

## **Banking, Commerce and Insurance Committee January 28, 2019**

**WILLIAMS:** [00:00:01] Ladies and gentlemen, it's the appointed hour, and we have a full house. Welcome to the Banking, Commerce and Insurance Committee. My name is Matt Williams. I'm from Gothenburg. I represent Legislative District 36 in the Nebraska Legislature, and I am pleased to serve as Chair of the Committee. The committee will take up the bills in the order that they have been posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members may come and go during the process of the hearing. We have bills to introduce in other committees and are sometimes called away. It is not an indication we are not interested in the bill being heard in the committee. It's just part of the process. To better facilitate today's proceeding, I ask that you abide by the following procedures. Please silence or turn off your cell phones. Please move to the front row when you are ready to testify. We will have an order of testimony which will be the introducer followed by proponents, opponents, neutral testimony, and then the introducer will be asked if they would like to close on the bill. Testifiers sign in. Hand your pink sheet to the committee clerk when you come up to testify. Spell your name for the record please before you begin your testi-- testimony and be concise. We will be using a five minute time clock: four minutes on green, one minute on yellow, and then the clock will turn red, and I will be happy to help you stop your testimony at that point. If you will not be testifying at the microphone but want to go on record as having a position on a bill to be heard today, there are white tablets at each interest where-- entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We will need 10 copies. If you have written testimony but do not have ten copies, please raise your hand now, and the page will be happy to come and grab those from you and make the copies that are necessary. To

my right is committee counsel, Bill Marienau. To my left at the end of the table is committee clerk, Natalie Schunk, and all of our committee members are with us today. And I would ask them to introduce themselves starting with Senator McCollister.

**McCOLLISTER:** [00:02:44] Thank you, Chairman Williams. John McCollister, District 20, central Omaha.

**KOLTERMAN:** [00:02:49] Mark Kolterman, District 24, Seward, York and Polk Counties.

**QUICK:** [00:02:53] Dan Quick, District 35, Grand Island.

**LINDSTROM:** [00:02:56] Brett Lindstrom, District 18, northwest Omaha.

**La GRONE:** [00:02:59] Andrew La Grone, District 49, Gretna and northwest Sarpy County.

**HOWARD:** [00:03:03] Sara Howard, District 9, midtown Omaha.

**GRAGERT:** [00:03:06] Tim Gragert, District 40, northeast Nebraska, Cedar, Dixon, Knox, Boyd, Holt, and Rock.

**WILLIAMS:** [00:03:13] And Tsehaynesh, and Kylie will be our clerks with us today. So if you need anything from them, they are here to help us. The committee will now begin taking up the bills in the order that they are presented. We will open our first hearing on LB221 to change provisions related to limitations on powers under the Title Insurers Act and ask Senator La Grone if he would please open.

**La GRONE:** [00:03:45] Thank you, Chairman Williams, and members of the committee. LB221 provides that a closing or settlement protection letter is not required when a title insurer awards agent is not performing escrow settlement or closing services. Currently the law requires a title insurer to issue closing or settlement protection every time it issues title insurance commitment or a title insurance policy. Sometimes an insured wishes to buy title insurance but record the deed his or herself. Under the current law, this party is still required to pay for closing or settlement protection despite not receiving the service. The change provided for in this bill eliminates a report-- that requirement under these circumstances. After me, a representative from the Nebraska Land Title Association will testify the benefits of the bill, but I'd be happy to answer any questions you may have.

**WILLIAMS:** [00:04:30] Are there questions for Senator La Grone? Seeing none, and I'm sure you're staying to test-- to close.

**La GRONE:** [00:04:37] Absolutely.

**WILLIAMS:** [00:04:39] We would invite the first proponent to testify. And if you'd please introduce yourself and spell your name.

**JUSTIN RHOADES:** [00:04:53] Good morning. My name is Justin Rhoades, J-u-s-t-i-n R-h-o-a-d-e-s. I'm here today on behalf of the Nebraska Land Title Association. I worked in the land title and escrow industry for the past 20 years. For years, our local title insurance industry in Nebraska has helped countless homeowners and lenders in refinance transactions. Over the years, the practice of issuing title insurance to lenders has varied greatly, but the laws have not been amended to reflect these changes. As current practice goes, some lenders choose to purchase title insurance policies directly from us to insure their loans without any service for escrow, settlement or closing. During

this scenario, the lenders themselves are the parties handling the funds for the settlement and the closing and work directly with those borrowers. We are only providing the insurance to a lender afforded under the title policy. We have determined that the current law under 44-1984 requires a closing protection letter to be issued in connection with the issuance of any title insurance commitment or policy. There is no clarification of the law that covers any scenario in which we as title insurers do not close, settle, or handle escrow services for these transactions. In addition, there would be a direct cost savings to the consumer. Most closing protection letters, if not all, are charged at a rate of \$25 directly to the consumer at closing. Under 44-1984, as it is written, consumers are charged for this closing protection letter without any direct benefit of what is actually covered under the letter. Therefore, we have worked closely with Senator La Grone to help bring this bill to the legislature in an effort to clarify when a closing protection letter must be issued under 44-1984. We feel this change is necessary to align ourselves with the current practices of the marketplace. Therefore, we support LB221 as written, and ask that the committee advance the bill. Senators, committee members, thank you for your time.

