laws? OK.

JOE GEHRKI: Law is currently an option. Principles and practices is not required; we're going to require principles and practices, finance and law. If we did those three, if potential licensees did principles and practices, law, and finances, we would see better agents in the state of Nebraska. There's no question about that.

VON GILLERN: OK. That's helpful. Thank you.

JACOBSON: Other committee questions? Yes, Senator.

HALLSTROM: I, I'd just comment. I think I normally am, am against increased regulation of businesses. But in this area, I also hear and see folks who come in and they look at a professional real estate agent and they say, "Gosh, you're doing well, and I could do this." And I think if you have more stringent requirements, you may actually dissuade some of those fly-by-nighters from coming into the, into the industry and the profession.

JOE GEHRKI: However, however we get to more professionalism, I'm for.

HALLSTROM: Thank you.

JOE GEHRKI: Thank you.

JACOBSON: Further committee questions? I have just one.

JOE GEHRKI: Yes, sir.

JACOBSON: I, I guess, kind of along the lines of Senator von Gillern. I, I was just kind of curious, can you give us some examples of where

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maybe the most of the complaints are coming from? Or some-- where-- what some of the complaints are.

JOE GEHRKI: Non-disclosures of, of all sorts. Non-disclosure of agency relationships, non-disclosure of defects on a property. If agents and, quite frankly, sellers disclose more and better, we would be better off.

JACOBSON: Right. OK. That's kind of what I figured. Thank you. Appreciate it.

JOE GEHRKI: Thank you.

JACOBSON: Thank you for your testimony. Other proponents? Ms. Gilbertson, welcome.

KORBY GILBERTSON: Good afternoon, Chairman Jacobson, members of the Committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association in support of LB187. I'm going to skip explaining the background of the reason for the, the agency agreement, but to talk a little bit about-- more about the fact that there are two sets of standards, and the Realtors association has always tried to advance the, the professionalism of Realtors and licensed real estate agents. And so, this was a, a project that we worked on last summer trying to come up with the right language, making sure that people are protected so that, really, this is more of a consumer protection type issue, so that consumers don't have to worry about whether or not they understand the difference between working with a Realtor or a licensed real estate professional, and that they know that they're both going to be treated the same. And, in the bill, it's-- it refers to the section that talks about the activities that will be taken; I decided to chair that this involves listing sale purchases, exchange rents, lease or options for any real estate; can also work on lots or parcels of land, so that this kind of covers the gamut of what you would be hiring someone to do. So before that the-- any of those activities could take place on behalf of someone, they would need to enter into an agreement. And so, with that, I'd be happy to take any questions. But the Realtors are standing in support of this, and hope you will advance it.

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JACOBSON: Questions from the committee? All right. Seeing none, thank you.

KORBY GILBERTSON: Thank you.

JACOBSON: Other proponents? All right. Seeing none, are there any opponents who wish to testify? Opponents? All right. Seeing none, anyone wish to testify in a neutral capacity? All right. If not, Senator Dover, you're welcome to close.

DOVER: I just want to answer a couple of questions from a little different angle. I was licensed in 1983, went full-time in 1988 and took over management of a real estate company. We've been in business for over 60 years.

JACOBSON: So this is your disclosure now?

DOVER: Oh. So, to the question that Senator Hardin had, it's-- I was also-- my father was on the Real Estate Commission, I was on the Real Estate Commission, my wife was on the Real Estate Commission, so we have a lot of experience in what the Real Estate Commission does in state statute. And it is interesting that usually, traditionally, complaints only go up when real estate slows down, right? Because people are upset because-- why isn't my house selling? I'm angry and frustrated. I want to file a complaint. So this is really strange, because real estate's moving pretty good right now. And-- you want my honest opinion why we see this happening? Because there's some people seem interested in-- into why it's happening now-- it's-- I think it's because real estate brokerage firms are extremely stressed for profitability. Something that started back in probably the early '90s was recruiting among real estate companies. And it is the number one job of any broker is to recruit agents from another company. This is done by offering a higher payout in real estate commissions. Due to that, there is extreme pressure on the bottom line at brokerage firms, and therefore, they've gone into ancillary services, property management, title and escrow, those-- you know, lending-- those kind of things like that. And so, I think unluckily, because they're trying to keep everybody happy, sometimes that accountability that used, that used to be there back when I was in the '80s and the '90s and the 2000s isn't there today. In fact, in my local market, I am amazed that we actually will counter agreements to make it legal, because the agents that we're seeing in the field today are not trained the way

