

SENATOR EBKE: OK. We're going to get started. Welcome to the Judiciary Committee. My name's Laura Ebke. I'm from Crete. I represent Legislative District 32 and I chair this committee. I'd like to start off by having my colleagues introduce themselves and we'll start with Senator Halloran today.

SENATOR HALLORAN: Thank you, Chair. Steve Halloran, District 33, Adams County and part of Hall County.

SENATOR HANSEN: Matt Hansen, District 26, northeast Lincoln.

SENATOR CHAMBERS: Ernie Chambers, District 11, Omaha, Nebraska.

SENATOR BAKER: Roy Baker, District 30, Lancaster and Gage Counties.

SENATOR EBKE: And Senator Morfeld and Senator Pansing Brooks will be joining us in a bit. I think Senator Krist had something else going on that he wasn't-- didn't think he was going to make it for. Assisting our committee today are Laurie Vollertsen, our committee clerk, and Dick Clark who is one of our two legal counsels. The committee pages are Rebecca Daugherty from Doane University in Lincoln and Sam Baird from the University of Nebraska in Lincoln. Out on the table over there where the crowd is standing, you will find some yellow testifier sheets. If you are planning on testifying on any bill today, please fill one out for each time you plan to testify on each bill and then hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing, make sure we've got names spelled right and everything. There's also a white sheet on the table if you don't wish to testify but would like to record your position on the bill. For future reference, we're getting-- we're about halfway through hearings now I guess. But if you are not testifying in person on a bill and would like to submit a letter for the official record, all committees, not just the Judiciary Committee but all committees, have a deadline of 5:00 p.m. the day before the hearing. We will begin bill testimony with the introducer's opening statement. Following the opening we will hear from the proponents of the bill, then the opponents, followed by those speaking in a neutral capacity. We'll finish with a closing statement by the introducer if he or she wishes to give one. We ask that you begin your testimony by giving us your first and last name and spelling them for the record. If you're going to testify, I ask that we keep the on-deck chairs filled. Those are those chairs with

the yellow signs on the front. That helps us to know who's next, who's coming up next, and make sure that we know how long-- how long we need to allot before the next hearing comes in. If you have any handouts please bring up at least 12 copies and give them to the page. If you don't have enough copies the page can help you make some more. We'll be using a three-minute light system. When you begin your testimony the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. We have a buzzer that goes off at three minutes and 30 seconds. So that means you've got 30 seconds to finish her up. As a matter of committee policy I would like to remind everyone that the use of cell phones and other electronic devices is not allowed in the public...during the public hearings. Senators may use them to take notes or to keep in contact with staff. Sometimes we have staff calling us and/or texting us and telling us that we've got meetings or somebody is here to see us. At this time I'd ask for everybody to take a look at your cell phones and just make sure that they're on silent or vibrate mode. One more thing, you may notice that some of our committee members get up, come and go. That really has nothing to do with the importance of the bills that are being heard but rather senators may have bills to introduce in other committees or other meetings that they need to step away for. And so with that in mind, we will begin with LB855 and Senator Lindstrom.

SENATOR LINDSTROM: Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18, northwest Omaha. Today I'm bringing you LB855 which seals the criminal history record information for those who have received a pardon. Once a pardon is issued by our Pardons Board, the individual may go back to the court in which they were sentenced to file a petition to seal their record which will then be granted. The Nebraska Board of Pardons is made up of the Governor, Secretary of State, and Attorney General. The board usually only hears cases in which an application is correctly filed, three years have passed since the sentence was completed on a misdemeanor and cases-- misdemeanor cases and ten years for a felony conviction and no contacts with law enforcement or court convictions have occurred. The time includes any probation, supervised release, or parole term. The concept of LB855, which was brought to me by a constituent in conjunction with-- concerns from numerous others in this situation. I believe that a pardon should carry with it an

effect that has a true impact on the life of the individual. As it stands now, when a pardon is issued on a felony conviction the individual receives a restored right to vote, to serve as a juror, to hold office, and, if expressly granted, the right to possess a firearm. These are all rights that are important to individuals being contributing members of society. However, these effects do not-- do nothing for the day-to-day life of an individual. They are still disqualified from many jobs due to the felony conviction not going away. LB855 is a bill that helps break down barriers to employment. When applying for a job, the individual may respond that they have no record and a background check will indicate the same. Law enforcement will still have access to the record. It is my intent that LB855 will apply retroactively as well as to future pardons. The same mechanism in the-- is the same that has been used in-- used in 2016 with LB505 that applied to those cases where no charges are filed as described by the prosecuting attorney, when no charges are filed due to diversion completion, and when the case is dismissed. We are sending the reach of the statute to include-- include those who have been vetted to the highest degree in the state, our Pardons Board. The relief granted by the-- by the board is no more punishment or restriction by the state. In reality the state is the only arena where there is no more punishment or restriction. Even if the individual has worked to go to school or receive job training in the ten years before being eligible for the pardon, the stigma of the-- of a conviction is still carried when applying for a job. LB855 can provide a light at the end of the tunnel for those who are working hard to better themselves and turn their lives around. Every state deals with the sealing of records in different ways. Twenty-one states either expunge, seal, or set aside pardon convictions, or have created their own combination of the three. Many states seal or expunge records without a pardon. Stamford University conducted a cost-benefit analysis of eliminating the obstacle of a criminal record and the ability to gain employment. Granted, the study applies to expungement and I'm only asking for the records to be sealed, but over three years there was an estimated net gain of \$651 per offender in increased taxes and reduced public assistance. Individuals with past criminal convictions also earn an average of \$6,190 per year after expungement. While I understand the complications of using this information across all settings, I do believe it is example of economic and social well-being that individuals and our communities can achieve-- can receive when we allow individuals to re-enter the work force without the stigma of conviction. I have an amendment that

I passed out that addresses some of the language concerns brought to us by the Nebraska Administrative Office of Courts and others concerning LB855. First, the amendment changes the action from filing a petition to filing a motion. It is my understanding that a motion is used in cases that have already happened and a petition applies to new cases and generally has a fee attached. Second, we changed the county or district court, on page 3, line 25, to sentencing court to clarify in case there are any questions as to where to file the motion. This also eliminates the needs for sentence two. Finally, the third sentence, from line 26 to 28, is eliminated that refers to a county attorney being named respondent and being served with a copy of the petition. It is my understanding that the county attorney will already be part-- will be a party in this matter as the plaintiff acting on behalf of the state and, therefore, cannot also be the respondent. I believe the county attorney as plaintiff will receive notice automatically when the motion is filed. The final sentence, on line 28 through 30, will stay the same. I strongly encourage you to vote LB855 out of Judiciary Committee. It is only right that we put into action the full effect that a pardon is meant to give. With that, I'll take any questions.

SENATOR EBKE: Thank you, Senator Lindstrom. Senator Baker.

SENATOR BAKER: Thank you, Chairwoman Ebke. Senator Lindstrom, are you somewhat familiar with the laws regarding what employers-- potential employers can do, what point they can ask whether somebody has a criminal record?

SENATOR LINDSTROM: It's been a while. I've filled out an application before.

SENATOR BAKER: I think it's-- I think you can't ask for it up-front. It's only if you-- becomes a serious candidate now. I think that's the way it is. But here's my question of you. You indicated after a person filed and succeeded in having it sealed, then they could answer no to do you have a criminal record. What if the question posed, have you ever been convicted of a felony?

SENATOR LINDSTROM: If they still went through the process and were sealed to that pardon, after the ten years of not having any interaction with law enforcement and still receiving that pardon, then, yes, they could still [INAUDIBLE].

SENATOR BAKER: They could say--

SENATOR LINDSTROM: No, I--

SENATOR BAKER: To the question, have you ever been convicted of a felony, they could say no?

SENATOR LINDSTROM: After they received the pardon they could say no.

SENATOR BAKER: OK. Thank you.

SENATOR EBKE: Other questions? Thank you, Senator Lindstrom. First proponent.

RORY LAUGHLIN: Hello, members of Judiciary. My name is Rory Laughlin, R-o-r-y L-a-u-g-h-l-i-n. And clearly I'm a proponent of this legislation. And so it's kind of been like a long journey over the last-- considering I have my felony since I was 16, and so I'm not really like the happiest person in general but I'll just say it like I say it and it is what it is. So I'm not going to sit here and play games with you like I feel the state has done with me and basically the Pardons Board. I'm not going to attempt to hold you hostage and snatch your life away like the state has done to me. Instead, I'm just going to briefly tell you why I think this law should be changed and then you guys, if you want to ask me a few questions, you can. So the first thing is, what is a pardon anyway, because the definition of the pardon doesn't seem to match up to the effects. And another question I had is, how much is the Governor's signature actually worth, because when the Governor seems to campaign for people it seems to have this huge impact but when he does it for me it means nothing. And so if you look on that pardon certificate you can see that not only have I been endorsed by the Governor and the Attorney General but also the Secretary of State as far as character reference is concerned. So this can't be a character reference. And if you read more towards the bottom of the certificate, you see that they reinstated my gun rights and so I can have a concealed carry permit. So you can't say it's a matter of public safety because how can I have a concealed carry permit but still be a threat to public safety? And so really, like where I'm at, at this point, because of the fact that we know that people with felonies, you know, they get jobs that you just can't earn a living with. And so-- and we know that when you look at these job applications, like Senator Lindstrom was talking about, you're supposed to be progressing through life. You're not

supposed to work at Burger King when you're 50, you know what I mean? And a criminal record--you guys already know this--it devalues a person in every possible way. I mean it absolutely does. And so the fact that I've had my felony for so long is that I haven't been able to progress through life like you guys have. And so that's why I'm trying to go to college at 34 years old, trying to get out of his parents' house, when you guys have already moved on and had a family and have a life. And so like to me, honestly, like where I'm at right now, I would almost be better just chopping my hands off and collecting like a disability check because at that point then at least I know I have a steady income, I'll have medical care, and I'll never have to explain to another person why my past is like preventing me from contributing to society. The thing is, if I'm going to work and go to school for something, why can't I work at TD Ameritrade and earn an actual living? Why can't I work at the bank? Why can't I be a police officer? What is the point of a pardon if it doesn't actually further restrict the state from persecuting you? I mean, if I go to a job interview like I have been in the past and they basically-- you get to the final-- like when Senator Baker was mentioning, you get to the final end and then they go, OK, now it's time to do the background check, and then you have to reveal it. And then they go, oh, OK, well, we'll get back with you. And then you e-mail them. Was it the pardoned felony? Was it the burglary? And they just don't respond back. Why would they pick me when they have 50 other candidates that don't have a record? What's the-- why would they even-- why risk it? Why-- why go with me? Clearly they don't. And so like the whole point of this bill is the-- is the fact that it's-- a pardon is supposed to restore a person. And considering I have my gun rights, what is the point of still-- why is the state still following me around? Like when, when can I ever get the government off my back and just be the individual that I'm supposed to be? Who-- does the taxpayer? Who benefits from me not being able to earn more money. And that light is red so--

SENATOR EBKE: OK, Mr. Laughlin. Questions? So you've-- you were pardoned almost about a year and a half ago. Is that right?

RORY LAUGHLIN: Um-hum.

SENATOR EBKE: Other questions? Thanks for coming today.

RORY LAUGHLIN: All right. Thanks.

SENATOR EBKE: Appreciate it. Next proponent.

RYAN SULLIVAN: Madam Chairperson, Senators, my name is Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I'm assistant professor of law at the University of Nebraska College of Law where I teach in the civil clinical law program and I supervise the Clean Slate Project. I'm testifying today as a citizen and not as a representative of the university. Through my work on the Clean Slate Project I've performed extensive research in this area, particularly the Nebraska Pardons Board, and I've performed research on the benefits of obtaining a pardon. As you guys-- as you may know, Nebraska's Board of Pardons is a very active board. They regularly grant pardons to deserving Nebraskans who demonstrate through a very intensive application and hearing process that they should no longer be deemed a criminal. The Pardons Board requires the applicant wait at least ten years to apply to have a felony pardoned. Not only must the applicant be free from crime during this period, they must demonstrate to the board that they have taken active steps to improving themselves as members of our community, as our society. As part of our research I observed and collected data on numerous--dozens and dozens--of these Pardons Board hearings and I can tell you that the board is extremely thoughtful and deliberate in their process. I've compiled and analyzed data on ten years of Pardons Board activity. During this period, stemming from 1997 through 2017, the board presided over 1,662 applications which each met the time requirements. And even though they met the time requirements, the board still denied 569 of these applications. The reasons for denial varied case to case but often related to the severity of the crime, the number of crimes in the applicant's history, and their conduct preceding the application. For certain serious crimes the board found simply more time was necessary in order to establish that the individual had truly turned over a new leaf. So those individuals who do make it through the pardon application process and who are able to obtain a pardon have been thoroughly vetted and have demonstrated that they no longer pose the type of risks that would justify the government maintaining a record that continues to label them a criminal and needlessly leaves them in a disadvantaged position in our society. While the pardon itself offers significant benefit, these citizens remain hamstrung by the existence of the government-maintained record of the conviction that has now been pardoned. There is no justifiable reason to allow these records to remain public that is not outweighed by the prejudice

suffered by those seeking to better themselves and re-enter society as fully contributing citizens. Thank you.

SENATOR EBKE: Thank you, Professor. Any questions for Professor Sullivan? I see none.

RYAN SULLIVAN: Thank you.

SENATOR EBKE: Thank you. Next proponent.

MARK FOXALL: Madam Chairperson, Senators, afternoon. My name is Mark Foxall. I'm a senior certified law student at the University of Nebraska College of Law where I'm enrolled in the civil clinical law program and co-lead the clinic's Clean Slate Project. I'm here to speak in favor of LB855 as a citizen, not as a representative of the university. An estimated 70-100 million Americans have criminal records. Sixty-five million of those individuals face the daunting task of overcoming significant barriers to acquire basic social and economic needs because of their criminal records. Today a criminal record acts as a government-mandated brand that will forever remain seared into an individual's record. This permanent branding mentality has contributed to the United States becoming the world's most incarcerated nation. Currently 2.3 million people are incarcerated in the United States. Ninety-five percent will one day be released and will face incredible challenges as they transition back into society. Because of these challenges, many don't make it. They end up on government assistance or back in prisons or jails. Criminals are not evil. They are often good people who made bad choices but they can be rehabilitated. Reintegration is a chance for a fresh start. It is proven that successful reintegration reduces overall recidivism rates. Lower recidivism rates will save our state millions in incarceration-- incarceration costs which in turn could be used to fund more progressive reintegration programs. Successful reintegration means equal access. Research has indicated that when individuals have access to employment, housing, and education, they succeed in becoming productive members of their community. One way to improve an individual's access is to stop unnecessary labeling them criminals into perpetuity. This is exactly what LB855 will accomplish. By definition a pardon is supposed to absolve convicted offenders and remove any civil disabilities associated with their convictions. I believe we fall short in achieving this goal because even after a pardon has been granted the individual continues to be held back by the record of his or her past. Although the crime may be

pardoned, the criminal label remains. Many criminologists subscribe to the labeling-- labeling theory. This theory postulates that a person's behavior is dictated by the perception of others. Thus, if these pardoned individuals are still perceived as criminals and deviants, they will remain criminals and deviants. This is precisely why we need LB855. Pardoning the crime is not enough to fully remove the label of criminal. Just as imprisonment or probation both come to an end, so, too, should the label we place on people who have been convicted of a crime. Without the relief provided by this bill, a criminal record is a life sentence without the possibility of parole. Yes, of course, sealing these records will improve an individual's access to housing, employment, and education, but in truth it goes beyond that. It has the ability to provide these individuals with a sense of hope, accomplishment, and agency, which helps them put their past behind them and move from an old life into a new one. There is no reasonable justification for keeping these records available to the public. Thus, I ask that you please vote in favor of LB855 so that Nebraskans can be free from the debilitating stigma that accompanies a criminal record not only so they can better themselves but so we can better our society. Thank you, and I'll take any questions you have.