**WILLIAMS:** [00:06:53] Further questions for Mr. Rhoades. Seeing no questions, thank you for your testimony.

**JUSTIN RHOADES:** [00:07:00] Thank you.

**WILLIAMS:** [00:07:02] Additional proponents. Seeing none, is there anyone here to testify in opposition. Seeing none, is there anyone here to testify in a neutral capacity. Seeing none, Senator la Grone waives closing. We will close the hearing on LB221. OK. We'll be waiting just a minute for Senator Hilkemann.

[00:07:47] [BREAK]

**WILLIAMS:** [00:12:04] Senator Hikemann has arrived. We will open the hearing on LB42 to provide certain responsibilities and a duty under the Condominium Property Act and a duty under the Nebraska Condominium Act. Welcome, Senator Hilkemann.

**HILKEMANN:** [00:12:18] Thank you, Senator Williams.

**WILLIAMS:** [00:12:20] Welcome to open on LB42.

**HILKEMANN:** [00:12:24] OK. Thank you. Good afternoon, Senator Williams, and members of the committee. I am Robert Hilkemann. That's R-o-b-e-r-t H-i-l-k-e-m-a-n-n, and I represent Legislative District 4. And I come to-- today to introduce LB42. Following conversations with the Douglas County Clerk, Douglas County Register of Deeds, and NACO, I am offering an amendment to the bill that would replace "county clerk" with the term "register of deeds." After having the bill drafted and introduced, it became clear that the Register of Deeds is the more appropriate office for which to carry out the intentions of LB42. My testimony will be under the assumption that, should the committee choose to advance LB42, it will be with those recommended changes in place. LB42 would provide for an annual registration of condominium board officers with the Register of Deeds office where the condominium is located. Such registration would allow for public and private entities to serve legal notices and to send important information to the appropriate people. This issue was brought to my attention by the city of Omaha and is believed to be a sort of nuts-and-bolts bill for city operations. Currently when the city needs to serve notices following complaints of things such as weeds or litter in the common areas of condominiums, it can be nearly impossible for the city to determine the appropriate responsible party to whom to serve this notice. By comparison if the complaint involves a private home or an apartment complex, it's easy to determine through registration records who would receive complaint notices to resolve

dangerous or unsightly issues. The only process that exists similarly to this is if a condominium is incorporated, and not all of them choose to incorporate. When they're incorporated, they and-- they initially file with Nebraska's Secretary of State and an update is required every two years. During that time, if there is a change in the responsible parties, no notice is required. LB42 would clarify who is responsible for the common elements for all condominiums, require an annual registration of the responsible entity with the Register of Deeds of the county in which the condominium is located, and provide for a fee capped at \$25 to those counties managing the registrations. I believe that it fits in perfectly with similar functions counties are already providing at the Register of Deeds. In conclusion, there needs to be a better route to service notice of issues such as these, and LB42 provides much-needed structure and clarification for our cities. I am happy to answer any questions but assure you that there are better experts behind me than me. So thank you very much.

**WILLIAMS:** [00:15:42] Questions for Senator Hilkemann. Senator McCollister.

**McCOLLISTER:** [00:15:45] Thank you, Senator Williams, and thank you, Senator Hilkemann, for bringing this bill. You may be able to answer my questions or may not. I'm going to ask them to you first.

**HILKEMANN:** [00:15:54] OK.

**McCOLLISTER:** [00:15:56] Seems to me, and I went door to door talking to some of these condominium holders, that the balance of power between the board of a condominium and those people that are owning condominiums is unequal, very unequal, and that the condominium board can on it-- can make unilateral decisions that some of the owners would really object to. This bill is a good-- good start but I wonder if it goes far enough because condominium owners sometimes have very little recourse when the board is acting, in their view to be, irresponsibly. Any response to

that?

**HILKEMANN:** [00:16:40] Senator McCollister, I think that when we look at this bill, I'm not sure that that addresses the issue that you're talking about. Because this is-- what this is-- if the city gets a complaint on say weeds or in that area-- and the cit-- or trash or whatever else, the city doesn't know who to contact because these-- they don't know who's actually responsible, who's actually on that board. And so as far as individual condominium owners having some input into that, they may not know who all those board member are either as far as that's concerned.

**McCOLLISTER:** [00:17:18] Well, this is a great addition. So--

**HILKEMANN:** [00:17:20] Thanks.

**McCOLLISTER:** [00:17:20] --thank you again for bringing this up.

**HILKEMANN:** [00:17:23] Yeah. This way, I would think it would help those people out because if they want to know who they need to contact, they'll at least know who are the condominium board ownership that they could contact.

