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Judiciary Committee  
February 06, 2015

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[LB221 LB253 LB385 LB409 LB416]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 6, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB385, LB409, LB416, LB221, and LB253. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: We don't have a quorum, so let me give you the criteria. If you're going to testify, pick up a slip outside and fill it out so that you can give it to the clerk/one of the pages when you come up to testify. If you want to express your opinion but you do not want to testify, there is a sign-up sheet outside that you can do that. And that will be made part of the record so that it will show in the record, official record, that you did appear and that you had a position, one side or the other. If you have a handout, make sure you have 15 copies to distribute to the staff. And when you come up, speak clearly into the microphone so that...it's not for purposes of amplification as much as it is making sure the transcript has been recorded, clarifies what your position is. Shut off all your cell phones, and I'll do that too. We have some senators that are not going to be here right away. They're introducing bills in other committees. But on my right is Senator Matt Williams from Gothenburg. Our clerk (sic) is Josh Henningsen--our lawyer, excuse me, lawyer. Our clerk is Oliver VanDervoort. And then we have Senator Pansing Brooks, got it--there's a law firm here in town by the name of Pansing Guenzel (sic--Crosby Guenzel), and every time I introduce her, I call her Pansing Guenzel (laugh)--and then Senator Ebke from Crete.

SENATOR EBKE: Crete, there you go.

SENATOR SEILER: I almost said Wilber but I got it right.

SENATOR EBKE: That's okay.

SENATOR SEILER: There will be...here comes Senator Coash from Lincoln. He's joining us. And we have two more senators and they'll be both here shortly, as soon as they get done introducing. We'll start with LB385. Brett, you may come up and...Senator Chambers has joined us, from Omaha. Brett, you can go. [LB385]

SENATOR LINDSTROM: Thank you, Chairman Seiler, and thank you, committee members. My name is Brett, Senator Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, and I represent the Legislative District 18 in northwest Omaha. Today I'm bringing LB385 for your consideration. LB385 gives landlords a more time-efficient remedy for tenants who, by themselves or others,

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they have given permission to be on the premises, engages in behavior that threatens the health, safety, or peaceful enjoyment of specified others. Specifically, after giving a three-day written notice, the landlord can bring proceedings to evict the tenant. Behaviors specifically listed in the bill include, but are not limited to, physical assault or the threat of physical assault; illegal use of a firearm or other weapon or the threat of illegal use of a firearm or other weapon; and possession of a controlled substance, unless the substance was obtained directly from a physician. There are certain protections listed in this bill that allow tenants to avoid eviction. The tenant can either get a restraining or protection order against the person who committed the act, or they can call law enforcement regarding the incident. The goal here is to maintain a safe environment for tenants and all others on these premises, which helps to create safer communities across our state. With that, I'll take any questions you may have. Thank you. [LB385]

SENATOR SEILER: Any questions? I have a question of you, Brett. [LB385]

SENATOR LINDSTROM: Yes, sir. [LB385]

SENATOR SEILER: (Exhibit 1) We have received as an exhibit, dated February 16, 2015, from the ACLU. Have you had a copy of that? [LB385]

SENATOR LINDSTROM: I've been told about the copy. I'm familiar with the contents of it, yeah. [LB385]

SENATOR SEILER: Okay, that's all I wanted to know. [LB385]

SENATOR LINDSTROM: Yes. [LB385]

SENATOR SEILER: Any other questions? Seeing none, you may step back. [LB385]

SENATOR LINDSTROM: Thank you. [LB385]

SENATOR SEILER: Testimony in support of LB385. [LB385]

GENE ECKEL: Good afternoon. Senator Seiler, members of the Judiciary Committee, my name is Gene Eckel. I'm on the board of directors for the Nebraska Association of Commercial Property Owners and on the board of directors for the Apartment Association of Greater Omaha and Lincoln. We're here in support of LB385 because we want to help landlords protect tenants

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that feel threatened by the criminal acts of other tenants. Specifically, as Senator Lindstrom indicated, LB385 allows a private landlord to terminate the lease of a tenant who engages in a drug-related or criminal activity on the premises that threatens the health, safety, or peaceful enjoyment of other tenants, the landlord, or the landlord's employees without the opportunity to cure. This bill also provides an exemption for a tenant that seeks a protective order, a restraining order against an occupant or guest that conducted a criminal act or reports such criminal act to law enforcement. This language mirrors the language currently set forth in the Nebraska Housing Agency Act, and it gives the private landlord some tools as a public housing agency to evict a tenant for a criminal act committed on the premises. And currently, the Landlord and Tenant Act requires the landlord to wait 30 days before filing a lawsuit to evict a tenant that engages in a criminal act on the premises, and we believe LB385 is an important piece of legislation that will help landlords protect innocent tenants that feel threatened by the criminal acts of other tenants. And we urge you to support LB385 and to advance this to General File. I'd be willing to answer any questions from any of the committee members at this time. [LB385]

SENATOR WILLIAMS: I have... [LB385]

SENATOR SEILER: Senator Williams. [LB385]

SENATOR WILLIAMS: Thank you, Chairman Seiler. Can you just go through an example for me as how this...a fact situation of how this LB would apply. [LB385]

GENE ECKEL: Sure. A good situation would be let's say there was a tenant that was selling narcotics and the police were reported and the police came out and they arrested that individual. And that would be a situation where there was a criminal act that would affect the health and safety of other tenants in that apartment community. And at that time, the landlord could serve a three-day notice on the tenant. And if the tenant did not move out within three days, then the landlord would have to file a lawsuit to then have an eviction. And that hearing date would be 10-14 days later and at that time the tenant would have their day in court. And the landlord would have to prove to the judge that there was a criminal act, that it affected the health and safety of other tenants. And then it would be up to the judge at that time to determine whether restitution would be granted to the landlord or not. [LB385]

SENATOR WILLIAMS: What level of criminal act would this law cover? [LB385]

GENE ECKEL: Primarily, this would cover...it...well, the...good... [LB385]

SENATOR WILLIAMS: Not primarily. [LB385]

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GENE ECKEL: Right, I mean,... [LB385]

SENATOR WILLIAMS: What would it cover? [LB385]

GENE ECKEL: Well, and it is a little bit...because we're mirroring it after the current, existing law in the Nebraska Public Housing Agency Act. I mean, obviously, drug-related crimes or violent crimes would be covered, such as if someone discharged a weapon on the premises or shot somebody on the premises. That would certainly be covered. If there was an assault of someone on the premises, whether it's tenant on tenant or tenant on occupant or on a guest, that would probably be covered. If there was harassment of another tenant, that would probably be covered if there...if it's a continued series of harassment. [LB385]

SENATOR WILLIAMS: Your example I think that you gave me was drug possession. [LB385]

GENE ECKEL: Drug dealing or drug possession. [LB385]

SENATOR WILLIAMS: Okay, drug possession, less than an ounce in Nebraska, is an infraction. Where would that particular... [LB385]

GENE ECKEL: I don't know because I'm not a judge. I mean that...and we...that's up to the judge to make that decision at that time. If it's not enough and the judge doesn't feel like it's enough, then the judge isn't going to grant it. [LB385]

SENATOR WILLIAMS: Is that defined in the statute, in LB... [LB385]

GENE ECKEL: No, it's not defined in LB385. But here's what I will say: Currently, under the Landlord and Tenant Act, if you have...if the lease that the tenant signs says, if we catch you with an illegal drug that's a violation of the lease,... [LB385]

SENATOR WILLIAMS: Your contract. [LB385]

GENE ECKEL: ...so under current statute, the landlord is going to serve them with what we call a 14/30, which is they would have 14 days to cure the act. And if they don't cure it within 14 days, then the lease terminates 30 days later from the day they gave them that notice. The theory though is that, if it's a criminal act, how can you cure it? So what typically goes on in our industry is that the landlord gives the tenant a 30-day notice to quit. And if they're not out in 30

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days, then they'll file a lawsuit. And if, again, if the tenant challenges it, they have their day in court and it's up for the judge to make that determination. [LB385]

SENATOR WILLIAMS: The purpose here is to expedite that process. [LB385]

GENE ECKEL: That is correct. So again, we look at...the Public Housing Agency Act currently has this in effect right now. So if you're in the Lincoln Housing Authority and you commit a crime, Lincoln Housing Authority can serve you with a three-day notice to quit. And if you're not out in three days, they can file a lawsuit. So, I mean, so we just want some parity between the private industry and what the public housing agency currently has. [LB385]

SENATOR WILLIAMS: Thank you. [LB385]

GENE ECKEL: Yep. [LB385]

SENATOR SEILER: Senator Chambers. [LB385]

SENATOR CHAMBERS: There is an existing remedy in the law for all of these circumstances, isn't that true? [LB385]

GENE ECKEL: Under the...76-1431, with the 14/30 notice, is that what your making reference to? [LB385]

SENATOR CHAMBERS: So...but this is to expedite it for the benefit of the landlord. Is that what the purpose of this bill is? [LB385]

GENE ECKEL: No, the purpose of this bill is to expedite it for the purpose of keeping other tenants safe because... [LB385]

SENATOR CHAMBERS: Is what? [LB385]

GENE ECKEL: To keep other tenants safe in...because there has been times when our members, the tenants are saying, hey, we're afraid of this tenant or this tenant is continuing to do these acts, why don't you do something about it? And the landlord is like, well, we are doing it, but we have to wait 30 days. So we're just trying to expedite it because we want our members...our tenants to be safe. And the Supreme Court held in 1999 that a landlord can't...has a duty to protect tenants if they know that there's an ongoing criminal conduct going on the premises. So landlords have a

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liability issue here, too, that they want to protect their tenants, but they want to do it in an expedited fashion. [LB385]

SENATOR CHAMBERS: How would somebody possessing an amount of marijuana, say, or any prohibited drug going to affect any other tenant? [LB385]

GENE ECKEL: Your honor...Senator. [LB385]

SENATOR CHAMBERS: So this isn't... [LB385]

GENE ECKEL: I apologize. [LB385]

SENATOR CHAMBERS: This isn't just to ensure the peaceful enjoyment of the apartment that another tenant has, is it? It goes beyond just the other tenants, doesn't it, this bill? [LB385]

GENE ECKEL: I would say this: I would say it could turn out that someone could...a landlord could file a three-day notice or serve three-day notice and could file a lawsuit. But I cannot, sitting here today, tell you whether or not a judge would grant it just because someone had possession of marijuana, if that would be sufficient. [LB385]

SENATOR CHAMBERS: No, you're going beyond what I am asking you. You indicated in a lot of what you said that other tenants' interests are the driving force behind this bill, unless I misunderstood what you said. Is there something other than the interest of other tenants that is driving this bill? [LB385]

GENE ECKEL: No, the interest here is that we want to make sure that we protect our tenants' safety and that when they come complaining to our members about other acts of tenants that are criminal nature, they want them to be out as soon as possible, rather than... [LB385]

SENATOR CHAMBERS: Well, how would the possession of a drug of any kind affect another tenant? [LB385]

GENE ECKEL: I...you know, I don't know, Senator. If, you know, facts change, unless someone was...just possession of it, I don't know. [LB385]

SENATOR CHAMBERS: Okay, and I don't want to keep asking you the same question. [LB385]

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GENE ECKEL: Sure. [LB385]

SENATOR CHAMBERS: Who drafted this bill, if you know? [LB385]

GENE ECKEL: I did draft it. [LB385]

SENATOR CHAMBERS: Are you a lawyer? [LB385]

GENE ECKEL: I am. [LB385]

SENATOR CHAMBERS: Had you studied the law of landlord/tenants before you drafted it? [LB385]

GENE ECKEL: Yes. [LB385]

SENATOR CHAMBERS: And you know that there are remedies already in the law? [LB385]

GENE ECKEL: Yes, 76-1431. [LB385]

SENATOR CHAMBERS: So why should we...I can understand why landlords might want something like this. They might want the authority, if we'd give it to them, to say, I don't like your looks, get out. The landlord can try to get us to do that. But why should we, as policymakers who know that there are already remedies in the law, offer law on top of law? [LB385]

GENE ECKEL: Here's my...my response to that would be, Senator, because we're asking for a more expedited way than allowing a tenant that may be causing or may cause or is currently causing harm to other tenants to stay there for 30 days before a landlord could file a lawsuit to have them evicted. [LB385]

SENATOR CHAMBERS: Okay. Do you believe it's possible...if this pencil is six inches long, do you think it's possible to have a six-inch stick that has only one end? Is that possible? [LB385]

GENE ECKEL: To have one end? [LB385]

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SENATOR CHAMBERS: That has only one end. It's got to have two ends because six inches... [LB385]

GENE ECKEL: That's true. [LB385]

SENATOR CHAMBERS: ...is from one point to another. So if we pass a law that is going to give landlords something, what in that law would ensure that the tenant is not going to be an inappropriate victim of this process you're asking us to put in place? If somebody is arrested, you as a lawyer know that an arrest is not the same as a conviction, don't you? [LB385]

GENE ECKEL: That is correct. [LB385]

SENATOR CHAMBERS: So if somebody is arrested, say, for drug possession or anything else, would that arrest by itself trigger all of what is available in this law, if it were the law, for a landlord to do? Would the arrest be sufficient to trigger it? [LB385]

GENE ECKEL: It would be, and it's currently that way under the Nebraska Public Housing Agency Act. [LB385]

SENATOR CHAMBERS: And if it's found that the arrest was false, unjustified, or the charge were not sustained, what redress would the tenant have who is no longer...who no longer has a place to stay? [LB385]

GENE ECKEL: If...at that point, the tenant would have no redress. [LB385]

SENATOR CHAMBERS: Would you be willing, if we were to do this, to put in a provision that, should any tenant be removed pursuant to the provisions of this law, that tenant (inaudible)...upon proving that the removal was unjustified under the law, that tenant would be entitled to what the law calls liquidated damages of \$5,000? Would you be willing to have that put into the law? [LB385]

GENE ECKEL: No. [LB385]

SENATOR CHAMBERS: Do you think it's a serious thing to be removed from where you live without just cause? [LB385]

GENE ECKEL: No. But again, this will go to a judge to make that determination. [LB385]

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SENATOR CHAMBERS: I don't want the judge to do my job. My job is not to say we're going to put something in statute that some outfit wants to make it easier for them to do what they want, but those who bring it don't know what it entails and wants us to say, well, whatever the judge says is it. We've got to put it in the law. What recourse do you think that a tenant should have that would be written into this law? If the tenant inappropriately is put out, what should the tenant be granted? [LB385]

GENE ECKEL: Well, under current statute, there is retaliation or harassment provisions put in. The liquidated damages under those statutes is three months' rent plus liquidated damages plus reasonable attorney's fees. [LB385]

SENATOR CHAMBERS: Who asked, who authorized, or retained you to draft this statute? [LB385]

GENE ECKEL: As...on the...as the chairman of the legislative committee for my association, I drafted it on behalf of the association. [LB385]

SENATOR CHAMBERS: And which association is that? [LB385]

GENE ECKEL: That's the Apartment Association of Greater Omaha and Lincoln. [LB385]

SENATOR CHAMBERS: Well, the fact that you mentioned the Lincoln Housing Authority, I thought maybe they were the ones. Why do you mention them, because this applies to more than just the housing authority's property, doesn't it? [LB385]

GENE ECKEL: The reason why I mentioned Lincoln Housing Authority is because under 71-15,139, under the Nebraska Public Housing Agency Act, the public housing agencies can do this currently, except they don't have a provision to exempt people who have been the victims of domestic violence, which this bill does. [LB385]

SENATOR CHAMBERS: Are you here as a lobbyist for that organization? [LB385]

GENE ECKEL: No, I'm on the board of directors. I'm just here testifying on behalf of both organizations that I'm on the boards for. [LB385]

SENATOR CHAMBERS: That's all I have. Thank you. [LB385]

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GENE ECKEL: Thank you. [LB385]

SENATOR SEILER: Any other questions? I have one, since you drafted this bill. The part that bothers me the most is the terminology, "peaceful enjoyment." Do you have a definition, any other statute in that? [LB385]

GENE ECKEL: There's no definition of it, but it's currently in...I think it... [LB385]

SENATOR SEILER: How about State Supreme Court Opinion that defines it? [LB385]

GENE ECKEL: I can certainly look and provide you one at a later time. [LB385]

SENATOR SEILER: If you find one, please send it to me. [LB385]

GENE ECKEL: But it is in the current Landlord and Tenant Act, 76-1421. [LB385]

SENATOR SEILER: I know. It's always bothered me. [LB385]