SENATOR EBKE: Thank you, Mr. Foxall. Any questions? I see none. Thank you for being here today.

MARK FOXALL: Thank you.

SENATOR EBKE: Next proponent.

KATHERINE LESIAK: Chairwoman Ebke, Senators, my name is Katherine Lesiak, K-a-t-h-e-r-i-n-e L-e-s-i-a-k, and I'm a senior certified law student at the University of Nebraska College of Law. I'm testifying in favor of LB855 as a citizen and not as a representative of the university. Last semester I co-lead the civil clinic's Clean Slate Project. I represented clients seeking criminal conviction pardons and set-asides. These individuals sought better employment, better housing, and relief from the stigma of being labeled a criminal. Today you will hear testimony from one of the clinic's prior clients, Mark Irwin. My partner and I represented Mark in a hearing before the Nebraska Board of Pardons. Mark had a criminal conviction from when he was younger arising from his struggle with drugs and alcohol. However, he has overcome those struggles. He is sober and an active member of his community. But this record of his criminal past still

follows him. A few years ago Mark was offered a job for which he was fully-- fully qualified. After receiving the offer the employer completed a criminal background check and saw the past criminal charges on his record, none of which related to the position. Nevertheless, the employer rescinded the offer. Through an application and hearing process that took over a year, Mark was granted a pardon by the Nebraska Board of Pardons. The board commended Mark for his hard work in turning his life around and it was inspiring to see how this validation encouraged Mark. Yet, even though his conviction has now been pardoned, Mark continues to be burdened by the existence of this past record, as many who see it don't understand the implications of a pardon or simply see the past charges and judge people by Mark-- like Mark not for who they are but for who they were. This benefits no one. Fortunately Mark found an employer who was able to look beyond this past. Mark now has a successful career. However, most others are not so fortunate. And if Mark ever wanted to change his job, he will again be judged on his criminal past instead of his current qualifications. The need for this amendment is great. Recipients of a pardon continue to be prevented from obtaining employment for which they are qualified due to the existence of this government-maintained and distributed information. This bill will allow certain deserving Nebraskans a fair opportunity to be evaluated on their qualifications. Hiring decisions will be based on one's ability to perform the job as opposed to some past act that relates in no way to the job function. The table I've provided you illustrates what other states are doing to fix this problem. As you will see, other states have already adopted legislation that would allow for the expunction of the record upon granting of a pardon. In this bill the record would only be sealed, which means it will not be available to the public but will still be available to law enforcement, which is a fair compromise. For Mark and for other similar Nebraskans who are seeking to improve their lives yet who are still burdened and stigmatized by public criminal records, I implore you to support this bill. Thank you.

SENATOR EBKE: Thank you. Questions? I see none. Thanks.

KATHERINE LESIAK: Thank you.

SENATOR EBKE: Next proponent.

MARK IRWIN: Hello, everyone. My name is Mark Irwin, M-a-r-k I-r-w-i-n. I'm here to tell you a little bit about myself, kind of my

past and my present. Currently I work at TD Ameritrade in HR. I graduated from the University of Nebraska at Omaha. Like Katie [PHONETIC] mentioned, it was hard to get a job right out of college because of my past and I take full accountability for my actions. I have no one to blame except for myself. But I learned from my mistakes. Back in August of 2017, I did receive a pardon from the Governor, Attorney General, and Secretary of State. And that was a blessing. When I first graduated from college and went out to look for a job, I did not-- it wasn't-- how should I say that? It was a tough one because I did get a good job offer. But I was turned down because of my background. Prior, while I was in college, I was also let go from my present job because of my past mistakes. The changes I've made in my three and a half years of sobriety I will have at the end of this month is I've come in close contact with my God and I hit my knees every morning and every night and pray. It's all about gratitude. I go to AA four to six times a week. I have a sponsor I call every day and I do service positions and I am a trusted servant of two meetings and one is a substantial amount of money. I make living amends to my family every day by staying sober because they're-- they're there for me. They raised me just how they wanted me to be, a good person, having a job since the age of ten, starting with a paper route, where I had to do that every day. I have a great network, support system with my sponsor, my friends that I now have due to AA and other groups. Talking about work, I was promoted, once I got that job where I'm at currently, to HR within six months of my hiring, which I think is a very-- a good thing. I volunteer. We started a nonprofit called Living Well with Golf. And what it does is teaches kids in north and south Omaha, in unprivileged parts, golf skills and life skills and just seeing a smile on their face puts a smile on my face. If I were to leave a job I would have troubles, I believe, with my background just because even though I do have a pardon, someone may not understand what that is and still see that record. And that's why I support LB855 and I encourage you to. Thank you.

SENATOR EBKE: Thank you, Mr. Irwin. Questions? I see none. Thank you for being here today.

MARK IRWIN: Thank you.

SENATOR EBKE: Next proponent.

SPIKE EICKHOLT: Good afternoon, Madam Chair, members of the committee. My name is Spike Eickholt--first name is S-p-i-k-e, last name is E-i-c-k-h-o-l-t--appearing on behalf of the ACLU of Nebraska in support of the bill. You do have my written statement. I'm not going to read it. I think the previous testifiers and Senator Lindstrom have explained the bill. I think the concept is straightforward and we would encourage the committee to advance the bill from committee. As Senator Lindstrom indicated, a year or two ago Senator Krist did a bill that provided for a record to be sealed from public view if a person was cited but not charged or if a person completes a diversion program. This provides for a record to be sealed if a person receives a full pardon or a pardon from the Pardons Board. As you heard the previous testifiers explain, that sealing a record will give that pardon additional meaning and significance to someone who really has changed their life and moved on from their criminal past. It's necessary, we would suggest, because even though a pardon-- the Pardons Board restores someone's civil rights and does essentially forgive that person for their crime, the official record is kept by the Administrative Office of the Courts and can be accessed by anybody. And as the previous testifier explained, many times when somebody does a background check, an employer does, they won't really sort of understand. I mean the committee understands the concept of pardons, convictions, and that sort of thing. But many employers don't and it's really unfortunate for someone who's in that position to have to explain in a job interview that, yes, they do have a conviction but they did get a pardon and here's a copy of the pardon, and that's simply the last thing that you really want to be talking about if you're applying for a job or looking for a position or looking for a place to live. So we would encourage the committee to advance the bill and we thank Senator Lindstrom for introducing it.

SENATOR EBKE: Thank you, Mr. Eickholt. Any questions? I see none. Thank you. Are there-- is there any other proponent testimony? I see nobody moving. Is there any opponent testimony?

WALT RADCLIFFE: Madam Chair, members of the Judiciary Committee, my name is Walter Radcliffe, W-a-l-t-e-r R-a-d-c-l-i-f-f-e, appearing before you today as a registered lobbyist in opposition to LB855, here on behalf of Media of Nebraska, which is an organization composed of the Nebraska Press Association, Nebraska Broadcasters, the Lincoln Journal Star, Omaha World-Herald, the outstate dailies. Very simply put, Media has always opposed any sealed records. They've

always supported open courts as the Nebraska Constitution calls for. This is a very long-standing position of theirs. I will-- I'll address a couple things in LB855. But you know, I'm sure a lot of you have read Orwell's 1984. You remember it for a lot of different things, but remember "Newspeak"? That's when government came in and changed what their records were. I mean that's what we're doing. Somebody said there's no justifiable reason to retain this as a public record. Well, it's a public record. That alone is a justifiable reason to retain it, for crying out loud. Why-- why would you not? There are social-- I don't dispute the social side of it. That's-- that's-- I'm not here to argue that. But I'm here to say when government creates a record, the record should stand, very simply. But let's take-- take a look for just a second, though, at LB855, on page 3, line 23 and 24, where it says we're-- upon successful application motion, blah blah blah. You're to seal the criminal history record information related to such charges or conviction. OK. Let's assume somebody gets-- goes to trial, gets convicted, appeals to the appellate court, there's a record there; goes the Supreme Court, there's a record there. The U.S.-- the Supreme Court reports are printed. Those are circulated. Then you apply to-- to the United States Supreme Court. That's denied. What are you going to do? We going to go burn the Nebraska reports? How do you do it? I mean there's some practical stuff. But at the end of the day-- some may say I'm nitpicking at that point. But at the end of the day, public record should be just that, public records. So with that, I'll be happy to try to answer any questions.

SENATOR EBKE: Question for Mr. Radcliffe? I see none. Thanks for being here today.

WALT RADCLIFFE: Thank you. Thank you.

SENATOR EBKE: Other opponents? I see nobody moving. Is there anybody to speak in a neutral capacity? I see no one. Senator Lindstrom. We have a letter of support from Matthew Kuhse, I think is how you pronounce it, from-- who is the Omaha City Prosecutor.

SENATOR LINDSTROM: Thank you, Chairwoman Ebke. I would just quick address Mr. Radcliffe's comments which there are truth to that in this day and age with technology, anything that has been in the court system, particularly a conviction of a felony, you could Google and find that information. What we're attempting to do here is to allow that individual to move on with their life. So when they go in to

apply, they've gone through the steps necessary, the ten years, getting a full pardon, and be able to check that box that says no. Often we're dealing with some issues in this state with overcapacity in the prison system. We're dealing with economic issues as far as having thousands of unfilled jobs in Omaha and the rest of the state. And these individuals have done the necessary things to be productive members of society with given-- they're given their rights back, whether it's gun rights, voting rights, all the other things that come with it. And we're creating a barrier, an unnecessary barrier in my opinion. I try to put myself in the shoes of individuals that have gone through this process and if every day I had to wake up with no hope, no purpose, no reason for bettering myself, it'd be hard not to revert back to some of the things that got me there in the first place. So what we're trying to do is help individuals get out of the situation, a bad mistake. They've done their time in a sense of going through, not having any issues for ten years, being able to get a full pardon--it is the highest step to get--and getting your rights back in that regard and just move on with your life. So again, it's three-- it's a couple issues. It's dealing with the overcrowding in the prison, it's also an economic issue, and it's just a personal issue that allows an individual to move on with their life. So I appreciate the committee's attention to this issue and would encourage you to vote for LB855 as amended. Thank you.

SENATOR EBKE: Senator Baker.

SENATOR BAKER: Thank you. Senator Lindstrom, I'm in an LLC that does executive searches and one of the things that we always do is we do a Google search or a Dogpile search. That's still going to show up.

SENATOR LINDSTROM: It could.

SENATOR BAKER: Yes.

SENATOR LINDSTROM: It could. There's no doubt that it-- well, it will show up. I mean Google covers everything.

SENATOR BAKER: Yes.

SENATOR LINDSTROM: But if say an individual or employer maybe-- you know, as a-- say a small employer that might have 1-50 employees, they're probably going to do the Google-- Google search because they're going to be more in tune with that individual person, maybe even look at their Facebook, right? I think anymore employers look at

that, maybe social media. That is going to come up. Now if you're applying to certain things they maybe outsource, there's still a protocol that they will go through. This just allows somebody in the application process to-- could-- they can check now, right?

SENATOR BAKER: I understand.

SENATOR LINDSTROM: And so I wouldn't-- if I'm an individual, I'm not going to stop at the first no. I'm going to apply to a lot of different avenues. And so I think, yes, there would be some issues with that, to your point. But I think it is-- it's the right steps to letting an individual move on with their life.

SENATOR BAKER: I understand. Thank you.

SENATOR LINDSTROM: Thank you, Senator Baker.

SENATOR EBKE: Other questions? I see none. Thank you, Senator Lindstrom.

SENATOR LINDSTROM: Thank you very much.

SENATOR EBKE: That closes the hearing on LB855. We will move to LB691. I-- yep, I saw Senator Blood walk in. Go right ahead.

SENATOR BLOOD: Thank you, Chairperson Ebke. Good afternoon to the Judiciary Committee--I don't know why I have so much trouble with that word every time--and thank you for the opportunity to share LB691 with you today. My name is Senator Carol Blood, C-a-r-o-l, B as in "boy," l-o-o-d, as in "dog," and I represent District 3 which consists of western Bellevue and southeastern Papillion, Nebraska. Today I would like to share the Nebraska Virtual Currency Money Laundering Act. Drug dealers, sex and human traffickers are pumping their profits into "cryptocurrency" cash machines to launder dirty money. Laundering money is nothing new but utilizing cryptocurrency as the vehicle creates a problem since cryptocurrency is not considered money under the eyes of the federal government but considered property. In the United States and other countries, law enforcement has seen an increase in the use of digital currency by criminals who are simply walking up to kiosks and dumping their ill-gotten gains into the virtual automatic teller machines. The funds can then be transferred across borders and countries to criminal associates who can withdraw them in any currency or spend them on the Dark Web without being traced. In some countries police

have described cryptocurrencies as one of the biggest emerging threats in organized crime because gangs have realized that these cash machines offer the perfect opportunity to offload large quantities of cash. Gone are the days of casinos and bookies laundering your funds. Now you can use technology. As you may know, on-line currencies are highly encrypted but some are marketed specifically for the privacy conscious. Now I want to be quite clear that the most reputable cryptocurrency organizations work very hard to push forward safety measures that are not appealing to many criminals. With that said, this is not true of all cryptocurrency companies and there are over 1,300 of them. I have two other bills that support the amazing efforts of those who work with digital ledger technology and we must be careful to not confuse the good with the bad. Criminals use prepaid mobile phones bought with cash that are soon thrown away to set up Bitcoin accounts so these on-line wallets-- wallets cannot be traced back to them. There's also no paperwork trail for police to follow because there are no bank statements or Bitcoin certificates. Criminals can put money directly into a cryptocurrency ATM and turn them into cryptocurrency. There have been reports that as cryptocurrency profits shoot up, the move to hide profits on-line can make even more money for techie criminals. Plus, if you load up the machine with large amounts of cash, should you be stopped by law enforcement, you're less likely to have that money on you, or if attacked by other criminals who want to rip you off. In November of last year, Matthew Allen, an ICE special agent in charge of Homeland Security investigations, noted that criminal organizations are increasingly using cryptocurrencies to launder money or otherwise-- otherwise pay for illicit activities. He stated why testify-- whilst testifying in front of the Senate Judiciary Committee that child exploiters, drug smugglers, illegal firearms sellers, and intellectual property rights violators are all beginning to use cryptocurrencies for their transactions and that virtual currencies are the newest major method for hiding criminal proceeds. Last year in Florida a similar bill to LB691 was passed as a direct result of a Miami judge throwing out a criminal case where a man was accused of selling \$1,500 worth of Bitcoins and was specifically told they were going to be used to purchase stolen credit card numbers on-line. You may be asking yourself why--why did the judge let him off? Well, because the criminal case was thrown out because the judge ruled that the Bitcoin is not money. Miami-Dade Circuit Judge Teresa Mary Pooler ruled that Bitcoin was not backed by any government or bank and was not tangible wealth and cannot be