**McCOLLISTER:** [00:17:33] Thank you.

**WILLIAMS:** [00:17:34] Additional questions. Seeing none.

**HILKEMANN:** [00:17:35] Oh, you've got a great committee here.

**WILLIAMS:** [00:17:42] Was that a question? Thank you, Senator Hilkemann. We would invite the

first proponent. If you would state and spell your name, please.

**ALAN THELEN:** [00:18:03] Good afternoon, Mr. Chair, members of the committee. My name's Alan Thelen, T-h-e-l-e-n. I'm a lawyer with the Omaha city attorney's office and I'm appearing here today on behalf of the city of Omaha. The city of Omaha is in favor of LB42, and we would like to sincerely thank Senator Hilkemann for bringing this forward. We think that this is a simple problem, and it's being presented with a simple solution. Cities like Omaha have the statutory duty to make sure the property owners maintain their properties. So Omaha's job is to enforce our property maintenance code. Condominiums present a problem that we, and perhaps other cities, have encountered. Condominiums, according to state statutes, consist of two parts. One part consists of the individual units, the individual apartments, and those are individually owned by each individual occupant. The other part of the condos are the common areas of the condominium. Basically, that's everything else. That consists of the interior hallways, the community rooms, parking garage, roof, exterior grounds, etcetera. In enforcing our property maintenance code, the individual units are relatively simple. They don't present too much of a problem to us because we can find the owner of each unit. The owner of each unit can be traced through the county Register of Deeds records pretty easily, and we can issue a notice to them if there's a problem with their unit. And they are accountable. With the common areas, it's a little bit different. The common areas are not owned or maintained by any individual owner per se; they are owned by a condominium regime or a condominium association or governing body of some type. Under the present statutes it's kind of vague. The statutes just vaguely say that it's operated by a board of administrators or possibly an unincorporated association which can--; in some cases it's not really filed or recorded anywhere. It's not-- I-- not identified anywhere. So if there are violations in the common areas of a condominium in Omaha right now, we don't know who to-- who to notify, and there isn't really any accountability. Omaha's practice has been to issue a notice to all of the individual owners, but that really doesn't work. That's using a sledgehammer to-- on a smaller problem, and the individuals really aren't the



real party in interest on the common areas. The solution here is that-- we think pretty simple, and it is a simple bill. It would require that the condominium's governing body simply file a statement with the county where it identifies itself and provides contact information on each one of its officers. So as currently written, LB42 would involve a filing with the county clerk. The Douglas County officials and the Nebraska Association of County Officials have come forward and made some pretty good suggestions to LB42 that we would go along with. We've been told that-- by those parties that they would prefer the Register of Deeds to receive these filings rather than the county clerk, and we're okay with that. We would just need to change those words in the legislative bill and might be some other tweaking that we would need to do to accommodate-- that accommodate the Register of Deeds language. And we're happy to work on that with Senator Hilkemann's office and provide an immediate amendment to you. One other thing that this L-- legislative bill does is it's kind of a cleanup measure. There are two sets of laws that-- that govern condominiums in Nebraska. One set of-- one is an older set of laws that governs condominiums formed prior to 1984 and then the other set of laws governs condominiums that are formed in 1984 and after. LB42 would amend both of those sets of laws in the way that I've just described. But it would also clarify in the older law that that governing body is in fact responsible for upkeep of the common areas. That-- that-- that is clear in the new law, but it's not so clear in the old law. So in LB42 we do include a clarification of that accountability. So to conclude, we're going to work forward-- work directly with Senator Hilkemann's office to present an immediate amendment to LB42. We urge its passage. Unless there are any further questions, I thank the committee for its time.

**WILLIAMS:** [00:22:36] Question for Mr. Thelen. Yes, Senator La Grone.

**La GRONE:** [00:22:42] Thanks for being here, and thanks for coming down. Just a real quick question. The \$25 fee, is that merely meant to cover the administrative costs associated with filing?

**ALAN THELEN:** [00:22:51] Yes and that-- that was an estimate just to cover their cost of dealing with this program. If we-- if we shifted to the Register of Deeds, we'll probably want to change that because there is another existing law on the books now that says that the Register of Deeds charges I think it's \$10 for the first page and \$6 for each page after that. And that should probably govern if it's going to go to the Register of Deeds. So we'll-- we'll tweak that. That \$25 think-- af-- after we get a good look at it, that-- we may take that out of that, and just have the-- be-- be governed by the Register of Deeds' normal fees.

**La GRONE:** [00:23:27] Can I continue with where I'm going?

**WILLIAMS:** [00:23:27] Yes.

**La GRONE:** [00:23:28] So then is that in another area of the statute where basically would that-- would all the mentions of the fee provision here become unnecessary? And if that dropped out, it'd be governed by the other area of the statute you just mentioned?