GENE ECKEL: It indicates it and then that's what you allow for the 14/30. If you violate the peaceful enjoyment of another tenant, then you're going to get served with a 14-day notice to cure, basically stop what you're doing; and if you do it again within six months or you don't do it within 14 days, you're going to be served with a... [LB385]

SENATOR SEILER: That term has always bothered me as being nebulous. [LB385]

GENE ECKEL: Yeah, and... [LB385]

SENATOR SEILER: The rest of your terms are pretty specific, and that's why I asked for it. [LB385]

GENE ECKEL: I will say this, Senator. We're willing to work with this committee on the language of it. [LB385]

SENATOR SEILER: Okay. [LB385]

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GENE ECKEL: But what we're looking at is just parity between what's in the Public Housing Agency Act currently...so housing agencies can do this; private landlords cannot. And so we just want an expedited process. We just think 30 days is way too long. [LB385]

SENATOR SEILER: Okay, thank you. Senator Pansing Brooks. [LB385]

SENATOR PANSING BROOKS: So I...thank you, Chairman Seiler. I was just wanting to know whether or not...so if one person in the family, as I'm reading Section 4, is found with some marijuana, then the entire family can be moved out. Is that correct? [LB385]

GENE ECKEL: Currently, that can happen, because it's a violation of a lease. So under current statute, that can happen and it would probably be a 30-day notice given to the tenant. And they would...and if they're not out in 30 days, then the landlord is going to file a lawsuit. That's the current Landlord and Tenant Act right now. [LB385]

SENATOR PANSING BROOKS: Okay, so when is...when does this three days start to run? [LB385]

GENE ECKEL: The three days would start to run as...after they served them with the notice, so whether it's by mail or personal service. [LB385]

SENATOR PANSING BROOKS: After the landlord? [LB385]

GENE ECKEL: Yeah, the landlord has to serve it to the tenant. [LB385]

SENATOR PANSING BROOKS: Okay. [LB385]

GENE ECKEL: And so then the next day after they're served, that's when the three days starts to count by law. [LB385]

SENATOR PANSING BROOKS: Okay, so any guest, anybody could be doing something illegal and you can kick the whole family out? [LB385]

GENE ECKEL: Well, unless that person, that tenant calls law enforcement, say, my family members has this, or, you know, if it's a victim of harassment or abuse and they get a protection order. [LB385]

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SENATOR PANSING BROOKS: Okay, thank you. [LB385]

GENE ECKEL: Thank you. [LB385]

SENATOR SEILER: Any other questions? Seeing none, you may step down. [LB385]

GENE ECKEL: Thank you. [LB385]

SENATOR SEILER: Thank you. Next witness for the support of this bill. [LB385]

JOHN CHATELAIN: Good afternoon. My name is John Chatelain, and I'm here representing the Statewide Property Owners Association, which happens to be an umbrella organization between the Lincoln Real Estate Owners and Managers Association and the Metropolitan Omaha Property Owners Association and a few other groups around the state. Although we didn't draft this bill, we do support it. I believe that it would be helpful to the property manager and also, in some cases, to tenants. I don't see that this...I'm also an attorney. I do a lot of landlord-tenant work and I've worked with the Nebraska Residential Landlord and Tenant Act and know it pretty well. I don't see that this gives the property manager any greater power over the tenant because everything spelled out here is already in the Landlord and Tenant Act or in the leases. But what it does is it expedites the process. I'll try to keep my comments to things that other people haven't already said. But currently there's only about three ways that the property manager can remove a tenant. That is with a three-day notice for nonpayment of rent, and the way that works is if the tenant doesn't pay the rent, the property owner sends the tenant a three-day notice. And then if three days expire, then they can file a case in county court, which usually comes up for trial in about 14 days. There's the 30-day notice to terminate the lease once the written lease has expired, and that has to be served before the periodic rental date, and the effective date is 30 days later. And then there is the 14/30 day notice where there is a violation of the lease or a violation of the Landlord and Tenant Act, and the situation with that is that it takes 14 days for the tenant to cure. And then if the tenant doesn't cure, then the property owner has to wait 30 days in order to terminate the lease. I have received a number of calls from tenants who are frantic about someone in the building who is threatening them or that they fear, and the...I have to explain to them the only thing that we can do is terminate the lease for nonpayment of rent. And if the tenant is paying the rent, then that is of no help. Or we can serve a 14/30 day notice on the tenant. And if the tenant cures within the 14 days, then we can't do anything more. If the tenant doesn't cure, then we can terminate the lease in 30 days. Then we still have to go to court after that, so you're looking at about a six-week period of time where someone that is threatening or menacing other people in the building can't be stopped. I noticed there were some comments about small amounts of marijuana. [LB385]

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SENATOR SEILER: Your red light is on. [LB385]

JOHN CHATELAIN: Am I done? Okay, I'm sorry. [LB385]

SENATOR SEILER: Senator Williams. [LB385]

SENATOR WILLIAMS: Mr. Chatelain, I'd like to... [LB385]

JOHN CHATELAIN: Yes. [LB385]

SENATOR WILLIAMS: ...have you go ahead and conclude your remarks that you were going to make on the small quantities of marijuana. [LB385]

JOHN CHATELAIN: Yeah. I read that part of the proposal after you brought that question up. And I don't know about the author of this proposal, but I don't think our association would have any objection if there was a slight amendment to this wording to allow for the de minimis amount of marijuana, which is no longer a crime in Nebraska but it's a civil infraction. So perhaps that could be changed there. What I think this really does is it gets after that tenant who is menacing or threatening other people in the building, and that's where I see it being used. I don't see the landlord ferreting out someone with a small amount of marijuana, less than an ounce, and saying, buddy, you're out of here. I just don't see it working in that situation. And I...we would certainly entertain an amendment to that effect if that would be of help. [LB385]

SENATOR SEILER: Senator Chambers. [LB385]

SENATOR CHAMBERS: Do the members of your association pay taxes? [LB385]

JOHN CHATELAIN: Yes, they do. [LB385]

SENATOR CHAMBERS: Do you think that taxpayers are entitled to police services when those services are needed? [LB385]

JOHN CHATELAIN: I believe so, yes. [LB385]

SENATOR CHAMBERS: Do you supply your property managers with the telephone number of the Omaha Police Department or 911 if it is an emergency situation? [LB385]

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JOHN CHATELAIN: I believe 911 is pretty known by most people. [LB385]

SENATOR CHAMBERS: Are your property managers security guards in addition to managers of property? [LB385]

JOHN CHATELAIN: I don't know of any case where the property manager would also be a security guard. [LB385]

SENATOR CHAMBERS: Then why don't they call the police if somebody is threatening or menacing? Because those would be offenses that the police could be called to deal with, why don't they call the police? [LB385]

JOHN CHATELAIN: Well, the police would typically say, from my experience, that this is a civil matter, this is a tenant in your building, you leased this property to this tenant, and so it's a civil matter... [LB385]

SENATOR CHAMBERS: Okay, let's take it a step at a time. [LB385]

JOHN CHATELAIN: ...and we are going to wash our hands. [LB385]

SENATOR CHAMBERS: Then this says a lot about criminal conduct. So you want to limit it to criminal conduct? Why don't you call the police if it's criminal conduct? [LB385]

JOHN CHATELAIN: Well, why would you want to continue the lease if someone is committing crimes inside the building? [LB385]

SENATOR CHAMBERS: Well, I'm not answering those questions. You're the one who came here with the legislation. You're the one who manages the property. So I would ask you the question that you're asking me. [LB385]

JOHN CHATELAIN: Well,... [LB385]

SENATOR CHAMBERS: If the police provide a service, why don't you call the police? [LB385]

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JOHN CHATELAIN: I would advocate that the police be called, but I am saying that, from experience, oftentimes the police say, this is a civil matter, it's a landlord-tenant situation, we defer to the Landlord and Tenant Act, and so we are going to take no action. [LB385]

SENATOR CHAMBERS: Then since the people who work for you don't know what criminal conduct is and they call the police when there is no criminal conduct, why is that word "criminal" mentioned in this bill? [LB385]

JOHN CHATELAIN: Because if someone is committing the crime, in many cases, that's already going to be prohibited by the lease. The lease prohibits the tenant from committing crime inside the building. So this doesn't change that part of it. What it does is it expedites the 14/30 day notice so that you don't have to wait 14 days to cure and then 30 days to terminate the lease... [LB385]

SENATOR CHAMBERS: And if I did... [LB385]

JOHN CHATELAIN: ...in cases of criminal action. [LB385]

SENATOR CHAMBERS: You spoke of experience. If...from my experience, I have found property managers, landlords to manufacture reasons to get people out of a unit. They will make threats against a tenant which under the law they cannot make but the tenant doesn't know it. So I'm one of those...if I'm one of those people who have no interest in expediting the removal of a person from the place where he or she lives, then I wouldn't be in favor of this legislation, would I? If all it does is expedite and I'm not in favor of expediting, there is nothing else in this legislation that would persuade me to support it, is there,... [LB385]

JOHN CHATELAIN: Well,... [LB385]

SENATOR CHAMBERS: ...since all of these other things are already covered by law? Let me back up. [LB385]

JOHN CHATELAIN: Okay. [LB385]

SENATOR CHAMBERS: Did you say that all of the things in this bill are covered by existing law or the terms of the lease? [LB385]

JOHN CHATELAIN: I would say... [LB385]

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SENATOR CHAMBERS: Is that what you said? [LB385]

JOHN CHATELAIN: I would say that is correct. [LB385]

SENATOR CHAMBERS: Okay. [LB385]

JOHN CHATELAIN: All of these things could be covered in the lease, and then you would be looking at a 14/30 day process. [LB385]

SENATOR CHAMBERS: You're going ahead of me. [LB385]

JOHN CHATELAIN: What we're proposing to do is expedite that. [LB385]

SENATOR CHAMBERS: You're going ahead of me. I'm the one who am taking this a bite at a time. [LB385]

JOHN CHATELAIN: Okay. [LB385]

SENATOR CHAMBERS: So first of all, these items that you're supporting in this legislation are already covered by law, correct, based on what... [LB385]

JOHN CHATELAIN: They would either be covered by the Landlord and Tenant Act or they would be covered by the lease. [LB385]

SENATOR CHAMBERS: So... [LB385]

JOHN CHATELAIN: In many cases, leases prohibit criminal activity inside the unit. [LB385]

SENATOR CHAMBERS: So these things are covered either by the law or the lease and in some cases by both. [LB385]

JOHN CHATELAIN: Correct. [LB385]

SENATOR CHAMBERS: And the only reason this is brought to us is to let the landlord move more quickly to achieve the remedy he or she wants than the existing law allows. [LB385]

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JOHN CHATELAIN: I believe that is generally correct. [LB385]

SENATOR CHAMBERS: And the existing law was put in place, we presume, in the same way the Supreme Court does, for the reasons stated. And if the legislation that is on the books now as the law had a rational basis--otherwise, the law could be declared unconstitutional--I haven't been told anything that shows me a compelling need to let the landlords move faster. Now, if you're dealing with a criminal situation, call the police. But this other...all this other stuff--and the one who drafted it does not even know what some of it means and other of it he wants to let the judge make a decision--that's not the kind of legislation I would support. But you have seven other people who could outvote me every day of the week. [LB385]

SENATOR SEILER: Any other questions? Seeing none, thank you. You may... [LB385]

JOHN CHATELAIN: Thank you. [LB385]

SENATOR SEILER: Thank you for your testimony. Next proponent to testify. [LB385]

DANA STEFFAN: Hello. I'm Dana Steffan. I sit on the board of the Real Estate Owners and Managers Association here in Lincoln, Nebraska, as well as I am a property manager here in town. And I'd like to give you guys an example of a reason why this law would be beneficial. We had a lease with two individuals. Both individuals had left the property and they let...a friend moved in. The friend was not a great character. Police were called multiple times. We did use LPD. The police told me to not go to the property alone again because they knew these individuals, they knew activities that were going on. We did use the 14/30 to get them out of the unit, but it took two-and-a-half months. In that time, other tenants in the building called the police. They called me. The whole nineplex was just in unrest for a long period of time. It would have been great to have another tool in our arsenal of what we can do against people. And I'm not here to try and ask people to leave. I want to get my units filled. I want to leave them filled. I don't want tenants to move out. And I just wanted to let you guys know that another tool in our toolbox would be awesome to have to use. [LB385]

SENATOR SEILER: Senator Chambers. [LB385]

SENATOR CHAMBERS: You have one instance that you can relate to us where this happened based on what you personally know about? [LB385]

DANA STEFFAN: I have more instances, too, if you'd like more examples. [LB385]

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SENATOR CHAMBERS: And they're all like the one you told us about? [LB385]

DANA STEFFAN: Well, the other one is, you know, a gentleman, he had let a young lady move in. He wanted her to move and she wouldn't, so he left. So then I had another tenant that was not on the lease. I couldn't get information on her. I asked her to leave. I had to use the tools that we...and again, multiple police calls from people in the building, multiple police calls by myself to this unit, as well, and we had to go with this 14/30. And again, it was over a two-month process, damage to the exterior of the building, damage to the interior of the apartment, damage to other tenants' cars because of retaliation. It's just...it's not a fun situation to have anyone in. [LB385]

SENATOR CHAMBERS: Well, if somebody damaged your vehicle, you can call the police. [LB385]

DANA STEFFAN: Absolutely. [LB385]

SENATOR CHAMBERS: But we...let me speak for myself. I get calls from people on other issues besides this kind--I haven't had any about this, by the way--where something bad happened and they want the law changed. And one bad incident is not a sufficient basis to change the law. [LB385]

DANA STEFFAN: Absolutely, I understand that. [LB385]

SENATOR CHAMBERS: And if they have a property manager who cannot manage the property, that's for the one the property manager works for and the property owner and not, in my opinion, for the Legislature to change the law. [LB385]

DANA STEFFAN: You bet. [LB385]

SENATOR CHAMBERS: Some of these things relate to business practices and business operations and they don't rise to the level of mandating a change in the law. I have not heard anybody... [LB385]

DANA STEFFAN: Sometimes the 14/30 is just too slow. [LB385]

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SENATOR CHAMBERS: I have not heard anybody ask for what is being asked for here before today, and the only thing they're asking for is to be able to hurry up and do what the law allows them to do right now. [LB385]

DANA STEFFAN: Sometimes the 14/30 is just too slow. [LB385]

SENATOR CHAMBERS: Well, that's all that I have. Thank you. [LB385]

SENATOR SEILER: Seeing no further testimony, you may... [LB385]

DANA STEFFAN: Thank you. [LB385]

SENATOR SEILER: ...or questions, you may step down. Any further people in support of this bill? Are you coming up? Okay, those in opposition of this bill. Seeing none, anybody in the neutral? Seeing none, you may close. [LB385]

SENATOR LINDSTROM: Thank you, Chairman. Thank you, committee. Again, I think this is an important bill. And I understand, Senator Seiler. That language bothered me a little bit too. Once it was explained to me how the process worked, I was then okay with proceeding with LB385. And again, this is still under the Nebraska Housing Agency Act. This is just mirroring what we can do in the private sector. So the law is on the books under that act. We're just putting them into the private sector, implementing it there. So with that, thank you to the committee. And I would ask that you vote to pass LB385. [LB385]

SENATOR SEILER: Any further questions? [LB385]

SENATOR LINDSTROM: Yes. [LB385]

SENATOR SEILER: Senator Chambers. [LB385]

SENATOR CHAMBERS: For clarification, and you may not know, are public housing authorities members of this organization that the other testifiers referred to? [LB385]

SENATOR LINDSTROM: I do not believe so, but I am not 100 percent on that. [LB385]

SENATOR CHAMBERS: Do you think they've never asked for this because they don't have problems with difficult tenant-landlord situations? [LB385]

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SENATOR LINDSTROM: Well, as the law stands, under that it does exist as a... [LB385]

SENATOR CHAMBERS: If they don't have such problems, maybe it would be good for the landlords who don't know how to address these problems to talk to people at the housing authorities to see how they address them before they ask for a change in the law. That's just a suggestion of mine. That's all I have though. [LB385]

SENATOR LINDSTROM: I understand, Senator Chambers. I think that, if you were to ask them, and I can't speak for them, but the tool that they have right now is what we're asking for: speeding up the process for three days versus the 14/30. So they do have that ability to address it in a more timely fashion, and I think that the individuals that spoke today would also like to have that tool. [LB385]

SENATOR CHAMBERS: Just one thing as a follow-up to that: You understand that when legislation is brought to us to do one thing, it can be utilized, if it's deemed necessary, to do the opposite. And rather than shortening the period, there could be, based on the testimony, a need to lengthen the period, provide more protection for tenants than currently exists. So if they see a box with the word "Pandora" written on it, they might think before they open the box. But that is all I have this time. Thank you. [LB385]