hidden under a mattress like cash and gold bars. Federal laundering laws also do not apply unless those funds end up in a private bank account or other banking entity where it clearly becomes money laundering. And so much like Florida, Nebraska's money-laundering law that targets transactions that promote illegal activity requires a much-needed update. Existing laws do not include cryptocurrency and, therefore, cannot be used to hold a criminal accountable when it comes to laundering this currency. Technology is an awesome and fast-moving thing. However, when it comes to technology, the bad guys who might be tech savvy tend to scatter like cockroaches on to the next thing. A great example is the Dark Web, which is only getting bigger. It is the largest growing category of new information on the Internet and it's much bigger than any of us can probably imagine. From cryptocurrency and the Internet to drones and digital video technology, they all create ongoing problems when it comes to laws and how they can be enforced. Updating our laws to mirror the use or abuse of technology is a prudent thing to do in our role-- as our role as legislators. In June I started having stakeholder meetings with members of Nebraska law enforcement, county attorneys, the banking industry, and others while crafting this bill. I am not a lawyer, nor a member of law enforcement community, so I depended on their input. Many are excited to see state statute move forward and give them one more tool to help fight bad guys and hold them accountable. In fact, it kick-started some interdepartmental training between agencies on this subject as a direct result. We've taken a very cautious and sensible approach on this bill in laying out what we feel are reasonable terms when it comes to using cryptocurrency for laundering. LB691 gives a clear definition of terms in Section 2 and defines what is unlawful starting in Section 3; for example, if you know that the property involved in a transaction is being exchanged in an unlawful transaction and you attempt to hide the true nature of an unlawful transaction or intentionally avoid the money transmitter's act or other reporting requirements under state law or carry out these actions if a law enforcement officer is engaging in these actions as part of a sting. The bill lays out the financial transactions' amounts that can be found violating the act when they're carried out as described in Section 3, along with the punishment for these violations. You'll note that Section 6 also allows for violators to be held liable civilly and a description as to how you may do this is in page-- on page 5, Section 6, line 14. Also, a person who forces or convinces someone to violate this act will face separate offense charges. You

should also note that in Section 8 it states that in a civil action a petitioner may ask for the seizure of virtual currency. So we were cautious in that a business that deals with virtual currency will not be held liable for the criminal acts of others if they are acting legally during the investigation. Companies that receive \$10,000 in virtual currency in one trade or several related trades must file paperwork with the Department of Revenue. This allows the department to potentially look for red flags that may arise. Lastly, transferring virtual currency while violating Section 11 or Section 3 is a separate offense. An important part of this bill also allows a court to use distributed ledger technology in its deliberations, making sure that this technology is recognized and that there is no question as to the fact that we identify the types of crimes committed using DLT. I'm aware that we may have several people here stating that we should not be creating new laws here in Nebraska and I can respect this. But because we meet only once a year, in many ways, laws and ethics can't keep up with technology. We've got to stay informed on these issues and not be deer in the headlights, waiting for the semi to bring us down. Our laws and ethical practices have evolved over centuries. Today technology is on a rapid curve and is touching everyone everywhere. Changes of a magnitude that once took centuries now happen in decades, sometimes in years. Look at smart phones. The smart phones that we have now have more computing power than the Cray-2, a supercomputer that in 1985 cost \$17.5 million. That's amazing. While crafting this bill I remembered Gandhi's quote about codified ethics and I filled that Room 1023 with a village of people from different fields and backgrounds to craft what I felt at the time was the most responsible bill possible in a way that identifies accurately the type of technology being used. I took this seriously by doing months of research and shared input. But what it came down to is when a child is being trafficked and the money is laundered or illegal guns are being purchased to commit crimes, what happens to those funds is an important part of that suspect's crime and he or she should be held accountable. And I ask if it's fair to the victims of these crimes to give the criminals a pass because we didn't update our laws to match recent technology. And I personally do not think that that is justice. But with that said, I would like to say that although a lot of work has gone into this bill, LB691 is still not accomplishing what I believe needs to be done. It's too far reaching. It has too high of a fiscal note because it's clear that the state agencies don't have a clear understanding of what's going on with this technology and it probably

can't be fixed in such a short session. But I thought it was very important to have the hearing today because I know people are here for the hearing and I wanted to make sure that we have on record that this is an issue that we think we can fix. But unfortunately, this bill became something that it was not meant to be. And quite frankly, I think you probably need to keep it in committee. And I'm sorry to say that because I put a year and a half's worth of work into it. But I think there's a better way that's not going to have an outrageous fiscal note.

SENATOR EBKE: Thank you, Senator Blood. Senator Baker.

SENATOR BAKER: Thank you, Chairman Ebke. Senator Flood-- Senator Blood, did this come from the New York statute?

SENATOR BLOOD: This did not come from the New York statute. This came from a Florida statute.

SENATOR BAKER: OK.

SENATOR BLOOD: New York actually--and you'll hear that on the next bill--New York kind of blew it when it came to cryptocurrency. And they're scattering out of that state and coming to cryptocurrency-friendly states like Nebraska, if we get our bills passed.

SENATOR BAKER: We had testimony yesterday--

SENATOR BLOOD: In Banking.

SENATOR BAKER: -- in Banking and Insurance and I learned more about Bitcoin than I thought I ever wanted to know.

SENATOR BLOOD: It's pretty interesting.

SENATOR BAKER: But, you know, as I understand it, with Bitcoin-- there's a lot of other virtual currencies. Bitcoin is not the only one.

SENATOR BLOOD: Right, over 1,300.

SENATOR BAKER: Bitcoin, you have to get approval from everybody in the chain.

SENATOR BLOOD: Yeah, that's kind of right and we'll talk more about that on the next bill.

SENATOR BAKER: Right.

SENATOR BLOOD: But, yeah, it's-- it's-- it's a very interesting concept and one that we need to get our heads wrapped around.

SENATOR EBKE: Senator Pansing Brooks.

SENATOR PANSING BROOKS: Thank you for bringing this, Senator Blood. So it's good to talk about these. You know, technology is moving at such a fast rate. It's just amazing. And so I appreciate your bringing this. But I'm confused, and maybe you explained it and I missed it because I was trying to read some of this while you were also talking, but--

SENATOR BLOOD: It's a lot to read.

SENATOR PANSING BROOKS: -- I'm trying to understand because there are some penalties you've created and those penalties have a certain value to them and some of those same values are within our current statutes. So are you saying we can't use the current statutes and those valuation progressions because Bitcoin is so different?

SENATOR BLOOD: Right, it's not--

SENATOR PANSING BROOKS: Or couldn't you just redefine Bitcoin?

SENATOR BLOOD: It's not considered money so we can hold them accountable when they have a \$100 bill in their hand. But when we're using cryptocurrency like he [inaudible]-- he uses-- everybody uses Bitcoin but there's over 1,300 different types of cryptocurrency. It's considered a type of property. And so under our Money Laundering Act in-- that's followed under the federal government, we can't hold them accountable. We'd have to let the bad guy go if part of the crime had to do with the money laundering aspect of it.

SENATOR PANSING BROOKS: So I'm presuming that amount changes. Is the amount of the Bitcoin always the same?

SENATOR BLOOD: The value of the Bitcoin changes but it doesn't change the amount of a transaction.

SENATOR PANSING BROOKS: OK, that's what I'm saying.

SENATOR BLOOD: I mean a \$50 transaction is still a \$50 transaction.

SENATOR PANSING BROOKS: So if the value of it changes, then it's more like a stock or bond, isn't it, than a...

SENATOR BLOOD: Like gold? I hear it compared to gold a lot. I don't know if I agree with that. But I mean the market does change and it's a new technology and that's part of the reason why. I have-- on the next bill I have some people that are much more qualified than I that can explain that to you.

SENATOR PANSING BROOKS: OK. Thank you for bringing it.

SENATOR BLOOD: It's my pleasure. And thank you for allowing me to share this concern. I will be back next year with a better bill that I think is going to take away the fiscal note. But it's-- it's doing the opposite of what I'm trying to do with my other two bills. It's overregulating and that's not going to help anybody. It's just going to make it more of a mess and I don't want that. And I thought we could fix it and once we got the fiscal note I knew we were pretty well doomed, so--

SENATOR EBKE: Other questions? OK, thanks. First proponent. Do we have any proponents for LB691? I see nobody moving. Do we have any opponents? Could I see a show of hands how many people are planning on testifying? OK.

KYLE TAUTENHAN: Chairwoman Ebke, members of the Judiciary Committee, for the record, my name is Kyle Tautenhan, K-y-l-e T-a-u-t-e-n-h-a-n, and I am the founder of BlockEra, a company that provides blockchain consultation in the financial and agricultural sectors. I am here today in opposition to LB691. I have traveled nationally and internationally to compete in blockchain "hackathon" competitions and attend blockchain conferences to understand this technology at a deeper level. My experience around blockchain technology in Nebraska includes consulting for large financial companies in Omaha and partnering with farmers in Gothenburg to build a virtual currency and smart contract system to facilitate crop production contracts between buyer and-- or farmer and buyer. I oppose this bill, speaking from a technical perspective, because we are too early in blockchain technology's life cycle to be creating laws and defining technical terms as Senator Blood has in this bill. We are currently in 1994 of

the Internet for blockchain technology. We don't know where blockchain will go and proposing any bill today would be similar to proposing bills in 1994 that define that all Internet communications could only be in the form of e-mail. This bill attempts to do just that by defining distributed ledger technology. This bill-- bill fails to consider that not all distributed ledger technology is created equal. Unlike public blockchains like Bitcoin, private blockchains can be centrally maintained and controlled by a single party to unilaterally alter data. The bill goes on to say that virtual currency means a medium of exchange in electronic or digital format, including distributed ledger technology, which is not a coin or currency of the United States or another country. It also says that all persons engaged in a trade or business who receive more than \$10,000 in virtual currency must complete and file with the Department of Revenue. Unfortunately, these definitions fail to consider that virtual currency--or, more specifically, tokens--can represent anything. This can mean traditional tangible assets like currency or corn or very abstract forms of value like intellectual property or even attention. Tokens can even represent no value at all. Additionally, there will be token concepts and applications that we haven't thought of yet or even discovered. Put simply, defining virtual currency today is trying to accurately predict the future, which this bill will not do. Thank you for allowing me to testify today. I'd be happy to answer any questions you might have.

SENATOR EBKE: Senator Morfeld has a question.

SENATOR MORFELD: Thanks for coming to Nebraska and talking a little bit about this. So I guess, you know, on one hand, I see where you're coming from that, you know, the technology is early. You don't want to create-- you don't want to get ahead of the technology in terms of laws or restrict the technology. But when's the appropriate time then? Do we wait ten years from now? Is it 20 years from now? Thirty?

KYLE TAUTENHAN: It's when we as technologists in the field can actually properly define the technical-- technical terms that are in bills like this. We don't even know what smart contracts are, right? We haven't clearly defined what a public blockchain is, nevertheless a private blockchain which was recently invented because the space is moving so quickly. Every time you define these technical terms you might be boxing us in, in the future. Now when that happens, I'm not sure. I can't predict the future.

SENATOR MORFELD: Yeah.

KYLE TAUTENHAN: But there are also experts that could come on board and help us craft that so that we are not accidentally boxing ourselves in even if the bill has good intentions.

SENATOR MORFELD: Yeah. I'm-- I'm sensitive to your argument though that we need to let the technology grow. I'm also sensitive to the fact...I mean I just think of this in terms of driverless cars. On one hand, we don't want to create too onerous of regulations where driverless cars won't come to Nebraska and we can avail ourselves of that technology. On the other hand, there's an important public safety-- there's an important responsibility to ensure public safety that we've been charged with as legislators. So what that balance is, that's kind of what I'm struggling with in terms of this, but you answered my question very well. Thank you.

SENATOR EBKE: Other questions? Senator Halloran.

SENATOR HALLORAN: Thank you, Chair Ebke. Some things are hard to define, so this one may be also. I think I know what it is. But blockchain "hackathon" competitions?

KYLE TAUTENHAN: Yes. So blockchain "hackathon" competitions are competitions where software developers go typically locked in a room for 24 hours and build applications on the bleeding edge of the technology. At the end of it you present what you've built over the weekend and it is judged and you can win prizes or whatever about it.

SENATOR HALLORAN: OK, thanks.

SENATOR EBKE: Other questions? OK. Thank you for being here.

KYLE TAUTENHAN: Thank you.

SENATOR EBKE: Next proponent...or opponent, sorry.

MATTHEW MCKEEVER: Good afternoon. I'm Matthew McKeever, M-a-t-t-h-e-w M-c-K-e-e-v, as in "victor," e-r. I'm here to oppose LB691. And just for an introduction, too, I'll reintroduce myself to Senator Baker, who was present during the Bitcoin hearing yesterday. Again, my name is Matthew McKeever. I'm an attorney with Copple, Rockey, McKeever, and Schlecht, with offices in Norfolk and in Omaha. I've been a practicing attorney for 20 years. I have license in Nebraska and New

York and in the last five years I've been practicing in the field of digital currencies and digital currency regulation. And from what I've seen so far, we do have a bill here that would affect what has come to be known as the "Silicon Prairie" here in Nebraska. We do have quite a substantial industry and perhaps this bill was supposed to address that. I've made quite a bit of an effort over the last five years to make sure that I'm plugged into the industry, get to know the industry participants, give them advice, and represent them on occasion too. Financial technology, or sometimes known as "fintech," is a rapidly growing field, especially here in eastern Nebraska. And I'm not just talking about PayPal. I'm not talking about First Data. I'm talking about a number of very prosperous startups here and they're all dealing with blockchain or cryptocurrency. I won't go into too many more definitions. I did hand out a brief flyer that summarizes basically Bitcoin, blockchain, and virtual currency. But we have these companies here. Some are known worldwide. Exodus Movement Incorporated, for example, is based here in Lincoln, known worldwide perhaps as the best wallet service provider for-- for cryptocurrencies. Alpha Bitcoin LLC is here in Lincoln and in Omaha with Bitcoin ATMs. There are other groups here working on other blockchain-related projects, such as Embermine and Ink. We have quite a few participants in this field right here in Nebraska, part of Silicon Prairie. There are other major participants nationwide such as IBM with their iCloud blockchain that's under development. Kodak announced their participation in a blockchain project and even Mutual of Omaha here in Nebraska has expressed interest in applying blockchain to some of its activities. So looking at LB691, what specifically does it do? Well. I'm not here to argue against money laundering statutes. I'm not a pro-money launderer, of course, not here to advocate for that, but I do want to address distributed ledger technology and anti-money laundering because basically these-- these regulations already exist and they do apply to exchanges in Nebraska and throughout the world. FinCEN--this is outlined in the materials that I have--already has anti-money laundering and KYC, or "know your client," provisions they apply not only to banks but at-- they're-- the FinCEN Opinion makes it very clear. If you're an exchange or if you're a money services business generally, they all apply. So you have to do KYC with due diligence. You have to do AML. You have to do suspicious activity reports. You have to file a report for \$10,000 transactions or more or series of transactions. And ultimately the blockchain is traceable, one way or the other. Criminals, you'll find, are not using blockchain products

like Bitcoin quite as much because they finally figured out we've got a public ledger available to everyone in the whole world to take a look at. And the FBI has determined recently that more often than not these transactions are traceable. If I may have just another minute, perhaps, of the--

SENATOR EBKE: Go ahead and finish up here, yeah.

