

Judiciary Committee February 15, 2018

EBKE: [00:00:00] Good afternoon. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete, represent Legislative District 32. I chair the Judiciary Committee. I'd like to start off by allowing my colleagues to introduce themselves and they will trickle in here shortly, I think, but we will start down here.

MORFELD: [00:00:18] My name is Adam Morfeld, District 46.

KRIST: [00:00:19] Bob Krist, District 10.

CHAMBERS: [00:00:19] Ernie Chambers, District 11.

EBKE: [00:00:19] And we will be joined, I'm sure, by Senator Pansing Brooks, Senator Hansen, and Senator Baker shortly. Senator Halloran is at a funeral out of town. Assisting the committee today are Laurie Vollertsen, our committee clerk, and Tim Hruza, one of our two legal counsels. The committee pages today are Rebecca and Sam. Rebecca goes to Doane University and Sam goes to the University of Nebraska at Lincoln. On the table at the front, over there, you will find some yellow testifier sheets. If you are planning on testifying today, please fill out one and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There is also a white sheet on the table if you don't wish to testify but would like to record your position on a bill for the record. Also for future reference, if you're not testifying in person on a bill and would like to submit a letter for the official record, all committees this year have a deadline of 5:00 p.m. the day before the hearing. We will begin testimony. Okay, let me see a show of hands, how many of you are planning on testifying on something this afternoon? Okay. We will begin bill testimony with the introducer's opening statement. Following the opening, we'll hear from proponents of the bill, then opponents, followed by those speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you're going to testify, I ask that we keep the on-deck chair filled. If you have any handouts-- which is the one of the chairs up in the front row. If you have any handouts please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can help you make 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 you to wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone to check your cell phones, make sure they're on silent or vibrate mode. And some senators may be using their computers or their cell phones to contact staff and so forth or to take notes. With that in mind, Senator Harr, would you like to begin?

HARR: [00:02:43] Thank you, Senator Ebke, members of Judiciary Committee. My name is Burke Harr, H-a-r-r. I represent Legislative District 8. And I will begin my testimony with an apology. The last time I testified here I misspoke, some would say lied. I said it was my last time and it wasn't. I have this one plus two more, so I apologize.

EBKE: [00:03:00] It was, it was wishful thinking, right?

HARR: [00:03:09] Yeah, on both sides, I think. I am here today on LB978, which is a follow-up to a garnishment bill I brought last year. And the idea was last year I brought it in assistance with the Uniform Law Commission and others and realized that there was a lot opposition on both sides as far as where we could go and what we need to do to streamline garnishment so that we can make it more reliable, more understandable, and more efficient for the courts. And so over the summer, with the assistance of Professor Willborn, who will be coming to testify here in a little bit, who I owe a great amount of thanks for his hard work on this bill, we sat down and talked to a number of

Judiciary Committee February 15, 2018

groups. We talked to the Bar Association, oh, and also my legislative counsel Jamison Wyatt did a great job too. But I spoke to the Bar Association, to the courts, to creditors, to debtor groups, to Legal Aid, to Appleseed, across the spectrum, and we tried to come up with some language that would address fairness and efficiency in Nebraska's wage garnishment system. This bill comes as close as any bill we've ever had. I was hoping we'd crossed the finish line. We're not quite there. But LB978 does do a lot of good things. It provides plain-language notice to employees at the beginning of the wage garnishment process. It statutorily authorize-- authorizes electronic payments between employers, the garnishee, the court, and the creditor. It adjusts the limits on garnishments and makes them and allows them to be automatic. And it expands the definition to a new class of workers who are functionally equivalent to an employee but are treated as independent contractors. That part I thought was really good because we see no real problem with that. Unfortunately, department-- it's my understanding that HHS, in their fiscal note, they didn't-- they contacted our office today, I believe, but so we just learned about it in the fiscal note yesterday, have an issue with going after the new class of employees. And it, it also expands protections for employees who currently have discharges because of garnishments. That can sometimes be confusing. When there's a garnishment, someone has to reply within a certain period of time. Doesn't always happen. And a lot of court time is currently wasted in garnishments. And what we've tried to do is to make it simpler, more understandable, and that HR can do it and to take the courts out of this as much as possible, while still allowing them to be there as a remedy when and if needed. With that, I would entertain any questions you may have.

EBKE: [00:06:06] Any questions for Senator Harr? I see none. Thanks.

HARR: [00:06:07] Thank you.

EBKE: [00:06:07] First proponent.

COREY STEEL: [00:06:20] Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l. I'm the State Court Administrator for the judicial branch and here to testify in support of LB978. In my written testimony, it talks about an inclusion of an amendment. I think there will be one coming, just talking with Jamison. I'd like to thank Senator Harr and his staff and, as he mentioned, particularly Jamison, who worked very hard on this with Professor Willborn from the University of Nebraska, and other various stakeholders on this bill which, if passed, would make significant changes to Nebraska garnishment laws Senator Harr talked about. I'm going to go off script a little bit with my written testimony, as it has a few of the same remarks that Senator Harr made. LB978 provides the option for electronic payment and that's really what I want to talk about today. This is important because it, because of any delayed costs to the debtor and additional interest, increasing the amount of, owed by many prolonged, prolong the garnishment process, which is burdensome and not only to the debtor but to the creditor, garnishee, and the court as well. As of December 2017, electronic payment option which will accommodate payment of garnishments was launched by the Administrative Office of the Courts. Nebraska courts have been accepting on-line payments since 2009, but this new process allows for thousands of transactions each month. However, this improved service allows users to create accounts that will make repeated payments much easier. Businesses paying on garnishments can save their case information and make monthly the electronic fund transfers to the court in just a few clicks, instead of having to enter all the information every time. Creating accounts also means users can get monthly reminders, via text message or e-mails, that a payment is due. Language in LB978 which recognizes the availability of electronic payments supports the court's efforts to respond, to be responsive in the way that people do business today. Again, LB978 takes a lot of steps to clarify the garnishment process. I'm not here on a lot of the policy decisions in LB978. What we are here to talk about is the process. And Senator Harr and his staff has been, has been very open to, once that payment does come in the court system, once there is that determination that

Judiciary Committee February 15, 2018

payment does come through the court system, how that operates and how that works. And so that's why we're here in support of that bill. While the legislation will require JUSTICE programming and court staff education, we support Senator Harr's effort in bringing this legislation and will continue to work with Senator Harr and others on any amendments forthcoming. Thank you for your consideration and I'm happy to answer any questions that you may have.

EBKE: [00:09:10] Questions for Mr. Steel? I see none. Thanks.

COREY STEEL: [00:09:13] Thank you.

EBKE: [00:09:14] Next proponent.

SARA VENEMA: [00:09:27] Good afternoon. My name is Sara Venema, it's S-a-r-a V-e-n-e-m-a, and I'm here today before you to support LB978, submitted by Senator Harr. As a payroll professional for an employer here in the Lincoln area, the topic of garnishments is something that I deal with on a day-to-day basis. I'm also a committee member with the Nebraska Chapter of the American Payroll Association, as well as the National-- [BEEPING]

TIM HRUZA: [00:09:59] Sorry about that.

EBKE: [00:09:59] Oh, that's okay.

SARA VENEMA: [00:09:59] -- as well as the National Chapter of the APA. Both our local and national chapters of the American Payroll Association also voice, voice support of LB978, LB978. The APA is a nonprofit professional association serving the interests of more than 20,000 payroll professionals here in the U.S. APA's government relations task force works with the federal and state level, seeking legislative and regulatory solutions to improve garnishment processes and procedures. We feel if LB978 is enacted by the state of Nebraska, it will make great inroads in improving the overall Nebraska wage garnishment system. This bill will be of benefit to both employers and employees within the state. The benefits of the bill are not limited to, but as Senator Harr stated, providing a plain-language notice to employees at the beginning of the wage garnishment process, this benefit greatly reduces the time I, as well as other payroll professionals, spend with employees, explaining the garnishment process when a wage garnishment is received. Simplified language within the interrogatory completed by payroll professionals for our employers will also save time and leave less room for error. Authorizing electronic payments between the employer, court, and creditor: This benefit offers efficiencies and cost savings to both the employer and to the state by way of automatic payments processes. The automatic payment process also greatly reduces the risk of lost payments sent through the mail and manual error when completing and submitting payments to the courts. This bill also offers other efficiencies and simplification related to adjusting the limits on garnishments and making them automatic; expanding the definition of an employee to address independent contractors; and finally, expanding the protections employees currently have against discharge because of garnishment. Thank you for letting me speak in support of LB978. And on behalf of the local and national chapters of the American Payroll Association, thank you, and for your time and consideration.

EBKE: [00:12:13] Thank you. Any questions? Don't see any. Thanks for being here.

SARA VENEMA: [00:12:13] Thank you.

EBKE: [00:12:13] Next proponent.

STEVE WILLBORN: [00:12:29] My name is Steve Willborn, W-i-l-l-b-o-r-n. I'm the Spencer

Judiciary Committee February 15, 2018

Professor of Law at Nebraska. I've distributed some longer comments, but given the time constraints I'm going to focus just on three aspects of LB978. LB978 is a big deal because garnishments in Nebraska are a big deal. In fiscal year 2017, there were over 55,000 wage garnishments in Nebraska. So small improvements can lead to large savings. One thing the act does is provide a much better notice to employees about garnishments. I've distributed the form that would be required by this act-- it might change a little bit but it would be pretty close to that-- and the current form. The Uniform Law Commission spent a lot of time and money on getting that form capable of being read by fifth and, people with a fifth and sixth grade education. They ran focus groups and readability studies and so on. It will inform employees much better. The bill also makes changes in the amounts that can be garnished. First, the bill increases the amount that's protected, before anything can be garnished, from 30 times to 40 times or maybe 35 times the federal minimum wage. If it's 35 times, the change almost precisely adjusts the amount for inflation since the federal minimum wage was last changed in 2009. With this change, workers will have the same buying power under that exemption now that they had in 2009. The second change to these protections is a movement from our current two-tiered percentage. Creditors can take 25 percent of the earnings of nonheads of families and 15 percent of the earnings of heads of families to a one-tiered system set at 20 percent. I've combed through census data and done an informal survey of county clerks, and this is kind of roughly what it would mean but take it with a grain of salt. It's back of the envelope. First, my estimate based on my survey of county clerks is that there are about 3,700 hearings each year on the issue of whether someone is the head of a family or not. They involve court time, employees have to miss work, lawyers have to show up. All those hearings would be eliminated under this act. Second, and more importantly, most people who are heads of families never get the advantage of a lower rate. Based on my survey, less than half of those entitled to the lower exemption actually get it. Employees have to claim the lower rate if they want it. Usually they don't because they don't know about it or they're worried. So more than heads, more than half of heads of families themselves would be better under this bill because they'd give up only 20 percent of their disposable earnings rather than 25. And, of course, all nonheads of families would be better off because of a lower rate. And another important point is that those people who are nonheads of families are a lot poorer than heads of families. So the current system seems a bit backward in preventing more to be taken from their salaries than for heads of families. My rough estimate is that on net workers in Nebraska will save about \$500,000 per year from the switch to one middle level compared to the current two levels. That is, the losses to those who actually claim the head of family rate are more than offset by the benefits to heads of families who don't claim the lower rate than to nonheads of families. Thank you.

EBKE: [00:15:53] Thank you. Got some questions? Okay. Thanks. Thanks for all the information. Next proponent.

BOB HALLSTROM: [00:15:53] Chairman Ebke, members of the Judiciary Committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m, here before you today as registered lobbyist for the National Federation of Independent Business to testify in support of LB978. I'll be relatively brief. Anything that streamlines the process and makes it more efficient and economical for employers is something that we support. Garnishments are work and extensive for small businesses, so that anything that makes it simpler is going to be good for us at the end of the day. I also think the form in the bill that goes to the employee is important for allowing them to know what their rights are because small employers do get questions from their employees when garnishments come about. They obviously aren't in the business of practicing law to give advice with regard to that. So I think that's a beneficial aspect of the bill as well. With that, I assume if the beeper goes off early with me in the seat it will not be by accident. But I'd be happy to address any questions that you may have.