**ALAN THELEN:** [00:23:40] Yes, I believe so.

**WILLIAMS:** [00:23:40] Additional questions. Seeing none, thank you for your testimony.

**ALAN THELEN:** [00:23:47] Thank you.

**WILLIAMS:** [00:23:48] I would invite the next proponent. Seeing none, is there anyone here to testify in opposition. Seeing none, anyone testifying neutral. Seeing none, Senator Hilkemann waives closing. That will close the public hearing on LB42.

**LINDSTROM:** [00:24:23] Well, now we move to LB78 introduced by Senator Williams. We will open the hearing and whenever you're ready, Senator Williams.

**WILLIAMS:** [00:24:35] Thank you, Senator Lindstrom, and members of the Banking, Commerce and Insurance committee. My name is Matt Williams. I'm Leg-- I'm Senator from Legislative District 36, M-a-t-t W-i-l-l-i-a-m-s. Before I start my formal testimony, several of the members of this committee served last year, and you will remember that we passed LB1121 through the committee and through the legislative process which adopted the protected series LLC laws in our state, not to go into effect until the year 2021, which was designed to give us time to update our underlying statutes to be sure everything was in harmony. And that's why I am here today because that process has now been done, and LB78 takes care of it. This is not a discussion on the specific need or requirements to have protected series LLC. The legislature decides that-- decided that last year. This is the process to harmonize and keep our statutes in line. LB78 will amend the Nebraska Uniform Protection Series Act and the Nebraska Uniform Limited Liability Act to properly coordinate the provisions of those two acts. Nebraska's Uniform Protected Series Act was enacted in 2018 by way of LB1121, and is based on the Uniform Protected Series Act as promulgated by the National Conference of Uniform Commissioners on Uniform State Laws in 2017. The changes to Nebraska's Uniform Protected Series Act under this bill would become operative on January 1, 2021 which is also the operative date of LB1121. The Uniform Protected Series Act provides a comprehensive framework for the formation and operation of a protected series limited liability company. A protected series LLC has both horizontal liability shield-- shields as well as standard vertical liability shields. All modern business entities provide the traditional vertical shield which protects the entities owners and their assets from automatic vicarious liability for the equities debts. The series limited liability company provides horizontal shields protecting each protected series and its assets from automatic vicarious liability for the debts of the company and for the debts of any other protected series in the company. A horizontal shield likewise protects the series liability

limited company and its assets from creditors of any protected series of the company. The Uniform Law Commission provided for their Protected Series Act to be enacted as part of the state's already existing version of the Uniform Limited Liability Company Act. That is a named act within a named act. Nebraska followed that course the best it could in 2018, but there was a hitch. Nebraska's existing Limited Liability Company Act was originally enacted in 2010 based on the 2006 version from the Uniform Law Commission. However, the Uniform Protected Series Act was designed by the Uniform Law Commission to fit within the 2013 version of their Limited Liability Company Act, not the 2006 version that Nebraska has in statute. LB1121 as enacted at the end of 2018 did not include any critical edits to address this matter. This year, LB78 fixes that issue. This bill was developed by a working group put together pursuant to interim study resolution LR378. Those participating included members of the Nebraska State Bar Association, the office of Secretary of State, and Nebraska Uniform Law Commissioner, Larry Ruth. The group had a great deal of assistance from two other Uniform Law Commissioners: David Walker, a retired professor at Drake Law School in Des Moines, Iowa; and, Steven Frost, an attorney from Chicago. Also I would like to give kudos to Banking Counsel Bill Marienau for all of his help in working through this and helping with the drafters, and my LA, Dexter Schrodt. LB78 would make a number of cleanup and correcting changes in our Protected Series Act. The bill would fill in gaps in the area of filing requirements. The bill would provide for use of existing requirements for entities-- business entities name filings. The bill would correct internal statutory references and provide for correct usage of defined terms. The bill would also harmonize technology between the Uniform Act and our existing statutes. The bill would provide filing requirements for a foreign protected series of a foreign series limited liability company. Finally the bill would outright repeal a section of the existing act which is unnecessary in Nebraska because it only has utility in states that already have protected series statutes on their books. The changes in this bill are cleanup, clarifying, and gap-filling. They do not alter the substantive direction of the underlying act. In summary, the decision to provide for protected series LLCs has already been made with LB1121 last session. This bill is the

follow-up to make adjustments and corrections so that Nebraska's Protected Series Act properly fits within our existing statutes. And we have several experts that are here today to talk about this, and I would encourage the committee to ask all the questions you need. And I will stay to close.

**LINDSTROM:** [00:31:06] Thank you, Senator Williams. Any questions from the committee. Seeing none, thank you, Senator Williams. We will now move to proponents of LB78. Good afternoon.