SENATOR LINDSTROM: Sure. I understand, Senator. [LB385]

SENATOR SEILER: Senator Williams. [LB385]

SENATOR WILLIAMS: Senator Lindstrom, I just had a question, just to be sure that we're clear on this. If I'm understanding what the testimony was, the public housing sector has this remedy right now. [LB385]

SENATOR LINDSTROM: Correct, Senator Williams. [LB385]

SENATOR WILLIAMS: Thank you. [LB385]

SENATOR SEILER: The record will be closed. The written comments will be made part of the record, and thank you very much. [LB385]

SENATOR LINDSTROM: Thank you. [LB385]

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SENATOR SEILER: Next bill is LB409, Senator McCollister. [LB409]

SENATOR McCOLLISTER: (Exhibit 1) Good afternoon, Chairman Seiler and members of the committee. My name is John McCollister, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r. And I represent the 20th Legislative District in Omaha, Nebraska. A couple of comments before I read my testimony: This committee heard this bill last year. It was LB120, brought to this committee by Senator Lautenbaugh. And I think we've addressed the issues that we could see in the testimony, in the transcript, when this bill was heard last year. I'm bringing this bill from the...some...the apartment owners in Omaha and a few in Lincoln. And as a former owner of a sixplex, I've actually experienced some of the issues that I'm addressing in this bill. I'm here today to introduce LB409 and AM187, which would replace Section 1 of the bill. You've got the amendment in your hands now. LB409 and the amendment would amend the Residential Landlord and Tenant Act by doing two things. First, LB409 with the amendment would clarify the act by defining the term "tenant" to mean the person's name in the rental agreement who are entitled to occupy the premises, along with any dependent children under the age of 19. Under current law, the definition of the term "tenant" does not specify the status of the person other than the named tenant who may be occupying the rental unit. Landlords of rental properties frequently encounter situations in which the persons other than the named tenant are found to be occupying in the property. This proposed change to the Landlord and Tenant Act would specify the fact that all occupants do not have the same status as the person who actually made the rental agreement. In the event of an eviction, all other occupants would be considered trespassers. Secondly, LB409 would allow landlords to ask the...for increased security deposit from tenants who keep pets. Under current law, the added deposit for keeping pets is one-fourth of the one-month rent. LB409 would increase this to one-half of the one month's rent. This would mean an increase in the allowed deposit of one-fourth of one month's rent. For a unit that sells or rents for \$1,000, the pet deposit would increase, therefore, from \$250 to \$500. Landlords find that the pet damage typically involves carpeting, and the cost to repair or replace damaged carpet can be much more than the extra \$250 that this bill would allow. This option would be less burdensome than an ongoing monthly rent increase while providing landlords who want to allow tenants to keep pets to collect a sum of money that would more adequately cover the cost of damage that domestic animals can easily cause. I'd be happy to answer some questions. [LB409]

SENATOR SEILER: Senator Chambers. [LB409]

SENATOR CHAMBERS: You're not a lawyer, are you? [LB409]

SENATOR McCOLLISTER: No, sir. [LB409]

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SENATOR CHAMBERS: Okay. You didn't sound regretful when you answered. (Laughter) Are you aware that the term "trespasser" is a term that's in the law right now,... [LB409]

SENATOR McCOLLISTER: And I believe, sir, that it's... [LB409]

SENATOR CHAMBERS: ..."trespasser"? [LB409]

SENATOR McCOLLISTER: And it has a criminal aspect to it that once an eviction occurs, that does have a different status, as I believe. [LB409]

SENATOR CHAMBERS: Now, if a person is legitimately holding property as a tenant and that person invites somebody to that apartment and the one whose name is on the lease leaves and the police come to that apartment and they want to search the apartment and that individual who is the invitee of the tenant is allowed to give the police permission to come in even though the tenant is not there and would have objected, are you aware of that? [LB409]

SENATOR McCOLLISTER: Yeah, I do not believe that would indicate a trespasser. We're saying that... [LB409]

SENATOR CHAMBERS: But wait a minute. Are you aware of that being the case, the scenario I gave you? [LB409]

SENATOR McCOLLISTER: I'm not surprised that it is. [LB409]

SENATOR CHAMBERS: Okay, well, if that's the case, it means that the tenant can invite somebody into that unit and that person, in the absence of the tenant, for legal purposes of a search, can invite the police into that facility...I mean that place. A trespasser is one who is on premises against the wishes of the person who legally occupies that land or owns it. You're asking us to turn the law on its head for these renters, these people who rent property, and make the word "trespasser" mean something it has never meant before. If you're where you are with the consent and permission of the one who is the legal caretaker of the land, you are not a trespasser, even if the one who made that land available wants that person to be deemed that. So what you're asking us to do is to say, by operation of law, a person who currently cannot be deemed a trespasser under civil or criminal law, by operation of law, should become a trespasser for the benefit of landlords. In a nutshell, that's what you're asking us to do, right? [LB409]

SENATOR McCOLLISTER: I don't believe so. And if that's the language that came through in the bill, it needs to be changed. We only want that "trespasser" term to apply in the event of an

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eviction. Your point is well taken that if somebody comes into that premises at the invitation of the tenant, whether or not the tenant is there is immaterial... [LB409]

SENATOR CHAMBERS: Why does... [LB409]

SENATOR McCOLLISTER: ...and that would not trigger a trespassing claim. [LB409]

SENATOR CHAMBERS: Why would the person have to be deemed a trespasser if that person is not allowed to be there pursuant to the terms of the lease and a person thereunder such circumstances would be a basis for eviction? Couldn't the lease cover that? [LB409]

SENATOR McCOLLISTER: I'm assuming that the eviction event would occur before any kind of charge of trespassing or a call to the police saying that you've got a trespasser on the premises would occur. [LB409]

SENATOR CHAMBERS: I don't know that this would be constitutional, because in Nebraska any law that is in derogation or contrary to the common law is narrowly construed. And to try to take a law in order to benefit those who are renting property and convert a person who is the invitee into a trespasser, I don't even think a court would uphold something like that. That's my view. But you may not know the answer to this. Who drafted this language? [LB409]

SENATOR McCOLLISTER: The apartment folks, although we did review it, and particularly in view of the testimony last year and the transcripts. And we saw the... [LB409]

SENATOR CHAMBERS: But here's what I'm asking, and maybe you said: Who drafted it? [LB409]

SENATOR McCOLLISTER: It was the landlord association in Omaha. [LB409]

SENATOR CHAMBERS: Oh, okay. That's all I'll ask you. Thank you. [LB409]

SENATOR SEILER: Senator Krist. [LB409]

SENATOR KRIST: I understand the intent, but talk me through. Let's look at page 3, lines...starting with line 16...26, I'm sorry: "(14) Tenant means the person named in a rental agreement who is entitled to occupy a dwelling unit to the exclusion of others." I get it. "Only persons named in a rental agreement and their dependent children under nineteen years of age

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shall be considered tenants"...(microphone malfunction) (crackling noise). That's God talking to us. I'm sorry. It's my supreme being talking to us. [LB409]

SENATOR CHAMBERS: I get blamed for that all the time (inaudible)... [LB409]

SENATOR KRIST: (Laugh) Okay. [LB409]

SENATOR WILLIAMS: Senator Krist, where were you at on this? [LB409]

SENATOR KRIST: I'm on page 3 of the green copy... [LB409]

SENATOR WILLIAMS: Okay. [LB409]

SENATOR KRIST: ...which I'm assuming the change that you've brought to us is the same language. [LB409]

SENATOR SEILER: It's...yes, page 3, bottom of page 2, top of page 3. [LB409]

SENATOR KRIST: Yeah. [LB409]

SENATOR WILLIAMS: Okay. [LB409]

SENATOR KRIST: So on my copy, it would be green copy, 3, top, 26: Tenant means a person named in an agreement who is entitled to occupy a dwelling unit. Senator McCollister, if I for whatever reason have to expedite moving out of my house and get an apartment, because it's been sold, and I signed that lease, my wife would technically not be able to live there because she's not my dependent children and her name is not on the lease. So I bring that to your attention because the words mean a great deal and I don't...I see that that by itself is a complicating factor. Now you did go on to say that it's...permanently residing on the premises is going to be considered, so that would be my first concern. My second is when you...again, on the next page of the green copy, you've moved one-half...moved the pet deposit up to one-half from one-fourth. Does that language to you...and being a former landlord, does that mean that you could charge one-half of the lease as a deposit and still continue to charge me \$50 a month for my pet in the lease? [LB409]

SENATOR McCOLLISTER: No, sir. [LB409]

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SENATOR KRIST: So that, the... [LB409]

SENATOR McCOLLISTER: That's the damage deposit only. And whatever rate you negotiate with the landlord on your agreement, whether or not it includes a pet fee, is up to the parties at the time of...the contract is consummated or a lease signed. [LB409]

SENATOR KRIST: So when it comes to a pet deposit or offset for pet damages, then the total of any charges made for a pet would be limited to one-half of the lease? [LB409]

SENATOR McCOLLISTER: Yeah, of the security deposit. So if it's a security deposit of \$500, let's say, you could add another half of that, another \$250, simply for the pet deposit, in which case the entire damage deposit would be \$750. [LB409]

SENATOR KRIST: In my recent experience of renting an apartment, which I never care to repeat, while we were building our house, I remember that I paid a pet deposit up-front. [LB409]

SENATOR McCOLLISTER: Yes, sir. [LB409]

SENATOR KRIST: And then I paid a monthly fee to have the pet there. [LB409]

SENATOR McCOLLISTER: Well, as long... [LB409]

SENATOR KRIST: So in that interpretation, I would think that this, the way that this is written, that that could never exceed one-half of the total monthly rent, no matter how it was charged, is...would that be your interpretation? [LB409]

SENATOR McCOLLISTER: Well, I think we're talking about a damage deposit, rather than the rental agreement. So if that's how it's worded, I could see your point. We need to redraft it or modify the language. [LB409]

SENATOR KRIST: It's kind of a...it's a doughnut hole and there is no...there's a loophole, I think. So anyway, thank you. Thanks for your...for bringing it forward. [LB409]

SENATOR McCOLLISTER: One point, Senator. Your point about the wife of the tenant, you know, it would be our intention to include that person. Maybe we have to say it's a part of the

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nuclear family or broaden the definition in a way that it wouldn't exclude any dependent, maybe persons older than 19 years old that may be disabled and who is... [LB409]

SENATOR KRIST: Yeah. I could see this playing heavily on a mobile family, like a military family, where the father or mother goes ahead, rents the apartment, because technically that person who he is married to is not a dependent child less than 19 years of age. [LB409]

SENATOR McCOLLISTER: Point well taken. [LB409]

SENATOR KRIST: So I would ask you to look at that language. Thank you. [LB409]

SENATOR McCOLLISTER: Thank you, sir. [LB409]

SENATOR SEILER: Senator Chambers. [LB409]

SENATOR CHAMBERS: The reason I was going to hold my questions was until somebody else came up. But since my colleague opened the area of the pet deposit, that's something I'm...I'll disagree with that, period. But what does the word "permanently" mean? [LB409]

SENATOR McCOLLISTER: A time of long duration. [LB409]

SENATOR CHAMBERS: That's not what it says. [LB409]

SENATOR McCOLLISTER: And I'd say that could be a problem, "permanently." [LB409]

SENATOR CHAMBERS: You probably couldn't determine what's permanent until after the end of something, because anything before that would be less than permanent. [LB409]

SENATOR McCOLLISTER: Well, anything permanent can be changed and maybe we're... [LB409]

SENATOR CHAMBERS: If...let's say that the lease were for a year; then, for the person to be there permanently, the person would have to have been there for a year. Permanent means from the beginning to the end. [LB409]

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SENATOR McCOLLISTER: Well, most lease agreements that I've seen extend...there's a provision to extending the lease on some kind of automatic basis. So I'd say that term would be defined in the rental agreement. [LB409]

SENATOR CHAMBERS: So then why put it in the statute? Instead of saying permanent in the statute, give a duration in your lease. And if a person stays there and is not one of these named individuals, then that is the basis for whatever you're going to do by way of a remedy. And it should be a matter of whether it's continuously being there or continually, which means continually, intermittently. So let's say the person is there one day this week, one day next week. That is not permanently there. So why...I'll hold this question until somebody comes who can tell me who drafted this language. And that was why I didn't want to go into that with you, not that you couldn't answer the reasons as to why you brought it, but I don't want you to be offended by me not asking you these kind of questions. [LB409]

SENATOR McCOLLISTER: I'm not offended at all,... [LB409]

SENATOR CHAMBERS: Okay. [LB409]

SENATOR McCOLLISTER: ...believe me. [LB409]

SENATOR CHAMBERS: Okay. [LB409]

SENATOR SEILER: I have just a question. In a scenario, and it happens a lot in towns that have college campuses, one person will be the signer on the lease, another person moves in, gives a check for half the rent. That's continued over a long period of time. We're taking a tenant, by its normal sense, and creating him into a trespasser? [LB409]

SENATOR McCOLLISTER: No, I continue to say that... [LB409]

SENATOR SEILER: You are by this language. [LB409]

SENATOR McCOLLISTER: ...that in the event of an eviction, let's say the rental fees quit coming in, that would trigger an event process, I mean eviction process, and then the landlord would look at the terms of the lease, including the signed tenants, and that's how that would be triggered. [LB409]

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SENATOR SEILER: I think the purpose of it is so that they're all trespassers and you don't have to name them in your lawsuit. That's the real purpose, because what you've got here are not trespassers. You've got business invitees, and they're treated differently under the law than a trespasser. And so I think we're mixing terms up here and I, too, want to listen to somebody who's drafted this. Thank you. [LB409]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Thanks very much. [LB409]

SENATOR SEILER: Anybody testifying in favor of this bill or a proponent of this bill? [LB409]

JOHN CHATELAIN: John Chatelain, J-o-h-n C-h-a-t-e-l-a-i-n. I would like to correct one thing Mr. McCollister said. The bill is actually proposed by the Statewide Property Owners Association which is an umbrella group between Omaha and Lincoln and various other property management groups around the state. And I'll try to again limit my comments to things not already covered. But where I see the need for this bill is if the tenants have either moved out or they are being evicted and have been removed, then all of a sudden there is someone else in the property, someone just shows up. Currently, the property manager would have to file what is called a wrongful detainer action against that person, which takes 14 days at the least. You have to give a 3 day notice and then the court is going to set it 14 days later. For someone who is actually a trespasser, this is not one of the family members of the tenant; it's not the spouse of the tenant; it's not someone there by invitation of the tenant. It's someone that just shows up. They just weasel their way into the property. And that person needs to be removed more expeditiously and that's why we are proposing this. I don't believe we would have any objection to inserting the word "spouse" in there along with dependent children. And I don't have a problem with removing the word "permanently" either. This is a person that's not a tenant. It's a person that is legitimately a trespasser. We would like to be able to call the police and say that there's someone in this building and we would like them removed. If you look at section (11) in this statute, it says that a rental agreement includes written or oral. So what we're talking about in (14) is to be distinguished between an oral tenant because there are some tenants that are under oral leases. If--the scenario that you suggested, Senator Seiler, where the college student is on the lease--that college student moves out, another student moves in, the landlord is receiving rent from that person, and then it's an oral lease and then it would be covered by section (11) up there. So we understand that a lease can come about through writing or it can be an oral lease. What we're talking about is the person that doesn't belong there. [LB409]

SENATOR SEILER: Your red light is on. Questions? Yes, Senator Krist. [LB409]

SENATOR KRIST: Okay, unless I'm missing something, and so you're going to have to talk me through this, did you...were you part of the drafting process? [LB409]

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JOHN CHATELAIN: I did not draft it, no. [LB409]

SENATOR KRIST: Okay, well, then I'll be very brief in my terminology. Both you and Senator McCollister speak as if section (14) is after an eviction or after action taken to evict. [LB409]

JOHN CHATELAIN: It was my understanding that we had inserted language in (14) saying, "For purposes of eviction." [LB409]

SENATOR KRIST: Well,... [LB409]

SENATOR SEILER: Top of page 3, right-hand side. [LB409]

SENATOR KRIST: Top of page 3 on the green copy? [LB409]

SENATOR SEILER: No, on AM187,... [LB409]

SENATOR KRIST: Okay. [LR32]

SENATOR SEILER: ...last page, "For the purpose of eviction." [LR32]

SENATOR WILLIAMS: That's a change in the amendment, I think. [LB409]

SENATOR KRIST: For the purposes of eviction, okay, then I don't have any other questions. Thank you. [LB409]

JOHN CHATELAIN: Okay. [LB409]

SENATOR SEILER: I have one, going back to my question. [LB409]

JOHN CHATELAIN: Okay. [LB409]

SENATOR SEILER: I agree with you that there's an oral lease. But what you've got here is language that is so open that I think it covers your oral lease inadvertently. If you look on line 3, on page 3, it says, "and all other persons." That's everybody that's in that room: the person that's paying the rent; the person not paying the rent that left; your trespasser that just moves in.