EBKE: [00:17:14] Questions? Senator Chambers.

Judiciary Committee February 15, 2018

CHAMBERS: [00:17:17] Oscar Wilde said the best way to get rid of temptation is to yield, but I'm not going to yield today. I don't have any questions.

BOB HALLSTROM: [00:17:19] Thank you, Senator.

EBKE: [00:17:19] Any other questions?

BOB HALLSTROM: [00:17:19] Thank you.

EBKE: [00:17:19] Thanks for being here. Yeah. Next proponent. I see nobody else moving. Do we have any opponents?

JOSHUA DICKINSON: [00:17:51] Good afternoon, Senators. My name is Josh Dickinson, D-i-c-k-i-n-s-o-n. I'm an attorney with the law firm of Spencer Fane LLP and I'm here today to testify on behalf of the Nebraska Collectors Association. We are opposing the bill on one aspect. And we do appreciate the work that our organization has been able to do with Senator Harr and his office in trying to work through a compromise to find a way to get this bill passed. We do generally agree with many of the legislative goals of this bill. We support streamlining the process. We support clarification of the process, reduction on the burdens on the court and reduction of hearings. All those things are good for consumers, they're good for collectors. They're good for the court and they're good for employers. We certainly support the electronic payment option that's being added to this. We think that that's an excellent addition to the bill and we support that. There are a few minor issues with respect to the additional notices that the bill would, would require to be sent out. And we believe that those are largely just wording issues that we can ultimately work out with Senator Harr's office and with the proponents of the bill. There are two issues that are pretty fundamental changes with respect to the garnishment bill and that's what I'm going to focus the remainder of my time on. One is the, the, the rate of garnishment and the removal of the dual system to a head of, to a unified system of 20 percent garnishment. We support that. And even though that support may ultimately result in longer collection periods because we will not be able to garnish as much that we could have at the 25 percent level, we support the simplification of the bill and not having the dual system and moving to a unified 20 percent system. We think that that's going to ultimately be a good thing for the court systems and, and will make the bill much more clear. The one fundamental issue that the Nebraska Collector's Association has with this bill relates to the changing of the multiplier to determine who is exempt from garnishment and who is not. As several folks have testified, the current system requires 30 times the minimum wage and the proponents of the bill would like to increase that. The current bill is written at 40, 40 times. Or there's been some discussion of raising it 35. That, in all function, will make more people in the state of Nebraska judgment proof, and we just fundamentally disagree with that. And one important thing to note is, is that the vast majority of states have adopted and continue to adopt this 30-time multiplier. Certainly all the states in the Midwest and the states that surround us continue to adopt the 30-times standard. Some of the states in higher cost areas on the Coast have raised that. But if you look around, Dakotas, Iowa, Kansas, they all have adopted this 30-times standard and we don't see any reason that Nebraska should be, you know, so to speak, an island in the Midwest when all the other states with a similar cost of living have maintained this 30-times standard. And so for that reason, for that narrow reason, the Nebraska Collector's Association is opposing this particular bill at this time.

EBKE: [00:21:10] Thank you, Mr. Dickinson. Senator Chambers.

CHAMBERS: [00:21:13] This is a rhetorical question. Do you believe in democracy?

JOSHUA DICKINSON: [00:21:16] Of course I do, Senator Chambers.

Judiciary Committee February 15, 2018

CHAMBERS: [00:21:18] Three are for and one is against, so who should win in a democracy?

JOSHUA DICKINSON: [00:21:23] Well.

CHAMBERS: [00:21:24] That's all right. That was a facetious question.

JOSHUA DICKINSON: [00:21:25] I'm happy to answer it, but if it's facetious I'm fine.

CHAMBERS: [00:21:28] I'm going to ask you like people always say things to poor people: If you don't like it here go somewhere else. If these states allow a higher percentage than would be the case in Nebraska, the people who have businesses in Nebraska could just move to those other states, couldn't they, and have a higher rate available to them?

JOSHUA DICKINSON: [00:21:50] Certainly that, they're free to move their businesses if that one narrow issue was, was important enough to them that they felt that they needed to move for that reason. Sure.

CHAMBERS: [00:21:59] You know why I like dealing with you? You answer the question that is asked, and I appreciate that. And for that reason, I don't have any more questions to ask.

JOSHUA DICKINSON: [00:22:09] I appreciate you taking it light on me today, Senator. Thank you.

CHAMBERS: [00:22:12] Okay. [Laughter]

EBKE: [00:22:12] Okay. Thanks.

JOSHUA DICKINSON: [00:22:14] Thank you, Senator.

EBKE: [00:22:14] Other opponents?

JERRY BROZ: [00:22:29] Good afternoon, Senator Ebke and members of the committee. My name is Jerry Broz, J-e-r-r-y B-r-o-z, administrator of State Accounting Division of the Department of Administrative Services, and I'm here today in opposition to LB978 for a couple of practical purposes. There's a couple of operational issues we identified that may have a direct impact on the budgets and the expenses of the Department of Administrative Services. The first one is the bill proposes to, for requiring the employer to generate a report requested by the judgment debtor, which outlines the amount, the calculation and amounts taken from the employee's pay. The legislation does not specify the report contents and so State Accounting would be providing the calculations for disposable earnings, amount exempt from the garnishment, amount subject to garnishment and amount garnished. On average the Department of Administrative Services processes 2,115 garnishments each year. If the report is processed manually, which at this in point time would have to be, the judgment debtor, if each one of those judgment debtors requests a copy of the report, we estimate that it would take approximately an additional 1,586 hours annually to do that. Now State Accounting is in the process of validating the process within our new Oracle Fusion platform cloud-based system. Whereas these processes may be able to be automated, but we have not completed the validation process for the garnishment process and purposes. The process has to be reviewed yet. It's unknown what the, what the cost to automate this report would be, but we're estimating approximately 200 hours of development time at a cost of \$150, or a cost of \$30,000. It would be a one-time cost. The Department of Administrative Services also processes garnishments for the University of Nebraska. It is unclear if their garnishment process can be automated as they

Judiciary Committee February 15, 2018

utilize separate Enterprise Resource Planning system. Due to these uncertainties, State Accounting may require a three-quarter FTE additional person at an annual cost of \$50,483, and this position would be dedicated to working with the HCM solution to try to, try to create some automation into the process. These costs would be incurred within the fiscal year '18-19 time period. The second issue we identified operationally is the clarification of the language within, within the proposed legislation to expand the definition of employee to include nontraditional employee groups, such as independent contractors. Garnishment rules would have to be applied to those employees just as it would for traditional employees. Traditional employees earn a predictable amount of compensation paid on a recurring basis and systematically accounted for within our current EnterpriseOne payroll module. Application of rules and processes for nontraditional employees is more complicated as information may not be readily available. The independent contractor, who may be difficult to identify within our E-1 accounts payable system, may not earn a predictable amount nor paid on a recurring basis. The systematic accounting process found in the payroll module should be duplicated in the accounts payable module. These costs to do that are unknown at this time. Without clarification, it will be difficult to assess the charge. Thank you for your time and your consideration. Any questions at this time? Thank you.

EBKE: [00:26:24] Thank you, Mr. Broz. Senator Chambers.

JERRY BROZ: [00:26:24] Senator Chambers.

CHAMBERS: [00:26:24] So your opposition is to the bill as written because of the difficulties you outlined in your statement?

JERRY BROZ: [00:26:33] Yes, pure, purely operational issues. Otherwise, the bill as presented has, has merit to it. And it's just primarily, from the employer perspective, the application of certain of the elements within the bill and the time it costs to apply.

CHAMBERS: [00:26:51] Now, and pardon me if I don't use technical language, as to the amount of time, additional hours, that might be necessary, that could be handled with additional employees, wouldn't it, that number?

JERRY BROZ: [00:27:03] Yeah.

CHAMBERS: [00:27:04] But then the other one, it talks about different formats. Would that require a change in equipment or just how would that be addressed if it's to be dealt with?

JERRY BROZ: [00:27:12] Yeah, the application of a traditional garnishment system defined in a, like in a payroll module system does not exist in a traditional accounts payable system. And so the modification of the accounts payable system to accommodate the processes for handling garnishments, reporting garnishments, and stuff would have to be programmed into accounts. Otherwise, it would be a meticulous and manual process to be able to comply with the, that piece of the legislation.

CHAMBERS: [00:27:47] And if it were a manual process, had you even an estimate of what the cost might be or how many employees it might take to do it in a reasonable period of time?

JERRY BROZ: [00:27:57] The, we have not calculated that cost. We can do that and provide that to you for, at a later time next week.

CHAMBERS: [00:28:05] Oh. That's all I have.

Judiciary Committee February 15, 2018

JERRY BROZ: [00:28:05] Yeah.

CHAMBERS: [00:28:05] Thank you.

JERRY BROZ: [00:28:05] Yeah.

EBKE: [00:28:05] Any other questions? Thanks for being here.

JERRY BROZ: [00:28:10] Thank you.

EBKE: [00:28:13] Are there any other opponents? Anybody testifying in a neutral capacity? Senator Harr, would you like to close? Do we have any letters?

LAURIE VOLLERTSEN: [00:28:24] No.

EBKE: [00:28:24] No letters on this, so.

HARR: [00:28:27] Just quickly. So I want to thank everyone for coming in to testify. And if I can explain just a little bit, with the creditors, the issue, it's on page 11, starting on line 9, and it's the amount by which his or her disposable earnings for that week exceed. It's currently 30 times the federal minimum wage prescribed. We change that to 40 times and we agree. We offered 35 because we're going off the federal minimum wage. And as everyone knows, the minimum wage in Nebraska is higher. And so, yeah, it makes that judgment-proof number lower, but it's probably not fair. So I'll continue to work with them and try and see if we can work out some sort of compromise. I was hoping to make it through one bill without having to talk about fiscal notes, but DAS decided to come in. And so it amazes me. I don't know if you guys have looked at the fiscal note, how closely you've looked at it, but if you look on page, what is it, well, it's on depart, DAS's fiscal note. They say they have to hire an accountant at \$21,943. That may seem reasonable. But then look at its benefits, \$22,000. That guy would have you believe they're, they pay more in bennies than they do in salary? I want that job. I just can't believe that that's true. I think the fact that they don't want to do this and hoping that by putting a fiscal note on it we could kill it by fiscal note. But to Mr. Nichols' credit, he said, hey, this can be incorporated into the budget; it won't have an effect. So therefore, since they couldn't kill it by just writing a fiscal note, someone had to come and testify in person against the bill, which, again, death by fiscal note, folks. They don't want to do work. It's not that they think it's bad policy; it's they don't want to do the work. Well, that's what they're hired to do, the work. So I, I, I don't know. I guess I've-- there's a good thing there's term limits. With that, I'd entertain any questions you may have.

EBKE: [00:30:57] Senator Chambers.

CHAMBERS: [00:30:58] Senator Harr, you said you'd go from the 30 to the 35 percent?

HARR: [00:31:03] Well, yes. It's currently at 30 of federal and I wanted to move it up to 35.

CHAMBERS: [00:31:07] Now, 35 percent, whose money is going to now be at risk moving it from 30 to 35 percent? Who would be hurt by it, if I could use the term "hurt," meaning more of his or her money would be available for garnishment?

HARR: [00:31:27] Well, you would be able to take more of the garnishment wages.

CHAMBERS: [00:31:30] And who is going to be garnished?

Judiciary Committee February 15, 2018

HARR: [00:31:33] The employee or--

CHAMBERS: [00:31:35] The debtor.