MATTHEW MCKEEVER: OK. Thank you. So this bill in particular would also cover all currencies and all tokens and all virtual currencies, including those under development, not just cryptocurrencies, by its definition and the changes that are laid out in Section 19 which expands the definition of money transmitter. And that's primarily the reason why I oppose the bill. That would mean that even frequent flyer miles and rewards points theoretically are covered and captured in that definition. And what we might see from the long-term effects on the Silicon Prairie would be what happened in New York. Now this is not the New York "BitLicense" that you may have heard about but it's very close because it basically makes everyone in this field a money transmitter. So-- and that's what New York did. And that was what triggered the great New York Bitcoin exodus where hundreds of startup companies and some well-established companies all left New York, leaving only one chartered bank left to doing business in that state. And it's been documented that a money transmitter license application, some of-- the costs are all borne by the applicant, including investigation. Could be \$50,000-100,000, which would just kill startups here in Nebraska. In the end this bill as it is right now would effectively end startup development in fintech here in Nebraska. It would stop innovation. It would also keep innovation out because outside sellers/innovators would have to adapt or license in Nebraska. And so it would do what happened in New York. And as I've advised my New York clients is to advertise but put a disclaimer: Not available to New York residents. And ultimately fintech will go somewhere else. It will go to New Hampshire, a place that specifically rejected this type of bill and said cryptocurrencies are not covered by money transmitter statutes, or Wyoming, which is developing similar statutes. Ultimately I do oppose this bill. I would hope, with due respect to the senator that introduced it, that the industry is contacted more. We had not heard of this bill coming up. The industry generally was taken a bit by surprise and we are willing to discuss. Generally the industry, I'm sure, is willing to

discuss further developments in the field. And with that, I do make myself available for any questions. Thank you.

SENATOR EBKE: Thank you, Mr. McKeever. Any questions? I see none. Thank you for being here today.

MATTHEW MCKEEVER: Thank you for the opportunity to speak. Thank you.

SENATOR EBKE: Next opponent.

WILLIAM PAYNE: Chairwoman Ebke, members of the Judiciary Committee, for the record, my name is William Payne, W-i-l-l-i-a-m P-a-y-n-e. I'm co-founder and chief technology officer for Simple Vet Solutions, Incorporated, a software company that uses blockchain technology to provide secure record management services to the animal agriculture industry. We currently provide services to thousands of farms spread across the nation. I'm here today to provide testimony in opposition to LB691. Blockchain is a very new technology and, as such, many different approaches are being taken to overcome limitations in current implementations of the technology. The bill becomes limiting because it doesn't allow room for cutting-edge approaches currently under investigate-- under investigation to address the very problems this bill is intended to address. My objections to this bill begin with the assertions made that distributed ledger technology, particularly when implemented as cryptocurrency, facilitate illicit activities. The cryptocurrency community is actively working to prevent such uses of the technology. We're not criminals. We want to ensure our technology is used for the benefit of society. This bill as written will discourage-- discourage developers such as myself from operating in Nebraska. The true benefit of distributed ledger technology is only beginning to come to realization and some the most promising business sectors that blockchains and smaller contracts will apply to are supply chain management and agriculture, both of which are very tangible to Nebraskans. Two weeks from tomorrow I'll be flying to Denver to participate in an international "hackathon" event with some of the brightest minds in blockchain in the world to contribute to moving the technology forward. I'm one of only three people from Nebraska selected to attend. Paramount to moving DLT forward and to creating widely applicable limitations is the ability to test, implement new theoretical approaches to overcoming limitations in DLT. LB691 in its current form may limit freedom to operate in this arena and create an environment that is unsupportive of new developments in DLT. If we choose to overregulate right now

instead of leading the way for blockchain technology going forward, we will be handing the keys to the Silicon Prairie over to our neighboring states who are, instead, clearing the path for innovation. The structure of LB691 demonstrates a lack of input from the Nebraska blockchain community. Nebraska has a vibrant technology and entrepreneur-- entrepreneurship community and we have an opportunity to place Nebraska at the front of the global movement. It is my hope that more Nebraska technology community leaders will be included in the effort to establish Nebraska as a state that is in favor of this revolutionary technology. Thank you for allowing me to testify today and I'll be happy to answer any questions you might have.

SENATOR EBKE: Thank you, Mr. Payne, for being here. Any questions? Senator Hansen.

SENATOR HANSEN: Thank you, Senator Ebke. And just to clarify something you said, so I understand why you wouldn't want to have cryptocurrencies be stigmatized as being used for crime. But I mean it's a currency. If it exists, there's probably not a viable way to always prevent it from being used in a criminal--

WILLIAM PAYNE: There's not. But I don't want to put barriers in the way that will prevent us from making new tools, making new implementations that make it harder for criminal activity to be facilitated by blockchain technology.

SENATOR HANSEN: All right. Thank you.

SENATOR EBKE: Other questions? OK. Thank you for being here today. Next opponent. Do we have any other opponents?

SPIKE EICKHOLT: Good afternoon, Madam Chair, members of the committee. My name is Spike Eickholt. First name is S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. I'm a little bit intimidated to stand up here after the young guys and I really don't understand a lot of the technology or things that they're talking about. I first want to thank Senator Blood. She did start looking at this issue over the summer during the interim. She did invite us to at least one or two meetings on the subject. Our concern doesn't really have to do with the amendments to the Nebraska Money Transmitters Act, Sections 18-19 of the bill, or even the reporting requirements under Section 11 of

the bill. And as we have suggested to Senator Blood, we would recommend or suggest or urge her to, if she wants to regulate this new type of cryptocurrency, to work on that act because that is something where licensed institutions are regulated by the Department of Revenue. The part of the bill that we have concerns with is the addition of a whole series of different criminal offenses, particularly, and many of those felony-level offenses to the general criminal code. I've distributed 28-- 35-- or 28-1354. That's referenced in this bill as meaning unlawful activity. That's defined on-- in Section 2 of the bill. "Specified unlawful activity," on page 2, line 31, "means any racketeering activity as defined in Section 28-1354." If you look at that bill, that's nearly every criminal offense in the criminal code. It's not simply drug offenses or human trafficking but it is fraud, it is forgery, it is property crimes. It's a whole series of different offenses. If you look at Section 3 of the bill, it makes it a crime for any person, not simply a licensed entity by the Department of Revenue but any person, to conduct a financial transaction knowing that "the property involved," which is not defined, "represents the proceeds of some form of unlawful activity." The concern that we have is that this will prevent-- or provide another crime that can simply be added on or charged in addition to other criminal offenses, other felony forgery crimes or other drug transaction crimes. And that is just something that we have opposed as an organization, we've argued. And I explained to Senator Blood that really in any kind of bill this year that proposes to make a new offense, particularly a felony offense, it's our position that the Legislature should not do that; or if the Legislature does do that, the Legislature should be very careful. We haven't heard from law enforcement here today or from the prosecutor's office or any entity that will be responsible for enforcing this law so we really don't know how it will be used. And if you look at the bill, it's our position the bill is very broad and it's very general. So even though the intent may be narrow, these crimes stay on the books. You can't repeal them. Senator Ebke had a bill in another committee that did away with the silly drug tax stamp law that hardly is ever used whatsoever. And she was opposed vigorously by some entities for just simply repealing that law. So we would urge the committee not to do that. not to just add new crimes to the criminal code. Thank you.

SENATOR EBKE: Thank you, Mr. Eickholt. Any questions? OK, thanks. Are there any other opponents?

EDWARD WENIGER: Good afternoon. My name is Edward Wineger, E-d-w-a-r-d W-e-n-i-g-e-r. My company is Alpha BTC and I'm against this bill. I want to thank Senator Blood for-- I did want to read my statement anyways despite the fact that it wasn't getting out of committee, so I-- I do want to take this time to thank Senator Blood for her willingness to learn about our industry and look forward to working together with her on future projects. My company, Alpha BTC, operates Bitcoin kiosks in Omaha and Lincoln and soon in other states whereby we-- where we sell and buy Bitcoin and Litecoin. Bitcoin is difficult to understand, obtain, and easy to trace. Stopping criminals from using it will remove a valuable tool from law enforcement's arsenal in catching criminals. It is almost too easy to make a comparison to cash with this bill, which criminals would just likely revert back to. There are already existing statues that have been mentioned that cover the circumstances outlawed in this bill such as FinCEN and money service business framework at the federal level. Just yesterday the SEC and CFTC held a day of hearings on some of these related topics. The U.S. Marshals have auctioned off millions of dollars' worth of Bitcoin. There are plenty of federal statutes and federal activity that cover what this bill attempts to regulate. I understand why using a weapon in the course of a crime carries an added sentencing penalty, a gun or a baseball bat as a weapon. Bitcoin is not a weapon. As you'll hear later today during LB695, blockchain is a platform for innovation and inspiring entrepreneurs around the world. Agriculture and international trade is a huge part of the Nebraska economy. What happens when we have Union Pacific or Werner Trucking taking high-value payments via digital currency from Japan for moving shipments and they don't report every one of these transactions? Will we prosecute them criminally? To quote the fiscal note attached to the bill, "The effect of this amendment will be that persons engaged in the business of receiving virtual currency for transmission to another location will be deemed money transmitters under the NMTA and required to be licensed." I would posit that the inherent purpose of digital currency is transmission. In closing I'd like to reiterate Bitcoin is not a weapon. Owning or using digital currencies and blockchain technology is not illegal any more than using cash, which is covered under existing laws. I'd be happy to take any questions.

SENATOR EBKE: Thank you for being here today. Any questions? I guess not. Thank you.

EDWARD WENIGER: Thank you.

SENATOR EBKE: Are there any other opponents? Do we have any-- anybody testifying in a neutral capacity?

MARK QUANDAHL: Chair Ebke, members of the Judiciary Committee, Mark Quandahl. It's Q-u-a-n-d-a-h-l. I'm here in my capacity as director of the Nebraska Department of Banking and Finance and just wanted to start off by saying that we're here on a neutral capacity. I think if you look at the fiscal note at this, just because of the expansion of the department's jurisdiction primarily in our money transmission area, it would require the addition of some additional personnel and also training in that area. And so I just wish to appear to note our neutral capacity on this particular bill and also to answer any questions that the committee may have. Would add that we'd be more than willing and expect to participate with this committee and with Senator Blood, with the Banking, Commerce and Insurance Committee, and with the industry to try to fashion some sort of a remedy that would foster innovation in the fintech space but then also recognizing the consumer protection and also public safety aspects that need to be addressed.

SENATOR EBKE: Thank you, Director Quandahl. So big question is, does anybody really understand it?

MARK QUANDAHL: It's-- it's-- it's a good question. I think-- I think you heard Senator Blood said there were 1,300 virtual currencies out of there. If you look at my testimony, it says 1,400. There was testimony yesterday that there's 1,500. And so it's one of those areas that's-- it's rapidly expanding. And just from the folks that testified previously, too, it's-- it's something that's not necessarily difficult to get your hands around but there's a lot of-- there's a lot of educating that needs to be done, so--

SENATOR EBKE: OK. Thanks for being here.

MARK QUANDAHL: Thank you.

SENATOR EBKE: Is there any other testimony? We have one letter of opposition from the ACLU of Nebraska and Spike Eickholt as well. So, Senator Blood.

SENATOR BLOOD: And so in general I don't disagree with the opposition. I actually saved you some time because I asked our people

who are in favor of the bill to not come today. It's disappointing that we put all this work and the bill's not where it needs to be. But it is a new technology and my goal in Nebraska is to embrace this technology and this bill did the opposite. And the more we tried to fix it, the more convoluted it became. And so I know when to quit and this is the time. But I do look forward to my next bill, Senator Ebke, in hopes of educating you more so on this topic.

SENATOR EBKE: OK. Any questions for Senator Blood on LB691? I see none, so this concludes the hearing on LB691. We will begin the hearing on LB695. And for those out there in the ether watching, the plan here is at the end of LB695 we will take a five- to ten- minute break. We'll find Senator Clements, who I think is in Appropriations Committee, and then we'll proceed. So, Senator Blood, LB695.

SENATOR BLOOD: Thank you again, Chairperson Ebke. My name, again, is Senator Carol Blood, C-a-r-o-l B, as in boy, l-o-o-d, as in dog. And again, I represent District 3 which encompasses parts of western Bellevue and southeastern Papillion. I would like to thank you for the opportunity to present LB695 this afternoon. This bill, though simple in nature, is one that can have great impact in the state of Nebraska for young entrepreneurs and for economic development as we work to move our state forward and prime ourselves for potential growth in this up-and-coming area of technology. This session I have brought forward a distributed ledger technology initiative that has been divided into three bills, one, of course, which we hope will not go any further than what we just did. But LB695 is probably the most important part of kick-starting this ledger technology movement in Nebraska. Most people have only heard of the technology known as distributed ledger technology because of mass communications and social media stories about the rise of cryptocurrency that is based on blockchain, such as Bitcoin, over the last few years. People often think of Bitcoin technology and distributed ledger technology as one and the same. However, that is not the case. These terms have become entwined over the past few years but it's important to distinguish the two from one another to help clarify the definitions used in this bill. Let's start with the concept of distributed ledger technology. A distributed ledger is a type of database spread across multiple sites, regions, or participants. A distributed ledger has to be decentralized. Otherwise, it would resemble a central-- centralized database like most organizations use today. Removing the middleman from the equation is what makes the concept of distributed ledger technology so appealing to many. Organizations use distributed ledger

technology to process, validate, or authenticate transactions or other types of data exchanges. Records are stored in the ledger once consensus is achieved by the participating parties. Every record stored in the distributed ledger is time stamped and its very own cryptographic signature. Cryptographic digital signatures use public-key algorithms to provide data integrity. When you sign data with a digital signature, someone else can verify the signature and can prove that the data originated from you and was not altered after you signed it. All of the participants on the distributed ledger can view all of the records in question. The technology provides a verifiable and auditable history of all information stored on that particular data set. Now blockchain, as many of you have heard about over the last few years, is just one particular type, a distributed ledger-- of distributed ledger. I don't know why I have trouble with that word. Most people know it as the technology powering Bitcoin and other popular cryptocurrencies. The name "blockchain" also refers to how blocks are added to the chain which contains transaction records. To make the chaining of blocks possible, the blockchain uses a cryptographic signature known as a hash. A hash algorithm is used to write new functions into the blockchain. So in this sense it is certainly possible to use a blockchain as a ledger which can be shared with anyone and everyone. What makes blockchain so appealing is how they are so much more than just a simple data structure. It is possible to use a blockchain to determine rules for a transaction or even to create a smart contract. So a blockchain is a sequence of blocks but distributed ledgers do not require such a chain. Also, distributed ledgers do not require proof of work and offer better scaling options. So some implementations are capable of combining both a distributed ledger and blockchain, but this does not always apply. So I thought that was really important since some people seem to be stuck on the technology, on that word "blockchain." So distributed ledger technology facilitates the process of recording transactions and tracking assets in an organization's network. An asset can be tangible, like a house, a car, cash, land; intangible, like intellectual property such as patents, copyrights, or branding. Virtually anything of value can be tracked and traded on a blockchain network, reducing risk and cutting costs for all involved. My bill, LB695, would make it so that distributed ledger technology would be added to existing statute and the Electronic Notary Public Act and the Uniform Electronic Transactions Act. The bill adds smart contract language and makes it clear that these contracts can exist and be utilized in Nebraska and may be used the same way as a regular paper