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That's...everybody is created into a trespasser, and I don't believe that's true. I think you have a different quality there... [LB409]

JOHN CHATELAIN: Well, yeah, I think... [LB409]

SENATOR SEILER: ...when it says all other persons. [LB409]

JOHN CHATELAIN: ...permanently residing, I don't look at the person we're talking about as permanently residing there. They're not even residing there. [LB409]

SENATOR SEILER: No, you just said... [LB409]

JOHN CHATELAIN: They're occupying there. [LB409]

SENATOR SEILER: Well, I think your "residing" might be pretty broad in interpretation. [LB409]

JOHN CHATELAIN: Right, I think perhaps that could... [LB409]

SENATOR SEILER: If we're cleaning up the language, let's clean up all the language. [LB409]

JOHN CHATELAIN: I think that could be changed to "occupying." [LB409]

SENATOR SEILER: Okay, I'd be curious as to what you recommend for a change in that. [LB409]

JOHN CHATELAIN: Okay. [LB409]

SENATOR SEILER: Thank you. Senator Chambers. [LB409]

SENATOR CHAMBERS: Did a lawyer draft this? [LB409]

JOHN CHATELAIN: You know, I'm not sure who drafted it. [LB409]

SENATOR CHAMBERS: Well, why don't you call him up here if he...if the one who drafted it...will that person...is that person here who drafted this? [LB409]

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SENATOR SEILER: Seeing...oh, way at the back. [LB409]

KENT ROBERT: I'm here. [LB409]

SENATOR CHAMBERS: Then I'll wait till that person comes before asking you the certain type of question. But I want to ask you some questions... [LB409]

JOHN CHATELAIN: Okay. [LB409]

SENATOR CHAMBERS: ...because obviously you're the point man for the organization today. Are we going to be looking at the white copy for the purposes of our discussion? The white copy would be an amendment which strikes all of Section 1, and that means the only thing that would be left in this bill would be what we find on page 4 in line 2, where it says "Sec. 2." This amendment says strike Section 1, so that means everything, as far as the green copy, everything that you find on page 2 of the green copy, on page 3 of the green copy, and in line 1 on page 4. All of that is gone. And all that we have left if we adopt this amendment is what's in this white... [LB409]

SENATOR WILLIAMS: Is that the green copy or is this the amendment? [LB409]

SENATOR CHAMBERS: ...on this white sheet of paper. Do you have...is the white sheet of paper that you're looking at titled "Amendments to LB409"? [LB409]

JOHN CHATELAIN: No, I was looking at the original. [LB409]

SENATOR CHAMBERS: Well, if the...who offered the amendment? Is this something your group wants? [LB409]

JOHN CHATELAIN: Yes. [LB409]

SENATOR CHAMBERS: So then let's go to what it is you want, and we'll forget what's on...in the green copy right now, because that would be replaced by this amendment. [LB409]

JOHN CHATELAIN: Okay, I think I'm looking at the green copy, which is actually white for me. That's why I'm a little confused. [LB409]

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SENATOR CHAMBERS: Okay, well, let's look at the white copy that's labeled "Amendments."  
[LB409]

JOHN CHATELAIN: Okay. [LB409]

SENATOR CHAMBERS: Now the language that is underlined is what we will be looking at if this amendment is adopted, and that would be on page 3. Do you see it at the top of the page, in line 1? The underlining begins with the word "For," "For purposes of eviction." Turn to page 4.  
[LB409]

JOHN CHATELAIN: I only have three. [LB409]

SENATOR CHAMBERS: Well...oh, yeah, page 3, okay. So do you see the underlined language?  
[LB409]

JOHN CHATELAIN: I do. [LB409]

SENATOR CHAMBERS: And I'll read it for the record. "For purposes of eviction, only persons named in a rental agreement and their dependent children under nineteen years of age shall be considered tenants and all other persons permanently residing on the premises shall be considered trespassers." Now you stated that this language doesn't refer to the person who signed the lease, it doesn't refer to that person's relatives, but it actually does if they're over 19 years old. They would be considered trespassers under this, isn't that right? [LB409]

JOHN CHATELAIN: Anyone that is not on the lease or that person's dependent children or that person's spouse, correct. [LB409]

SENATOR CHAMBERS: Okay. So if this person is 20 years old and is the child of the one who signed the lease, that person is considered a trespasser under this amendment. That's true, isn't it?  
[LB409]

JOHN CHATELAIN: For purposes of eviction. [LB409]

SENATOR CHAMBERS: Why do you have to put trespasser in the statute and you don't just write into the lease the ones who are entitled to be on the premises? And then you can try to get away with saying other persons permanently, but you might be required to describe or define what permanently means. But since we're discussing it, I'll ask you. What does the word

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"permanently" mean to you? Because what the courts say when they construe or interpret language in a statute: that language has the ordinary or popular meaning of the word. So when it's in this particular statute, if it should be passed into law, is permanently supposed to mean something other than what it would be defined as in a dictionary? [LB409]

JOHN CHATELAIN: Well, permanently, one definition--lasts forever, eternally--that's not the definition that would apply to a rental property. [LB409]

SENATOR CHAMBERS: So then instead of using the word... [LB409]

JOHN CHATELAIN: A permanent...permanently in a rental property would be someone who lives there all the time, day after day, night after night. [LB409]

SENATOR CHAMBERS: Same thing: Why don't you then say what you mean in the lease instead of using a word that can mean this or that or the other? Does that make sense to you that, if you're writing the lease,... [LB409]

JOHN CHATELAIN: Yes, I... [LB409]

SENATOR CHAMBERS: ...why don't you write in the lease what you mean? [LB409]

JOHN CHATELAIN: Well, the lease can be drafted according to what the parties agree to. [LB409]

SENATOR CHAMBERS: Exactly. [LB409]

JOHN CHATELAIN: What we're talking about is for purposes of eviction. An eviction has to go through court. The property manager doesn't remove a tenant from the property based solely on the lease. It has to go through court. So we're talking about, for purposes of evicting someone, they are not going to be considered a tenant if they are not on the lease, there's no oral lease. [LB409]

SENATOR CHAMBERS: I understand all that. The term "eviction" is a word with legal significance. We all understand that. You understand it. That's why I want to talk to whoever drafted this, because apparently that person means something different by these words, different from what I understand any of them to mean. So I will not ask you any other questions except to say this: If you have a provision in the lease where you mention this category of persons who are

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allowed to stay there even if their name is not on the lease, which would be dependent children under 18, and you said you'd be willing to put spouse in the lease or whatever, then why don't we just say...when you talk about all other persons, I don't understand that to mean what you've said, that the leaseholder is the one who just moved out and abandoned the property, then somebody takes residency. Wouldn't such a person be considered under the law to be a squatter? [LB409]

JOHN CHATELAIN: Well, that squatter is now entitled to an eviction process with a 3-day notice and a 14-day waiting period for court. [LB409]

SENATOR CHAMBERS: But here's what I'm asking you. You go too far. Under the law right now, if a person comes into this unoccupied dwelling, isn't that person considered a squatter? [LB409]

JOHN CHATELAIN: I would call them a squatter. [LB409]

SENATOR CHAMBERS: Okay. [LB409]

JOHN CHATELAIN: I would also call them a trespasser. They do not belong in the property because there's no lease. The only way another person has the right to occupy another person's property... [LB409]

SENATOR CHAMBERS: But here's what you don't understand. [LB409]

JOHN CHATELAIN: ...is with a lease. [LB409]

SENATOR CHAMBERS: I'm talking about what the law says, not what you think or what it means to you. If you are the one writing the lease, put into the lease what you want it to say. Now if the status of squatter occurs, that occurs because whoever owns the property is not attentive, is not watching what happens, and this person becomes a squatter. And then, as you pointed out, if you want to get rid of this squatter, you can't just call the police and say, throw him out of here, can you? [LB409]

JOHN CHATELAIN: That's correct. It requires a judicial proceeding. [LB409]

SENATOR CHAMBERS: Right. You probably didn't know I knew that little thing, did you? And I hadn't even read this bill. [LB409]

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JOHN CHATELAIN: I assumed you knew that. [LB409]

SENATOR CHAMBERS: Okay, that's all I'll ask you. I want to talk to the one, if that person is going to come up, who drafted this language so I can understand before asking questions what that person meant. [LB409]

JOHN CHATELAIN: Yes. Okay, any other questions? [LB409]

SENATOR SEILER: Seeing none, you may step down. Thank you. [LB409]

JOHN CHATELAIN: All right, thank you. [LB409]

SENATOR SEILER: Next proponent. I think this is the guy you were looking for. [LB409]

KENT ROBERT: Senator Seiler and the executioners, this (laughter)...I'm here (laughter)...Kent Rogert, R-o-g-e-r-t, and I'm here today representing the Statewide Property Owners Association. And we thank Senator McCollister for introducing this bill for us. I'll be way less than three minutes and then I'll take your questions. So the language that we...was put into this bill and the amendment was a direct conversation between myself, with the intent we were looking for, and the Revisor's Office. This is what came out. If we have questions with some of the definitions of the words in the language, we're more than happy to work it out and change words if we need to. The biggest reason or example of what we're talking about in terms of having people not on the lease: You could name folks on the lease, and we ask everybody to be in...that's in the house, residing on the property, to be on the lease. Say someone moves into and leases a house or apartment. Subsequently, their significant other moves in with them. Things don't work out. They split. The lease...the lessee, the person who leased the property, moves out and leaves the significant other. The significant other does not pay rent or causes the landlord to come down and look, find out what's going on. He finds somebody in the property who was not on the lease and is not paying rent. Currently, the only way to have that person removed from the property would be to go through an eviction process. We're seeking a remedy to remove those folks from the property without having to spend the time and money on an eviction process by asking them to leave and, if they don't, having the law enforcement officials remove them for us. Currently, the law enforcement officials' answer is, this is a civil matter, you need to go through the eviction process, even though this person is not on the lease. I will take any questions. [LB409]

SENATOR SEILER: Senator Chambers. [LB409]

SENATOR CHAMBERS: You're not a lawyer, are you? [LB409]

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KENT ROBERT: I am not. [LB409]

SENATOR CHAMBERS: The questions that I was going to ask would be unfair for me to ask of you because they'd be technical questions. Have you ever heard the term, though, "statute of frauds"? [LB409]

KENT ROBERT: Yes, sir. [LB409]

SENATOR CHAMBERS: Do you know what that means, what that refers to? [LB409]

KENT ROBERT: Will you enlighten me to...so I know exactly what it means? I think I do, but I would be just guessing. [LB409]

SENATOR CHAMBERS: (Inaudible)...put in writing. Now is this a real estate transaction that we're talking about when a person is leasing or renting? [LB409]

KENT ROBERT: Yes. [LB409]

SENATOR CHAMBERS: If the lease or agreement is for more than a year, must that agreement be in writing? [LB409]

KENT ROBERT: Not necessarily, no. [LB409]

SENATOR CHAMBERS: Then where does the statute of frauds come in? [LB409]

KENT ROBERT: I don't know. [LB409]

SENATOR CHAMBERS: You said you don't know? [LB409]

KENT ROBERT: I don't know. [LB409]

SENATOR CHAMBERS: Okay, then I'm not going to go into all that. Let's just deal with the language that is here. And I'm not going to ask you all of the questions that I asked the other people because I think you're innocent. (Laughter) [LB409]

KENT ROBERT: You've known me longer than that, Senator Chambers. [LB409]

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SENATOR CHAMBERS: Can you understand why those of...oh, and you were in the Legislature, so you know that when we're crafting language for a statute, we should be very precise and at least know what we mean when we put the language there. [LB409]

KENT ROBERT: Yes, sir. [LB409]

SENATOR CHAMBERS: So you can understand why I would want to be very clear on what the word "permanently" would mean. [LB409]

KENT ROBERT: Yes, sir. [LB409]

SENATOR CHAMBERS: Either it means what commonly is understood by the term, which is continuous until you reach an endpoint; and if it means intermittently, then they would have to find language, or should, other than the word "permanently." [LB409]

KENT ROBERT: Okay. [LB409]

SENATOR CHAMBERS: But I'm not sure that I even agree with this, because it doesn't say in this language anything that was given to us as a justification. It doesn't talk about anybody having deserted, abandoned, or moved out of the property and another person came in to occupy it and that other person, or those persons, would do so permanently. If I'm going to try to gain something by adverse possession, there would be a certain number of years that I would have to have undisturbed possession of that land. I would have to do it openly, notoriously so that it would be clear that I'm claiming this and treating it as my own. And if I do that for the required number of years, because it varies from state to state, then it becomes mine. [LB409]

KENT ROBERT: Yes. [LB409]

SENATOR CHAMBERS: And my title to that property or right to it will trump that of the one who actually owned the property before. [LB409]

KENT ROBERT: I understand. [LB409]

SENATOR CHAMBERS: Now we're not talking here about anything that suggests that the one who holds the lease has abandoned it. There's nothing which says that in the event the property has been abandoned and the one who had signed the lease can be found, then in...if you want to call it recouping something or other for the period of time that that person was obligated to pay

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the rent but didn't pay it, there's nothing about any of that in this language. This seems to me to be another of those kind of things where the landowners or landlords want to short-circuit the existing law or do an end run around what the current law requires. Is that basically what this is designed to do? [LB409]

KENT ROBERT: We understand that there is a remedy, for sure, to take care of the problem. We are making the case that the remedy should not be necessary because of the circumstance, and it costs money and takes time that would not necessarily be needed because of the circumstance that creates the cost. Does that make sense? [LB409]

SENATOR CHAMBERS: And I don't have any other questions, and that's not a put-down. But I'm not going to ask you a lot of things that, you know, would really be unfair because you have not said that you're a lawyer, you practice law, or anything like that, and that's why I'm not asking those additional questions. So that's all that I would have. [LB409]

KENT ROBERT: Thank you. [LB409]

SENATOR SEILER: No questions? Anybody? [LB409]

SENATOR CHAMBERS: May I make a comment now? [LB409]

SENATOR SEILER: Yes. [LB409]

SENATOR CHAMBERS: I know him in a different capacity and he fills that one very well. [LB409]

KENT ROBERT: Thank you, sir. [LB409]

SENATOR CHAMBERS: You can take that back to your bosses and tell them I said it on the record. [LB409]

KENT ROBERT: Thank you, sir. [LB409]

SENATOR CHAMBERS: Okay. [LB409]

SENATOR SEILER: I just have trouble with that last language, and you may, if the attorney isn't here that drafted it, talk to him about it where he's changing the invitee. I'll give you the example:

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the significant other that moves in. She pays or he pays 50 percent of the rent each month. The landlord knows about it, fully understands that she's there, and she's really part of the lease, or at worst she's an invitee, and you're changing her to a trespasser just so you can save a little...a couple days getting her out. [LB409]

KENT ROBERT: Well, we would... [LB409]

SENATOR SEILER: I have problems with that. [LB409]

KENT ROBERT: I understand. I think our response to that would be that we didn't...we were not aware of the extra resident. The check or the cash came from one person, the original. If there was money coming in from the other party and it was known by both parties, the tenant and the lessor, then an oral contract has been made, if we accepted that money from the other person. [LB409]

SENATOR SEILER: I have a problem taking an invitee by a tenant that's lawfully there and changing them to a trespasser just so you can serve them and get them out. [LB409]

KENT ROBERT: I understand, um-hum. [LB409]

SENATOR SEILER: Okay. Convey that to the lawyer, will you, please? [LB409]

KENT ROBERT: Um-hum. [LB409]

SENATOR SEILER: Any other questions? Seeing none, thank you. [LB409]

KENT ROBERT: Thank you. [LB409]

SENATOR SEILER: Anybody else in...a proponent of this legislative bill? [LB409]

GENE ECKEL: Senator Seiler, members of the Judiciary Committee, my name is Gene Eckel. I am on the board of directors for the Nebraska Association of Commercial Property Owners and the Apartment Association of Greater Omaha and Lincoln. We are in support of LB409 with regard to the increase in the pet deposit, although I would want to put a comment. We currently agree with the current language of the statute with regard to the definition of a tenant. We think that's sufficient. I would only add, maybe, might want to add a definition for occupant. Sometimes a property manager or lessee forgets or just doesn't put a name of a roommate, a