HARR: [00:31:36] There we go. Yes. Thank you.

CHAMBERS: [00:31:37] And there's nobody here speaking for the debtors today, is there? I haven't heard that person yet.

HARR: [00:31:43] Well, yes and no. So that's why we went-- yes, that is correct. And that's why we went to that 35, to help people to get a little further, to allow a little more. And that was, that 35, was brought after conversations with Appleseed and with Legal Aid.

CHAMBERS: [00:32:00] With whom?

HARR: [00:32:00] With Legal Aid and Appleseed. And that, they wanted it at 40, but because of the other simplicities of going from 25 for head of household down to 20, the amount being way, garnished, they were willing to go to 35.

CHAMBERS: [00:32:14] Is somebody from Legal Aid in the house? I know not--

HARR: [00:32:17] Yeah.

CHAMBERS: [00:32:17] --and nor Appleseed.

HARR: [00:32:17] No Appleseed here.

CHAMBERS: [00:32:20] So I have to take your word for it.

HARR: [00:32:22] And I'd be more than willing to get you in contact with them.

CHAMBERS: [00:32:23] Well, just answer the question.

HARR: [00:32:23] Yeah.

CHAMBERS: [00:32:23] I have to take your word for it.

HARR: [00:32:26] Yes.

CHAMBERS: [00:32:29] Yes or no?

HARR: [00:32:30] Yes.

CHAMBERS: [00:32:30] With me you've been honorable so I'll take your word. I don't need them to be here [INAUDIBLE] information. I want you to know that on the record.

HARR: [00:32:35] Thank you. Other than when I lied earlier at my last session about my last session.

CHAMBERS: [00:32:40] And I don't have any more questions because we want to get out of here at a reasonable hour.

Judiciary Committee February 15, 2018

HARR: [00:32:40] Okay.

CHAMBERS: [00:32:40] You're the only one I'd say that to. But other people are very intelligent and catch on quickly. Thank you,--

HARR: [00:32:40] Thank you.

CHAMBERS: [00:32:40] -- Senator Harr.

EBKE: [00:32:45] Thank you. Senator Pansing Brooks.

PANSING BROOKS: [00:32:50] Thank you, Senator Harr. I'm just interested in how it got to the point of putting the whole notice of garnishment into the state statutes. It's, I mean we go back and forth all the time in this committee. Some people don't want the procedural--

HARR: [00:33:06] Yeah.

PANSING BROOKS: [00:33:07] --matters put into the record. We had something on eyewitness identification. You should have heard the Crime Commission talking about how, oh, my gosh, we can't put that, something might change on eyewitness identification. And so I mean I can hear the same kind of argument. What,--

HARR: [00:33:21] So why care?

PANSING BROOKS: [00:33:22] --were there people saying it was necessary? What happened on that?

HARR: [00:33:28] Well, I haven't served on the committee in six years. I'm glad some things never change.

PANSING BROOKS: [00:33:34] Yeah.

HARR: [00:33:34] And the reason we think it's important to have it here is because the majority of the people who, the debt owner, can't afford an attorney obviously because they're in debt. And so we want to have that notice provision in there so that it, it's written in as simple and clear a language as possible what their rights are and are not and what, if they do have questions, who to contact so that if they feel it's unjust. But we wanted to lay out in law a notice so they know what they can and can't do and what the procedures are, again, to save them money and to save Legal Aid, at the end of the day, money if they, people can have their questions answered without having to call Legal Aid or Appleseed.

PANSING BROOKS: [00:34:17] I get it. Thank you.

EBKE: [00:34:23] Other questions? Okay.

HARR: [00:34:23] Thank you.

EBKE: [00:34:23] This will end the hearing on LB978. Thank you, Senator Harr. LB992, Senator Bolz. Welcome back to the Judiciary Committee.

BOLZ: [00:34:48] Thank you. Good afternoon to the hardest working committee in the body. I am in fact Senator Kate Bolz, that's K-a-t-e B-o-l-z for the record, and I bring LB992 for you for

consideration. LB992 provides for the following. It adds to landlord-tenant law to include additional types of abuse or victimization, including stalking, human trafficking, and abuse of a vulnerable adult. It allows the perpetrator of an act of violence to be evicted. It offers a process for survivors and landlords to protect their lease agreements. It offers an option for a victim of violence to work with the landlord to terminate a lease in a way that tries to maintain a landlord's interest to the greatest extent possible. I was brought this bill by a constituent who contacted me late last year and explained her personal circumstances of working to try to escape an abusive situation while maintaining her ability to pay her bills. So I bring that bill, this bill to you with the intention of working to represent the interests of people who have not only been victims of crimes but who are being economically abused and manipulated. What we know about intimate partner abuse is that this type of violence affects one in four women in her lifetime. And we also know that the other types of victims of crime are real and are present in the state. Traffickers use force, fraud, or coercion to lure their victims and force them into labor and exploitation. When it comes to elder abuse, financial exploitation is self-reported at higher rates than emotional, physical and sexual abuse, or neglect. So among other things, economic abuse can involve the abuser preventing a victim from accessing existing cash, bank accounts, or credit cards, forcing the victim to give the abuser money and demanding that the lease, mortgage, or assets be in the abuser's name. So these situations are often dangerous and serious and a majority of homicides actually occur when a survivor is trying to leave a perpetrator. And so we know that the opportunities needed for a victim of crime to leave a circumstance is a sensitive and challenging situation. So LB992 allows victims and survivors to seek third-party support and documentation as a component of his or her plan to escape the hold of an abuser, even when police intervention may not be practical or safe. These same conditions and concerns apply to anyone who falls prey to acts of violence, including those experiencing sexual assault, domestic violence, stalking, labor or sex trafficking, and exploitation of a vulnerable adult. So LB992 allows a landlord to terminate a lease agreement with a tenant who is a perpetrator of abuse based on evidence provided by the victim. Even when they are evicted, the perpetrator is held responsible for all amounts due under the lease. Under the provisions of LB992, victims and their dependent household members may be allowed to negotiate new lease agreements with the landlord. If a victim is unable to maintain the lease without the perpetrator's contribution, the victim or survivor or tenant may be released from the lease if one of the following conditions are met: an order of no contact, protection or restraining order, or other such legal relief; or a third-party confirmation statement, as prescribed in the statute, is completed and presented to the landlord. It's not the intent of LB992 to place undue burden on landlords. Under the provision of the statute, the interest of the landlords are maintained in the following ways. The landlord may hold the perpetrator responsible for applicable damages and fees. The landlord may require a remaining tenant to enter into a new agreement. A survivor that requests a release under the terms identified in this bill would be required to do so within 30 days and no later than 45 days. And a victim of abuse that requests a release under the terms identified of the bill would be required to pay the rent for the time he or she remains in the residence. Nothing in LB992 prohibits a landlord from evicting a tenant for nonpayment of rent, lease violation, or other violation of the Uniform Residential Landlord, Tenant Act. I brought you a couple of amendments. We have been working to try to bring a balanced bill to this committee, one that both represents the interests of victims of crime, like my constituent, and takes into consideration the interests and needs of landlords. And so the first one narrows the number, the type of people who could provide a statement on behalf of the victim to fewer people, and the other one changes the time frames in which a landlord and tenant could negotiate their agreement. In the interest of your committee's time, I will say on the record and to start the hearing and to prefer, preference everybody's conversation, I am more than willing to work with the landlord interests to negotiate technicalities and make sure that this bill, should it move forward, is fair. And so I hope that maybe helps the committee process move forward through my, my commitment to doing that if issues are brought to this committee. So I don't mean to be long-winded. I'm trying to wrap it up. If you have any questions for me, I'd be happy to answer them.

Judiciary Committee February 15, 2018

EBKE: [00:40:27] Thank you, Senator Bolz. Any questions? I see none right now.

BOLZ: [00:40:28] Thank you.

EBKE: [00:40:29] First proponent.

ROBERT SANFORD: [00:40:42] Good afternoon, Senator Ebke and committee members. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d, and I am the legal director for the Nebraska Coalition Against Sexual and Domestic Violence. The Nebraska coalition is a membership-based, nonprofit organization, and through our membership we seek to enhance safety and justice by changing the beliefs that perpetuate domestic violence and sexual assault. I am here today to express the coalition's support for LB992. Housing needs and domestic violence are closely linked. According to information provided by the National Alliance to End Homelessness, on a single night in January 2017, 16 percent of the overall homeless population reported that they had experienced domestic violence at some point. Each year the National Network to End Domestic Violence conducts a 24-hour survey of programs providing services to victims of domestic violence. The most recent published results are from a survey taken on September 14, 2016. All of Nebraska's domestic violence programs participated in the survey, and NNEDV found that of the 106 requests for services that went unmet in Nebraska, 78 percent were related to housing issues. Even today we read custody decisions that are made by Nebraska judges which reference domestic violence and homelessness. Congress recognized this link in 2005 when it reauthorized the Violence Against Women Act. At that time Congress took steps to protect victims faced with potential evictions because of domestic violence. Congress went further and stated that an individual enrolled in a federal housing assistance program could not be denied housing because of past domestic violence. Unfortunately, these protections only exist for those individuals enrolled in a public housing assistance program. There are only limited protections available for private landlord-tenant agreements governed by state law. In 2016 this body passed LB221, allowing a landlord to evict a tenant for a number of reasons. One reason included was the existence of violent criminal activity. A small exception was carved out for victims of domestic violence if the victim seeks some form of protective order or reports the crime to law enforcement. Unfortunately, that legislation failed to address the fact that many victims are unable to report to law enforcement or seek a protection order because those very acts may in fact make them less safe. LB992 seeks to enhance victim safety. It creates a definition for a qualified third party who can work with the victim to report the domestic violence to the landlord. It then allows the landlord and the victim to determine the most appropriate response, a response that should have safety at its core. Housing needs are a key consideration for victims working on safe, on a safety plan. LB992 provides a small enhancement to our current law that provides significant options for victims making decisions that few of us have ever had to make. The coalition appreciates Senator Bolz's efforts to protect victims. We support LB992 and ask that you vote to send this bill to the full body for consideration and passage. Thank you.

EBKE: [00:43:58] Mr. Sanford. Questions? Senator Chambers.

CHAMBERS: [00:43:59] I'm trying to figure how this would work. If the perpetrator is evicted, is the tenant who remains responsible for paying the rent at that location?

ROBERT SANFORD: [00:44:18] I believe, my understanding of the bill, Senator Chambers, is that this allows the landlord and the victim tenant the opportunity to find the best option for the victim tenant, which may be to stay. It allows the landlord and that victim tenant to renegotiate the lease or it--

CHAMBERS: [00:44:42] [INAUDIBLE] too far, that's not required in this bill, is there, is it, the

Judiciary Committee February 15, 2018

renegotiation? Anytime people agree on something they can, but the landlord doesn't have to allow that under the terms of the bill. Is that what the bill says currently?

ROBERT SANFORD: [00:45:02] It would take me a minute to find that answer.

CHAMBERS: [00:45:11] Go ahead.

ROBERT SANFORD: [00:45:11] What the bill says, on page 7 in line 10, is that the landlord may require any remaining tenant or occupant to execute a new rental agreement for the remainder of the term.

CHAMBERS: [00:45:24] So the one who remains is going to have to continue to pay the amount that would be due and owing? I was trying to read at the same time you were telling me, so tell me again what you said.

ROBERT SANFORD: [00:45:35] That would be my understanding is that the landlord could require the remaining tenant to renegotiate the lease.

CHAMBERS: [00:45:43] And if the tenant didn't want to do that then the tenant could be evicted.

ROBERT SANFORD: [00:45:46] Correct. That's my understanding.

CHAMBERS: [00:45:49] So what is the real benefit in this law?