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that Joe Gehrki was before he became the director of the Real Estate Commission, but-- and we've had this discussion too, before. But you're just not seeing the level of training and accountability that used to be there, because if you do that, you may lose your agent to another firm who doesn't care how they act, and, and puts them on their line and gets a commission. So that's, I think, Senator Hardin, the reason we're, we're seeing what's, what's going on, what's changed in the industry. And-- that's all I have. So in-- I'm-- even though I-- I'm waiving my closing now. And so, thank you. I'm back to Appropriations. And actually, on a side note, we did fund an additional investigator for the Real Estate Commission. [INAUDIBLE]. They've always had one forever, now they'll have two take care of this for the public. Thank you.

JACOBSON: Thank you. Questions for Senator Dover? Just so you know, you waive your closing before you close.

DOVER: Oh, OK. You know, I, I-- you know, I'm just half a term. What can I say?

JACOBSON: Thank you.

DOVER: Thank you.

JACOBSON: All right, we had zero proponent letters, zero opponent letters, and zero neutral letters. So with that, that-- this concludes our hearing on LB187, and we will open the hearing on LB139. Senator Dungan.

DUNGAN: Thank you, Chair Jacobson. Good afternoon, Chair Jacobson and fellow Banking, Commerce and Insurance Committee members. I'm Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n, and I represent Legislative District 26 in northeast Lincoln. Today, I'm introducing LB139. LB139 is a bill relating to disciplinary actions against credential holders and appraisal management companies under the Real Property Appraiser Act. Currently, in the case of a violation under the Nebraska Real Estate Appraiser Act, the Real Property Appraiser Board must begin an investigation in the case of a written complaint. They may also start an investigation on their own motion. The board may then revoke or suspend the credential, or otherwise discipline or credential holder, revoke or suspend a qualification, or continuing educ-- education course or activity, deny any application, or issue a cease and desist

order. LB139 would instead allow the board to enter into a contingent dismissal agreement with remedial measures with a credential holder or a company. If an appraiser or an appraiser management company commits a violation, the board may enter into an agreement with that individual or the company to help them better understand the proper standards and procedures. A completed contingent dismissal agreement will not be a disciplinary action; if they do not complete the duties in the agreement, they will face formal disciplinary action or dismissal. We in Nebraska and nationwide have a shortage of appraisers. This allows for a more appropriate course of action in lieu of a dismissal or a suspension, and this allows the Real Property Appraiser Board to decide how best to educate and discipline their members. Tyler Kohtz will be testifying after me. He's an expert in the field, and can better explain the need for this alternative form of correction. He can also give examples of when something like this could have been utilized. Thank you for your time and consideration, and I'm happy to answer any questions you might have.

JACOBSON: Thank you. Questions from the Committee? All right. Seeing none. I know you'll be here for close, so.

DUNGAN: Yes, I will.

JACOBSON: Proponents?

TYLER KOHTZ: My name is Tyler Coates, T-y-l-e-r K-o-h-t-z, and I'm the director for the Nebraska Real Property Appraiser Board. I'd like to begin by thanking Senator Dungan for introducing LB139, and Chairperson Jacobson and the rest of the committee members for the opportunity to speak on behalf of the board concerning LB139. The board was established in 1991 to carry out the requirements of Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, and the board's primary functions are to issue and renew appraiser credentials, appraisal management company registrations; develop and implement standards for appraiser credentialing and appraisal management company registration; approve appraiser qualifying education courses and continuing education activities; investigate and adjudicate grievance-- grievances; and disseminate relevant information to the general public, credentialed appraisers, and appraisal management company. The board's programs are fully funded through registration fees and credentialing fees, and no taxpayer money is used to support this program. The purpose of LB139