**LARRY RUTH:** [00:31:26] Well, good afternoon. My name is Larry, L-a-r-r-y, Ruth, R-u-t-h, and I appear in support of the bill this afternoon. I want to give you a little bit of background so that you can understand this bill and the next bill actually. The Uniform Law Commission in Nebraska is called the Nebraska Uniform Law Commission. Every state has a Uniform Law Commission as a state agency. We are a state agency appointed by the Governor. We don't get paid. We get a little bit of expenses but that's about it. We love the law and we love to make our jurisprudence better. The members of our Uniform Law Commission in Nebraska are: Judge Arlen Beam, he's on the 8th Circuit Court of Appeals that's one step below the U.S. Supreme Court, who's been a member for almost 40 years; Unifor-- University of Nebraska law professor now and former dean Harvey Pearlman who's been on the commission for about 30 years, I'm rounding these numbers off because I don't remember exactly what they are; Revisor of Statutes, Joanne Pepperl, this is your own employee, she's on the Nebraska Uniform Law Commission and she provides a lot of insight, she's been around on this commission for 25 or 30 years; I'm retired-- retired lawyer from Lincoln here and I've been on around 25 years, you get the idea this is a bunch of old folks and kind of doing it on their-- their day off, their retirement, it's-- it's a lot of work; in addition to that, Professor John Lenich who's-- teaches at the U-- UNL Law college; and private practitioner James O'Connor who's in Omaha. Like I said, all states have uniform law commissions, and then we have a national organization of those uniform law commissions just plain called the Uniform Law Commission. It's

located in Chicago. And what we do is we have committees draft proposed laws in areas where we think the states can have some benefit from having uniform laws. Thus we have the Uniform Commercial Code which handles all the commercial transactions in the states. The Uniform Anatomical Gift Act that's what you have in your billfold or your purse that shows that you're going to give your-- some kind of body parts away at death. That's-- that's a-- that's something that we-- we drafted and brought to the states. Uniform Probate Code just as an example of how it touches us all. So we do this in a lot of different areas and then we have a annual meeting where we go over those drafts, and we put-- we adopt those things that we want to take to the states. I'm having handed out to you now a rest-- a-- a-- a-- a list of acts, this is a--from a excerpt from our annual report, a list of acts that have been adopted in Nebraska. They show over the last 100-plus years about 116 acts, and they are-- they ranging, as I said, Anatomical Gift to Uniform Commercial Code. And in the last, for example, last 15 years, I think we've adopted 20-- you've adopted 20 acts or so. The problem exists when you have something that takes place in Nebraska, and you have the great mobility of people. You have some kind of a similar situation arising in Iowa. It's good to have a law in Nebraska that may be applied in other states, or better yet, it's good to have a similar law in Iowa or whatever where that attorney practicing there could say well that's like I did it in Nebraska. It-- it benefits federalism because it puts down to the states the enactment of laws that are closest to the people. Can you imagine the federal government having authority over the Uniform Commercial Code area? It's almost boggles my imagination because it's very hard for the uniform code to be updated addition-- occasionally and tailored to the local act if you have a federal law. So we are very pleased with our work in this area of LB70. We had a Uniform Act and then it-- the-- it-- it got adopted here before some of the tailoring was able to be done. This bill tailors it. I might just say that, I think I have said, that this is a voluntary group of folks. And we-- we are-- we feel very pleased to be able to work on behalf of the state of Nebraska on this. We don't have any interest group behind us. We don't make any campaign contributions. It's just people who are interested in having better lives. So that is our-- my testimony, and following me is David Walker who is great

law school and is-- was very actively engaged with this. He thought he found a mistake over the noon hour in this bill. And so we called in Bill Marienau, and yeah, there was a mistake. It was a mistake that we thought we found a mistake. Bill told us what he-- how he had drafted something and made a lot of sense the way he did it. So I-- I applaud Bill and his-- his support of the things that we do. Thank you very much.

**LINDSTROM:** [00:37:00] Thank you. Hold on one sec. Just got to see if there's--

**LARRY RUTH:** [00:37:02] I'm sorry.

**LINDSTROM:** [00:37:02] --any questions.

**LARRY RUTH:** [00:37:04] Yes.

**LINDSTROM:** [00:37:04] No, you're good.

**LARRY RUTH:** [00:37:04] I see.

**LINDSTROM:** [00:37:04] Any questions from the committee? Seeing none, I do have just one quick question.

**LARRY RUTH:** [00:37:08] OK.

**LINDSTROM:** [00:37:08] It's mentioned that it won't be finalized until 2021. Do you foresee any other adjustments or changes between now and 2021?