ROBERT SANFORD: [00:45:51] The benefit to victims is that it gives them options. If the tenant is able to stay within, stay and maintain the lease agreement, that's one option for the tenant, for the victim tenant. Or if the victim is seeking to leave, as in the example that Senator Bolz gave of her constituent, it gives that victim tenant an option to terminate their portion of the lease and leave.

CHAMBERS: [00:46:23] The one who remains could do, are you, when you say terminate, because I was reading some of the material as Senator Bolz was speaking and I might have missed that. Now we have two people, to keep it simple. A is the perpetrator; B is the victim. A can be evicted and B would be allowed to remain. The victim would be allowed to remain.

ROBERT SANFORD: [00:46:55] Correct.

CHAMBERS: [00:46:58] Suppose A comes back. Would it be up to the victim to call the police or is the landlord going to do something to make that, make sure that person doesn't come back?

ROBERT SANFORD: [00:47:10] I don't believe that the, that the bill actually addresses who is responsible for that. It does provide, I believe, that if the victim does allow the perpetrator back on the premises that that can be considered a violation of the remainder of the lease I believe.

CHAMBERS: [00:47:29] And then both could be evicted.

ROBERT SANFORD: [00:47:33] Correct. I believe that's correct.

CHAMBERS: [00:47:33] If the basis for the eviction of the perpetrator is what the perpetrator did, but the one who was the victim overlooks it, why should the landlord be able to evict if in the victimization there's no destruction of property? I'm not seeing where this really does anything.

ROBERT SANFORD: [00:48:02] From my perspective, working with victims, I think that the

Judiciary Committee February 15, 2018

piece that is significant to us is the simple fact that it allows the lease to be bifurcated and allows the victim the opportunity to leave without a responsibility for the remainder of the lease, which is significant to many victims who feel locked in to their lease and can't get out of that unsafe environment.--

CHAMBERS: [00:48:30] So then--

ROBERT SANFORD: [00:48:30] -- increasing the lethality potentially.

CHAMBERS: [00:48:33] -- a basis for breaking the lease would be to have been victimized by a co-tenant, the victim does not want to stay there under any circumstances. So that victim could leave without penalty of any kind, meaning no report is going to be made that this person didn't pay rent or any of those kinds of things. Is that basically the benefit that would accrue to the victim under this bill?

ROBERT SANFORD: [00:49:04] My understanding is that, yes, it would allow the victim to leave as if the lease had ended.--

CHAMBERS: [00:49:14] Okay.

ROBERT SANFORD: [00:49:14] -- with notice to, you know, proper notice to the landlord that they were terminating the lease, their portion of the lease.

CHAMBERS: [00:49:23] And that's considered a-- I won't draw it out but there are people who remain in an abusive relationship because, for economic or other reasons, they don't feel free to leave. So it's one of those situations and the perpetrator is not going to leave and the victim doesn't ask the landlord to evict the person then, as the landlord has no role to play, and those two can remain in the apartment without the landlord doing anything in terms of evicting either one of them or both?

ROBERT SANFORD: [00:50:03] I believe that it does allow the land, that it does allow the landlord to evict the abusive--

CHAMBERS: [00:50:10] Even if the victim doesn't make a complaint to the landlord?

ROBERT SANFORD: [00:50:13] If a neighbor were to report it, if it was an apartment complex and a, and a neighbor reported it to the landlord, I don't know that that necessarily would prevent the landlord from, that this bill would prevent the landlord from doing that. I think--

CHAMBERS: [00:50:30] But that [INAUDIBLE] I won't drag it out any further. I just have questions. Thank you.

PANSING BROOKS: [00:50:45] Okay, any other pro, sorry. Any other proponents? Thank you for coming. Any further proponents? Okay. Opponents. Any opponents? [INAUDIBLE] Welcome.

GENE ECKEL: [00:51:08] Good afternoon, Senator Pansing Brooks, members of the Judiciary Committee. My name is Gene Eckel, that's G-e-n-e E-c-k-e-l. I'm testifying on behalf of the Nebraska Association of Commercial Property Owners, the Association, Apartment Association of Nebraska, and I've also been asked to provide written documentation or written testimony for the Metropolitan Omaha Property Owners Association in opposition of LB992. First I want to start out, we support the concept of allowing a victim of domestic violence to terminate a lease. And we greatly appreciate Senator Bolz and her staff working with us on making some amendments to the

Judiciary Committee February 15, 2018

bill. But even in its amended form, we still have opposition to the bill. The way we read it, the bill does leave it open for tenants to take advantage of the ability to terminate a lease and some of it's based on the qualified third party that they've defined. We believe that if a physician or psychologist or someone who is working for an advocate group, their basing the information only on the testimony of the victim and nothing else. Some of our concerns, as you know, if it's a doctor that's providing information, is it a doctor from another state or psychologist from another state or someone who's local? Also our concern is it doesn't indicate whether a tenant can provide a landlord with a temporary protection order or a permanent domestic violence protection order. And if we can get that defined, that would assist us in making that decision for where a landlord can say, yes, this is a permanent one and not temporary. Temporary usually will last for 10 to 14 days until a judge can provide a hearing to determine whether or not a protection order should stay in place. Some of our other concerns is how many times can a tenant seek to terminate a lease. If they're going to use a protection order, can they terminate the lease, go to another rental property and, for whatever reason, maybe they don't want to live there, maybe they find somewhere else that's cheaper, can they use that protection order to then terminate the lease again, even if there's no imminent threat? And then the last thing we wanted to see is what is the process if the, if the perpetrator is actually the landlord? Should we speed up that process and allow the victim to terminate the lease earlier? So those are really the reasons that we certainly oppose it. Again, we support allowing a tenant to terminate if they're a victim, but we would ask that this committee oppose LB992 or at least advancing it to General File so we can at least have the opportunity to work with Senator Bolz and her staff to find some agreement on some of our concerns and maybe even next session we introduce it where all the parties involved are comfortable with the language. So I appreciate your time and consideration. And I'm happy to answer any questions you may have.

PANSING BROOKS: [00:54:15] Thank you, Mr. Eckel. Any proponents, or any questions? No questions. Thank you so much.

GENE ECKEL: [00:54:27] Thank you very much.

PANSING BROOKS: [00:54:27] Okay. Further opponents? Opponents? Anybody in the neutral? No. Senator Bolz. And there are some letters. Let's see, in support: Amy Miller from the ACLU of Nebraska, Jennifer Bullington, Karen Bell-Dancy from the YWCA, and Michelle Zip [PHONETIC] Zych from Women's Fund of Omaha.

BOLZ: [00:54:57] I'll be very brief. The two intentions of the legislation are to give a tenant, who is the victim of a crime, the opportunity to work with the landlord and develop an agreement for leaving, which, which may include that tenant leaving within a certain time frame or may include a new lease agreement for them to continue on. It also provides a process for how a landlord could evict a perpetrator of violence. And so just wanted to try to simplify and clarify the intention of the bill. Very briefly, I just wanted to provide a closing comment in response to some of the concerns, and that is I don't think that, that we want to create legislation around the idea of false allegations. I don't think that there are false allegations that, that would drive the usage of a piece of legislation like this. By taking a circumstance of abuse to a court and getting a temporary order that is approved by the court system, I think that that is an appropriate strategy for trying to justify or clarify that abuse and victimization has occurred, especially in the circumstances of a circumstance of adult abuse or stalking or human trafficking. I don't know that the, the law should be driven by the fear of false allegations. So that's, that's where I'm coming from. And I'd be happy to answer any final questions.

PANSING BROOKS: [00:56:37] Does anybody have a question?

BOLZ: [00:56:37] Thank you.

Judiciary Committee February 15, 2018

PANSING BROOKS: [00:56:37] Thank you, Senator Bolz. That closes the hearing on LB992. And next we want to open the hearing on LB1131. Senator Riepe, welcome.

RIEPE: [00:56:37] Thank you. Thank you, Chairwoman Pansing Brooks, members of the Judiciary Committee. I am Merv Riepe, spelled M-e-r-v R-i-e-p-e, and I am the state senator representing District 12, which is Omaha, Millard, and Ralston. Today I present to you LB1131. This concern was brought to me by a constituent. She is not alone in this concern and I have talked to other senators who have had constituents who have had similar concerns. I would declare that this is a do the right thing kind of bill and I will proceed on from there. When parents of a minor child divorce, the noncustodial parent may be ordered to provide child support until the child turns 19. Yet, children with mental or physical disabilities often require support past the age of majority. Current Nebraska law can leave custodial parents struggling to ensure their child's well-being. In the case Meyers versus Meyers, the Nebraska Supreme Court held a court may only order a parent to pay child support on behalf of a child until that child reaches the age of majority. The court relied upon statutory language providing courts may order child support in relation to, quote unquote, any minor children and their maintenance, end of quote. They define a minor child as all persons under 19 years of age. Nebraska courts continue to apply the holding in Meyers. Absence an agreement of the parties, there is currently no obligation for a parent to support a child past the age of 19. For some parents, a child with developmental disabilities, the Meyers decision has had the unfortunate consequence of allowing the support of a child with developmental disabilities to be shouldered by one parent if the other parent chooses not to support this child after the age of majority. Additionally, the decision has created the potential for a two-year gap of services for a child with developmental disabilities. A child with developmental disabilities will not graduate from high school until 21 and would not necessarily qualify for day services under the Medicaid day waiver until turning 21. This creates a gap between the age of majority and the age day waiver eligibility begins. In a divorce situation, the support could shift from two parents to one parent, if one of the parents does not agree to continue to provide support for the child with developmental disabilities, creating a gap for supportive services. According to the National Conference of State Legislators [SIC], 39 states plus the District of Columbia have already adopted legislation providing that courts may enforce parental support obligations past the age of majority for adult disabled children. LB1131 defines, quote unquote, minor children with regard to proceedings for dissolution of marriage. Minor children would first refer to a child who has not reached the age of majority. It would also refer to a child regardless of age who is a dependent of one of the parties because of a mental or physical incapacity which began or was diagnosed before the child reached the age of majority. This definition will enable Nebraska courts to order child support past the age of majority if the child has a mental or physical disability. Thank you, colleagues.

PANSING BROOKS: [01:01:08] Okay. Any questions for Senator Riepe? Okay. Thank you, Senator Riepe.

RIEPE: [01:01:17] Thank you very much.

PANSING BROOKS: [01:01:17] First proponents. And could you please say how many are here for this bill? Raise your hands if you're here for this bill. Three others. Thank you. Go ahead.

EDISON McDONALD: [01:01:41] Hello. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d, and I am the executive director for The Arc of Nebraska. We're a nonprofit with 1,500 members covering the state, and we are advocates for ensuring the most integrated lives for people with disabilities as possible. We support LB1131 because it protects children with disabilities and parents who are trying to support them. A divorce is a difficult process. It is made even more difficult by the additional burden of having a child with a disability. If this child is above the age of

majority, they may still require care. However, in many cases one parent becomes unwilling to continue to support a child past the legal requirements. In this sort of unfortunate situation we wish to ensure that the child has protection and that the parent seeking to support them is not left with an undue burden. According to a 2012 study, "Relationship Status Among Parents of Children with Autism Spectrum Disorders," published in The Journal of Autism and Developmental Disorders, risk of divorce is significantly increased in parents of a child with a disability. According to another 2012 study from the national organization, oh, I didn't put it in there. It's Autism Speaks. The cost of raising a child with intellectual disabilities can exceed \$2.3 million. This leaves an enormous potential for burden. In my few short months on the job in this position, I have already dealt with several parents who were left in similar situations. I speak regularly of this enormous cost of care for many of these individuals. This is even more the case in these sorts of circumstances. These cases are tearing, they're jarring, and they're frustrating. To add this extra burden to an individual parent already in distress can be overwhelming. We need to offer them what aid we can in securing the support. We do request a modification in language. In line (8)(b) the text should read, a child of the parties to the dissolution of marriage action regardless of age who is a dependent of one or more of the parties because of a mental or physical, and it says "incapacity." We'd like it to be modified to say "disability that substantially limits one or more major life activities which began or was diagnosed before they reached the age of majority." That language shift would help to ensure that it's more congruent with state statute. In particular, a requirement laid out that ensures that we have more fair and open language. It's inclusive and supportive. In closing, I want to thank Senator Riepe and his office for bringing this bill. I urge you to amend and support LB1131 as it will ensure that parents are better able to care for their children with disabilities. Thank you. Questions?