is to update the Real Property Appraiser Act and Appraisal Management Company Registration Act to implement the use of conditioned dismissal in lieu of disciplinary action. Title XI requires that real estate appraisals be performed in accordance with generally-accepted uniform standards known as the uniform standards of professional appraisal practice, or USPAP, and are to be performed by individuals whose competency has been demonstrated and his professional conduct is subject to effective state supervision. USPAP consists of up to 73 standards, not including, including advisory opinions pertaining to professional ethics, appraisal development appraisal reporting. A real property appraiser must adhere to these standards when engaged in real property appraisal practice for each assignment. In addition, the AMC Rule implements minimum requirements of the Dodd-Frank Wall Street Reform Recovery Act [SIC], which added new section-- 1124-- to Title XI concerning the registration and supervision of appraisal management companies. That is-- the intent of the board's regulatory program is to be educational in practice when possible for violations that do not rise to the level of filing a formal complaint, and when a dismissal with a written advisory does not provide adequate oversight to ensure that the issue leading to the violations are corrected, the board has no remedy but to, to cure the minor unintentional violations without the real property appraiser or AMC suffering the ramifications of discipline on their record, including, but not limited to reporting the disciplinary action to the appraisal subcommittee to be included on the appraiser registry or AMC registry. I know we're getting close to the end, but may I continue?

JACOBSON: Go ahead. Yep, go ahead.

TYLER KOHTZ: Thank you. An example of when this would come into play is, at the conclusion of a recent investigation concerning the appraisal of a feedlot, the board struggled with whether to dismiss the investigation with the written advisory or to file formal charges. Although the-- most of the USPAP standards were met by the appraiser in the report, the appraiser failed to adequately reconcile the income approach. Complexities and the comparable income producing properties were not accounted for in a consistent manner, which led to variances in the value per head of cattle. This failure on the part of the real property appraiser resulted in an appraisal report lacking credibility. It was the board's position that additional education in appraising feedlots or complex agricultural properties would likely correct the appraiser's deficiencies, but under the current system, it

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didn't feel that if it was in an advisory letter, the appraiser would likely carry it through, and there'd probably be another grievance filed against that appraiser. The board chose to proceed with filing formal charges in this matter, and the appraiser chose not to renew their credential to avoid disciplinary action on their record. If the contingent dismissal was an available option, the board and the appraiser could have entered the contingent dismissal agreement offered by the board, and the grievance could have been dismissed once the appraiser completed the terms outlined in the contingent dismissal agreement. As previously mentioned, the intent of the board's regulatory program is to be educational in practice when possible and use the contingent dismissal would provide another tool for the board to use. The board supports LB139. A technical breakdown has been provided to your legal counsel already for your use. If you have any questions on that, the bill, or my testimony, please let me know. And thank you.

JACOBSON: Thank you. Questions for the testifier? I think essentially, as I read the bill, what you're-- what we're trying to get at is to provide another avenue--.

TYLER KOHTZ: Correct.

JACOBSON: --for a less harsh disciplinary action so that we've got the ability to basically rehabilitate these--

TYLER KOHTZ: Yeah. Yeah, if you--

JACOBSON: --appraisers, as opposed to kicking them out for-- the last I checked, we wait a long time to get appraisal turn around, and--

TYLER KOHTZ: Yes, sir. That's exactly right.

JACOBSON: --at the same time you want quality appraisals. But, but people that are already in that industry and have already done the basic work,--

TYLER KOHTZ: Correct.

JACOBSON: --they have the interest, it's important that they just finish getting trained in the areas that they need to work on,--

TYLER KOHTZ: Yeah.

JACOBSON: --rather than kicking them out of the industry, so.

TYLER KOHTZ: That's correct.

JACOBSON: I think-- I'm assuming that's what you're trying to get done here.

TYLER KOHTZ: Yes.

JACOBSON: Thank you. Questions? All right. Seeing none--

TYLER KOHTZ: Thank you.

JACOBSON: Thank you. And-- any other proponents? Speaking to a pretty small crowd right now. Seeing none. Any, any opponents? Seeing none. Anyone wishing to speak in the neutral capacity? Seeing none. Senator Dungan, you're welcome to close. If you're going to waive closing-- you took the lesson from Senator Dover. So with that, I'll just mention that there were two proponent letters, no opponent letters, no neutral letters. With that, that closes out LB139, and I would just ask the committee members to kind of hang out here and-- if we could ask everyone else to clear the room, we'll kind of move into executive session, and--