**LARRY RUTH:** [00:37:15] I don't think so. I am hoping that this is-- this is it. You know, one of the reasons we pushed this so fast is that other states are-- are forming, I mean, people in other states are forming these LLCs protected series. In Illinois alone, as of last year, there were 28,000 LLCs, protected series LLCs, and some of them are beginning to be used in Nebraska. One of the advantages of our LLC Protected Series Act is when they come into Nebraska, they're going to have to register, they're going to have to be transparent about who they are. And also are state laws going to apply because the choice of law that's going to be applied will be Nebraska law? So part of what we did-- what you did last year was to not only set up a system by which our folks in Nebraska could-- could-- could prepare and develop a protected series, but also to say OK if you're going to come in from Delaware, you're going to come in from Illinois, you're going to come in under our terms. And that's what we're doing here. I don't see any others. But, you know, the law is a process, it's a journey; it's not a destination. You have-- always have people who can find something that might improve it.

**LINDSTROM:** [00:38:33] Like noonhour.

**LARRY RUTH:** [00:38:33] Pardon me?

**LINDSTROM:** [00:38:35] Like over the noonhour.

**LARRY RUTH:** [00:38:36] That's exactly right.

**LINDSTROM:** [00:38:37] Thank you.

**LARRY RUTH:** [00:38:38] Thank you. Thank you.



**LINDSTROM:** [00:38:40] Next proponent.

**DAVID WALKER:** [00:38:46] Good afternoon, I'm David, D-a-v-i-d, Walker, W-a-l-k-e-r, a retired professor and dean from Drake Law School in Des Moines, Iowa. I am, and have been since 1992, one of Iowa's Uniform Law Commissioners. Since 2000 I have been the chair of our Iowa Commission. While retired, I am active in our business law section of our bar. I chair the corporate laws committee of the bar and as chair of the Uniform Law Commission, am active in working with the legislature on uniform laws that are sponsored and introduced in-- in our-- our general assembly. We are in fact, you know, introducing as part of the Iowa State Bar Association's legislative program for this 2019 session, the Uniform Protected Services-- Unif-- Unifor-- Protected Series Act that you adopted last year and which is the subject of LB78, in making corrections and-- and revisions. I was privileged to be part of a group working with Nebraska lawyers and others from-- a representative of the Secretary of State's office with your committee counsel, Mr. Marienau, with Bill Muller [PHONETIC] from the bar association and with-- with Larry and others in examining LB78 in its earlier iterations. And I quite agree with Senator Williams, the Chair of your committee, that Mr. Marienau did an excellent and careful job in identifying what revisions were needed and checking the cross references. And indeed, I performed a similar function in Iowa on our Uniform Protected Series Act because we, too, had the 2006 Uniform Limited Liability Company Act, not the 2013. So the-- the work was very careful. I, as a member of the business law section counsel of the bar and Uniform Law Commissioner, consider it very important for states like Iowa and Nebraska others in-- in the plains to have business and other legislation which is sound, current, well, well vetted, and helpful to the people of our states and the lawyers who represent and serve them in transactional or state or other-- other planning. The Uniform Protected Series Act that Nebraska has adopted, I hope Iowa will adopt it, is far superior to what presently exists in almost all-- I would-- except Illinois; Illinois has a good statute. I think we improved upon it, but in terms of addressing a felt need that people in business have, to utilize a limited liability company as a way

to organize their business which nevertheless has distinct or discrete operations which members of the limited liability company may own and invest in in varying proportions. The-- the Uniform Act that-- is instructive, it is channeling, it is much clearer. In Iowa for example, we adopted series legislation 10 years ago. I can't tell you, nor can a member of our secretary of state, how many limited liability companies actually have established series. The reason that Larry Ruth was able to tell you that Illinois has approaching 28,000 and perhaps more by this time is there is in Illinois a requirement for a limited liability company establishing a series to file a certificate of designation and to pay appropriately a fee. And so that will be done under the Uniform Protected Series Act. The legislation, in the vast majority of the 15 jurisdictions that have series legislation, define a series as a separate and distinct set of transferable interests for which a-- recounting records are separate and distinct. But that's saying, well, wait a minute, I'm not seeing this as a discrete operation or asset within a company and I don't know how clearly and reliably, confidently I can establish it. And this legislation does that for lawyers. I could not improve upon Senator Williams' statement about what LB78 does. I don't want to take up your time. It-- it through the committee council has identified cross references that needed to be checked, and in some cases corrected, terminology needed to be changed from the Uniform Protected Series Act to fit neatly within the state's, and our state's too, Limited Liability Company Act. Committee counsel even found places where there was need for a hyphen in-- to be inserted in order correctly to use a-- a defined term in the statute. So it was very, very careful. I wholeheartedly support LB78, commend it to your attention as a way of improving business legislation in-- an organizational statute that addresses what more and more people and business simply want to utilize as a way of organizing their-- their business operations. I'd be happy to answer any questions.

**LINDSTROM:** [00:45:11] Thank, Mr. Walker. Any questions from the committee? Seeing none, thank you for your testimony.