PANSING BROOKS: [01:04:36] Thank you, Mr. McDonald. Does anyone have any questions for Mr. McDonald? Thank you. Next proponent.

JANE KUHLARS: [01:04:44] Hi. I am Janie Kuhlars, K-u-h-l-a-r-s, and I would encourage you to vote for the LB1131. My ex-husband and my daughter Stefi turns, Stephanie, turns 19 in May. She was diagnosed at birth with a moderate case of Down syndrome and a low immune system. She also has behavioral and sensitivity issues, which means a daily struggle to brush her teeth, shower her hair, brush her hair, trim fingernails, and she still continues to wet the bed regularly. I try to get her up in the middle of the night to avoid it. Sometimes we do it; sometimes we don't. Her dad and I have been divorced nearly 7 years, after I was sole caregiver to her and our son for 12 years while their dad lived at the bars, played golf, and everything else several times a week, although it was not my choice for divorce after 24 years when he traded me in for a different model. But I do appreciate the assistance that the court finally made him do which I could never do, as the nagging wife, to get him to help with the care of our kids and especially our daughter. I've had times where I've had to leave a seven-year-old son at a game while I ran my daughter to a school thing and back and forth. So I do appreciate that he now has to help with that care because otherwise I would be a basket case by now. My ex-husband's \$805 a month child support ends in May, when Stefi turns 19. This amount is already going to be \$864 a year more than what she was getting in SSI. Therefore, she's taking a loss of that amount of money when she goes on Social Security. And the \$4,200 I receive a year in alimony ends in April, and Stefi's after-school and summer day care costs us \$9,498 a year. He currently pays two-thirds and I pay a third of it based on the divorce decree. So I will be picking up his additional \$6,332 of day care expense. Her day care for the coming year, school year, is also going to increase \$2,050 due to the Millard School's Young Adult Program that lets out an hour and a fourth hours earlier every day, so that increases that cost for me. Her dad also, through all these years, was supposed to be paying two-thirds of her health premiums and healthcare costs after it became unaffordable for me when my first employer at the time of the divorce terminated me at will to end up hiring part-timers instead of full-timers. But the state child support office could not enforce that portion of the divorce decree because there was no specific dollar amount listed, even though the court decree was signed two years prior to my [INAUDIBLE] let, being let go from my

Judiciary Committee February 15, 2018

job. And also, so for a while Medicaid allowed me to put the two kids on Medicaid because ever since I lost that job I have been working for a small employer who does not offer health insurance, so I use Obamacare. The first few years, until a Supreme, a federal Supreme Court decision, the King versus Burwell decision, I was not even able to put my kids on Obamacare because my income did not qualify us, did not qualify. It allowed me to put myself on, but it was not enough money to put kids on.

PANSING BROOKS: [01:10:03] Ms. Kuhlars, the light is on and so we're going to need you to wrap up, if you could rather quickly.

JANE KUHLARS: [01:10:05] Okay.

PANSING BROOKS: [01:10:10] Thank you.

JANE KUHLARS: [01:10:11] And at one point I spent \$605 to try and get an attorney to get my husband to help and that did not work. He refused anyhow. So anyhow, I'm left with \$13,446 per year, but I have no idea where that money is coming from. So I would hope you would use this as a stopgap to force these parents to help with their child rather than letting them off in the sunset riding their Cadillacs, which he's bought two; his Corvette, he's bought one; and motorcycle, he's bought one, all in the last seven years but based on his \$56,000 annual income.

PANSING BROOKS: [01:10:58] Okay.

JANE KUHLARS: [01:10:58] So thank you for what you can do to help me keep my daughter.

PANSING BROOKS: [01:11:02] Wait. If you could wait just one minute, there may be some questions, please. Do you have any questions? Okay, I have a question. So I'm looking at some more of your testimony. You quoted the Meyer and Zetterman cases. And so, and basically those two cases hold that a parent can't, is not responsible for a child with a disability until once they turn 19 unless it was included in the initial divorce settlement. So was that information not included that not, that not included in your initial divorce settlement?

JANE KUHLARS: [01:11:38] Actually, somewhere else in there, here on the second page, it starts at the bottom paragraph. At the time of our divorce, my ex-husband asked the judge if we could settle what we would do regarding her when she turned 19. The judge told us that issue would have to wait until she became an adult and the guardianship process would determine that. So then I started finding out about the Meyer and Zetterman when my ex-husband told me recently he wasn't going to help anymore. So we had an opportunity, but the judge didn't evidently know. My attorney didn't know. I hadn't even stopped to give that a thought, to research that. I thought my attorney would know. Whether his attorney knew that I don't know.

PANSING BROOKS: [01:12:30] Okay. Well, I appreciate that information and we really appreciate your coming forward. I know it's really difficult. Thank you. Any other questions? Okay. Okay, Next. Thank you very much.

JANE KUHLARS: [01:12:34] Thank you.

PANSING BROOKS: [01:12:34] Next proponent. Okay, opponents? Any opponents? If you all could be ready to come up because we do have quite a few bills today. Thank you. And I'll hand it back to Senator Chair Ebke.

EBKE: [01:13:01] Oh, okay. Go for it.

SAM COOPER: [01:13:01] Thank you. Judiciary Committee and Chairwoman Pansing Brooks, my name is Sam Cooper, S-a-m C-o-o-p-e-r. I'm here on behalf of NLTA. It's the Nebraska Land Title Association. We're an association, about 500 members situated across the state and most the counties. I currently work with TitleCore National, which is a title insurance company out of Omaha. We are obviously here in opposition of the bill as written. I think our opposition is largely technical, not with the underlying policy concerns of the bill. Obviously, our primary function as title insurers and as [INAUDIBLE] closers is that we are responsible for searching public records and ensuring when property, real property, changes hands that the guy selling it actually owns what he's selling. As part of that we search all the district court records around the state for child support judgments, so I guess our concern as an agency is kind of the lack of detail on this proposed bill. It's about one sentence change in the, the definition of a minor child. It doesn't really provide a mechanism for establishing or documenting that this exists. Presumably, this would be, take place inside of the original child support case and would be contained in the child support order or if that order were later modified after the original order. Presumably, this would all happen in the same case and I think that's probably the intent, whatever one is getting at. But there's no requirement that this finding be made by a court of competent jurisdiction, that this finding be made at any specific time. There's no, there's no even requirement the finding be made in writing. Presumably, that's the intent. And I think that we would be happy to work with Senator Riepe on some of these technical issues because I think the intent is there. I just think that we would need to flesh it out in the body, the legislation itself. We also are, the reason that we're concerned with some of that is because this could potentially lead to child support obligations that go on indefinitely, which admittedly is the point of the bill, that some of these child support obligations go on indefinitely. But it would lead to a pretty substantial increased workload, which is an increased cost for us in having to search now every single child support order entered, presumably for every child that was ever subject to a child support order, indefinitely. We're also a little bit worried about how this would jibe with 42-371. That's the bill that creates our, the lien for child support judgments on real estate, 42-371. And I'll just give you a quick synopsis. Under sub (5), says these are going to cease to be judgments, child support judgments will cease to be liens on real property registered when the youngest child becomes of age or dies or the most recent execution. So that doesn't really jibe with this. I'm not sure if that would-- if this lien would continue with these extended child support orders or not, so that's a technical concern for ours. Again, I think it's "overcomeable" but something we'd like to work with the senator on. So with that, I will stop. Those are the-- our concerns are largely technical, and open it up for any questions.

EBKE: [01:16:20] Senator Krist.

KRIST: [01:16:20] So just to make just a couple of questions, who are you with?

SAM COOPER: [01:16:26] NLTA, the Nebraska Land Title Association.

KRIST: [01:16:26] So when your land title companies, many of them, take application and are the primary beneficiary of mortgage payment, I'm assuming, or some other kind of land payment,--

SAM COOPER: [01:16:43] We're not the beneficiary of the mortgage. We would be insuring a title and transaction, so we'd issue a title insurance policy.

KRIST: [01:16:52] Okay. So you're the insurance part of [INAUDIBLE].

SAM COOPER: [01:16:52] Well, so I guess-- and I'm not the insurer. I insure for Old Republic. I'm an agent with an insurer.

Judiciary Committee February 15, 2018

KRIST: [01:16:55] Okay. When--

SAM COOPER: [01:16:55] Me specifically.

KRIST: [01:16:55] When you apply yourself or avail yourself, Senator Riepe, I think it's important that the question is asked on an application process if there are indeed special needs members of the family, which would start a track record from the very beginning. You ask me everything else, including my shoe size, when I apply for mortgage, so I think--

SAM COOPER: [01:17:26] I don't, we don't issue [INAUDIBLE].

KRIST: [01:17:26] No, I know.

SAM COOPER: [01:17:26] Okay.

KRIST: [01:17:26] They. They do it when they insure it.

SAM COOPER: [01:17:30] Okay.

KRIST: [01:17:30] So the information could potentially build a database where you would know that there is a special needs child in the family. The incidence of divorce, separation, or people walking away are higher in families that have special needs.

SAM COOPER: [01:17:48] Sure.

KRIST: [01:17:48] So I get your point and I think it's well-taken. I'm hoping that we, again, when you avail yourself to Senator Riepe, potentially we could start to build that kind of a database and stay within HIPAA and stay within all the other stuff, things we have to comply with in order to ensure it. But I think it's an important part of the family planning process.

SAM COOPER: [01:18:13] And I agree. And I, just to maybe address that concern a little bit before I go,--

KRIST: [01:18:13] Yeah, go ahead.

SAM COOPER: [01:18:13] -- I think, I think we're obviously not, I'm not taking a position on any of the policy decisions.

KRIST: [01:18:16] Sure.

SAM COOPER: [01:18:16] Obviously, I think parents' support of their kids is a good thing. But for us it would be something as simple as maybe including a requirement that that finding be made in a court order that the child support order was initially [INAUDIBLE].

KRIST: [01:18:25] There you go.

SAM COOPER: [01:18:25] That would be simple enough. When we search titles and we search the land record, we could see it right there. And the converse: If it's not there, we know it's not there. But it's a place where we can look and say this either is or is not there. And that's kind of my concern is that, as written, I don't know where I would look to find, and if it's not there where I would go to definitively say it's not there.

Judiciary Committee February 15, 2018

KRIST: [01:18:42] Good. Thank you.

SAM COOPER: [01:18:42] Yeah.

EBKE: [01:18:42] Other questions? Okay. Thanks for being here today.

SAM COOPER: [01:18:50] Yeah. Thank you.

EBKE: [01:18:50] Any other opponents?