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spouse; sometimes the children aren't put on the lease. And maybe if you define what occupant is, that might cover them as well, because even under the old language, the current language for tenant, it...that...I'm afraid that they might get missed out on that, as well, but they're entitled to be there. So that's all we have. [LB409]

SENATOR SEILER: Any questions? Bob...or Senator Krist. [LB409]

SENATOR CHAMBERS: On this one, would you rather be on my side of the table or your side of the table? [LB409]

GENE ECKEL: I would be on your side of the table, Senator Chambers. (Laughter) And it feels better. [LB409]

SENATOR CHAMBERS: And I'm not going to ask you any questions and don't feel I'm putting you down, but I think we've covered the waterfront, so thanks a lot. [LB409]

GENE ECKEL: Thank you very much. [LB409]

SENATOR SEILER: Senator Krist. [LB409]

SENATOR KRIST: But you came up specifically to talk about the pet deposit, so I'll... [LB409]

GENE ECKEL: That and... [LB409]

SENATOR KRIST: And you're in commercial business or you're acquainted with it, so I'm going to ask you the same question I asked before. In the case where you're asking for a pet security deposit, which is essentially a damage deposit, because you have pets in the property, then that can't exceed one-half now of the total monthly rent as a deposit. How does the continual fee that some landlords charge throughout...in other words, \$250 deposit and then I'm going to charge you \$50 a month. And the explanation of that in terms of a tenant relationship is, you're probably not going to pick up your dog stuff, so I'm going to have to take care of it, so I'm going to charge you \$50 a month. Does this...do you interpret this to mean the most you can charge in any capacity for a pet deposit or pet offset or security deposit to be one-half, the one-half number? [LB409]

GENE ECKEL: If I understand your question correctly, if you're saying that the pet deposit and any pet fee would be one and the same,... [LB409]

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SENATOR KRIST: Yes. [LR32]

GENE ECKEL: ...I would say I do not read the language of the statute. I would say it just applies to a pet deposit. I think a pet fee is separate and that's a contractual fee that's not...that's outside the realm of the statute. [LR32]

SENATOR KRIST: Okay, well, you just lost my vote because what we're saying here is that the tenant now has to pay whatever and you're going to bump it up one-half, and then he's going to continue to charge the pet fee. So anyway,... [LB409]

GENE ECKEL: Well, and...even my...I want to clarify that a landlord can ask for up to one-half, so it's negotiable. If they want to ask for less or not even charge a pet deposit at all but just stay with a pet fee, they could do that as well. It's completely negotiable. [LB409]

SENATOR KRIST: My experience is government never does away with taxes and "up to" is usually the number that people go to, so. [LB409]

GENE ECKEL: That's true. That's true. [LB409]

SENATOR KRIST: Okay, thanks. [LB409]

GENE ECKEL: Thank you. [LR32]

SENATOR SEILER: Thank you very much. You may step down. [LB409]

GENE ECKEL: Thank you, Senator. [LB409]

SENATOR SEILER: Any further testimony from the proponents? Any testimony from the opponents? Seeing nobody scrambling from their chair, how about in the neutral? Senator McCollister, you may close. Oh, there he is, waives closing. LB416, Senator. [LB409]

SENATOR PANSING BROOKS: Okay. Senator Seiler and fellow members of the Judiciary Committee, for the record, my name is Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s. And I represent Legislative District 28 right here in the heart of Lincoln, where you're sitting. And I am here to introduce to you LB416. This is a bill that was brought to me by the Nebraska Bar Association. LB416 seeks to update Nebraska's Uniform Probate Code provisions which deal with the effect of divorce on nonprobate or nontestamentary assets. Currently, Nebraska

statutes contain the 1969 version of the Uniform Probate Code which deals with the revocation of the will upon divorce. The 1969 version of the UPC, Uniform Probate Code--I'm going to use that from now on--did not address nonprobate assets, which are assets that are passed outside of a will, such as life insurance proceeds or property designated as transfer on death. LB416 has two main parts and is based on 1990 updates to the UPC which address these nonprobate assets which are becoming more and more prevalent. First I want to talk about the very end of the bill because it's pretty simple. And the last part of LB416 contains the 1990 UPC updates to Section 30-2354, which is commonly referred to as the slayer statute, quote unquote. This section of statute outlines the disposition of property from the decedent when someone who would...and this is on pages 9-15 of the bill. Anyway, this section of statute outlines the disposition of property from the decedent when someone who would otherwise have inherited from the decedent is found to have "feloniously and intentionally" killed the decedent. Similar to Sections 1 and 2 of the bill that address divorce and annulment, this update is intended to both include probate, assets that pass through the will, and nonprobate, assets that pass outside of the will. The second and, I think, a little bit more complicated area of this is that LB416 would generally nullify upon divorce or annulment the designation of a spouse as a beneficiary of nonprobate or nontestamentary assets, such as life insurance policies, individual retirement accounts, and payable on death accounts, unless expressly stated otherwise. So this is all dependent on a Supreme Court case where Judge Cassel wrote the concurring Opinion and where such situation as this arose. Two people, named Brenda and Dale, were divorced after ten years of marriage and Dale passed away a few days after the divorce became final. Dale had two life insurance policies, both naming Brenda as the beneficiary. This case ended up in court and went up to the Supreme Court. The Nebraska Supreme Court ruled that the life insurance money should go to Dale's estate and not to the ex-wife, as it had been written on the policy, since the settlement agreement expressly set that designation. So Supreme Court Justice Cassel, this was law last year in 2014, concurring with the majority Opinion, wrote, "But existing law relies upon the general rule that divorce does not affect a beneficiary designation in a life insurance policy. This in turn requires close examination of the judgment dissolving marriage. This framework lacks certainty, contradicts ordinary expectations, and encourages litigation. These flaws could easily be remedied by legislation. The basic practical problem is that after a marriage is dissolved, the former spouses frequently do not change preexisting beneficiary designations in life insurance policies and similar contractual arrangements. Sometimes there is only a brief interval between the dissolution and the policyholder's death. For whatever reason, beneficiary designations often go unchanged. Human experience teaches that most policyholders would prefer a death benefit pass to someone other than a former spouse." But again, except for an express direction to the contrary, which is possible--somebody can come back in and say, I want my ex-spouse to receive this life insurance policy because, for example, she will be taking or he will be taking care of the children, so I do want that to go to the ex-spouse--so except for an express direction to the contrary, LB416 would allow nonprobate property to pass in a manner that is similar to that of testamentary property under a will so that the contingent beneficiary and not the primary

beneficiary--the ex-spouse--would receive the property when there is an intervening divorce or, in the last part of the bill, a killing by one of the spouses. In response to Judge Cassel's Opinion, the Bar Association has drafted this bill. I spent a lot of time trying to read it and fully understand it and I...so I hope you'll consider, favorably consider, this legislation, this corrective legislation. And you will hear from Bill Lindsay, who was...I think had a big hand in drafting this, and he of course is highly regarded in the area of probate and trust in our state. So I'm happy to answer any of your questions that I basically can understand, and then we'll turn it over to Mr. Lindsay. Anybody have anything? [LB416]

SENATOR SEILER: We'll wait for Mr. Lindsay. [LB416]

SENATOR PANSING BROOKS: Okay, good. Oh, thanks a lot. Nice. After I spent six hours yesterday studying and learning this? Okay. (Laughter) [LB416]

SENATOR SEILER: I understand. [LB416]

WILLIAM LINDSAY: Senator Seiler, members of the committee, my name is William Lindsay. I'm a practicing attorney in Omaha. Last name is L-i-n-d-s-a-y. I believe Senator Pansing Brooks very accurately set out the purpose and the reason this particular bill came up. Nebraska's probate code is a mixture. Our original probate code was the 1969 probate code. It was adopted by the 1974 Legislature, became effective January 1, 1977. There have been some updates as cases have come along. There's some parts of the 1990 probate code that I would not want to adopt in Nebraska. This particular matter, after the decision--particularly, a concurring Opinion of Judge Cassel--a number of members of the bar, including myself, looked at this. We looked at the 1990 version of the probate code. With one exception, I believe, it's the 1990 version of the probate code that's in the two sections that are involved. So if you have any questions, I'd be happy to answer them. [LB416]

SENATOR SEILER: Which one of you want to go first? [LB416]

SENATOR KRIST: Could I? I'll be brief. To clarify for the record, Bill, this...when you say, for the purpose of this section these are our definitions,... [LB416]

WILLIAM LINDSAY: Yes. [LB416]

SENATOR KRIST: ...these aren't new definitions. These are definitions that are already in law and now we've put them into this section? [LB416]

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WILLIAM LINDSAY: Well, the reason for those particular provisions is some of those definition sections are from the particular section in the Uniform Probate Code from 1990. [LB416]

SENATOR KRIST: Okay. [LB416]

WILLIAM LINDSAY: Some of those were from the general definition sections in Section 1-201 of the Uniform Probate Code. So they were put into here because we didn't adopt the general definitions. So if those wanted to be pulled out into a separate section, that wouldn't be an issue. [LB416]

SENATOR KRIST: No, no, I...the genesis for my...the reason for my question is just to ask...these aren't new definitions. You've pulled them out of existing definitions in law or in the code...codes, plural. [LB416]

WILLIAM LINDSAY: Well, in the code, 1990 code that we haven't adopted, so they're not part of Nebraska law now. [LB416]

SENATOR KRIST: Okay. [LB416]

WILLIAM LINDSAY: With...there is, I say, one exception. There is a definition of notice and of corporate which comes from the Uniform Trust Code that we have adopted ten years ago. [LB416]

SENATOR KRIST: Okay. And then as I understood the introduction, this in no way would affect...in federal law, once a spouse...once you're married for ten years, the military retirement is...that's part of the distribution. There's no...you're going to get it anyway. So that doesn't touch retirements in that capacity? [LB416]

WILLIAM LINDSAY: We can't affect at the state level federal law. There is clear preemption in this area... [LB416]

SENATOR KRIST: Okay. [LB416]

WILLIAM LINDSAY: ...both, for example, a federal group employees' group life insurance program, there's a United States Supreme Court decision. There's also decisions with regard to ERISA-covered plans through an employer. [LB416]

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SENATOR KRIST: Right. Okay. I just wanted confirmation that that wouldn't affect that at all. Thank you very much. Thank you, Chair. [LB416]

SENATOR SEILER: Senator Chambers. [LB416]

SENATOR CHAMBERS: An insurance policy is a contract between the insurer and the one paying the premium or the insurer and the named beneficiary? Is it a contract, first of all? [LB416]

WILLIAM LINDSAY: Yes, it is. [LB416]

SENATOR CHAMBERS: And between whom does that contract exist? [LB416]

WILLIAM LINDSAY: It's between the insurance company and the owner of the policy. [LB416]

SENATOR CHAMBERS: And the owner of the policy would be the one who pays the premiums? [LB416]

WILLIAM LINDSAY: Generally speaking, yes. [LB416]

SENATOR CHAMBERS: And is the owner of the policy in a position, as the owner, to designate whom the proceeds should go to in the event of a certain occurrence, death, or whatever it would be? [LB416]

WILLIAM LINDSAY: Yes. [LB416]

SENATOR CHAMBERS: Is there a provision in the U.S. Constitution that prohibits any state law from impairing or abrogating the obligation of contracts? [LB416]

WILLIAM LINDSAY: There is a provision I haven't looked at in a long time, so I don't know what it says. [LB416]

SENATOR CHAMBERS: You...but you know that something is in there that talks about the state not being able to abrogate the obligations of contracts. In other words, you and I enter a contract and the state cannot pass a law and say that contract is invalid. [LB416]

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WILLIAM LINDSAY: That's correct. This is not saying the contract is invalid. It's saying who the money gets paid to. [LB416]

SENATOR CHAMBERS: Well, if I own the...if I am the one who owns that policy and I've made a declaration as to what should be done with that policy, how is the state going to come in and say that's not going to be done? [LB416]

WILLIAM LINDSAY: That's a question that this committee is going to have to decide, whether it can be done or not. [LB416]

SENATOR CHAMBERS: No, no. [LB416]

WILLIAM LINDSAY: I believe that it can be done. [LB416]

SENATOR CHAMBERS: I thought you were going to tell me that this all is based on Supreme Court decisions construing all of this language so that the Legislature can pass a law or a court on its own can abrogate the terms of a contract... [LB416]

WILLIAM LINDSAY: Well,... [LB416]

SENATOR CHAMBERS: ...without rendering the contract itself invalid because there was no meeting of the minds, there was no consideration. In other words, those factors that create a valid contract, if they were not present, then it's not a contract, even if you and I think we've got a contract. [LB416]

WILLIAM LINDSAY: That is correct, Senator. [LB416]

SENATOR CHAMBERS: Okay. So if this contract exists...and as you know, which nonlawyers might not know, consideration can consist of a promise for a promise. It doesn't have to be something physical or actual but a promise for a promise: If you do this, I obligate myself to do that. The point I'm getting to: When those conditions are met and a contract does exist--for my purposes, let's say we have a legally recognizable contract, all the conditions have been met--if in my contract that I entered, and it remains in force between me and the insurance company as long as I've paid my premiums on time or during the period of grace if there is one, and all of that is out of the way so that we've got a standing contract that's legal, and I croak today and I named...I can name anybody I want to as a beneficiary, can't I? [LB416]

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WILLIAM LINDSAY: Yes. [LB416]

SENATOR CHAMBERS: And if I just die, then that...the proceeds will go to the one that I named, correct? [LB416]

WILLIAM LINDSAY: That's right. [LB416]

SENATOR CHAMBERS: Now if I happen to have been married and I get a divorce and then I die, then the court can step in and say that is not going to go where I wanted it to go in the contract. Is that true under all this language that is in here? [LB416]

WILLIAM LINDSAY: Under this legislation it would go...it would not go, as you originally stated, in the beneficiary designation because the problem that comes up with this particular situation is, when there is a divorce, oftentimes people think the divorce decree handles everything. No matter what they're told, they think it handles everything or they set it aside. And traditionally, the divorce decree, unless it's very specific, does not set aside a beneficiary designation. There has to be certain, specific language in there to, you know, make that happen, but a lot of people that I've talked to over the years don't understand that. [LB416]

SENATOR CHAMBERS: Here's the way I would rather see the law operate. If I write a will and I...the witnesses are there or the holographic will, but just...we have a legal will. That's me from beyond the grave trying to influence what happens on top of the ground with whatever I had the right to dispose of. And I can dispose of it the way I want to by way of a legally valid will. And if somebody wants to break that will, there are certain things they would have to show--maybe it was obtained by fraud or somebody who is going to take under the will also signed as a witness or...well, you know more about that than I do. But I would rather we do it like this: We look at the insurance policy as a contract and it's legally binding until the person who owns the contract says something different, but don't change it by operation of law. No matter what I think, no matter how I feel, if I want the contract changed, then I'm going to have to change it myself pursuant to what the contract agreement is. And they always say nothing is a part of this written contract other than what's within the four corners, unless you can prove fraud or those other outside factors. So in order that I understand, I want you to tell me under what circumstances the law, probate, would allow a judge to determine that the one designated in the policy as the beneficiary is not going to be honored as the beneficiary in the event of a divorce and then the one who gets the divorce croaks and does not make any change in the policy or a designation of a beneficiary. If I understand what was said, the court will step in and say that what the owner of the policy said, who has died, is not going to be recognized. Some money is due to go to somebody because the premiums were paid. The insurance company is going to pay that money over to somebody. And if I understood correctly, the court, rather than the terms of the policy,

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will determine to whom the insurance company is going to pay the proceeds. Is that correct or is that incorrect? [LB416]

WILLIAM LINDSAY: The divorce court would basically make that determination. The divorce court already has the legal authority to do that under the divorce statutes. This would make it clear that if you don't put a provision in the divorce decree saying that the divorced spouse still retains those rights, they no longer retain the rights. [LB416]

SENATOR CHAMBERS: Well, why...we...since it's done by statute the way you describe, we can change the divorce court authority by amending that statute, can't we? [LB416]

WILLIAM LINDSAY: We could. [LB416]

SENATOR CHAMBERS: That's what I'm thinking about, because I think, I believe...maybe my training in the law that I had many years ago calls me to believe that the law should do what the law says. And when people enter an agreement, I don't want the court to step in and say, well, our judgment is more valid than yours. But in this case, the Legislature apparently did it because you said it's by statute that the divorce court can operate in the way it does. Is that correct? [LB416]