**DAVID WALKER:** [00:45:16] Thank you very much.

**LINDSTROM:** [00:45:18] Next proponent. Afternoon.

**COLLEEN BYELICK:** [00:45:31] Afternoon. Afternoon, members of the Banking, Commerce and Insurance Committee. For the record, my name is Colleen Byelick. It's C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm the general counsel and chief deputy for the Secretary of State's office here on behalf of Secretary of State, Bob Evnen, in support of LB78. As you know, the Secretary of State files a variety of business registration documents including documents to form and maintain limited liability companies and to qualify foreign limited liability companies and provide authorization for them to transact business in our state. Last session, the Legislature passed LB1121 which introduced the series limited liability company concept. At that time, our office was in the process of implementing a new filing system and did not have the capacity to implement the legislation. In addition, we had some technical concerns with the legislation and with the potential loss of revenue based upon the filing fee structure. Since the passage of LB1121, we have launched our new filing application, and we've processed over 80,000 transactions using our new system. In addition, we were able to provide feedback on some of our technical concerns and the filing fee structure. And those suggestions have been incorporated into LB78. And we feel that the fee structure has made the fees so they're consistent with the fees for limited liability companies. We appreciate the opportunity to be included in the working group that contributed to this legislation and thank Senator Williams and committee staff for their work on this bill and for introducing this legislation. Thank you for your time today.

**LINDSTROM:** [00:47:13] Thank you. Any questions from the committee? Seeing none, thank you.

**COLLEEN BYELICK:** [00:47:18] Thank you.

**LINDSTROM:** [00:47:19] Next proponent. Seeing none, I do have one letter in support, Timothy Hruza with the Nebraska State Bar Association. And now we'll move to opponents. Any opponents of LB78. Seeing none, any neutral testimony. Also seeing none, Senator Williams, you're welcome to close.

**WILLIAMS:** [00:47:45] Thank you, Senator Lindstrom, and members. I believe it is our responsibility, as senators, to create the best business environment we can to allow businesses to advance and to grow in our state. And clearly the protected series LLC is an instrument and a form of ownership that will be beneficial to use in the future. With that, I would encourage the group to advance the bill to General File. Thank you.

**LINDSTROM:** [00:48:11] Thank you, Senator Williams. Any final questions? Seeing none, thank you, Senator Williams, and that closes the hearing on LB78.

**WILLIAMS:** [00:48:38] All righty; we're moving right along. We will open the public hearing on LB70 to adopt the Uniform Voidable Transactions Act and eliminate the Uniform Fraudulent Transfer Act and ask Senator Hansen to go ahead and open.

**M. HANSEN:** [00:48:54] Thank you. Good afternoon, Chairman Williams, and members of the Banking, Commerce and Insurance Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26, northeast Lincoln. I'm before you today to introduce LB70, a bill that would adopt the Uniform Voidable Transactions Act or UBTA and eliminate the currently known law as the Uniform Fraudulent Transfer Act or UFTA. This is a 2014 update that is a product of the Uniform Law Commission which is a nonprofit forum to create nonpartisan state legislation where

uniformity of state law is desirable. The Uniform Voidable Transaction Act provides remedies for certain transactions by a debtor that are unfair to the debtor's creditors and are generally designed to keep the debtor's property out of the creditors reach. It addresses a few narrowly defined issues and is not a comprehensive revision of the Act it would replace. First, the title of the act would be changed to the Uniform Voidable Transaction Act. The title of the current law has a misleading description because fraud is not necessarily an element of claim under the current act. Thus the change to the term "voidable transaction." The Uniform Fraudulent Transfer Act has always applied to incurrences of obligations as well as-- as tra-- transfers of property. Thus the name changes-- a the-- thus the name change aims to clarify the purpose and application of the act. Overall the name change is intended as a clarification of the current act's purpose rather than changing the scope or the role of the act. The new act also includes a few new provisions. For example, it adds a choice of law role for claims governed by the act and includes uniform rules allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the act. It also adds a new section to deal with series organizations and provides that each protected series of a series organization is to be treated as a purpose-- as a person for purposes of the act even if not treated as a person for other purposes. It also deletes a special definition of insolvency for partnerships. The currently enacted UFTA set forth a special definition of insolvency applicable to partnerships which adds to the sum of the partnership's assets the net worth of each of its general partners. The new act deletes that special definition, and thus makes partnerships subject to the general definition. Under the general definition of insolvency in the act, the debtor is insolvent if, at fair valuation, the debtor's debts are greater than the sum of the debtor's assets. Finally, the new act presented in LB70 makes minor changes to several provisions dealing with defenses and-- to a transferee. This update has been passed by 19 states so far and has been approved by the American Bar Association and was listed by the Council of State Governments as suggested state legislation in 2015. I will note that the testifier behind me, representing the Uniform Law Commission, was an expert on the specifics of this updated act. I would like to thank them and the Uniform Law Commission for the

help with this bill. With that, I would close and ask you to advance LB70 from committee.

