

One Hundred Fifth Legislature - First Session - 2017

Introducer's Statement of Intent

LB268

Chairperson: Senator Laura Ebke

Committee: Judiciary

Date of Hearing: February 01, 2017

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB268 deals with the ever increasing problem brought on by the increasing cost of retirement and nursing facilities for the aged on one hand and a desire to pass accumulated wealth to heirs on the other.

The States have a duty under Federal Law to effectively screen applicants for medical assistance and, if assistance is granted, then to recover costs of long term nursing home care from the “estates” of aid recipients, to the extent there is an “estate”. Prior to 2015 “estate” in Nebraska was defined using the traditional definition of “probate estate”. Nebraska had not utilized the authority given to it under federal law to broaden the definition to include various legal techniques and schemes that came into being to transfer the wealth to heirs and the nursing home costs to the taxpayer. In fact, an industry of Medicaid estate planners emerged to take advantage of the resulting Nebraska loophole. That changed in 2015 when pursuant to LB72 the Legislature adopted an expanded definition of “estate” as encouraged by federal cost controllers over a decade ago. LB72 thwarted various legal mechanisms to transfer real estate and other property to heirs and avoid personal responsibility for the aged relatives who had resources. LB72, however, did not define the process of estate recovery and left that in the realm of administrative action and court interpretation on a case by case basis. Defining process that way is often expensive and inefficient. Legislation is a far more efficient and definitive mechanism and thus the need for LB 268.

LB268 by its repeated language is expressly limited to procedures that are permissible under federal law while at the same time prescribing its use to the full extent permitted under federal law. It carefully carves out the boundaries of the “expanded estate”, and the mechanisms for recovery of Medicaid dollars advanced by the state. It sets forth rules designed to assist the Department of Health and Human Services in denying assistance to those who do not qualify. It assists estate planners and practitioners by laying out clear procedures, priorities, and safe harbors. Its provisions have no effect on persons or estates unless and until there is an application for medical assistance. With the exception of some accommodation of DHHS with regard to special notations on death certificates and, instead of requiring an additional form, utilizes an informational form already mandated when every deed is filed, LB268 is in substance a redraft of Judiciary Committee AM2394 to LB1103 from 2016. That Judiciary Committee amendment was the result of language agreed upon through negotiations between me, as the bill’s introducer, and representatives of the Nebraska Bar Association, the Nebraska Land Title Association, the Nebraska Bankers Association, and DHHS.

Principal Introducer: _____

Senator Paul Schumacher