WILLIAM LINDSAY: Yes. It is by statute that the divorce court can operate. The divorce court has, except as prohibited by federal law, total control over the property of the parties. [LB416]

SENATOR CHAMBERS: Federal law does that? [LB416]

WILLIAM LINDSAY: No, except as prohibited by federal law. [LB416]

SENATOR CHAMBERS: Oh. [LB416]

WILLIAM LINDSAY: For example, this particular provision would not apply to a federal employee group life insurance program. [LB416]

SENATOR CHAMBERS: Right, I see what you mean there. Okay, you helped me, even though you just...more...you sat there and did more nodding and answered a few questions that I asked directly and I did most of the talking. But I think you understood what I was saying and your responses clarified the uncertainty in my mind. And if I want to see it go the way that I'm interested, maybe these statutes, maybe this bill could be amended. I don't know. But the only

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way I could achieve the result I want would be to amend the powers or the prerogatives of the divorce court. And if that is not dealt with statutorily, that court will continue to do what you have described today. Correct? [LB416]

WILLIAM LINDSAY: Yes. [LB416]

SENATOR CHAMBERS: Okay. [LB416]

WILLIAM LINDSAY: Let me give you an example though. A divorce court can order a party to maintain a life insurance policy and change the beneficiary irrevocably to cover a child support obligation, so we need to make certain that whatever, if something, was done to the divorce statutes, you don't alter the effect that it could have on supporting children. [LB416]

SENATOR CHAMBERS: Now how would a court enforce that, by contempt powers? If it ordered me to maintain this policy and I refused to do it, what would happen then? [LB416]

WILLIAM LINDSAY: You'd have a normal contempt proceeding on that. [LB416]

SENATOR CHAMBERS: Okay. [LB416]

WILLIAM LINDSAY: Or there could be, if you died in the meantime, there could be a judgment against your estate. [LB416]

SENATOR CHAMBERS: Okay, thank you. I appreciate (inaudible) that. [LB416]

WILLIAM LINDSAY: Thank you, Senator. [LB416]

SENATOR SEILER: Senator Williams. [LB416]

SENATOR WILLIAMS: Mr. Lindsay, I just wanted to be sure that the same concepts that we were talking about with life insurance with Senator Chambers would also apply to bank accounts that were jointly held, bank accounts that are held POD but would be covered by this statute, correct? [LB416]

WILLIAM LINDSAY: Yes. [LB416]

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SENATOR WILLIAMS: If this were to pass in its present form, is there, in your judgment, sufficient protection built in for the financial institutions involved that I will most assuredly tell you will pay out in a form other than would be the form if these properties came under the probate as probate assets versus nonprobate assets? [LB416]

WILLIAM LINDSAY: That was why, when looking at this bill, we put a provision in from the Uniform Trust Code with regard to what is notice, what is notice to an institution, something that we've had for ten years, so that there's already some groundwork for the institutions. I think there is protection; there is relief-of-liability provisions in here if payment is made before the organization has notice. [LB416]

SENATOR SEILER: Any further questions? Yes, Senator. [LB416]

SENATOR CHAMBERS: Again, to show how little I know about these kind of matters, based on what Senator Williams asked about a joint bank account, and I presume it's between the two who were spouses and they no longer are married, could the surviving spouse withdraw everything out of that account when the other one croaked? [LB416]

SENATOR WILLIAMS: They'd usually do it before,... [LB416]

SENATOR CHAMBERS: Hmm? (Laughter) I mean after the croaking. [LB416]

SENATOR WILLIAMS: ...right before the divorce is filed. [LB416]

SENATOR CHAMBERS: I know, but I... [LB416]

SENATOR WILLIAMS: Excuse me. [LB416]

SENATOR CHAMBERS: See...no, no. When you're dealing with these legal issues, you can set up the situation that you want. [LB416]

\_\_\_\_\_: That's right. [LB416]

SENATOR CHAMBERS: But, right, anytime when either one of them is alive, they can clean it out, and some do it even when they aren't angry at each other. But they become angry subsequent to that, then either a divorce or a killing or an attempted killing. But here's the question, and maybe you answered it: If today there is a joint account and both parties to the account are alive,

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and if they get a divorce but they don't change anything about that account, either one could still have access to everything in the account? Or does the divorce automatically sever that and it becomes half to you and half to her? [LB416]

WILLIAM LINDSAY: Generally, unless the divorce decree severs it, or we have a statute such as this that would sever it at death, it is not severed; but there is probably in the divorce decree an awarding of certain dollar amounts. Between the bank and the person withdrawing the funds they can do it because the bank hasn't been given notice of the divorce decree that would revoke it under the terms of this statute. [LB416]

SENATOR CHAMBERS: And... [LB416]

WILLIAM LINDSAY: But there would be an obligation back to the estate of the deceased's former spouse. [LB416]

SENATOR CHAMBERS: But the surviving ex-spouse, because they're no longer together for this example, the joint account exists, they get a divorce. You're saying that the divorce decree while both of them are alive should say what's to happen with that joint account? [LB416]

WILLIAM LINDSAY: Yes, and... [LB416]

SENATOR CHAMBERS: And if it says nothing about it, what happens? [LB416]

WILLIAM LINDSAY: If it says nothing, then generally the state law on joint accounts says that it belongs to the parties in proportion to the contribution that they each put into the account while they were both alive. [LB416]

SENATOR CHAMBERS: Okay, so there is law on that right now... [LB416]

WILLIAM LINDSAY: Yes. [LB416]

SENATOR CHAMBERS: ...that would determine how it's to be handled. [LB416]

WILLIAM LINDSAY: Yes. [LB416]

SENATOR CHAMBERS: Okay. [LB416]

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WILLIAM LINDSAY: What sometimes happens is an account is omitted from a decree. [LB416]

SENATOR CHAMBERS: You said it what? [LB416]

WILLIAM LINDSAY: An account somehow doesn't get into the decree. [LB416]

SENATOR CHAMBERS: Oh, okay. Then the survivor can take all of it, correct? [LB416]

WILLIAM LINDSAY: No, not under this law, because the joint tenancy part would be broken. [LB416]

SENATOR CHAMBERS: Okay, by operation of law. [LB416]

WILLIAM LINDSAY: Yes. [LB416]

SENATOR CHAMBERS: So if the survivor tried to get it, that person would be told by the bank that you can get this amount and no more if the bank has some kind of notice. But suppose the bank doesn't have notice. [LB416]

WILLIAM LINDSAY: Then the bank is not responsible and will pay it out because that's what terms of the contact, to the bank's knowledge, says. [LB416]

SENATOR CHAMBERS: Okay, so then it's paid out to the survivor. Is...can somebody who is handling the estate of the one who died move against that survivor who took everything out of the account and as for...I don't know if they'd call it an accounting or what. But if the estate became aware that the account had been cleaned out, and say it's a substantial amount of money, could the estate take any action against that surviving ex-spouse who took everything out of the joint account which had not been mentioned in the divorce decree and the total amount had been paid over by the bank? Is the surviving spouse entitled to keep all that because it was not procured by fraud? [LB416]

WILLIAM LINDSAY: Under current law, probably, yes; under this proposed law, no, the estate would have a right of action. [LB416]

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SENATOR CHAMBERS: Boy, you lawyers sure make things hard for a guy trying to do the right thing, but you're doing your job. But you sure made it hard for me. That's all that I have though. [LB416]

WILLIAM LINDSAY: Well, thank you, Senator. [LB416]

SENATOR CHAMBERS: I don't think could absorb any more right now. Thank you. (Laughter) [LB416]

SENATOR SEILER: I have a couple questions, going back to the insurance program. I had two of these cases and we settled them both. But both clients walked into the insurance man after the divorce and said...one said, well, I'm thinking about changing it but I'll get back to you, walks out, dies that night. The second one came in and said, fill out the contingent...the change-of-beneficiary form and I'll be back later today to sign it. He died before he signed it. Under your current proposal, what constitutes affirmative action to change that policy? Is it notice in writing or do you have to change the deal or is verbal communication good enough? [LB416]

WILLIAM LINDSAY: This doesn't affect how a beneficiary is changed in terms of anything other than a divorce. So if I wanted to change a beneficiary on my life insurance policy to somebody else, I have to have it... [LB416]

SENATOR SEILER: Right, but both these... [LB416]

WILLIAM LINDSAY: ...the form signed and left to my possession and control. [LB416]

SENATOR SEILER: Both these people had been divorced and they were changing it afterward. [LB416]

WILLIAM LINDSAY: Okay. Under this, the divorce decree itself would do that unless there's been some sort of reservation in the decree or in the policy. [LB416]

SENATOR SEILER: And if it hadn't been but he went to his insurance, I thought you...somebody mentioned...I think Pansing Brooks mentioned that you would have to have something to change that policy. Does it have to be in writing, is what I'm getting at, under your current bill? [LB416]

WILLIAM LINDSAY: Under this bill, it's...the writing is the divorce decree itself. [LB416]

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SENATOR SEILER: The divorce decree takes care of that, automatically changed. [LB416]

WILLIAM LINDSAY: It takes care of it; but still, as a practical matter, you don't want to get into litigation. [LB416]

SENATOR SEILER: Right. [LB416]

WILLIAM LINDSAY: So you change the beneficiary. [LB416]

SENATOR SEILER: Well, not necessarily, if you're on the... [LB416]

WILLIAM LINDSAY: You try. That's...you always recommend it to your clients. [LB416]

SENATOR SEILER: Right, I understand. I just wondered how far that they had to go to keep it in the spouse's name. He shows up at his insurance person and says, keep it in the insurance, even though a divorce decree says it's going to be separate. He's now... [LB416]

WILLIAM LINDSAY: Well, now, if he's going to do that, I think he'd have to do the...and he wants to put the ex-spouse back on,... [LB416]

SENATOR SEILER: Right. [LB416]

WILLIAM LINDSAY: ...he either...just have it set up in the decree that she remains the beneficiary or does the beneficiary change for them. [LB416]

SENATOR SEILER: But it... [LB416]

WILLIAM LINDSAY: And that's postdecree, so that would overrule the decree. [LB416]

SENATOR SEILER: That's what I'm getting at. The verbal conversation doesn't change it. [LB416]

WILLIAM LINDSAY: No. [LB416]

SENATOR SEILER: That's what I wondered. [LB416]

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WILLIAM LINDSAY: Most insurance policies I've ever seen require it in writing. [LB416]

SENATOR SEILER: Right. Okay, thank you. Senator. [LB416]

SENATOR CHAMBERS: I'm always amazed when a mechanic can go under the hood of a car that's not running and make the motor run. The only thing that amazes me more is when I'm watching two people discuss something that I don't understand and they're nodding in agreement, they understand what they're talking about. So I would have to ask Shakespeare to let me paraphrase something. What I get out of all of this is: Decree or not decree, that is the question. (Laughter) And you don't have to answer for... [LB416]

WILLIAM LINDSAY: (Laugh) Thank you. [LB416]

SENATOR SEILER: Any further questions? Seeing none, thank you, Bill. [LB416]

WILLIAM LINDSAY: Thank you. [LB416]

SENATOR SEILER: Any further proponents of this bill? I don't see a rush to the front. [LB416]

SENATOR WILLIAMS: What I learned is, if you go to Seiler's office, don't drink the water. (Laughter) [LB416]

SENATOR SEILER: The opponents, any opponents? Seeing none, anybody in the neutral? [LB416]

ORRON HILL: (Exhibit 1) Greetings, Chairman Seiler and Judiciary Committee members. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I am legal counsel for the Public Employees Retirement Board, also known as the PERB, and the Nebraska Public Employees Retirement Systems, and I'm here to testify to LB416 in a neutral status. The PERB is responsible for administering the Nebraska retirement systems for schools, judges, State Patrol, state employees, and county employees. The PERB must ensure that the retirement benefits are managed in accordance with the Internal Revenue Code, Nebraska law, and the applicable policies and regulations and rules. It is our understanding that the bill extinguishes a designated beneficiary's interest in a member's retirement benefits under certain conditions, such as divorce, annulment, or the felonious intentional killing of a member by a beneficiary. For divorce and annulment, it does so by creating a statutory presumption that a former spouse or a relative of a former spouse, including the member's stepchildren, disclaimed their interest in the member's retirement benefit. The bill's intent is to bring Nebraska law into line with the Uniform Probate Code and current

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case law. That's all been previously discussed. Our staff deals with beneficiary designation forms and qualified domestic relations orders on a daily basis and understands the concerns regarding obtaining complete and up-to-date designations, navigating the unique issues of blended families and multiple marriages, and ensuring the proper distribution of assets upon a member's death. NPERS continually reminds our members in our correspondence, on our forms, and in our newsletters to keep their beneficiary forms updated. Every year we have cases where relatives are distraught after finding out their loved one did not update their form, thus, leaving their retirement benefits to parents, former spouses, and others. It is difficult to determine whether the choice was intentional. Regardless, it causes serious problems and heartbreak for all involved, thus, we had some concerns regarding the implementation of this legislation. We engaged Senator Pansing Brooks's knowledgeable staff regarding this legislation. It is our understanding that a beneficiary designation form completed after a divorce or annulment is finalized, will be honored even if the former spouse or relative of former spouse is a named beneficiary because it shows a conscious decision on the part of the member to make the election after the termination of the marriage. It is also our understanding that qualified domestic relations orders will not be impacted by this legislation. This information reduced many of our concerns. It is our hope that the Nebraska State Bar Association, practicing attorneys, and others in positions to influence our fellow Nebraskans will work with us to educate the public regarding the impact this legislation will have on their designations and estates should LB416 pass. The PERB has not formally voted to testify neutrally to LB416 due to the timing of the board's last meeting. However, LB416 was discussed with Chairman Denis Blank and Elaine Stuhr, the legislative committee chair, and I am able to state that there is a general consensus that the PERB is neutral towards LB416. I will take any questions the committee may have. [LB416]

SENATOR SEILER: Seeing none,... [LB416]

SENATOR CHAMBERS: One... [LB416]

SENATOR SEILER: Oh, there, Senator Chambers. [LB416]

SENATOR CHAMBERS: This isn't meant to be facetious. Does neutrality mean a lack of understanding at this point of all the ramifications that would exist as far as what you do if this became law in the form that it's in? Or are you neutral because it doesn't matter what it is...what it does, just so it's clearer to you what it does? [LB416]

ORRON HILL: We believe we understand what the bill says, Senator, as it is currently drafted, based upon the presumptions that are contained in it. And based upon what our understanding of how we could respond to the bill and educate our members in how to respond to the bill if it is passed, we have no proponent or opponent position to that particular issue. As this is a matter of

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public policy, it is not the purview of our agency to make public policy or weigh in on it. It is up to the Legislature to make that decision, and so we defer to the committee. [LB416]

SENATOR CHAMBERS: You've heard the expression that if I don't get something, it goes over me. Well, this is one thing that did not go over the hill. They don't get it. (Laughter) They're exhausted. He got it. Anybody who knows enough about this to take a neutral position understands more about everything than any or all of us put together. Thank you, Mr. Hill. That's all that I have. [LB416]

ORRON HILL: Thank you, Senator. [LB416]

SENATOR SEILER: Any other questions? Thank you, Mr. Hill. Any further neutral? Senator, you may close. [LB416]

SENATOR PANSING BROOKS: Okay, great questions, colleagues. What I am...I just wanted to say that I think what Judge Cassel was talking about was trying to have us make a policy determination. Right now in wills the...when an ex...when a spouse dies in the middle of a divorce, then the ex-spouse is placed in a position as if that spouse had predeceased the one that actually died. So then we have property that follows that. That's our policy, is to follow that testamentary path. So anyway, Judge Cassel at least was, from what I was understanding and what he was trying to do, was to make a similar policy so that the nontestamentary property would pass in a way that was similar, as well, so that the primary beneficiary was removed to become the...and the contingent beneficiary then got that power to get the property. So there's my limited understanding of this, and I worked hard on it. (Laugh) Any questions? Uh-oh, I may have opened myself for questions here. Yes. [LB416]

SENATOR SEILER: Yes, Senator Krist. [LB416]

SENATOR KRIST: Are you familiar what the cartoon Charlie Brown? [LB416]

SENATOR PANSING BROOKS: I do know that cartoon, sir. [LB416]

SENATOR KRIST: Do you know, every time an adult talks in that cartoon, it's "wah-wah-wah-wah-wah." [LB416]

SENATOR PANSING BROOKS: "Wah-wah-wah," yeah. [LB416]

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SENATOR KRIST: That happened to me about 20 minutes ago. (Laughter) I just want to tell you that, so. [LB416]