or digital contract is used but in a more productive, transparent, cost-efficient, and safe manner. In my bill I define smart contract as "an event-driven program or computerized transaction protocol that runs on a distributed, decentralized, shared, and replicated ledger that executes a contract or any provision or provisions of a contract by taking custody over and instructing transfer of assets on the ledger." So in other words, the parties involved will come to terms and, following the parameters of what is needed in the contract, math and code will then be used to create this document, in a nutshell. The technology I earlier described creates a virtual copy of a contract that will have the same force and effect of any other contract. But one important difference is that that contract is autonomous, or self-implementing. For example, a smart contract can be used with self-autonomous or self-parking cars that every state-- it's too bad that Senator Morfeld's not here-- that every state seems to be rushing to regulate. In this environment, smart contracts could put into play a sort of response that could detect who is at fault in a crash, the sensor or the driver, as well as a long list of other variables. Using smart contracts, an insurance company could charge rates differently based on where and under what conditions customers are operating their vehicles. The bill also makes sure to include an electronic signature as one that is obtained through distributed ledger technology and adds it to the official definition of electronic signatures. Finally, my bill will create the official definition of distributed ledger technology as an electronic record of transactions or other data which is: uniformly ordered; redundantly maintained or processed by one or more computers or machines to guarantee the consistency or nonrepudiation of the recorded transactions or other data; validated by the use of cryptocurrency-- excuse me, cryptography. Under all that technical talk this is really just a bill that will move the state of Nebraska forward in the field of technology that is going to get bigger and more important in the near future. This technology is not a matter of if but when. It may be new to you, but it's already used in banking, insurance, agriculture, by emergency responders, aeronautics, real estate, the healthcare industry, importing, exporting, transportation, and so much more. We can take the lead over the vast majority of the United States who are competing with us for new business simply by changing a few words in our state statute. With that, I would be happy to answer any questions you might have and I would urge you to advance this bill to the full Legislature and help me make this my priority bill. I'd also like to note that I believe

there are people with much more technical knowledge than I on this topic who can delve much deeper if needed. I'm going to add that after conversations with the Secretary of State's Office this morning I have brought an amendment I would like to be considered for committee amendment that would remove the notary section. Because this is technology that is relatively new to Nebraska, there could be some confusion about what exactly certain language does. It certainly is not my intent to cause unease with other agencies and offices as I understand it has been doing. So this proposed amendment should remove the major concerns that Secretary Gale had on this bill. And with that, I thank you for your time.

SENATOR EBKE: OK, Senator Blood. Do you have a copy of the amendment or is it going around?

SENATOR BLOOD: I thought he passed it out already.

SENATOR EBKE: Maybe they did [INAUDIBLE] -- no, never mind. We've got it. We've got it.

SENATOR BLOOD: All right. I couldn't find my staff person.

SENATOR EBKE: It was just in my pile.

SENATOR BLOOD: I know he's back here somewhere.

SENATOR EBKE: Right. OK.

SENATOR BLOOD: Any questions?

SENATOR EBKE: Any questions for Senator Blood?

SENATOR BLOOD: I think we have more proponents on this particular bill than we had on the last, yeah.

SENATOR EBKE: OK, good enough. OK. Can I see a show of hands how many people are planning on testifying either as proponents or opponents or neutral on this bill? One, two, three, four, five, six, seven, eight, nine. OK, so--

SENATOR PANSING BROOKS: People back there too.

SENATOR EBKE: Yeah, about ten or so. So, OK, let's-- first proponent. Let's [INAUDIBLE] the way, just keep moving.

JAMES DRAKE: Good afternoon, Madam Chairman and the respected members of this committee. My name is James Drake, J-a-m-e-s D-r-a-k-e. I'm the CEO of Embermine, Incorporated, a blockchain and smart contract deployment company right here in Lincoln, Nebraska--in fact, five blocks away. I'm a-- I'm a proponent of this bill for a lot of different reasons. LB695 is an excellent example of what I call bedrock legislation. What we do is we try to establish with these type of rules and these type of regulations an opportunity to define what these are in terms of state statute, how we can operate as a business, declare ourselves operational utilizing these technologies. One of the biggest challenges that I face as an organization as incorporated in the state of Nebraska is how to define my company under the laws of taxation, of operational needs as far as reporting, as far as needs as-- you know, as far reaching as even just being able to define to our customers that we're actually a legal company. A lot of people hear about blockchain technology, they think of Bitcoin. Obviously, as has been indicated several different times here, one of the biggest challenges is separating that we're not Bitcoin, we're something else, and that crypto-- cryptocurrencies could follow a wide range of different assets that it's in charge of. And also, as was-- been mentioned several times here by other individuals, this is a new technology that's evolving every single day. We still don't completely understand the full ramifications of everything. But much like the Internet in the 1990s, well, we won't understand the full ramifications of what's going on until we actually have had an opportunity to put it into the scope of what every day-to-day business is going to be about. About 25 years ago I sat in a chair similar to this in the state legislature of Minnesota discussing taxation of Internet sales. How would you guide or follow any sort of rules that are appropriate for taxation? We don't even understand what jurisdiction people are selling under, what products they're selling, how they're selling them, even "guidelining" what is the difference between one particular product that's important versus another one that needs to be taxed in a different district, who collects those taxes, who monitors it, how do you stop it or enforce it if there's a problem. All those challenges were very similar to blockchain technology now. In fact, that-- as it evolved, a lot of those situations were changing. As fast as the law can change, you know, people will take advantage and try to take advantage of those laws to their benefit or to the consumer's detriment. Laws like what Senator Blood have passed or are proposing now help us establish a baseline for how we're going to analyze and discuss these issues and

I think that they're important in that regard. Ignoring it and saying it's a problem for later is a mistake. What we need to do is we need to help these, you know, folks who are designing these laws and putting these laws out there establish the bid-- the bedrock and legislative intent for these laws. And my encouragement of Senator Blood's bill at this particular point is to say we can establish those laws in a very meaningful way that doesn't stop the proponent-- stop the proponents of these bills from going forward in the education on these matters as well. I'm open for any questions.

SENATOR EBKE: OK. Thank you, Mr. Drake. Any questions? Guess not. Thank you.

JAMES DRAKE: Thank you.

SENATOR EBKE: Next proponent.

GARRISON BRECKENRIDGE: I really appreciate the opportunity to speak here today. My name is Garrison Breckenridge; that's G-a-r-r-i-s-o-n B-r-e-c-k-e-n-r-i-d-g-e. I am co-founder and head researcher at Embermine, Incorporated. I'm also the editor-in-chief of TokenVerse which is a media news site covering these emerging technologies. And what I want to try to do with the limited time is to unpack the notion of a smart contract and provide some comparison and contrast to what people usually think about when they think about contracts in the traditional prose agreements that we're familiar with. So contracts are the cornerstone of commerce. Whenever there's a meeting of minds to achieve a common goal, common purpose, what people have done for centuries is to draft up a document that says specifically what are the conditions of the agreement and have clarity in that endeavor or that project. This operates on many scales, from a simple transaction, transaction of a good, or even governance of entire jurisdictions, territories. Smart contracts are automated processing scripts. They're programs that execute on a blockchain and facilitate the transfer of value, and that value can be cryptocurrencies such as Bitcoin and various other "crypto" assets that represent, like Kyle said, corn, livestock, and physical property, and even more intangible assets like property rights to creative goods. And where the two are different is that one is static and it's constrained to the four corners of the page and it's often difficult for people to parse out what the contract is intended to do, so it's fairly static. What a smart contract does is it kind of automates that process. And I don't think they're mutually exclusive either. It can be easy to

think of these new technologies as being incompatible with existing systems but you can-- you can actually combine a traditional legal prose agreement that's written in natural language with a smart contract quite easily. You use the hash, as Senator Blood mentioned, the cryptographic hash of the prose agreement and you send that through a transaction to the smart contract. So what you have instead of that smart contract, which is just code and people-- you know, most people can't understand what code is intended to do. What that helps do is clarify the intent. Senator Blood mentioned codifying ethics. I look at contracts, smart contract capability as codifying intent. I'm happy to take any questions.

SENATOR EBKE: Questions for Mr. Breckenridge? I see none. Thanks for being here today, appreciate it.

SENATOR PANSING BROOKS: I have a question.

SENATOR EBKE: Oh, I'm sorry. Senator Pansing Brooks.

SENATOR PANSING BROOKS: I think it would be really good to have like a little seminar for all of us on something like this and it's really hard in--

SENATOR EBKE: Lots of people are nodding.

SENATOR MORFELD: Lunch and learn.

SENATOR PANSING BROOKS: Yeah. What?

SENATOR MORFELD: A lunch and learn.

SENATOR EBKE: A lunch and learn.

SENATOR PANSING BROOKS: Yeah, I just think it would really be helpful and have handouts for us. And you all know so much more than I do about all this and I want to learn. It's hard to make decisions on something that I know so little about. Anyway-- but how about that sometime for the Legislature?

GARRISON BRECKENRIDGE: Sounds like an excellent idea to me.

SENATOR PANSING BROOKS: For some of us that-- I'm sure Senator Morfeld has this totally in his grasp but I, on the other hand, do not, so it would be really beneficial. So thank you for coming to

testify about all of this. And we do want to grasp what's going on and be-- not be reactive but proactive. Thank you.

GARRISON BRECKENRIDGE: Thank you.

SENATOR EBKE: Thanks for coming. Next proponent.

LAM HOANG: Hello, Madam Chairman and committee. My name is Lam Hoang and spelled L-a-m H-o-a-n-g. I do business at Embermine. And a lot of my job consists of educating the public so I hold local meet-ups and I travel to conferences and I talk with executives on what we're going to do with the blockchain technology. And I found out a lot of people don't understand it, like we're discussing. And I've been thinking about it a long time, how to get folks to understand the importance of blockchain. And one of the best ways I've found out to do it is to talk about-- compare it, blockchain, to fire or innovation that our ancestors just discovered. We-- we know what a fire does. The reason why we don't understand blockchain is because we're always trying to compare it with something else. Is it a currency? It acts like a currency but it's not a currency. Is it a stock? It's not a stock. You know, is it gold? It's definitely not gold because you can transfer it over the Internet. You know, what happens if I'm sitting inside-- in a room with a blockchain? You know, what then? Nobody really knows. But when I-- when I help them see that it's like fire, it's something new and distinct in the world that we just discovered and now we have to figure out what to do with it, the executives get that more because we know that when we touch fire it burns, we know it's not dirt, we know it can cook us-- cook food for us. We know that when we-- when we learn how to harvest it and master its usage, we're able to light up our cities and more of our homes. And so I think blockchain is just like fire. Once we grasp the characteristic of what it can do, then we'll know-- naturally know what to respond. Right now there's not enough time for me in the session to explain what all blockchain can do and its applications but it's important because it's the first time we can send and receive distinct pieces of information with one another securely. This means there's a revolution in the way we do commerce, way we collaborate with one another over the Internet using smart contracts, like Garrison was talking about, how we can increase efficiencies over supply chains by-- when, for example, when somebody loads food on the truck, the warehouse already knows that you're coming, so there's that efficiency with the shared ledger idea. We can solve food-borne illness things quickly because we know exactly where the

goods came from. So in short, what we have here in Nebraska is the opportunity to become leaders and stewards of the technology. Nobody's on it yet. It's a whole wide new world, brave new world. We can pass legislation that encourages innovation, collaboration in industry and will invite capital, and the smartest minds in the world that way. And we can pave, we can change how agriculture is done here and then pave the way for the world since everyone else is going to learn from us. Or secondly, we can say this is-- this-- we can shrink from the challenge of our times here and pass legislation that's reactive and uninformed. And when we-- to me, I know that the pioneers will continue doing the work elsewhere. But what that means for Nebraska is that we lose out on the opportunity to make Nebraska a place where, you know, our children and our community and our institutions are at the leading edge of human development. We could capture this or use it or we can choose not to. I think by passing legislation that makes Nebraska a more competitive hub for this kind of development. We're choosing to put us back on the map as a place of learning, innovation, the place of the good life, and the seat of the Silicon Prairie. Thank you.

SENATOR EBKE: OK. Well, thank you. Any questions? I think what's becoming clear is that there's a lot of things to learn about this.

LAM HOANG: Thank you.

SENATOR EBKE: Thank you. Next proponent.

MICHAEL ECHTERNACHT: Chairwoman Ebke, Chairwoman Ebke and members of the Judiciary Committee, my name is Michael Echternacht, M-i-c-h-a-e-l E-c-h-t-e-r-n-a-c-h-t. I'm an attorney in private practice with MEEM legal services here in Lincoln. I'm also outside general counsel for Embermine. I'm testifying here in support of LB695. Distributed ledger technology has and will continue to be a space of tremendous growth and development for entrepreneurs and established industries alike. As this technology gains more widespread adoption, the need for education, definition, recognition, and a regulatory framework becomes all the more necessary. LB695 provides both definition and recognition of a core component of distributed ledger technology, the smart contract. Further, it opens the door for the state of Nebraska to utilize distributed ledger technology as a more efficient and secure means of electronic signing and verification. These provisions help lay the groundwork for adoption of the technology in government-regulated industries and

professional services, as well as for the development of new consumer and business applications. Technology will always move faster than the law and that's precisely why legislation such as this is important as emerging industries are developing. Without addressing the issues surrounding new technologies, it's difficult to effectively counsel those looking to build and develop this industry within the state. This is a start and a chance for Nebraska to show support for distributed ledger technology as part of a growth industry that has broad implications for trade, agriculture, technology development, government, and more. And with that, I'll take any questions.

SENATOR EBKE: OK. Any questions?

SENATOR PANSING BROOKS: I have a question.

SENATOR EBKE: Senator Pansing Brooks.

SENATOR PANSING BROOKS: Do-- do all of you understand it completely?

MICHAEL ECHTERNACHT: Not completely-- what's addressed in the bill, yes, in this particular bill. But the smart contract technology is-- is something that's able to be grasped. Larger implications are yet to be seen but I think, as I mentioned, this-- this-- this bill provides a good start for laying the groundwork for allowing people to use the technology and start building upon it. And I think as-- as the technology is more widespread and as there are more communication, there can be better legislation that-- and more legislation that comes up in the future. But we have to start somewhere.

SENATOR PANSING BROOKS: OK. Thank you.

SENATOR EBKE: Other questions? OK. Thank you. Are there any other proponents?