BUB WINDLE: [01:19:03] Chairwoman Ebke, members of the committee, my name is Bub Windle, B-u-b W-i-n-d-l-e, here on behalf of the Nebraska State Bar Association. For all the reasons that we've heard, this is an issue of great significance. And I think kind of because it is an issue of significance, we have some concerns about it, about how exactly this fits into existing law and some of the specificity that may need to be applied to a framework like this which we wanted to raise before the committee. I think, first and foremost, one of the things we've heard is that the bill right now creates a different definition essentially of adulthood where the age of majority in a dissolution of marriage context, you kind of have a unique definition in this one context. If parents stayed married or if they were never married you would not necessarily have this continuing parental obligation. This would only kick in, in a dissolution of marriage context and whether that that parental right, if we're saying it may continue, whether it needs to continue in all of those or some of those or how exactly that would be defined. Another concern is the fact that there's no definition of incapacity and whether-- I believe Mr. McDonald raised the issue about changing that disability-- how exactly do we want to tailor that. Is incapacity, kind of depending on how you view it, do you lose out on some of the instances that we may want under the act because it's too narrow or might it be too broad? And I think to the extent that there is a legal framework right now that addresses vulnerable adults, it's likely guardianships and right now that's in the county court. And they've kind of developed an expertise around making some of the findings and administering those actions. Here the action would be in district court in the custody determination. Finally, there are some concerns about timing. I think this can be framed kind of a number of different ways, but it talks about the incapacity being before the age of majority. But there are questions about or uncertainty about what happens if the divorce takes place. The incapacity or disabilities before the age of majority but the divorce takes place after it, does this then still apply? Additionally, is it retroactive? So if a couple gets divorced after the age of majority, can they go back and claim child support and just a classic question of retroactivity. Would the bill allow currently divorced parents to go back and get child support that would have been historically due had the bill been passed historically? So these are kind of examples of types of questions, concerns, uncertainties we see under the bill. We've been speaking with Senator Riepe's office. We will continue to do so, do so. But right now we oppose the bill as drafted. With that, I'll take any questions.

EBKE: [01:22:13] Any questions? I see none. Thanks. Other opponents? Anybody testifying in a neutral capacity? Senator Riepe, would you like to close? Do we have any letters? No letters.

RIEPE: [01:22:31] Thank you, Chairman Ebke. I would. In closing, I would like to paraphrase what President Lyndon Johnson said. He's credited at least with saying that doing the right thing is easy; knowing what the right thing is difficult. And in this case this is the right thing to do. I wanted to talk that there is a fiscal note but it's a negative fiscal note, fiscal note, not a, not an add-on but a takeaway, something that we haven't heard much about this session. I'd also like to talk about the priority and we have requested a Speaker's priority and have not heard back on that. LB1131 does not, I repeat, not mandate but allows judicial judgment on a case-by-case basis. LB1131 was drafted based on laws in 39 states plus the District of Columbia through the National Conference of State Legislators [SIC]. So this is not something that we created out of thin air. I am prepared to work

Judiciary Committee February 15, 2018

with any and all senators to make LB1131 good legislation. I would take questions.

EBKE: [01:23:42] Questions? Senator Krist.

KRIST: [01:23:44] Senator Riepe, thanks for bringing it. And there's definitely, as you said, it's the right thing to do or it is a good thing to do. Is it the right thing as it is written? I think my opinion is the biggest question you have is the chronology that Bub brought forward in terms of does it apply here, here, on Tuesday, on Wednesday, where, you know, as we go forward. But I encourage you to try to-- having, having a special interest in this bill in many ways-- I encourage you to work on it even if it requires you have to work with lawyers to do it. So well--

RIEPE: [01:24:21] Yes.

KRIST: [01:24:21] Thank you.

RIEPE: [01:24:26] I also think, sir, if I may, is that a good point was made about that this might be dissolutions of marriages but simply of relationships. And I think there are some responsibilities there of parents for creating a child.

KRIST: [01:24:43] Sure. Thank you.

EBKE: [01:24:44] Senator Pansing Brooks.

PANSING BROOKS: [01:24:46] Thank you. Thank you for bringing this, Senator Riepe. I guess I'm sort of, number one, stuck on two things. Number one, on line 28 when it talks about a child of the parties to a dissolution, regardless of age, so you're talking it could be a 30-year-old.

RIEPE: [01:25:05] Could be a 30-year-old?

PANSING BROOKS: [01:25:08] Yeah.

RIEPE: [01:25:09] The intent is to try to bridge the gap between the age of majority to 19 and--

PANSING BROOKS: [01:25:14] Just 18 and 19?

RIEPE: [01:25:16] Well, no, it's to up till 21, when the state could provide some support, when they're graduated from high school.

PANSING BROOKS: [01:25:26] Okay. I think that the "regardless of age" sort of got to me, but I do see that previously it says the age of majority. So then I guess the other question is, regardless of age, it's also regardless of a previously agreed to dissolution agreement, right?

RIEPE: [01:25:52] I would have to, to look to legal counsel--

PANSING BROOKS: [01:25:53] I mean if people have thoughtfully--

RIEPE: [01:25:53] -- to determine if this goes retroactive. Is that what you're saying?

PANSING BROOKS: [01:26:00] No, I'm saying that if two parties agreed, for whatever reason, in their divorce and in their dissolution agreement, they agreed that party, that party X was going to take care of this child, maybe they got the house, maybe, maybe they got a whole bunch of stuff and it was a valid agreement. So you're-- this basically says regardless of any dissolution agreement,

Judiciary Committee February 15, 2018

too, pretty much. Right?

RIEPE: [01:26:31] I believe that it does. I also think that maybe many of those settlements were made on a Meyers versus Meyers, which they said this is not an option for you to have this be on the age of majority. And so people then settled in the divorce.

PANSING BROOKS: [01:26:48] Okay. I can see that issue. Yeah. Okay. Thank you very much. I think that's just a little bit of a-- I mean if they've made agreement through their dissolution agreement, you can, you can be--

RIEPE: [01:26:55] I think that's a good--

PANSING BROOKS: [01:26:56] -- more finely tuned to meet Meyer and meet what's happening with the dissolution agreement, so.

RIEPE: [01:27:02] We will. Words are important and we will go back and take a look at those.

PANSING BROOKS: [01:27:12] Thank you.

RIEPE: [01:27:12] Thank you.

EBKE: [01:27:13] Anything else? Thank you, Senator Riepe.

RIEPE: [01:27:16] Thank you very much.

PANSING BROOKS: [01:27:17] Thank you.

EBKE: [01:27:17] That concludes the hearing on LB1131. We will move to Senator Linehan, LB1039.

LINEHAN: [01:27:32] Good afternoon, Chairman, Chairwoman, excuse me, Ebke and members of the Judiciary Committee. My name is Lou Ann Linehan, L-o-u A-n-n L-i-n-e-h-a-n, representing District 39. I'm here today to introduce LB1039. LB1039 is simple to understand, though I expect there will be some tough bill. Currently a rent-- a landlord can refuse to rent to anyone with pets, or if they have pets, in addition to the month's rent a landlord can charge for a deposit. He can also ask for 25 percent of another month. So 125 percent of the rent can be used for a deposit if they have a pet. What this bill suggests is, a landlord willing to rent to pets, he can charge two months' rent: one the regular rent and one an extra month's rent for the pet. I have an amendment that the page is kindly handing out to make it clear that this is just to apply to dogs and cats, not to small animals and not to service animals. My thought behind this is we have-- we don't anymore-- we at one time, my family, had rental properties but more, I know more about how much damage a dog can do from having them all my life. We've had puppies and we have big dogs and at Christmas now, when everybody comes home for Christmas, we have five dogs. And even well-behaved dogs, normal wear and tear. But a dog that is not trained or a puppy can do significant damage to an apartment or a house, including doors and chewing drywall and cabinets. So it seemed to me a reasonable, if a landlord is willing to rent to someone with a pet, that it should be reasonable that they could charge or have a deposit that was enough to cover the damage that may be caused by that pet. I have to give credit to a UNL law student, who I think will testify against this bill, for coming to see me and brought me several issues that they're concerned with and she's concerned with and a professor concerned about renters in general and some of the abuse that renters take. And I said that I would be more than willing to work with them on those issues next year. I also am not planning on prioritizing this bill. I just thought it was a discussion that was worth having. So with that, I'll take

Judiciary Committee February 15, 2018

questions.

EBKE: [01:30:41] Questions for Senator Linehan? I have one question. There was-- and something to think about. I don't know what kind of rules there are now in respect to deposits, but we had one letter that came in and they said this wouldn't be so bad except that sometimes you get renters or you get, you get the landlords who are very slow in getting the deposits back.

LINEHAN: [01:30:58] This is one of those things that actually I have a daughter that's in law school right now. Between college and law school she worked a lot with refugees and there are some abuses that need to be addressed, and that is one of the things I talked to the law students about. And it's actually in the green copy, line 13 and 14, starts on 13: The balance, if any-- and this is talking about the deposit-- and a written itemization shall be delivered or mailed to the tenant within 14 days after demand. So if a tenant-- I think this might especially be true of people who are not familiar with the laws-- if a tenant does not demand a return of the deposit, according, the way I understand the law, that the landlord is not obligated to return the deposit. So it can be worse than slow. If they don't know enough to demand it, it can be never.

EBKE: [01:32:13] Okay. Are there any questions? Okay. Thank you.

LINEHAN: [01:32:13] Thanks.

EBKE: [01:32:13] First proponent.

KENT ROBERT: [01:32:23] Good afternoon, Chairman Ebke, members of the Judiciary Committee. My name is Kent Rogert, K-e-n-t R-o-g-e-r-t. I'm here today representing the Statewide Property Owners Association. You would have gotten our president of the association, but he's down the hall in another hearing. Lots of stuff going on today. We want to thank Senator Linehan for introducing this bill for us. We've looked at it in the past. Looking, you know, sometimes we ask the question, what do other states do, and sometimes we say we don't care about other states, we're Nebraska. In that regard, I would tell you that Missouri and Iowa both have two months, similar to what this bill would do, and then Colorado and Wyoming actually have two months with no limit on what it's for. You don't have to say one month rent for pet and one month for a security deposit. And, you know, historically the security deposit is made for either damage or for nonpayment of rent and then the following would be a pet deposit, which would be to help for any damage caused by the pet. I think the unwillingness of several property owners to rent to folks with pets is just because of the damage that can be caused and the cost to restore the property back to a rentable situation after those leave. You know just one room's carpet, even the cheapest carpet, is going to be four or five hundred dollars in a small room. If you want to make it look nice you can spend thousands really easy just picking up after the renters left. I know Senator Linehan asked me about fish and hamsters and those types of things in cages, so I suggested we do this amendment here on cats and dogs and that would pretty much cover us. So I'd answer any questions.

EBKE: [01:34:14] Questions? Senator.

PANSING BROOKS: [01:34:14] Well, I think Senator Linehan just said that it was for two months' rent. Is that correct?

KENT ROBERT: [01:34:21] So you can take a security deposit now currently for one month's rent.

PANSING BROOKS: [01:34:27] Yes.

Judiciary Committee February 15, 2018

KENT ROBERT: [01:34:27] And then currently you can take a quarter of a month's additional for a pet and the bill says we could increase it to--

PANSING BROOKS: [01:34:33] Okay.

KENT ROBERT: [01:34:33] -- another full month's rent for a pet.

PANSING BROOKS: [01:34:35] Sorry. So I was looking for two months in here.

KENT ROBERT: [01:34:37] One and one. Yeah, it's in a different, yeah.

PANSING BROOKS: [01:34:40] Yeah, you got rid of the one fourth.

KENT ROBERT: [01:34:40] We did.

PANSING BROOKS: [01:34:41] Okay. Thank you. I was just trying to understand it.

KENT ROBERT: [01:34:46] No problem.

EBKE: [01:34:47] Other questions?

KENT ROBERT: [01:34:47] Thank you.

EBKE: [01:34:50] Okay. Thanks. Next proponent.

GENE ECKEL: [01:35:03] Good afternoon, Senator Ebke, members of the Judiciary Committee. My name is Gene Eckel, that's G-e-n-e E-c-k-e-l. I represent the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska, and we are in support of this bill, LB1039. And the main reason why we support it is that a lot of times the amount of damage that's caused by a pet does-- it is going to be more than 25 percent of the one month's rent pet deposit that will be submitted by the tenant. So we do support it because, again, it would cover those costs or at least cover most of the costs that the landlord will encounter sometimes when dogs or cats cause damage, whether it's to the carpet or the drywall, the baseboards. So you know I'm happy to answer any questions as we are a part of the apartment industry. And I'm an attorney that does represent landlords, so if you want to ask me any questions I'd be happy to answer them.