SENATOR PANSING BROOKS: I just want you to know how exciting this area was after I finally studied it and understood it, so. [LB416]

SENATOR KRIST: Thank you. [LB416]

SENATOR PANSING BROOKS: Are you saying that I'm going, "wah-wah-wah"? [LB416]

SENATOR KRIST: No, no. (Laughter) [LB416]

SENATOR PANSING BROOKS: Yeah. [LB416]

SENATOR KRIST: I'm saying (laughter) I've loaded up from about 20 minutes... [LB416]

SENATOR PANSING BROOKS: Don't worry, I'll remember that, Senator Krist, no problem. [LB416]

SENATOR SEILER: Senator Chambers. [LB416]

SENATOR KRIST: That would assume that I'm calling anybody an adult here, so. [LB416]

SENATOR CHAMBERS: I thought I understood. And it doesn't matter if you were listening today when I spoke because none of us is going to follow. But I'll be able to talk to you because you're a member of the Legislature and I'll look at what Cassel wrote and talk to you so I can try to get an understanding. But the ones who did speak, what each one of them said did become clear to me. But now I'm trying to process it all and see just where we are. [LB416]

SENATOR PANSING BROOKS: The whole thing, yeah. [LB416]

SENATOR CHAMBERS: So I have just kind of a rudimentary understanding and I will talk with you more about it. [LB416]

SENATOR PANSING BROOKS: Okay. [LB416]

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SENATOR KRIST: That's what I meant. (Laughter) [LB416]

SENATOR PANSING BROOKS: Thank you. That it? [LB416]

SENATOR SEILER: Nothing further? [LB416]

SENATOR PANSING BROOKS: Okay. [LB416]

SENATOR SEILER: You may step... [LB416]

SENATOR PANSING BROOKS: Thank you very much. [LB416]

SENATOR SEILER: Senator Harr, LB221. [LB221]

SENATOR HARR: Chairman Seiler, members of the Judiciary Committee, thank you for having me back today on no-question Friday. (Laughter) I bring to you LB221. In 2013, I had a constituent bring up the issue of how rental properties address the property of a tenant once the tenant is deceased. Under current Nebraska law, landlords are directed to lock down the residence until the court authorizes someone through official court documents to come down and claim the property. The court then appoints a specific person as a personal representative. In many cases, families do not have the desire to wait for the court to take action, nor do they want to incur the cost of going to court. Landlords would like to accommodate the bereaved but oftentimes worry about the liability if they release the property to the wrong person. In other situations, you have where no one comes to claim the property, and there is a separate policy for that that I can go into details on, but that is often just as difficult when there is no next of kin or personal representative. As a result, I introduced LB796 last year and a hearing was held by this committee. The committee did not take any action on the bill, although I think this was due largely to the fact that Andy Hale, my LA at the time, introduced the bill. (Laughter) As a result, I am back with LB221. LB221 eases both parties' concerns that I heard last year. The bill allows landlords to create a form and request from their tenants the name and contact information of what would be defined as an authorized person. The authorized person is someone who can retrieve and store the tenant's property upon their death. Notice I said, did not take possess...they'll take possession but not ownership. LB221 directs the landlord to contact the authorized person within ten days upon the death of a tenant. The authorized person then has 20 days to go to the rental property and remove the tenant's property. If the property is not removed within the time frame, the landlord may dispose of the property as prescribed in the Disposition of Personal Property Landlord and Tenant Act which is already the law. The landlord would then have no further liability regarding the tenant and the property. LB221 establishes an improved

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process for administering these situations and clears up ambiguity in the law as it relates to landlord-tenant law. With that, I end my closing and ask for your support on LB221. Thank you. [LB221]

SENATOR SEILER: Any questions? Senator Chambers. [LB221]

SENATOR CHAMBERS: Senator Harr, it seems that the crux of this bill boils down to a matter of trust: Do you trust that the landlord made a reasonable attempt to contact the authorized person? There is no indication of what constitutes a reasonable attempt or even what constitutes an attempt. There was a king...I read this. I wish I had noted the case, one of those old, dusty volumes of early Nebraska Supreme Court cases. And this king said that he would...it wasn't made...let me use the word "published" or post any change in the law so that everybody in the kingdom would know what it was. And if it was a change that he thought people would disagree with it, he had it inscribed on some object. And then he had it posted so high above the ground that nobody could read what it said. But it complied with what his decree indicated because it was posted. He didn't say, posted so that people can read it and understand, just...and he posted it. Now what is a reasonable attempt in the context of this bill? [LB221]

SENATOR HARR: And I assume you're referring to page 3, line 25? [LB221]

SENATOR CHAMBERS: Yes. [LB221]

SENATOR HARR: Well, there will be contact information. So again, this program would be to a large degree largely voluntary. There would be no requirement that landlord or a tenant fill out this form. But if the tenant took the...went through the process and the time and trouble to fill out the form, it would have contact information assigned on there. And I would assume "reasonable" would be left to what the information is on that contact information. But I think, at the end of the day, reasonableness is a determination that would be made by the court, not by...you know, we can't foresee every single situation, as much as we'd like to. And so that would be left to the court to make an absolute determination on reasonableness. [LB221]

SENATOR CHAMBERS: Suppose the person whose property it is and who dies made a change in who shall be authorized and didn't tell the one previously authorized that a change had occurred. The landlord would go to the one on the most recent document. [LB221]

SENATOR HARR: I would agree with that. [LB221]

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SENATOR CHAMBERS: And the other person who had heard about the death would make an appearance and say, you gave it to the wrong person. And you're saying under the terms of this bill that all the landlord would have to do is present an authorization with a later date than the date on the second person coming with an authorization. And the landlord is then free and clear after having turned the property over to this second person. [LB221]

SENATOR HARR: Given your fact scenario, yes. You know, there may be something that we don't know about at the time. You know, there's an issue...there's always an issue of forgery or fraud, but...and reasonableness of if the landlord should have known about a forgery or a fraud. But if in fact the tenant filled out two separate contacts and the latter one came and the landlord contacted the latter, yes, that... [LB221]

SENATOR CHAMBERS: And currently, what is the problem, now that you've finished your presentation, that the landlords are trying to resolve by way of this bill? [LB221]

SENATOR HARR: Well, it's a landlord...and I would say, actually, for the tenants, too, it's about certainty about how your property is collected upon death. [LB221]

SENATOR CHAMBERS: But didn't you tell us that currently under the law...tell us what you've said again, because I don't want to misstate it. [LB221]

SENATOR HARR: Oh, well, yeah, so currently you can go to court and get a personal representative, and that costs money. And a lot of estates...you know, and let's be honest, if you're renting, your estate is probably not worth a whole heck of a lot. That's a generalization, but there is some truth to it. And so it's not worth the cost of going to court to get that property. And so what ends up happening is...well, what can end up happening is that no one claims the property. And there may be something in there that may not be of much financial value but has sentimental value. This presents a way for the landlord to hand the property over to the interested parties, release themselves of liability, not change the ownership, mind you. That's still an issue that needs to be dealt with either through... [LB221]

SENATOR CHAMBERS: Well, suppose the person, the tenant, does not want to designate an authorized person. [LB221]

SENATOR HARR: Nothing would require them to do that. [LB221]

SENATOR CHAMBERS: Say it again? [LB221]

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SENATOR HARR: Nothing in this bill would require them to do that. [LB221]

SENATOR CHAMBERS: And then the law as it exists now would kick in and all of those things would be done? [LB221]

SENATOR HARR: That is correct. [LB221]

SENATOR CHAMBERS: I'm just trying to get an understanding. I don't have right now a...I haven't made up my mind yet, but I think I understand now what the bill is doing. [LB221]

SENATOR HARR: And I'd be more than willing to talk to you off the record about it too. [LB221]

SENATOR CHAMBERS: Okay. [LB221]

SENATOR SEILER: I have some questions about the ten-day rule that you have in here. You realize that a small estate affidavit cannot be signed until 30 days after the date of death. [LB221]

SENATOR HARR: No. [LB221]

SENATOR SEILER: You should be. Ten days, you've got a problem with that, that they can't be an authorized person by a small estate affidavit. It's a 30 day, as I remember it. You have to... [LB221]

SENATOR HARR: Well, and I think we have to be careful about differentiating between ownership of the property. The person wouldn't have ownership; they would have possession. [LB221]

SENATOR SEILER: No, but the...in order for the person to even pick it up, he has to have some authority, and I'm just wondering if your ten days is a little short. That's my only point. [LB221]

SENATOR HARR: Okay. And I can work with that. I'm not...I would defer to you in that area of the law. This is built in to kind of bring certainty, and it's based on an Arizona law and... [LB221]

SENATOR SEILER: No, that's the only problem I had is the ten days, your initial ten days. [LB221]

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SENATOR HARR: Yeah, and so we touched on things that are different from different states, and I'd be more than willing to work with you on that. [LB221]

SENATOR SEILER: Okay, I have no further questions. Anything? [LB221]

SENATOR HARR: Thank you. [LB221]

SENATOR SEILER: You may step down. You're going to...are you going to wait for... [LB221]

SENATOR HARR: Yes, I plan to, yes. [LB221]

SENATOR SEILER: Okay. Proponent witnesses. [LB221]

GENE ECKEL: Senator Seiler, members of the Judiciary Committee, I'm happy to be before you again, Gene Eckel, on behalf of the Nebraska Association of Commercial Property Owners and the Apartment Association of Greater Omaha and Lincoln. [LB221]

SENATOR SEILER: Will you spell your name? [LB221]

GENE ECKEL: Oh, I'm sorry. It's Gene Eckel. The last name is E-c-k-e-l. We are in support of LB221 because in general it does provide a necessary process for the landlord as to what to do or who has authorization to retrieve a deceased tenant's property. And I would have to agree with Senator Harr, it does assist the tenant's family as well. A lot of the times, when our members have a deceased tenant, the...it could be family members, it could be friends, and they arrive and they want in to retrieve not only the deceased tenant's maybe clothing, maybe for burial purposes, or to look for the will, but also, you know, just to retrieve the property. And the problem occurs is that the property managers are afraid of letting these people in because we don't know who they are. So they do change the locks and they're hoping that someone will come in with personal representative papers to say that, I'm the personal representative of the estate and I have the authority to retrieve the property. The problem is, is that, as Senator Harr indicated, some people do not want to go through that process. And so then the landlord is in the position of not knowing what to do at that point. So in general we agree with the process that this bill provides. You know, we did indicate that...I believe it's on page 3, line 21. It does say that the...upon request by landlord, the tenant shall provide and routinely update name and contact information. So I don't know if that needs to be changed to "may" so it's not necessarily a requirement if the landlord does ask for it. I just wanted to bring that to the attention of the...to the committee. If you have any questions, I'd be more than happy to answer them. [LB221]

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SENATOR SEILER: Senator Williams. [LB221]

SENATOR WILLIAMS: I have a question, just thinking about other situations with this. How would this apply to an independent living facility that then maybe moves into assisted living that are rental units and oftentimes the people leave because they do die? [LB221]

GENE ECKEL: Well, I think this bill would apply to that; however, it depends on if there's someone who is established as a personal representative or not. If there are family members that usually are taking care of...they're the power of attorney for that person. Unfortunately, at the time of death, that power of attorney document, those powers now cease. So that person doesn't even have the authority to do anything at that point. So from a standpoint of liability for those assisted-living facilities, this would apply to it because the current Disposition of Personal Property Landlord and Tenant Act does not speak to this issue. It only...that act only talks about if it's abandoned personal property, and then they have to contact the tenant. Well, in this case, the tenant is deceased, so who can they contact? And it's not really abandoned, so this legislation would address that situation. Did I answer your question or... [LB221]

SENATOR WILLIAMS: Yes. [LB221]

GENE ECKEL: Okay. [LB221]

SENATOR SEILER: Senator Krist. [LB221]

SENATOR KRIST: Just to that point, normal situation is you don't...I mean a person who lives in an apartment, let's say, or a rental space is not in the situation of a person who is in a care facility of one kind or another. My experience just recently with parents is that's the first thing...one of the first pieces of paper that you agree on is the disposition of what happens to personal effects. So I think they're already handling that. I don't know...I would assume that this would affect them, but they're much better at making sure that those processes are in place. [LB221]

GENE ECKEL: You want me to respond to that or...? [LB221]

SENATOR KRIST: Yeah, absolutely, go ahead. [LB221]

GENE ECKEL: Yeah, they can...even myself, I have established a contract for the people who want to pick it up to do it. The question becomes, is a landlord still liable, because if somebody else arrives and says, well, why did you give it to this person, I'm...you know, it was supposed to come to me, then the landlord is still stuck at the position of not knowing what to do. And even

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though that gets put in provisions that you're going to hold me harmless and...you know, it's still a question of liability at that point. So what we would say is we like the idea of this legislation. There might be some things that need to be worked on, but we like the process and it gives guidance to the landlords so we can tell the tenants, here's what's going to happen, or their family members. This is the process. [LB221]

SENATOR KRIST: Good point. Thank you. [LB221]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB221]

GENE ECKEL: Thank you, Senator. [LB221]

SENATOR SEILER: Any further proponents? [LB221]

JOHN CHATELAIN: Yes, John Chatelain, on behalf of the Statewide Property Owners Association again, J-o-h-n C-h-a-t-e-l-a-i-n. And our association supports this bill as well. In my own practice, I represent a lot of landlords, property managers, and also some tenants, and I think this fills a gap that we presently have. Typically what happens is the tenant moves out and they leave things behind in the apartment or the house. Then the landlord has to send a notice to the tenant giving them 14 days to come and receive those items or they can be disposed of pursuant to the Personal Property Disposition Act. What happens if an individual dies? That's what this proposal would apply to. And I think it provides order, both for the sake of the tenant and the tenant's family and also for the landlord, so that the landlord knows who to give the property to under this procedure. I concur that it probably...line 27 should probably be amended so that this coincides with the small estate affidavit. But our association supports the bill as well. [LB221]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. Any further proponents? Seeing nobody, any opponents? Anybody in the neutral? You may close. [LB221]

SENATOR HARR: I'll waive closing then. [LB221]

SENATOR SEILER: You waive? Okay. [LB221]

SENATOR HARR: Thank you. [LB221]

SENATOR KRIST: That's a great closing. [LB221]

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SENATOR SEILER: Senator Morfeld, present LB253. [LB253]

SENATOR MORFELD: Good afternoon, Senator Seiler, members of Judiciary Committee. My name is Adam Morfeld, representing the "Fighting" 46th Legislative District, here today to introduce LB253. And I'm hoping this doesn't go until 7:00, like my last bill, so we'll see. LB253 amends Section 40-104 to allow that a purchase agreement or a contract for the sale of a homestead property signed by both spouses does not require acknowledgment or notarization to be enforceable. This bill does not remove the requirement for both spouses to sign the document, only that it would no longer need to be notarized. Furthermore, LB253 is limited to contracts for a purchase agreement and not for the deed. Both spouses would still need to attend and sign the final conveyance documents, which must be notarized still. Purchase agreements for a homestead are the only remaining real estate purchase agreement that requires acknowledgment. This causes difficulty in a world that is moving towards the use of electronic documents for the initial stage of the sale of property. I urge your favorable consideration of this bill and I'd be happy to answer any other questions. [LB253]

SENATOR SEILER: Senator Chambers. [LB253]

SENATOR CHAMBERS: Senator Morfeld, in statutes I like to see parallelism, and in the existing law, if you go to line 7, how are the two parties designated in that line? What words designate the parties? [LB253]

SENATOR MORFELD: Husband and wife. [LB253]

SENATOR CHAMBERS: No, line 7. [LB253]

SENATOR MORFELD: Oh, line 7? The interest of either or both spouses may be... [LB253]

SENATOR CHAMBERS: Both spouses, right? [LB253]

SENATOR MORFELD: Um-hum. [LB253]

SENATOR CHAMBERS: So in line 6, I would amend it by striking "husband and wife" and put the word "spouses." Then it's "both spouses" throughout. In the current law, it says, both spouses and husband and wife, both husband and wife, but in the amendment it says both spouses. So I think in order not to create a discussion that this bill is not trying to engender, I'd strike...I'd suggest getting rid of the words "husband and wife" and insert "spouses." Then the term is "both spouses" throughout. [LB253]

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SENATOR MORFELD: I'd be willing to entertain that amendment. [LB253]

SENATOR CHAMBERS: Okay. And if you don't want to do that, I'll do it. [LB253]

SENATOR MORFELD: I can do it,... [LB253]

SENATOR CHAMBERS: (Laugh) Oh, okay. [LB253]