JOHN HANSEN: Madam Chairman, members of the Judiciary Committee, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. We're the second-oldest, second-largest general farm organization in the state. We have created over 436 cooperatives in our 104 years as ways to create new markets, capture new value. We spend an awful lot of our time trying to create new value-added marketing opportunities and new ways to try to help family farmers and ranchers achieve a more fair compensation

for the products that we grow. We are in the fourth year of a farm crisis and it's not because we didn't do a really good job of producing an awful lot of really good, high-quality food. We just simply haven't been paid a fair price for what we produce. That is, to my way of thinking, market failure. And so we look at this technology and we are struggling to figure out all of what it means. But to the upside, we see a really tightly controlled and moribund conventional marketing structure. So if I'm a producer in Nebraska and I have a high-quality product that is, say, for example, wheat and meets international baking standards, it is very difficult to be able to do the identity-preserved process to go through the marketing channel and get that product from Nebraska to the Netherlands, for example. And so the conventional channels are-- are-- are very tightly controlled. So we look at this technology as a way of trying to perhaps open up new doors, new ways of trying to get from farmer to end customer, and for ways to reduce cost in the marketing system. What we want is verification and we want a structure that gives us certainty so that we know that what we're doing is-- is for sure, not just pumping money down the creek. And so all of a sudden in a new, very interesting, complicated, and magical way, our money disappears. There are a lot of new and really technically advanced ways to steal cattle these days, for example. And so we appreciate what Senator Blood is doing and appreciate the enormity of the task she has taken on. We do not want to stifle this new marketing opportunity but we also want to verify that it is safe and that it has proper oversight. And as with all things with money, the failure to appropriately oversee things, if there's enough money involved, things usually go south. Thank you.

SENATOR EBKE: Thank you, Mr. Hansen. Any questions? Thanks for being here today.

JOHN HANSEN: Thank you.

SENATOR EBKE: Other proponents? I see nobody moving. Do we have any opponents?

KYLE TAUTENHAN: Chairwoman Ebke, members of the Judiciary Committee, for the record, my name is Kyle Tautenhan, K-y-l-e T-a-u-t-e-n-h-a-n, and I'm the founder of BlockEra, a company that provides blockchain consultation in financial and agricultural sectors. I'm here today in opposition to LB695. I oppose this bill speaking from a technical perspective because we are too early in blockchain technology's life

cycle to be creating laws and defining technical terms which have been proposed in this bill. To start, the idea of legally enforceable smart-- smart contracts is a positive and noble goal. But this bill, like LB691, dangerously attempts to define distributed ledger technology and smart contracts without consideration to where the technology might go in the future. For example, LB695 isn't able to clearly define what distributed ledger technology is without contradictions. Section 2 declares, "For purposes of this section, smart contract means an event-driven program or computerized transaction protocol that runs on a distributed, decentralized, shared, and replicated ledger that executes the provisions of a contract by taking custody over and instructing transfer of assets on the ledger." With the introduction of the term "decentralized" and "shared," we've created different definitions of distributed ledger technology in the same bill, nevermind across bills. This bill doesn't know the difference between public and private blockchains or why such definitions should matter. Additionally, the section goes on to declare that smart contracts can have custody of and be the assets themselves. As heard in my testimony against LB691, tokens can be anything. At an even deeper level, smart contracts are tokens and tokens are virtual currencies, which brings up the question of when is a smart contract a token and when is a smart contract a virtual currency; or, put another way, when is a token a smart contract and when is a virtual currency a smart contract? Obviously it's very confusing. I'll leave you with my final thought. If a misplaced comma can alter the meaning of a bill, how can we expect this bill to properly legislate a technology that hasn't even developed proper definitions yet? Thank you for allowing me to testify today. I'd be happy to answer any questions.

SENATOR EBKE: Any questions? Senator Pansing Brooks.

SENATOR PANSING BROOKS: Clearly I'm confused but-- about this but I guess what I'm interested in, I mean, do we not know enough about it? I mean some people think they do know enough about it. I presume you know something about it.

KYLE TAUTENHAN: Yes, but I would say that anybody that declares themselves an expert in this space hasn't been humbled by it enough. We are literally coming up with it as we go right now. It is a very, very new technology and we haven't defined those definitions, right?

Everybody can comprehend what an e-mail is. Not everybody can comprehend what a smart contract is.

SENATOR PANSING BROOKS: I feel a lot better. So you don't feel there's enough knowledge even to create parameters around this theory to-- or a way to--

KYLE TAUTENHAN: No, because I--

SENATOR PANSING BROOKS: -- or a way to boost it so that we could be pioneers in a-- in a [INAUDIBLE]

KYLE TAUTENHAN: I believe we could use outside help. I don't believe we have the experts here or, you know, even-- really I would say there's very few experts at all. And I've already said that I don't think there are true experts in it but there are people, you know, in Washington, D.C., that have tried to attempt to define what smart contracts are, what distributed ledger technology is. And they've sat down really hard to make sure that it doesn't affect us in the future and-- and really tried to limit what the bills that are being written could-- could do to blockchain technology.

SENATOR PANSING BROOKS: And I have-- I have somebody-- I have-- I know of somebody who's buying, supposedly buying their first house with this virtual currency.

KYLE TAUTENHAN: Yep.

SENATOR PANSING BROOKS: So to me this is-- is just something it seems really important to try and understand--

KYLE TAUTENHAN: Yep.

SENATOR PANSING BROOKS: -- and to wrap our heads around. So do we bring in national people? But you're saying that there's some people in D.C., and they aren't [INAUDIBLE]

KYLE TAUTENHAN: There is a-- a non-profit group that works very hard at defining what the laws should be in blockchain and cryptocurrencies. They are called Coin Center. I personally believe in a lot of the things they do. I would consider bringing them in. As far as, you know, how it affects farming, I've personally gone to Gothenburg to talk with farmers and use this technology to facilitate corn contracts. I've also talked with cattlemen and how to buy cattle

with cryptocurrencies or treat that cattle as a token. These will all be going through smart contracts, right? These are somewhat of buzz words but until we all define them, we are going to affect every single industry in our state.

SENATOR PANSING BROOKS: And meanwhile many of us were at a-- at a-- an LES program where they're using Bitcoin, I don't know, knowledge or-- anyway, they're using it right now in some of the work they're doing with solar and wind energy.

KYLE TAUTENHAN: Yep. Energy is a huge industry that blockchain technology helps enable. These tokens that we're talking about and smart contracts can facilitate the buying and selling of power much more efficiently in a decentralized manner. So when homes have solar panels and they have Tesla Powerwalls that are holding the energy, you need an efficient way for that individual to sell back into the power grid at a-- an appropriate price. This technology can enable that.

SENATOR PANSING BROOKS: Well, that's pretty amazing that LES is sort of leading the edge on something right now, so--

KYLE TAUTENHAN: Absolutely.

SENATOR PANSING BROOKS: -- thank you. Thank you for your testimony.

KYLE TAUTENHAN: Thank you.

SENATOR EBKE: Thank you. I don't see any other questions.

KYLE TAUTENHAN: Thank you.

SENATOR EBKE: What I would say to all of those both for and against this particular bill, if you've got a good "Blockchain for Dummies" book, send the link to me--

SENATOR PANSING BROOKS: And to me.

SENATOR EBKE: -- preferably in Kindle format.

SENATOR PANSING BROOKS: I'd like it, too, so.

SENATOR EBKE: OK. OK, next opponent. Opponent? Going once, OK. Yeah. And if anybody else is going to be speaking in opposition or if

you're going to be in a neutral capacity, go ahead and move towards the front so we can see what we've got. Go ahead.

WILLIAM PAYNE: Chairwoman Ebke, members of the Judiciary Committee, for the record, my name is William Payne, W-i-l-l-i-a-m P-a-y-n-e. I'm co-founder and chief technology officer of Simple Vet Solutions, Incorporated, a software company that uses blockchain technology to provide secure record management services to the agriculture industry. I'm here today to provide testimony in opposition to LB695. I was among the first to implement distributed ledger technology in the agriculture industry. A little over a year ago, I began writing the backbone for the blockchain implementation that is fundamental to how my company operates and is now relied upon by users overseeing thousands of farms across the nation. My objection to these bills is in the definitive language used to define smart contracts and distributed ledger technology. Blockchain is a very new technology and, as such, many different approaches are being taken to overcome limitations in its current-- current implementations of the technology. The bill becomes limiting because it doesn't allow room for some cutting-edge approaches currently under investigation to overcome these limitations. As an entrepreneur who uses blockchain as a tool and relies extensively on smart contracts for business transactions, opportunity to innovate and test new technology is critical to growth and commercial viability. Under the wording in the bill the tools in blockchain implementation my company is built on may not fall under the definition of distributed ledger technology. In several of my implementations smart contracts do not fall under the definition of smart contract as it is written in the bill. These definitions are already outdated. I'm left to question, are my competitors going to challenge the legitimacy of my distributed ledger technology implementation under this bill? The effort to establish smart contracts and distributed ledger technology as legitimate tools for state business is good and important. But it is very important to ensure companies such as my own are able to operate and innovate without harm no matter the intent of the bill. I applaud the effort and intent of this bill and the initiative of Senator Blood in attempt to conquer what is in my opinion one of the steepest learning curves in technology. I'm originally from Atlanta, Georgia. Almost exactly three years ago I laid eyes on Nebraska for the first time looking out the window of an airplane as I approached air-- Eppley Airfield. I saw ice chunks floating on the river and wondered what I had got myself into. Over the years, however, Omaha has become

my home and the community, my family. In May of 2019, when I graduate with my Ph.D. and take up the reins of my company full time, I'll have a choice to make. Do I want to stay in Nebraska or should I relocate? As a business owner I need to be able to hire talent and LB695 in its current form may place Nebraska at a disadvantage in this space when compared to neighboring states. Thank you for allowing me to testify today and I would be happy to answer any questions.

SENATOR EBKE: Thank you, Mr. Payne. Questions? Guess not. Thank you. Other opponents? I see nobody moving. Neutral testimony?

TAD FRAIZER: Good afternoon, Senator Ebke, members of the committee. My name is Tad Fraizer, T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of property and casualty insurance companies. We were intrigued by this bill. Our trade association has advised me that insurance companies are actively looking at this technology in its many permutations and definitions, as we've heard today. They're still trying to get their minds around it and exactly how it's going to work. We see some positive aspects for the future but are kind of looking at different forms of legislation on possible regulation in other jurisdictions to try to find what may be the best definitions and best methods of approaching this subject. So we're-- we're taking a neutral position but wanted to let the committee know that the insurance industry is looking at this and it does appear to have some potential for the future. And I'd need your book for dummies in hard copy, Senator, so I'm probably even less qualified to answer questions but I'll try to anyway.

SENATOR EBKE: Oh, OK. Any questions?

SENATOR MORFELD: So you're not the guy that we're supposed to ask detailed questions of?

TAD FRAIZER: That whistling sound you hear is the concept going way over my head but--

SENATOR MORFELD: Got it.

SENATOR EBKE: OK, thank you for being here, appreciate it. Anybody else in a neutral capacity?

COLLEEN BYELICK: Hi, Chairperson Ebke and members of the committee. My name is Colleen Byelick, C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm the general counsel and chief deputy for the Secretary of State's Office, here on behalf of Secretary of State John Gale. My testimony on this bill is really limited to the electronic notary portion of the bill. As Senator Blood mentioned, Secretary Gale and myself met with Senator Blood this morning and discussed an amendment. The amendment removes the electronic notary portions of the bill and we would be in support of that amendment. At this time we're not really sure how the concept of smart contract works with our current electronic notary framework. That framework still requires physical presence and identification of the signer for an electronic notary transaction. We just weren't sure conceptually how that worked with blockchain and distributed ledger technology. So we did ask the senator if she could remove that section from the bill, which she has agreed to do. Happy to try and answer any questions you may have.

SENATOR EBKE: Thank you. Any questions? I see none. Thanks for being here.

COLLEEN BYELICK: Thank you.

SENATOR EBKE: Anybody else testifying in a neutral capacity?

EDWARD WENIGER: Good afternoon. My name is Edward Weniger. I'm with the company Alpha BTC. We have a network of Bitcoin kiosks and also provide blockchain services as well as host blockchain events. I just wanted to make a brief statement here on the bill in a neutral stance and-- one second here, sorry, pull it back up, sorry. All right. It's pretty short. So I applaud the senator for writing a relatively narrow, accurate bill, and working with the community. Hopefully we'll continue an ongoing dialogue-- dialogue in the future. A recent GovTech article highlighting blockchain technology legislation across the country contrasts Nebraska to ten other states including Arizona, Colorado, Florida, Hawaii, Illinois, New York, Tennessee, Vermont, Virginia, and Wyoming. This is a competitive space right now and we don't want to encourage businesses to set up shop in one of those other states. I would urge caution as we move forward with any fintech regulation which can quickly have unintended and far-reaching consequences in our digitized-- highly digitized world. We need to proceed with the lightest touch possible. Thank you.

SENATOR EBKE: Thank you, Mr. Weniger. Any questions? I see none. Thank you for being here. Anybody else? OK, Senator Blood. We had one letter in support, Andy Hale of the Nebraska Hospital Association.

SENATOR BLOOD: And so I want to close by being brutally honest. If you want to get a lot of e-mails and phone calls, have a technology bill, because between drones and distributed ledger technology my e-mail box has been very full. But one of the things I have found when it comes to technology is that you need to be prepared for a lot of "mansplaining" because everybody knows how to do it better and there's a lot of people who don't understand how state statutes and legislation works. So this bill is about legislative intent. We're not setting guidelines. We're not regulating. In fact, the partner bill with this bill, LB694, says that you will have no local control, no local regulation, and no taxation so that the perfect compatible bills to do what everybody says, which is to not overregulate, not tax it, not stop technology, that's what everybody says they want. So now when I hear things like the technology is too new to put into statute for our legislative intent, my response is much what Senator Morfeld said earlier. If not now, when? The bottom line is that right now in California we can have a competitive advantage over that state because they have a two-house system and what takes us one session can take them two to three years. So when new businesses look to come and start business in Nebraska, do you look at a \$160,000 home or a \$1 million home? Do you look at office space that can't be afforded or affordable office space and a highly qualified work force ready to go here in Nebraska? We are putting out a welcome mat. And as somebody beat me to the punch, there are ten other states that are hustling to get at the head of the pack right now with legislation, New Hampshire being the only one-- or Vermont, excuse me, Vermont being the only one that is ahead of us, and they're already seeing business come into their state. So is this bill too narrow because technology is going to expand? No matter when we do this bill, technology is going to keep expanding. So if not now, when? And we're not regulating and we're not taxing it, should both my bills come out. And this is a positive thing. I'm sick of our state being at the end of the pack all the time. We do tax incentives. We do grants. We do TIF. Look, we can do this one thing that can have-- just be as powerful as those tools by only changing words in our state statute. We have to fall forward fast. What is the down side to this? There is not a down side to this. And no offense to the opponents, but no matter what happens in technology, there's always naysayers and

somebody who knows how to do it better. And that's part of the fact that they're intelligent people, and I get that, and they all know how to do it better. But this bill is about legislative intent. This bill is about being ahead of the pack, being a leader in technology. And guess what? Next year I'm coming back with algorithms because we can do better in Nebraska. And this bill is the start of that. And I want to tell you that Cargill had planned on writing a letter of support, when we talk about the ag community. They couldn't get it in on time for this one. They're coming in on the other bill to talk about how important blockchain and these bills are to agriculture in Nebraska and, of course, across the United States because they use it internationally. KPMG, who does business with Nebraska right now and is using and promoting this type of technology, they couldn't come out in favor of it because they currently do e-business with the state and they didn't want the state to think they're trying to "upsell" them. I can't tell you how many big organizations are using this and want these bills to be successful. Today the Farm Bureau spoke with me and they're updating their state policy to include this technology and we're going to be in on that. And also, for those who are hoping for a lunch and learn, it's my understanding that the Banking Committee is putting together a tutorial session, since they're done with all their bills, sometime next week. So some of these fine young minds that were behind me will be there to speak and help educate. And then I actually did hand-- have a handout. It's technology for dummies--no offense--and I think I gave it to some of you; and if not, please contact my office. I'll make sure to get you a copy. I'm passionate about this and I'm very protective of this bill. I can't tell you enough that no matter what technology bill we have, everybody knows how to do it better. But we have to start somewhere and where we're starting isn't wrong. Is the technology going to change? Absolutely. And it's our responsibility as Nebraska state senators to learn about the technology, understand the technology well enough so when it does change, we can amend that statute. With that, I appreciate your time. I'm sorry to be brutally honest but I want you to know how important this bill is and have a little bit of understanding of how much drama's been involved in this bill. But I've been willing to deal with that drama because this is going to be a powerful thing for Nebraska, our young entrepreneurs, especially for the young people that are so educated that keep leaving our state. And again, it's not going to cost us a penny. How many economic development tools can we say that about? So with that, I ask, please, move this out onto the floor for debate. I want to

fight just as hard on the floor. And I'd be happy to answer any more questions if you have them.