EBKE: [01:36:05] Questions? I see none. Thanks.

GENE ECKEL: [01:36:05] Okay. Thank you very much.

EBKE: [01:36:13] Next proponent. I don't see anybody moving. Opponents.

REBEKHA DOSTAL: [01:36:32] Hello. My name is Rebekha Dostal. I am a senior certified law student at the University Nebraska College of Law and I am currently enrolled in the civil clinic there and I'm co-lead counsel on the clinic's Tenants Rights Project. I'm here to speak in opposition of LB1039 as a citizen and not as a representative of the university. Today an estimated 68 percent of U.S. households, or about 85 million families, own a pet: 60.2 million of those households own a dog and 47.1 own a cat. It is reasonable to believe that these ratios would be very similar in Nebraska. That has, that is alone a lot of families who own pets who would be, who, if this bill was adopted, would have to come up with four times the amount of, the amount of a pet deposit currently, current, the current law allows. A landlord is allowed to demand a security deposit, first month's rent, last month's rent, and a pet deposit equal to one fourth month's rent currently. By

Judiciary Committee February 15, 2018

increasing that amount, a landlord would be allowed to demand a tenant to pay for, a tenant to pay for allowing a pet. The bill would be increasing the financial hardship placed on these tenants. This bill would allow landlords to demand up to four times the amount of a month's rent before moving. So if a month's rent is \$1,000, a tenant would have to come up with \$4,000 before being allowed to move into the rental property. The Landlord, Tenant Act is meant to protect tenants and tenants' rights against landlord abuse. Currently statute 76-1416 is catered to landlords by allowing landlords to require a full month's rent as a security deposit and keeping that deposit until a tenant formally demands the deposit to be paid back to them. By increasing the pet deposit we are allowing landlords to hold and potentially keep an amount equal to another month's rent until the tenant formally demands it back, which most tenants don't know that they have to do. With the landlord holding this much of their money, how is a tenant supposed to move and then pay their next deposits, particularly if it's another \$4,000? That would mean up to \$6,000 is tied up at one time. While I understand that landlords want to be protected by potential damages done to the property by a pet, there are other ways that a landlord can protect themselves. There's nothing in the Landlord, Tenant Act that prevents a landlord, landlord from collecting pet rent and charging extra, just like they would for an additional occupant. This pet rent would be a fee that is collected monthly and that could be used by the landlords to cover additional wear and potential damages caused by pets, while limiting the financial hardship caused to the tenants. Thus, I ask that you please vote against LB1039 so that we can better protect tenants' rights and limit the financial hardship that this bill would be imposing over half of our, imposing on over half of our society. Thank you.

EBKE: [01:39:55] Thank you. Any questions? Senator Chambers. Senator Pansing Brooks.

PANSING BROOKS: [01:39:59] Hi. Thank you for coming. I'm always so happy when the students come from the law school. It's really important having you all here participating. So could you tell me a little bit more about the pet rent? I don't know anything about that. Is that part of the landlord, tenant law?

REBEKHA DOSTAL: [01:40:14] Currently there's nothing in landlord, tenant law that directly pertains to it but it is something that landlords have been starting to use. It's not very common but there are some landlords in Nebraska and other states that have been imposing pet rent and the most common one I've seen is \$25 a month but that's per pet. So if you had a dog and a cat it would be \$50 a month.

PANSING BROOKS: [01:40:39] And has that been upheld by the courts?

REBEKHA DOSTAL: [01:40:43] I didn't, I have, I'm currently not aware of any case law but it's something that I could research and get back to you if you would like.

PANSING BROOKS: [01:40:50] Great. Thank you very much.

REBEKHA DOSTAL: [01:40:52] You're welcome.

EBKE: [01:40:52] Any other questions? Oh, Senator Chambers.

CHAMBERS: [01:40:57] I appreciate the fact that you came, too. And you wouldn't be expected to know this but, as a citizen, at this point in the session, if a bill is not prioritized it's not going to go anywhere. So maybe you can rest a little easy for this session. Next session may be a different matter. And I thought I should disclose that to you.

REBEKHA DOSTAL: [01:41:20] Thank you. As Senator Linehan did mention, we met with her

Judiciary Committee February 15, 2018

this last Tuesday. So the clinic does plan to meet with her next session and discuss some proposed changes.

CHAMBERS: [01:41:30] That's all that I have.

EBKE: [01:41:33] Thank you.

REBEKHA DOSTAL: [01:41:33] Thank you.

EBKE: [01:41:33] Thanks for being here. Next opponent.

RYAN SULLIVAN: [01:41:46] Madam Chairperson, Senators, my name is Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I'm an assistant professor of law at the University of Nebraska College of Law where I teach in the civil clinical law program. I'm testifying today in opposition to LB1039 in my capacity as an attorney who regularly represents tenants on a pro bono basis. I'd like to start by saying that I'm not diametrically opposed to the proposed increase. I understand the reasoning behind it. I'm a landlord myself. I get it. When pets are involved there's a higher risk of property damage. The problem is, because of other language elsewhere in the act, many if not most Nebraska landlords, they don't view it as a deposit. They view it as a fee. They view it as an additional revenue source. And they have, a lot of landlords, have no intention of, of giving it back. In my eight years of representing tenants, I haven't had the pleasure yet to meet one landlord who respected a tenant's right to their deposit back. To avoid returning deposits, I've observed landlords fabricate and exaggerate damage to property. I've caught two landlords submitting as evidence pictures of alleged damage that was actually to a different property, a picture that they had used in five different cases to keep a tenant's deposit. In one case a landlord admitted to a policy of charging tenants twice the amount that they were invoiced to, to repair the damage. And if the tenant paid it, great. They made twice as much money on that. If the tenant objected, they told the tenant, well, how about I cut it in half? And the tenant would pay it because they thought they were getting a good deal. Now these are extreme examples but, unfortunately, it's more common than you think. Even in situations not so extreme, the landlord, as previously stated, often pockets the deposit because the tenant does not know they have a requirement to actually affirmatively demand the return of the deposit. In nearly every other state landlords must automatically return the deposit, minus damages and expenses allowable by law. Only in Nebraska and Kentucky are tenants required to affirmatively request their return. Not one tenant I ever represented knew that they had a statutory requirement to demand their, their deposit back. Most tenants wait patiently for the check and when it doesn't arrive they know there's not much they can do about it. Landlords know that, too. Also, unlike other states, Nebraska does not require landlords to keep the deposit in a separate account. They can keep it commingled with their revenue account. So it's not surprising that many landlords review it, view it as revenue. Again, as an attorney working in this area and a landlord, I see the reasoning behind the bill. But until the other portions of the act are modified to prevent abuse, I can't support it. So I'm looking forward to working with Senator Linehan and other Legislatures in making some of these advancements next session.

EBKE: [01:45:23] Senator Pansing Brooks.

PANSING BROOKS: [01:45:25] Thank you for coming, Professor Sullivan. Gosh, maybe Senator Linehan will work to get rid of that affirmative requirement and add an amendment on that and it will be stronger and not allow it to be commingled. I had no idea that that was the, that's the current state of affairs, so thank you for the information.

EBKE: [01:45:48] Senator Krist.

Judiciary Committee February 15, 2018

KRIST: [01:45:48] I was going to make the same comment, but I will add one for the record for my colleagues and for anyone else who wants to read the transcript, including senators, that I just introduced. I've had the occasion and the pleasure of working with the law school and faculty on issues that, finding out what needs to be done and how to put it in language to begin with made my bill a better bill, made legislation better legislation, and there were less issues on the backside. And I also would say, and thank you, Ryan, for attending a few round tables in the past where I didn't get your advice to begin with, didn't listen, and then they had to fix it on the backside. So you guys are doing a great job. Thanks for coming. And I would encourage all my colleagues to use the law, law students and the law school. It's a great asset.

RYAN SULLIVAN: [01:46:38] Thank you, Senator.

EBKE: [01:46:39] Other comments. Senator Chambers.

CHAMBERS: [01:46:42] Long, long ago, when I wore a younger man's clothes and you had not reached an age where you could wear diapers, I was doing work on landlord-tenant relationships. And I will be back next session and I want you, if you're willing, to lay out some of the things that you talked about today that definitely need to be modified, such as the tenant being required to demand. I would appreciate that, if you didn't mind doing it. And when I ask somebody to do something, it's not for an academic purpose. I will want to bring legislation. And I'm going to count on you and your students, or however you work it out, to present some of those. And you will have the chance to see your notions written into stone, at least for the time that I'm in the Legislature, because I think my colleagues would be willing to make some of those modifications. A couple of things said today I wasn't even aware of. So I would appreciate your doing that, if you would. And I'm not trying to put any pressure on you or coerce you, but I've been here when you talked about other things, so I don't feel reluctant to request that assistance from you.

RYAN SULLIVAN: [01:47:56] Happy to do it, Senator.

CHAMBERS: [01:47:57] Thank you.

EBKE: [01:47:58] Other questions? Okay. Thanks.

RYAN SULLIVAN: [01:48:01] Thank you.

EBKE: [01:48:02] Are there any other opponents? Go right ahead.

KEVIN BOOKER: [01:48:14] Chairman Ebke, committee members, this is the first time I've seen this, and it was just a little bit ago, so a lot of my testimony has been answered.

EBKE: [01:48:24] Could you give us your name and--

KEVIN BOOKER: [01:48:25] Oh, I'm sorry.

EBKE: [01:48:25] -- spell it for the record.

KEVIN BOOKER: [01:48:27] Yeah. It's Kevin, K-e-v-i-n, Booker, B-o-o-k-e-r, and I reside at 1329 F Street, number six.

EBKE: [01:48:39] Go right ahead.

KEVIN BOOKER: [01:48:41] Okay. So I actually have all three of these. I'm the owner of a

Judiciary Committee February 15, 2018

property, I rent a property, and I'm also the landlord of another property. So I can see all three of these aspects. My primary concern today when I seen the original bill was that of a service animal. As somebody that has a service animal, you know, that was my major concern. I did some of the math earlier and I'm not sure where I added wrong, but I was using the same numbers that the previous testifier was. At a thousand a month, that's \$3,000 with the first month, last month, and a pet deposit. So I'm not sure where the \$4,000 was. But so that's basically a \$2,000 deposit that they would basically be giving for damages. I have had a dog do damage to one of my rental properties. My deposit clearly took care of all the damage that I had to that property. My major concern is the elderly also that may not be covered by this that have companion dogs. They do not meet the requirements that were listed in the amendment. I, and I, reading this brought some concern to me. I know there are many landlords, and I can give you a list of them, that are charging more than that one quarter of a month deposit already. So there are landlords, especially in the Omaha, Bellevue, Elkhorn area, that are exceeding this one quarter. So I'm not sure where the landlord-tenant resolution could be that would help those folks. But I do appreciate Senator Linehan amendment to this bill and that addresses most of what my concerns are today. Thank you, folks.

EBKE: [01:50:50] Thank you for being here. Any questions? Senator Chambers.

CHAMBERS: [01:50:54] You know how they name bills after individuals or whatever? I'm going to call my bill, when I bring it, Pandora's box because it was opened by this bill. [LAUGHTER] Okay.

EBKE: [01:51:07] Okay. Thanks. Thanks for being here. Are there any other opponents? Is there anybody testifying in a neutral capacity? We have a few letters, letters of support from Korby Gilbertson of the Nebraska Realtors Association and Carina McCormick. Senator Linehan.