SENATOR MORFELD: ...make it happen. [LB253]

SENATOR CHAMBERS: Well, since I'd said it, I didn't mind, you know. (Laughter) Okay. But I don't have any questions. [LB253]

SENATOR SEILER: Any further... [LB253]

SENATOR KRIST: If the two of you would like me to do it,... [LB253]

SENATOR SEILER: Any further questions? [LB253]

SENATOR MORFELD: We can do it together. We can walk down there together, sir. (Laugh) [LB253]

SENATOR KRIST: All together. [LB253]

SENATOR SEILER: Any further questions? [LB253]

SENATOR PANSING BROOKS: Senator Krist, are you hearing noises again? [LB253]

SENATOR KRIST: No. [LB253]

SENATOR PANSING BROOKS: Okay. (Laughter) [LB253]

SENATOR KRIST: Absolutely clear, ma'am, thank you. (Laughter) [LB253]

SENATOR SEILER: Any proponents of this bill? [LB253]

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SUSAN NAPOLITANO: Good afternoon, members of the Judiciary and Senators. My name is Susan Napolitano. That's S-u-s-a-n. Napolitano is N-a-p-o-l-i-t-a-n-o. I am a lawyer representing the Nebraska Realtors Association. We are asking for support of LB253. It removes the notary requirement for seller signatures on a purchase agreement for homestead property. I'd like to run you through a little bit of a history on where homestead property achieved its special protection. A homestead property is most easily described as a property that my husband and I might call our home, would call our home. It's where we live. Because the law protects the home where we live, my husband would not be able to sell it out from under me. This is because a large body of law in Nebraska, in the 8th Circuit, and in the U.S., protects the homestead, and this is true in every one of our states presently. And that is regardless of whether those states require notarization of the sellers' signatures. Nebraska is only one of 11 states that still requires notarization of signatures of sellers on the homestead purchase agreement. The statute that LB253 would amend is actually one law that exists within the much larger body of law that specifically gives the homestead special status under the law, and that protection is still very strong now in 2015. My husband would not be able to sell our home without me, with or without the notary requirement. And a buyer, however innocent that buyer might be, would not be able to force a sale by specific performance. If my husband tried the same shenanigans 100 or 150 years ago, I'd have been in trouble: 150 years ago, a woman was not allowed to actually own property in her own name. The legal concept of protecting the homestead arose out of the necessity of protecting wives from husbands who held 100 percent of the title. Back in those days, I would have been out on the street if my husband had sold our home. To solve the problem, in the 1800s, the homestead laws were enacted. They proclaimed that the homestead deserved special status and they proclaimed that they deserved special protection. Once that concept was established, in the mid- to late 1800s, a husband couldn't sell the home without the wife's written consent. But he didn't give up that easily. He figured out that if he could just forge her signature or forge her consent, then he would be able to transfer the property still. And that's why we have statutes like the one we are trying to currently amend: 40-104 requires that both spouses' signatures be acknowledged by the notary. But this...but remember that this rule was necessary to prevent injury from women who were still not entitled to equal rights under the law. Fast-forward to 2015. Women own property, legally, just like men do. The homestead laws still protect the family home, but it no...the homestead laws no longer protect only the women. They also protect the men. They protect the family home from either spouse's fraudulent forgeries or attempts to transfer. Every homestead is protected against forgeries committed by either spouse in 2015 in Nebraska. Forgery is not a concern because Nebraska law does address it and Nebraska law does not allow the specific performance of a purchase agreement that has been forged. You may hear from the NSBA's legislative committee that this, removing the notary requirement, will open the door to fraud. I can tell you that I'm also on the legislative committee and I disagree. You will not be able to find a modern case that supports that argument. As I said, Nebraska is only one out of 11 states that still require it. There are a lot of states that are allowing the notary requirement to be removed and there is no pattern of fraud. Because of the value of the homestead, the trend

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of the courts throughout the U.S. is consistently to protect the homestead. Are there any questions? [LB253]

SENATOR SEILER: I have one. [LB253]

SUSAN NAPOLITANO: Yes. [LB253]

SENATOR SEILER: The case that says that you can't have or the statute that says you can't have specific performance, do you have... [LB253]

SUSAN NAPOLITANO: I do. [LB253]

SENATOR SEILER: What's the cite on that? [LB253]

SUSAN NAPOLITANO: Yes, I have...it's a couple cases, actually. The cite is Bacon v. Western Securities. Burk v. Demaray is the second one. Do you want the citation or just...could I give you the citation later to save time? [LB253]

SENATOR SEILER: No, that's fine. [LB253]

SUSAN NAPOLITANO: Okay. And then the 2002 case is Burk. [LB253]

SENATOR SEILER: Burk? [LB253]

SUSAN NAPOLITANO: Burk, yes, and there's more. The contract for sale of the homestead cannot be specifically enforced when only signed by one spouse, and that's Storrs v. Bollinger, Ambler v. Jones, and Trowbridge v. Bisson. [LB253]

SENATOR SEILER: Yeah, I understand your one signature, but the fraud...the forgery is the one that bothers me. [LB253]

SUSAN NAPOLITANO: Right. Any other questions? [LB253]

SENATOR SEILER: Seeing none, thank you very much. [LB253]

SUSAN NAPOLITANO: Okay, thank you. [LB253]

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SENATOR SEILER: Next witness, proponent. [LB253]

GREG LEMON: (Exhibit 1) Chairman Seiler, members of the Judiciary Committee, for the record my name is Greg Lemon, G-r-e-g L-e-m-o-n. I am the director of the Nebraska Real Estate Commission, appearing today on...in support of LB253. As Ms. Napolitano pointed out, this law that they're amending was originally passed in 1879. As she also pointed out, it was intended to protect, at that time, to protect women. And at this time there's certainly still people out there that want to do bad things and maybe even more people that want to do bad things to their spouses. And so there certainly is protections in the law that need to be...still need to be in place. When we regulate, we always want to strike a balance between the regulations, the protection of the public, and the burden upon the public and the businesses that have to transact business under those regulations. One of the things that wasn't pointed out which I would say has changed significantly since 1879 is, at that time, the transfer of property might very well just involve a purchase agreement, exchange of money, and a deed, the filing of a deed with the register of deeds office. These days, anybody who has gone through a real estate transaction knows that there is going to be a whole ream of papers that has to be signed. The transaction will come under the scrutiny of the title insurance company. The transaction will come under the scrutiny of the lender if there is financing involved, which there generally is. And also, our own commission audits...when the transaction involves a real estate agent, our transaction audits...our agency audits those files as well. And one of the things we check is for husband and wife signature on purchase agreements and on listing agreements and things like that. So I think one of the things that's changed significantly since that law was passed originally, in 1879, isn't the fact that, yes, there are still people out there that want to do bad things, but there are a lot more layers of scrutiny. There are a lot more layers and steps that are involved in a typical real estate transaction now where that can be caught. And as was pointed out, there's still a requirement that that deed, that both parties sign the deed and that be notarized. With that, I would be glad to answer any questions the committee might have. [LB253]

SENATOR SEILER: Seeing none, thank you. [LB253]

GREG LEMON: Thank you. [LB253]

SENATOR SEILER: Next proponent. [LB253]

LISA RITTER: Hello. My name is Lisa Ritter, L-i-s-a R-i-t-t-e-r. I'm Nebraska Realtors Association president. I'm also broker/owner of RE/MAX Results in Omaha, Nebraska. I sell and close approximately 50-60 listed homes per year, and I supervise 20 real estate agents. In my experience, this is a crazy, busy world, and it's...consumer protection is very important. One of the things that's occurring on a regular basis with transactions is that I'm constantly dealing with

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people that are traveling. I serve a lot of professionals and in 10-20 percent of the cases when I'm trying to do the sale of their home, one or both spouses may be traveling. It's a very common occurrence. And when that happens, they're not able to sometimes, you know, get a valid contract. The contract becomes voidable because they're signing it electronically and they can't find a notary during the day, they can't get over to a bank, that sort of thing. The other thing that's happening is it's a very healthy, robust economy, and we're getting competing offers. So people are using the fact that they can't get a notarized signature to game the system and get out of a contract when it's convenient. This can be done both on the buyer and the seller side. There are protections in places, as previous participants have said. The deed does have to be notarized by both the husband and wife, so there is a point where it will happen that both people have to be physically present. There is also an "e-notary" bill out there, and I want to note that that is not going to fix anything to correct this situation because, with the "e-notary" bill, you will still have to be physically present. The only thing it changes is that a person will not have to have a pen and paper. They'll just have to have an iPad or a computer. So it saves trees, but it doesn't fix the real problem. Any questions? [LB253]

SENATOR SEILER: Questions? Seeing none, thank you for your testimony. [LB253]

LISA RITTER: Okay, thank you. [LB253]

SENATOR SEILER: Next proponent. [LB253]

CONNIE HANSEN GOLTER: My name is Connie Hansen Golter, C-o-n-n-i-e, last name H-a-n-s-e-n G-o-l-t-e-r. And I am an owner of a real estate company in Hastings, Nebraska, New View Real Estate. And I think I just kind of want to give a specific example of what Lisa was talking about and to tell you that I feel like the sale of a homeowner's...a homestead property is already frequently a stressful and a very emotional experience for most sellers. And a primary goal of the seller's agent is to make it as smooth and as painless as possible. And...but as Lisa stated, we are a very mobile society right now. And I think Lisa was pretty conservative. At one time she said 10-20 percent, and I said, oh, Lisa, it's at least two out of five these days, or higher, that seem to be gone when you need them. It's not unusual to have either both or one of the sellers out of the area when a purchase agreement is presented. Now current technology allows us in almost all cases to have phone conversations or e-mails or faxes--well, not so much faxes when they're on a cruise. But you can negotiate contracts and you can keep both parties, you can keep the activity going on the contract in between agents. But presently, when you have to get that contract notarized, the problem that comes up, and I have experienced this personally, is that while they are out trying to identify a notary and to employ them to get this done, it can require anywhere from three to five days, depending on where they are. And in that period of time, a buyer has put a kill date on their contract. And usually, as Lisa said, in a brisk market, the kill date, the buyer,

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they want instant...they want to know in 24 to 36 to 48 hours. And if that seller cannot respond in that time period, that contract becomes null and void. And so you have damaged your seller if you have, you know, you've negotiated the terms, everybody is okay with everything, but you cannot consummate and make it a legal, binding contract in that period of time. And my feeling is, everybody is taking cruises these days and if somebody, one of my sellers, says, oh, I hope the property sells while I'm on my cruise, Murphy's law says it will. Good luck. [LB253]

SENATOR SEILER: Thank you, Connie. [LB253]

CONNIE HANSEN GOLTER: Yes. [LB253]

SENATOR SEILER: Any further testimony? Yes, Senator Chambers. [LB253]

SENATOR CHAMBERS: In the absence of this bill passing, would a bloody thumbprint of each one do? (Laughter) [LB253]

CONNIE HANSEN GOLTER: Put that in the legislation. I like it. [LB253]

SENATOR SEILER: Thank you. [LB253]

CONNIE HANSEN GOLTER: Thank you. [LB253]

SENATOR SEILER: Any further testimony? Mr. Poppe. [LB253]

ROBERT POPPE: Robert Poppe, R-o-b-e-r-t P-o-p-p-e. Senator Seiler and committee members, I'm an associate real estate broker in Hastings, Nebraska. I previously owned my own company and had salespeople working for me of which they were under my supervision and training. I would like to see this bill passed for the uniformity because we don't need notary seals on any other real estate document, other than the homestead. And in my personal situation, my assets are ten times what my homestead is. So if you're going to protect me, I'd rather have the protection on the rest of it so my wife wouldn't sell me out. (Laughter) [LB253]

SENATOR SEILER: I know your wife. She'd just divorce you. (Laughter) [LB253]

ROBERT POPPE: But she'd only get half. You...you (laugh)... [LB253]

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SENATOR EBKE: And then the Chair would manage it for her, right? Yeah. (Laughter)  
[LB253]

SENATOR SEILER: Right, my partner would. [LB253]

SENATOR EBKE: Oh, okay. [LB253]

SENATOR SEILER: Excuse me. [LB253]

ROBERT POPPE: But, you know, teaching your salespeople what has to be notarized, what have you, when most of them are sufficient without notary, this just causes more conflict and could be possible to misinterpret it when...but could...uniformity is what I would look for. [LB253]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB253]

ROBERT POPPE: Thank you. [LB253]

SENATOR SEILER: Good to see you again. [LB253]

ROBERT POPPE: You bet. [LB253]

JAYNE DEBUS: Hi. I'm Jayne Debus, J-a-y-n-e D-e-b-u-s. Pretty much said everything that needed to be said, but in the real estate business we have a phrase that "time is of the essence." And like Connie said, if you don't respond to an agreement within a very short period of time, you could have damaged both the buyer and the seller. But the other piece of the puzzle is finding that notary outside of...if you're...say you're in the hospital. You have to find a notary to come to the hospital. Or you're just out on a vacation someplace, which would be nice right now. But that notary in a lot of cases does not know those people; some cases, don't even ask for identification. So they're notarizing a signature that they really do not even know who those people are. And is that something that we can stop? I don't think so. So does that really serve its point? Thank you. [LB253]

SENATOR SEILER: Any further questions? Thank you, Jayne. Any further witnesses on the proponent side? [LB253]

JESSICA SAWYER: Good afternoon. My name is Jessica Sawyer, J-e-s-s-i-c-a S-a-w-y-e-r. I'm a real estate agent with DEEB Realty in Omaha and I do a pretty good amount of business there,

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and I'm also a notary public and have been for over ten years. I would again like to mention that with today's...the speed in the market today with multiple offers and getting a wet signature because a notary is required is sometimes difficult to do, especially when you're not a notary public or possibly may be a "for sale by owner" and it's a Saturday or Sunday. And that's a lot of time when the real estate transactions are taking place. So it's hard to find a bank or a notary, which I get a lot of phone calls or Facebook cries from non-notary public agents needing some help and, you know, they all think they're going to get their notary and make it easy for them down the road. But this maybe could fix that problem. Another example which has already been mentioned is if the seller is out of town and it's hard to hunt down a notary to get that contract signed and sealed. Then again, you know, we're in front of a title company for a deed set to be notarized in the same transaction, so we've kind of got it twice there. So I just want to simply ask as Nebraskans we move forward to eliminate this and, you know, make the life a little bit easier for sellers. And it would be great for the real estate agents, as well. Thank you. Any questions? [LB253]

SENATOR SEILER: Any questions? Seeing none, thank you. Oops, is that a hand up over there? [LB253]

SENATOR KRIST: No, I was just stretching. (Laughter) [LB253]

SENATOR SEILER: Any further proponents? Any opponents? [LB253]

WILLIAM LINDSAY: Senator Seiler, members of the committee, I'm William Lindsay, L-i-n-d-s-a-y. I'm here on behalf of the Nebraska State Bar Association. We're in opposition to LB253. LB253, as you've already heard, would change the requirement with regard to a purchase agreement on a piece of real estate, which is the homestead, so we're only talking the homestead. We agree that all other real estate doesn't require a notary on the purchase agreement. We agree that the deed still would be required to be notarized. However, when you consider that once the purchase agreement is signed, even if the specific performance action will not lie, if you have fraud or anything like that, you still have the action; you still have legal fees; you still have people having to go to court to deal with this. The notary is a little bit of protection for people, and it's only with regard to their homestead. It's where they live. If you have people who are out of state, for example, who are selling a house, if the purchase agreement specifies that both parties are nonresidents of Nebraska and they're selling the real estate here and that it's not their homestead property, it would not need to be notarized because it's no longer a homestead if they've moved. The statute currently already says that a power of attorney by either spouse can sign on behalf of that spouse. The people who are traveling who are on cruises may well have a power of attorney in place who could sign on their behalf whose signature can get notarized. The goal here with this particular law, I don't think the reasons for protecting the spouses on the

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homestead have changed in the last 140 years. There's been some negotiations between the bar and the realtors. Our suggestion was that, in removing this, that a licensed realtor would be allowed to witness a signature and that they would take on the responsibility that the notary would have. So that would be something that I think would accomplish the goal of allowing it to proceed, the transaction to proceed, but still provide some protection to, you know, the spouses where there could be instances of domestic violence, compulsion, other forms of influence. Thank you. If you have any questions, I'd be happy to answer them. [LB253]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB253]

WILLIAM LINDSAY: Thank you. [LB253]

SENATOR SEILER: Any further opponents? Anyone to testify in the neutral? You may close, waives closing. The hearing is closed. The record is... [LB253]