SENATOR EBKE: Senator Baker.

SENATOR BAKER: Thank you. Senator Blood--

SENATOR BLOOD: Yes, sir.

SENATOR BAKER: -- this bill, LB695, like that other bill, can-- can either hurt things, help things, or make no difference.

SENATOR BLOOD: Right.

SENATOR BAKER: So you indicate you believe that this legislation could suddenly make Nebraska more attractive than people who haven't passed this kind of legislation. So would this enable a company or a person to do things they can't do now?

SENATOR BLOOD: It is going to allow them to do things under state statute that they're worried if they come into our state will be overregulated, overtaxed, and not defined. And so because of that a lot of these new companies are avoiding states that have not bothered to step up to the plate and define the technology and say, hey, we're not out to overregulate you or tax you.

SENATOR BAKER: Thank you.

SENATOR BLOOD: You're welcome.

SENATOR EBKE: Other questions? I see none. Thank you, Senator Blood. That closes the hearing on LB695. We will take about a five-minute break, let people get up and [INAUDIBLE]

SENATOR BLOOD: Thank you for your time.

SENATOR EBKE: Thank you.

[BREAK]

SENATOR EBKE: OK, we're going to get started again. Next up is LB773, Senator Clements.

SENATOR CLEMENTS: Thank you, Madam Chair. Members of the Judiciary Committee--

SENATOR EBKE: They wander in.

SENATOR CLEMENTS: -- I'm Senator Rob Clements, R-o-b C-l-e-m-e-n-t-s. I represent Legislative District 2 and I'm here to introduce LB773. LB773 would update language for the misdemeanor of intimidation by telephone call to include intimidation by electronic message. Captain Ryan Crick with the Plattsmouth Police Department originally contacted my predecessor regarding issues they were having with acts of intimidation being reported in their community. Many of the incidents of intimidation were conducted using modern forms of communication like text messaging, e-mails, and other forms of instant messaging that most of us are familiar with and which arguably don't fit within the context of the crime, intimidation by telephone call, as described in Section 28-1310 of Nebraska Revised Statute. LB773 is the third version of this bill. In addition to adding electronic messages to the law, it aims to address First Amendment concerns that were brought up in the 2016 version, LB892, dealing with current language and previously proposed new language. My office shared the language of LB773 with committee's staff, along with the Nebraska County Attorneys Association and the national First Amendment group, the Media Coalition. We appreciate the points raised by the Media Coalition regarding the First Amendment free speech issues they believe are present in the current statute and the previous version of the bill. Many of the concerns the Media Coalition had with the previous bill are directed at language that is currently in the law like the terms "annoy," "offend," "terrify," and "indecent," which they believe have constitutional problems in light of recent U.S. Supreme Court Opinions. That is one of the reasons why LB773 strikes subsection 2 of current law to address those problematic terms. Nebraska courts also ruled that a jury instruction based on the presumption in subsection 2 is constitutionally impermissible. It deprives the defendant of due process right that the state prove each element of the crime and shifts the burden to the defendant to disprove the element of intent. I believe we've addressed their First Amendment issues in this bill. I'm aware of a few minor suggestions the Media Coalition may have for the committee to consider. I would be glad to work with the committee to address any additional concerns. My main concern with LB773 is to make sure law enforcement and prosecutors have the necessary tools to address intimidation, threats, and harassment that have migrated from direct

phone calls to new forms of direct electronic communication like text messages and e-mail. Captain Crick is here today and will be able to speak with you more specifically regarding the incidents they have run into where the acts of intimidation were committed through a text message or other form of electronic communication leading to no prosecution. As always, I'll be gladly-- gladly work with the committee and other stakeholders to make sure the language accomplishes the intent of the bill which is to update the language to include the new forms of modern communication. Thank you for your consideration of LB773 and I will try to answer any questions at this time.

SENATOR EBKE: Senator Baker.

SENATOR BAKER: Thank you, Chairman Ebke. Senator Clements, I can't help but noticing a lot of similarity in your bill and Patty Pansing Brooks's bill that's coming up next. Have you talked to Senator Pansing Brooks?

SENATOR CLEMENTS: We have talked to each other and decided we would each introduce our separate bills. They were both-- we didn't talk before bill introduction time and we found out once we were introduced that we both had one.

SENATOR BAKER: Yes. So do you see any material differences in your version versus Senator Pansing Brooks's?

SENATOR CLEMENTS: Very few. I've gone through my bill and made notes of where hers differs.

SENATOR BAKER: Does yours do anything more than what hers does?

SENATOR CLEMENTS: I have a couple of-- that I could mention.

SENATOR BAKER: Name one.

SENATOR CLEMENTS: I use the-- oh, let's see. We-- we talk about threatening to inflict injury. She adds the words "physical or mental injury"--

SENATOR BAKER: OK.

SENATOR CLEMENTS: -- just an additional definition. And one more, probably the major one in the definition of the electronic message,

it adds sound, visual image, or data. Where I have talked about text message or electronic mail, hers would add sound or visual image specifically.

SENATOR BAKER: So I would assume maybe that when people come up to testify-- in your bill, when Senator Pansing Brooks comes up, and say-- just repeat the testimony that I gave previously and we won't hear the same thing twice, so, just a hope of mine. Thank you.

SENATOR EBKE: Hope springs eternal, doesn't it? Any other questions for Senator Clements? OK, let's get started. Are you going to stick around?

SENATOR CLEMENTS: Yes.

SENATOR EBKE: OK, great. First proponent.

BEN PERLMAN: Good afternoon, Chair Ebke, members of the Judiciary Committee. My name is Ben Perlman, P-e-r-l-m-a-n. I am a deputy Sarpy County attorney here on behalf of the office and also speaking as a proponent on behalf of the Nebraska County Attorneys Association. I think as we heard from the testimony earlier today regarding blockchain technology, cryptocurrency, and all of those sort of things, it's important that the law keeps up with the changing technology and I think really that's all that's happening here. As a prosecutor we see in our office increasing amounts of threats, intimidation, and those sorts of things that are done more by text messages, Facebook messages, and other sorts of communications than by phone calls. I think an infinite more number of text messages are sent nowadays than telephone calls and so this is simply in my estimation a necessary update reflecting the technology. Again, I think more people use telephones to transmit electronic messages, again, through all those sorts of ways, including apps, versus phone calls. And so this will have a real-world practical effect. I don't think it changes the intent of the law at all. It simply updates to conform with how these-- how this technology is used. I have cases, I think every prosecutor has cases, where whether-- when an investigation starts, you'll start to see these messages flying around. When criminal prosecution starts, you'll see these messages start to take place and it's a real problem with witnesses and victims. And I think this-- this bill does a lot to address that. So with that, I'll entertain any questions.

SENATOR EBKE: Thank you, Mr. Perlman. Any questions? So there's no new-- no new crime created, just an update in the language of the crime of intimidation, right?

BEN PERLMAN: Right. And in fact, I would say that it makes it more difficult to commit the crime. I mean when you remove the words "annoy" and "harass," that's a pretty easy way to commit a crime that could send you to jail for three months. So the striking of that, other than that, I don't think there's any practical effect at all.

SENATOR EBKE: [INAUDIBLE] the technology. OK. Thanks for being here.

BEN PERLMAN: Thank you.

SENATOR EBKE: Other proponent? Thank you for waiting all day.

RYAN CRICK: Good afternoon. My name is Ryan Crick, R-y-a-n C-r-i-c-k. I currently serve as a captain with the Plattsburgh Police Department. When I started my career over 16 years ago in law enforcement, intimidation by telephone was an important statute because we could hold anyone in the public accountable for making threatening or harassing phone calls. These types of incidents are common for law enforcement personnel to deal with. However, with advancements in technology over the years, law enforcement has not been able to assist victims as well because individuals don't behind-- hide behind a phone call anymore. They hide behind Facebook posts, tweets, or text messages. What was at one time a routine report of someone receiving threatening phone calls now commonly includes sending threatening or harassing messages through social media outlets and fewer and fewer times by way of a phone call itself. If evidence presents itself, this statute in its current form only allows law enforcement to charge someone-- charge someone for threatening messages if it comes by way of a phone call. I'm asking that you update the language in this much-needed statute to help victims receive the proper investigation from law enforcement when they receive these messages through other means other than a phone call. I realize people have the ability to block a person if harassing or threatening messages have been received. The problem stands that the original message was still received and for a lot of people that message was all it took to feel threatened enough to report it to police. If blocked, I have also seen suspects use social-- someone else's social media accounts, obtain phone-- new phone numbers, or make contact again with the victim using other

means. Unless law enforcement has the ability to put a stop to it and assist the victims properly, in most cases this behavior does not stop. On behalf of law enforcement across the state, I'm sure I can say we ask that you consider updating the language of the statute to include many other electronic devices used in society today. I was actually just discussing with Senator Clements about a case that we just had from last weekend. This has happened commonly where we have officers talking with people that receive threatening text messages. It's common to receive these through a text message means. At-- just up until last weekend, our officers, all they could do is instruct them to go get a protection order. This, it didn't-- wasn't included in the statute so we do find it important to be able to help out victims more on these types of crimes.

SENATOR EBKE: Thank you, Captain Crick. Any questions?

SENATOR BAKER: I have one.

SENATOR EBKE: OK. Senator Baker.

SENATOR BAKER: Thank you, Senator Ebke. So I take it you-- you've had to investigate phone intimidation messages. Have you had some of those already?

RYAN CRICK: Yes, sir.

SENATOR BAKER: Do you ever run into where it's impossible to tell where the call came from through-- you know, maybe went through some system to get a phony IP address if it's e-mail, or-- or a burner phone or something where you couldn't identify? Have you run into that ever?

RYAN CRICK: We have run into that where we cannot identify the person or where the phone call is coming from [INAUDIBLE]

SENATOR BAKER: So then you can't do anything, right?

RYAN CRICK: Yes.

SENATOR BAKER: So I assume the same statute would-- would apply to scam calls, you know, say, this is the IRS, you'd better pay up or else you'll be arrested. This would apply to that, too, right?

RYAN CRICK: It would.

SENATOR BAKER: Yes. Thank you.

SENATOR EBKE: Been getting a lot of those calls?

SENATOR BAKER: I have gotten them.

SENATOR EBKE: Any other questions?

RYAN CRICK: Don't know if I'm going to take on the IRS, but--

SENATOR EBKE: That's right. Well, it's not the-- not really the IRS. Any other questions? Thanks for being here. Other proponents? Any opponents to LB773? Anybody in a neutral capacity?

SPIKE EICKHOLT: Good afternoon, Madam Chair and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in a neutral capacity to the bill. I did visit with Senator Clements earlier to explain that we would be testifying just so that we are on the record. We understand the issues and the-- and the-- and the reasons for the law change and in some respects it both broadens and narrows the elements of the crime. We just want to be on record that we're not opposed to doing that so long as the penalty provision remains the same as a Class III misdemeanor. There are other crimes that can be charged if people do engage in conduct that is actually threatening or actually witness tampering. Those are felony offenses. But this is a crime that can be prosecuted for harassing or other types of behavior. And as long as penalties remains the same, we don't have any opposition to the bill.

SENATOR EBKE: Thank you, Mr. Eickholt. Any questions? I see none. Thanks. Anybody else testifying in a neutral capacity? We have two letters of support, one from Marcia Blum of the National Association of Social Workers-Nebraska Chapter and one from Matthew Kuhse of the Omaha-- who is an Omaha city prosecutor. Senator Clements, would you like to close?

SENATOR CLEMENTS: Yes. Thank you. I'd like to speak to Senator Baker's question about the-- an IRS phone call. That would be-- I think that would be covered in section (e). A person who telephones or transmits an electronic message and attempts to extort money is section (e). That's where I believe that would be covered. Captain Crick came to the-- to the senator's office two years ago. It's been

a problem that long and we're just now able to get to it and I'd appreciate your favorable consideration. Thank you.

SENATOR EBKE: Thank you, Senator Clements. Any questions for him? I see none. Thank you. This closes the hearing on LB773. We will move to LB782 and Senator Pansing Brooks.

SENATOR PANSING BROOKS: Thank you-- thank you, Chair Ebke and fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB782 to help those who are victimized by bullying. Specifically, LB782 adds the offense of intimidation by electronic communications to statutes relating to the offense of intimidation by telephone calls. And, Senator Baker, of course I had to continue with it because they are similar but they are different in part. The additions of "electronic communications" to these provisions recognizes that methods by which people may be threatened, intimidated, or harassed have changed since the Legislature originally passed these statutes in the 1970s. Modern technology has changed the way we interact with one another, so our statutes need to be updated to reflect new forms of communications and, thus, new ways in which people bully one another. Children are especially susceptible to the harmful effects of bullying. According to the Bureau of Justice Statistics, 28 percent of U.S. students grades 6 through 12 have experienced bullying, much of which is done by electronic communications. In fact, according to stopbullying.gov, their Web site shows that almost 43 percent of kids have been bullied on-line and one in four have had it happen to them more than once. I was moved to bring this bill by the experiences of Jamy Sullivan and her daughter, Teghan Sullivan. Jamy is a decades-long friend-- long friend. They have pertinent stories to tell us today about how cyberbullying has impacted their lives. LB782 also has the support of law enforcement. The committee has received letters from-- of support from Lincoln Police Chief Jeff Bliemeister and Superior Police Chief Perry Freeman. I want to thank law enforcement for supporting this bill. I would like to note that Senator Bill Kintner brought a similar bill in 2016 and again in 2017. And as you know, Senator Clements has brought us that bill again. I signed on as a cosponsor at the time to Senator Kintner's bill, former Senator Kintner's bill, because I believe in the intent of the bill. When I decided to introduce the legislation myself, I brought in cyber law experts to help improve and clarify some of the language. We used the phrase

"electronic communications" because it more broadly includes the array of writing, sound, visual images, or data that may be sent as a communication with intent to bully. And in fact, the statute references Nebraska Statute 28-833 which directly defines an electronic communication and does not use the verbiage "electronic message." So that's why I think it's important to use that-- those two words. We also wanted to clarify the intent of these statutes that were related to bullying so we removed the terms "annoy" and "offend." Bullying should be about something more than annoying or offending someone. We want to make sure that the offense was defined by intent to intimidate, threaten, or harass a person. In keeping with that, I have one amendment I am introducing today. AM1794 cleans up the flow of language and clarifies that these actions must cause "significant distress." We want to make sure that we battle bullying while not putting kids at risk of any unnecessary interactions with law enforcement officials. Clearly, too often the bully has often been bullied before, so, in fact, unnecessary interactions with the law are the last thing that we wanted to do with this legislation. I believe the bill strikes a proper balance while updating our statutes to reflect modern technology. We did have a testifier that was set to join us today from The Set Me Free Project, an organization that works to keep youth safe from bullying. Unfortunately, that individual is attending a family health issue and could not be with us. I am passing out her statement which includes some important data points. I would like to thank her for submitting this. And I am also including a sheet that has all sorts of statistics, a colored sheet that has statistics on bullying in the United States. In closing, the additions of LB782 will provide greater protections against cyberbullying and keep our kids safe. I hope you would agree to amend the bill with the language that I've presented. And with that, I urge you to advance it to-- LB782 to General File and I'll be glad to answer any questions you might have.