LINEHAN: [01:51:35] Thank you. I would agree that there's other issues that need to be looked at and I have, again, empathy for pet owners. But I would like to come back to the fact that landlords now have a choice not to let you have a pet at all. So if we limit it legally now and also if there are things that are laws not being followed, that's kind of outside of my, what I'm trying to address right here. If you limit it to where a landowner doesn't, a landlord doesn't believe he can cover the damages by a dog, you're probably going to have more landowners, landlords who won't even allow you to have a dog. So I don't know where the magic is here, but I think we all know, anybody that's ever had a dog or a cat, that they can do a lot of damage that a thousand dollars won't cover. So I think there's, there's probably a happy place here that we can maybe work toward next year. And I would, I'd be honored to work with Senator Chambers on his Pandora box.

EBKE: [01:52:39] Senator Krist.

KRIST: [01:52:40] "Honored," that's the key word.

LINEHAN: [01:52:41] Yes.

KRIST: [01:52:41] I've just one comment. That pet rent, when we were building a house we were in an apartment building, and their pet rent was apportioned to the size of the dog. Thank God I had a small dog, right, because they had a pet rent per month that would accommodate all the way from a Saint Bernard down to this little thing that we had. So when you, when you're redoing it, I think that that's an admirable goal in terms of trying to space it out. Because, you know, so many, so many young folks, in particular, are mobile and putting a \$4,000 brick wall in front of them sometimes is tough, so. But thanks for bringing the bill.

LINEHAN: [01:53:20] Thank you very much. Okay. Thank you.

Judiciary Committee February 15, 2018

EBKE: [01:53:20] Okay, thanks. That closes the hearing on LB1039. We will now move to LB1029. And I would just say to my colleagues, if you can hang around for just a few minutes when we finish this one, Senator Pansing Brooks has asked that we Exec.

KRIST: [01:53:51] Well.

EBKE: [01:53:51] She did.

PANSING BROOKS: [01:53:51] We're going to be out early.

M. HANSEN: [01:53:51] All right. Well, good afternoon, Chair 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 District 26 in northeast Lincoln. I'm here today to introduce LB1029, which amends the Nebraska Revised Statute Section 30-4020, which is part of Nebraska's Uniform Power of Attorney Act. Currently this section sets forth when and how someone can accept or refuse a power of attorney. Among other things, the statute provides that if a party has a question that needs further information about the power of attorney, it can request a certification, translation, or legal opinion. It provides the conditions under which the party can refuse a power of attorney and provides remedies in the situations once your party refuses a power of attorney in violations of the act, namely, when a person does not have a good faith reason to do so. LB1029 focuses on the last piece: the remedies available when a party refuses a power of attorney in violation of the act. Under current law, a person who arbitrarily refuses a power of attorney is subject to, first, a court order mandating acceptance of power of attorney and, secondly, attorney's fees and costs associated with getting such an order. While current law does not expressly preclude an action for damages, it does not address situations in which a person's refusal of a power of attorney creates economic harm. For example, if a securities broker arbitrarily refuses a sell order and the market subsequently declines, a principal would suffer economic harm. But the act does not speak to the remedies available, even if the refusal is a clear violation of the act. LB1029 addresses the issue of liability for potential economic harm by providing that a person who arbitrarily refuses a power of attorney can be liable for economic damages and prejudgment interest, in addition to the attorney's fees and costs currently provided by law. What's important is that the changes in LB1029 apply only to instances in which a party arbitrarily refuses to, the authority of a power of attorney in fact, when he or she does not have a good faith reason to do so. The bill does not remove or amend any of the safe harbors that shield parties from liability when they legitimately question the authority of a power of attorney in fact. There are numerous and varied safe harbors in which a, under which a party can refuse a power of attorney without violating the act. LB1029 does not amend these safe harbors. It only applies to persons who do it in clear violation. In addition to these remedies for persons harmed economically by a violation of the act, the bill includes two other small changes. First, it shortens the period from seven business days to three business days the time period for which a person must either accept a power of attorney or request further information, like a certification, a translation, or opinion of counsel. Second, shortens from five business days to three business days' time the period in which a person must accept a power of attorney after receiving the additional information. These time frames, which are stated in business days, are meant to strike a balance, streamlining the process without moving too fast. This bill is brought to me by the Bar Association. Those who follow me will be able to describe the legal research that went into the bill and the aspects that are modeled on other states. With that, I would conclude my testimony and be happy to work with the committee on LB1029.

EBKE: [01:56:57] Any questions for Senator Hansen? Guess not. Okay.

M. HANSEN: [01:57:01] Thank you.

EBKE: [01:57:02] First proponent.

KARA BROSTROM: [01:57:17] Good afternoon. Kara Brostrom, K-a-r-a B-r-o-s-t-r-o-m, here on behalf of the Nebraska State Bar Association. I am an attorney at the law firm of Baylor, Evnen, Curtiss, Gruit and Witt here in Lincoln and in the trusts and estates practice group. LB1029 will solve a problem that principals and agents under valid Nebraska power of attorneys are encountering whereby financial institutions arbitrarily refuse such powers of attorney. The problem to be solved by LB1029 was identified by the Real Estate Probate and Trust Section of the Nebraska State Bar Association at our annual summer meeting. This section is comprised of professionals who not only draft power of attorneys on a regular basis but also counsel clients when encountering financial institutions who arbitrarily refuse power of attorneys. Power of attorneys are useless if you, if third parties do not honor them. However, if a third-party financial institution is forced to accept such power of attorneys, it only seems fair that they are protected as long as they act in good faith, which is what the Uniform Power of Attorney Act provides. The Uniform Act, as adopted by Nebraska, accepts a three-prong approach to address this issue. First, the act provides broad protection of financial institutions or third parties for good faith acceptance of any purportedly acknowledged valid power of attorney without imposing a duty to independently verify its validity. Second, the act sets out clear safe harbors-- eight, to be specific-- for legitimate refusals by financial institutions or third parties. This limits liability of third parties to facts known by the employee engaged in the transaction, thereby eliminating issues as to imputed notice or knowledge. Even acceptance of a power of attorney obtained through fraud or forgery does not result in liability if there is no actual knowledge of such facts. This covers almost all, if not all, reasons a third party would refuse to accept a power of attorney. Third, the act provides resources to third parties. They may require an agent execute a certification regarding any factual matter concerning the principal agent or power of attorney, and they may also request a legal opinion. However, by adopting the Uniform Act's provisions addressing liability for arbitrary refusals verbatim, Nebraska failed to address the issue of liability for losses incurred by the principal. I am the first to acknowledge the tension in the situation a financial institution is interacting with an agent on behalf of the principal but also acknowledge that the principal, by prior planning, executed a valid power of attorney for the agent to exercise such authority. Financial institutions are protected for not only good faith acceptance but good faith refusal. And why are we not protecting principals as well as agents? We should honor the terms and provisions of the document as executed by the principal when they held legal capacity and had a full understanding of the authority they were granting. The goal of LB1029 is to effectively encourage timely acceptances of powers of attorney without creating unreasonable liability risks. However if damages are incurred, as adopted, the act tips the scales in favor of third parties, to the detriment of the principal. The bill does not expand damages. It merely provides clarity to the principal as well as the agent as to adequate recourse in the event they suffer damages as a result of unreasonable or bad faith refusals of power of attorney documents. Thank you for your time.

EBKE: [02:00:55] Thanks. Senator Krist.

KRIST: [02:00:58] I just have this deja vu feeling all over again, right? Weren't you here talking about POAs and POAs and POAs?

KARA BROSTROM: [02:01:01] I was.

KRIST: [02:01:05] You were.

KARA BROSTROM: [02:01:05] I was.

Judiciary Committee February 15, 2018

KRIST: [02:01:05] What bill was that?

KARA BROSTROM: [02:01:07] That was LB1042 and that was to-- LB1047. I apologize, LB1047. Got it right here. But, yes, that was to provide agents the authority, if necessary to interact with a financial institution, the power to execute those power of attorneys, secondary power of attorneys if they so require.

KRIST: [02:01:32] So do we have a problem in this state where a POA is not a POA, everybody has their own POA? I mean is it consistent that people are refusing to acknowledge that this is a, this is a POA and it's valued in all circumstances?

KARA BROSTROM: [02:01:46] I believe what, I mean, what we're encountering or at least what I can describe--

KRIST: [02:01:50] Sure.

KARA BROSTROM: [02:01:51] -- on behalf of the Bar Section, as well as my practice group, is we're just seeing a trend with larger financial institutions either in arbitrarily refusing them or in requiring their own forms, which is the other bill. But specific to this issue, the Uniform Act as adopted does not preclude damages. It's just we want to ensure that there is, I guess make it clear for the expedited acceptance of power of attorneys as the Uniform Act does provide eight safe harbors and that's just specific to good faith refusal. There's a whole nother statutory provision on good faith acceptance. So there are a lot of safe harbors and really just trying to get the goal that we're not increasing liability for third parties or financial institutions but more so protecting the principal and the agents in executing or I guess in interacting and putting that power of attorney to use.

KRIST: [02:02:50] I'm glad you're doing that job [INAUDIBLE]. Thank you.

KARA BROSTROM: [02:02:50] Power of attorney expert right here. No. [Laughter]

EBKE: [02:02:52] Other questions? Okay. Thanks for being here.

KARA BROSTROM: [02:02:57] Thank you for your time.

EBKE: [02:02:58] Other proponents? Do we have any other proponents? I don't see anybody moving. Opponents. So much for consent.

BOB HALLSTROM: [02:03:06] Chairman Ebke, members of Judiciary Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association to testify in opposition to LB1029. I will indicate that I have been visiting with Mr. Windle on behalf of the State Bar Association to determine if there are other ways to address the concerns that have been expressed in support of the bill. But I think it's important for the committee to understand historically this is a Uniform Act. It came about because of a lot of work that was done on the federal level by the Uniform Law Commissioners, vetted by experts and stakeholders, to come up with a law to address some of the very problems that we have in other areas of the law, which is we don't have uniformity and we have inconsistency with regard to the acceptance of powers of attorney and things of that nature. That process was undertaken with regard to this bill. Former Speaker Flood introduced a bill in 2012 that was a result of further vetting by the State Bar Association and their Real Property Probate and Trust Law Section. The NBA, both at the federal level and the state level, was able to participate in those efforts. We have been before this committee before and other committees and will no doubt be again with nonuniform provisions. But in this case there's a reason and a method to the madness of having a particular time frame that,

Judiciary Committee February 15, 2018

to my understanding, is consistent on the seven days at the front and three days at the back with regard to a certification, translation, or opinion of counsel that, to my understanding, the 25 states that have adopted the Uniform Power of Attorney Act have adopted. With regard to the issue of the expansion of damages, I think I would take exception with the suggestion that it does not expand damages. Clearly, if you look at the bill, it's providing for consequential damages, which are not appearing in the statute at this time. The only possible or plausible argument that it's not expanding damages is if in fact this is a common law right of action. If it is, then I would suggest we could simply say that the Uniform Power of Attorney Act does not impact other remedies available under law. I would also note that the bill provides for prejudgment interest, which to my knowledge is not a common law right but is a creature of statutory creation. In closing, I would suggest that Senator Krist this morning-- I was listening to a bill with one ear-- and I think he was a step ahead of his time. On that bill he said something to the effect that we shouldn't be about passing laws that affect those that follow the law in trying to get to those that don't. And I think that's applicable here. I haven't seen or heard, from the discussions that I've had or the testimony today, that there are specific problems with financial institutions. And I think the witness in support, in using the financial institutions terminology, in fairness I think wasn't just talking about banks and credit unions. I think that's a broader generalized terminology because I don't think banks are causing problems in this particular area. With that, I'd be happy to address any questions of the committee.

EBKE: [02:06:39] Thank you, Mr. Hallstrom. Questions? Don't see any.

BOB HALLSTROM: [02:06:42] Thank you.

EBKE: [02:06:44] Next opponent. I see nobody moving. Anybody in a neutral capacity? See nothing. Senator Hansen. Senator Hansen waives. That closes the hearing on LB1029. That concludes our hearings for today. Thank you for being here.