SENATOR EBKE: Thank you, Senator Pansing Brooks. Senator Chambers.

SENATOR CHAMBERS: These kind of bills are difficult for me. But on page 2--and I understand the direction--we start, in line 3, to give the basis for all this that follows. A person commits the offense of intimidation by telephone call or electronic communication if with intent to intimidate, threaten, or harass. That would apply to bill collectors, too, wouldn't it?

SENATOR PANSING BROOKS: It--

SENATOR CHAMBERS: Because when they make their calls, they are harassing phone calls and they're trying to put pressure on somebody. I'm not saying necessarily that's bad but I just want it to be clear that the definition would apply whenever a certain fact situation exists and bill collectors could fall under this bill, which might not be a bad idea.

SENATOR PANSING BROOKS: I think you're correct.

SENATOR CHAMBERS: Is there somebody who is going to testify who is something like an expert, do you know?

SENATOR PANSING BROOKS: I-- I don't think--

SENATOR CHAMBERS: Because I don't want to delay the bill. You and I can talk about it.

SENATOR PANSING BROOKS: Right.

SENATOR CHAMBERS: But I just want the record to indicate that I have that question.

SENATOR PANSING BROOKS: Yes. I--

SENATOR CHAMBERS: OK.

SENATOR PANSING BROOKS: I don't think so but I'm happy to answer any further questions.

SENATOR EBKE: Senator Baker.

SENATOR CHAMBERS: And that's all that I have.

SENATOR EBKE: Senator Baker.

SENATOR BAKER: I had a question, too, and at the same paragraph that Senator Chambers was talking about. You've stricken the words "annoy, or offend," so if--

SENATOR PANSING BROOKS: That's--

SENATOR BAKER: If this passes, if Senator Chambers would call me up and annoy me or offend me, he'd be free and clear then.

SENATOR PANSING BROOKS: He would.

SENATOR BAKER: OK. Thank you.

SENATOR PANSING BROOKS: And he could keep pointing at you and saying-- and you couldn't-- you could just tell us that he was annoying you.

SENATOR BAKER: OK. Thank you.

SENATOR PANSING BROOKS: But we could not do anything about it.

SENATOR EBKE: Other questions? OK.

SENATOR PANSING BROOKS: Thank you.

SENATOR EBKE: First proponent.

TEGHAN SULLIVAN: Hi. My name is Teghan Sullivan, T-e-g-h-a-n S-u-l-l-i-v-a-n. I'm a freshman at Superior High School. I moved to Superior, Nebraska, five years ago. And I support this bill because when I was in seventh grade a boy in my class sexually harassed me through text. At first I was just weirded out and stunned someone would say those kinds of things. And we went to the police in school but they couldn't do anything about it. So I still had to walk the halls and have classes with him which was super hard. I just felt so disturbed that I would call my mom crying and wanting to go home. It was just very uncomfortable. And I've moved on from this considering it was two years ago. But I don't want other girls, like my little sister, to have to go through this. So that's why I support this bill.

SENATOR EBKE: Thank you for coming today. Any questions? So is it at the school you were-- that you're in now?

TEGHAN SULLIVAN: Yeah.

SENATOR EBKE: And that boy is still around or did he move?

TEGHAN SULLIVAN: I think he might have moved. We have people come and go all the time.

SENATOR EBKE: OK. Thanks for being here today. Oh, wait a second. Senator Chambers.

SENATOR CHAMBERS: In response, I'm in-- Senator Ebke's question made me think of it. He's not around now, as far as you know?

TEGHAN SULLIVAN: Nope. I think he left halfway through my eighth grade year.

SENATOR CHAMBERS: Did he leave suddenly?

TEGHAN SULLIVAN: I don't really know the whole story.

SENATOR CHAMBERS: And nobody really knows when he left or where he went?

TEGHAN SULLIVAN: Nope, I don't really.

SENATOR CHAMBERS: Have they dug up the backyards of any of your friends? I'm just kidding. I'm just kidding. I really don't have a serious question.

TEGHAN SULLIVAN: Thank you.

SENATOR EBKE: Other questions? Thank you for being here today. Thank you for coming up from Superior.

TEGHAN SULLIVAN: Yes, thank you.

SENATOR EBKE: Next proponent.

JAMY SULLIVAN: Hi. Thanks for having me. I am Jamy Sullivan, J-a-m-y S-u-l-l-i-v-a-n, and I am Teghan's mom. I-- after the experience my daughter Teghan just shared, I looked for ways to empower and protect her and started researching this issue. I found school policy and state laws to be behind. And so I decided to run for school board and won. And this has just been a passion of mine. We are all creating electronic communications and receiving them. We are on our phones, checking our phones every 4.3 minutes that we are awake. And so this is a huge area in our lives and our teen lives. After-- after Teghan had her experience, she was just-- she felt vulnerable. She didn't feel like she had any power. And so I felt powerless when she was asked for these-- she was asked for inappropriate photos. The boy had asked for nudes. He threatened her and solicited her-- solicited her for sex but because this boy had not broken any laws, nobody could share any information on who he was. We live in a small town so we could figure it out quite easily. But in-between time, it felt like a

very powerless place to be and we decided that there was probably lots of other people who would not be able to piece together information. She did feel afraid, powerless, and vulnerable, and I was devastated I couldn't do more to protect her. I just wanted her to feel safe and we wanted adults to be able to just share information with her. And we're just grateful that this amendment is being brought forth to just address where many Nebraskans, and especially our youth, spend their time. I firmly believe that including electronic communication in the language of this bill would tremendously help and guide and empower our youth. You have any questions?

SENATOR EBKE: Thank you, Ms. Sullivan. Any questions? OK. Thank you for being here.

JAMY SULLIVAN: Thanks. Thanks.

SENATOR EBKE: How were the roads?

JAMY SULLIVAN: Oh, they were sloppy on the way here but fine once I got to the interstate.

SENATOR EBKE: OK. Any other proponents? I see nobody moving. Any opponents? Any neutral testimony?

SPIKE EICKHOLT: Good afternoon, Madam Chair, members of the committee. Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing in a neutral opacity. This bill is similar to the bill you heard before, LB773, and, similarly, we are not opposed to this bill. But we just want to be on record that part of the reason for us not opposing the bill is because the penalty provision for this statute remains the same under this version of the bill as well.

SENATOR EBKE: Thank you, Mr. Eickholt. Questions? I see none. Thank you. We have three letters of support, one from Robert Sanford of the Nebraska Coalition to End Sexual and Domestic Violence, one from Jeffrey Bliemeister of the Lincoln Police Department, one from Perry Freeman of the Superior Police Department. Senator Pansing Brooks waives closing. This closes the hearing on LB782. Thank you for being here today. Next up, LB1083, Senator Hansen. Senator Hansen.

SENATOR HANSEN: All right. Good afternoon, Chairwoman Ebke and fellow members of the Judiciary Committee. My name is Matt Hansen, M-a-t-t-H-a-n-s-e-n, and I represent Legislative District 26 in northeast

Lincoln. I'm here today to introduce LB1083. Under current law a person charged with a crime may file a motion for discovery. If the court sustains the motion, then the prosecutor is required to produce certain evidence or information to the defendant's attorney which would include names and addresses of witnesses. LB1083 adds that telephone numbers and e-mail addresses, if known, of witnesses would also be disclosed to the defense in addition to the names and addresses. Today, these forms of communications are often preferred by all parties over mail or home visits. Court often sustains motions for discovery and order that they are reciprocal, meaning the defendant is also required to disclose any witnesses, their names and addresses, to the prosecution. In those cases, both the defense and prosecution would have to access-- would have access to the telephone numbers and e-mail addresses of witnesses under the bill. Attorneys already have access to names and home addresses of witnesses. This bill is an attempt to simply update the process to use today's modes of communication that people find most convenient. In most cases, in many counties, prosecutors already provide additional contact information required in this bill. Of course, a witness can always be deposed in a felony case but that is expensive and usually unnecessary when a quick phone call or e-mail would be much easier for all involved. There are testifiers behind me who will be able to provide more information from the perspective of those involved in the process. And as always, I'm happy to work with all stakeholders to provide the best bill possible. With that, I close my testimony and happy to answer any questions.

SENATOR EBKE: Any questions for Senator Hansen? OK. First proponent. Go right ahead.

DENISE FROST: Good afternoon, committee members. My name is Denise Frost. I am an attorney in Omaha and I'm here to testify on behalf--

SENATOR EBKE: You-- can you-- can you just spell your name for us, please?

DENISE FROST: Oh, I'm sorry.

SENATOR EBKE: That's OK.

DENISE FROST: Denise, D-e-n-i-s-e, Frost, like Jack Frost. OK, I've got to--

SENATOR BAKER: Or Scott Frost.

SENATOR EBKE: Or Scott.

DENISE FROST: I'm taking the Fifth, taking the Fifth. This case or this-- I'm sorry, this-- this is, after sitting through the Bitcoin bills, this is so much easier, so much easier. I still don't get Bitcoin either. So this is really, I think, just a kind of a commonsense bill to bring the statute up to date. That's all. I've asked the pages to circulate to all of you a letter that I think just simply summarizes the criminal defense attorneys' position on this. I think it brings us up to date. It's an efficiency matter more than anything else. It's a fairness matter. It's evenhanded. That is, if the prosecution is required to provide that information to the defense, the defense is going to be-- are going to be required to provide the same to the prosecution. And so it-- reciprocal discovery orders are commonly entered. But again, this doesn't favor one side over the other. It just simply moves the case along more promptly. That's an issue whether you're in a jurisdiction like Lincoln or Omaha, where there's a judge available all the time, or if you're in a jurisdiction where you've only got a judge once or twice a month. There isn't really at all, in my view, any risk of increased likelihood of witness coercion or intimidation. Certainly with e-mail-- heck, e-mail creates a written record, so there is no question that there's going to be anything improper that's committed to a written form that could be produced later. Also, the statute in subsection (4) already has a protection. If there is a reasonable concern by the prosecution that there is a risk to the witness if his or her information is revealed, the court can enter alternative means to protect the witness's privacy. To the extent that this bill proposes providing phone numbers or e-mail communication information, that is in any event not information that is made public. In a criminal case, information is passed between the lawyers. It's not filed with the court. It doesn't become a matter of public record. So (a) there's no meaningful chance that it's going to become one unless counsel makes a point of it, and also you can simply ask the judge to enter a limiting order if that's felt to be necessary. So it's not Bitcoin. It's a lot easier. I would ask you on behalf of the Criminal Defense Attorneys Association to pass this bill forward out of committee.

SENATOR EBKE: Thank you, Ms. Frost. Any questions? I see none. Thanks for being here.

DENISE FROST: Thank you.

SENATOR EBKE: Next proponent. Do we have any other proponents? Do we have any opponents?

SANDRA ALLEN: Good afternoon. Madam Chairman and members of the Judiciary Committee, my name is Sandra Allen, S-a-n-d-r-a A-l-l-e-n. I am here on behalf of the Nebraska Attorney General's Office and the Attorney General Doug Peterson. I'm the criminal prosecution section chief. We are opposing this bill for essentially two reasons, one of them being we currently have a bill, LB1912-- or a statute, excuse me, 29-1912, that is effective in terms of discovery. As the bill-- as the statute stands now, once-- once discovery is requested, an order is entered and the state is required to provide names of witnesses and addresses. That information gives the defense counsel the ability to then reach out and try to contact those particular witnesses that the state may call at trial. I've been a prosecutor for 17 years, 8 years in the county attorney's field and in-- 9 years at the Attorney General's Office, and I've had multiple occasions where discovery has been exchanged. I've received calls from defense attorneys and they say, we're having difficulties finding this witness, we're having difficulties contacting this witness, can you help us? And multiple times I've assisted in contacting witnesses and arranging for an informal type of conversation with the defense attorney if they wanted. There's times witnesses don't want to talk to defense attorneys. I've had witnesses contact me and they say, I keep having this person call me and they keep leaving these messages, what do they want? And they're a defense attorney. And I tell them that this is who they are, this is what they want. I said, you don't have to talk with them, I can't tell you what to do, you want to talk with them, feel free to talk to them. But I do warn them that if you don't talk to them you're going to have your deposition taken. So it's your call. You do what you want to do. But myself and other colleagues that I've worked with are very helpful in trying to facilitate that communication. The biggest concern that the Attorney General's Office has with this is we do believe it's a higher risk of threat and intimidation, maybe not the e-mails because that is a written record, I agree, but it's a lot easier to pick up the phone and make some intimidating calls than it is to drive by a person's house because you know what their address is. So we believe there's

an increased concern for that. Most of these-- a lot of these witnesses are domestic violence victims, sexual assault victims. Many of them are gang-related cases where we have witnesses where they have serious concerns for their safety. And if those particular witnesses know that their names can be disseminated or their address-- excuse me, their phone numbers can be disseminated, they're going to become even less cooperative than they are to begin with. The biggest concern about this, and I understand there's some protections in place already to try to have the court, you know, not allow this because of concerns of safety, but there's not a protective order in this place. There's nothing to stop a defense attorney from revealing that phone number to his client, his client to his buddies, to his friends, whatever, to continue this harassment and this intimidation that may happen. And without that protective order in place, we have serious, grave concerns about this bill passing. We feel that the current bill-- or the current statute, as it is, is effective and we, for those reasons, oppose that bill. And I'm willing to answer any questions.

SENATOR EBKE: Thank you, Ms. Allen. Any questions? I see none.

SANDRA ALLEN: Thank you.

SENATOR EBKE: Thank you for being here. Any other opposition? Is there anybody testifying in a neutral capacity? Senator Hansen, please. We had no letters, I don't believe, for this bill, so--

SENATOR HANSEN: I'll be short because I believe this might be a rare day before 5:00. So one of the reasons I brought this bill was just kind of-- and maybe it's a-- maybe it's just-- with technological changes, a generational thing. But I find phone calls to be much easier to access, well, than, say, someone coming to my house. And so in my mind, you know, having access to phone calls and e-mails is the less intrusive thing, as opposed to, say, encouraging somebody to come by. I would much rather be contacted in that method. That being said, I do-- I do feel that there are already protections both in terms of that the court and the prosecutor cannot reveal the information if they do feel it is a risk with witness tampering, as well as, as we heard in the last two [INAUDIBLE] there are some pretty-- already pretty strict statutes on intimidating phone calls. That being said, I had approached kind of all parties beforehand and

always happy to work and see if there's some sort of compromise language we can work out.

SENATOR EBKE: Great. Any questions for Senator Hansen? OK, I think that's it. That closes the hearing on LB1083 and we're done. Thank you for being here today.