**WILLIAMS:** [00:51:48] Thank you, Senator Hansen. Are there questions? Seeing none, thank you.

Staying to close?

**M. HANSEN:** [00:51:54] [INAUDIBLE]

**WILLIAMS:** [00:51:54] Fine. Thank you. Invite the first proponent.

**LARRY RUTH:** [00:52:02] Senator Williams, and members of the committee, my name is Larry Ruth, spelled L-a-r-r-y R-u-t-h. My purpose for coming up is to just state again in general terms what I stated at the last hearing of the last bill as to who the Uniform Law Commission is, what we are, what we do. I'm not going to restate that, but I am going to hand out what we typically do-- these are kits that support the bills that we work on. This one happens to be the one for the bill in front of you, and it-- it is sort of a-- summaries of why we-- why we think it's good to pass this act. This is one of those unusual acts that goes back in its different forms to 1918 if you can believe that. And this was one of the first ones that we've adopted here of the Uniform Act. I would also say that this act was originally drafted by a committee that was chaired by the person who is going to be following me. He flew in from Boston last night, so we'd have an opportunity to hear from him. And if you look at the draft of the Uniform Act, his-- his committee is listed with him as chairman. So without further ado, I would like to finish my testimony of the Nebraska Uniform Law Commission and suggest you hear next Edwin Smith who's representing the Uniform Law Commission out of Chicago. Thank you very much.

**WILLIAMS:** [00:53:34] Thank you, Mr. Ruth. Any questions? Seeing none--

**LARRY RUTH:** [00:53:37] Thank you.

**WILLIAMS:** [00:53:38] --thank you for your testimony. Mr. Smith, you are welcome to testify.

**EDWIN SMITH:** [00:53:46] Thank you, Mr. Chairman, and members of the committee. I am Edwin Smith, E-d-w-i-n S-m-i-t-h. I am a uniform law commissioner from Massachusetts. As Mr. Ruth said, I chaired the committee that drafted the statute. And I'm pleased to answer any questions that come up. There is a long history here on fraudulent transfer law going all the way back to Elizabethan England where residents of England would hide their assets to avoid being taxed on them. Well, the U.S. inherited that law, that fraudulent transfer law, that had a primordial rule which was that a transfer of an asset by a debtor with the intention of hinder, delaying, or defrauding its creditors could be set aside by a creditor. That was encapsulated in a uniform law statute, and in 1918 the Uniform Fraudulent Conveyance Act that was replaced by the Uniform Fraudulent Transfer Act in 1984 to make that act more consistent with the then new federal bankruptcy code. But it was 30 years since that 1984 promulgation, and we had seen certain little things that needed to be tinkered with and that's where we got the Uniform Voidable Transactions Act. And as Senator Hansen pointed out to all of you, a lot of this hangs on the change of the title to pick up transactions that might not necessarily be fraudulent but be done with the intention of hindering or delaying creditors and picking up not just transfers but also incurrences of obligations with a view to hinder, delaying or defrauding creditors. So that's why we refer to transactions. I think Senator Hansen did a wonderful job of summarizing the very, very key provisions. This is not a rewrite of the Uniform Fraudulent Transfer Act. It's a refinement, the Uniform Voidable Transactions Act. I think it's ironic that it has a provision that deals well with series organizations that you heard from earlier. And I had prepared some nice summaries, but I think Senator Hansen did a terrific job. And I have nothing really more to add to his very eloquent summary of what the act provides. I will say that one of the things that we did in this act is refresh the official comments, which were a little skeletal

in 1984, and we expanded those a lot. Now the official comments are not part of the act. They're available to courts to look at, who may find them helpful. Courts are free to follow them or not follow them. I like to think they'll be instructive, but they'll be useful also in connection with this act. I'll leave with the clerk an article that I wrote on the statute that goes into much more fulsome details if you're interested. That can be made available to all of you, but otherwise I want to thank you for your time and your gracious hospitality.

**WILLIAMS:** [00:57:14] Are there questions for Mr. Smith? Seeing none, thank you for flying in from Boston. Additional proponents.

**DON SWANSON:** [00:57:40] Hello, my name is Don Swanson, D-o-n S-w-a-n-s-o-n, and I'm not commissioner of anything. I am an attorney here testifying on my own behalf. I've been practicing with Koley Jessen law firm for a long time, and-- and since 1980 I've been doing debtor creditor law. And I've litigated many fraudulent transfer cases on all sides. Since the-- your Chair is from Gothenburg, I thought I should mention that I grew up on a livestock farm just south-- south of Arnold which is 25 miles north of there. I live in Omaha so to get out there I leave Omaha, Senator Lindstrom, Howard, and I go up past Gretna, past Seward. Grand Island's halfway, and then I get out to God's country. I haven't been anywhere near counties number 12 and 13, but I'm guessing the people from Arnold are a little-- have a lot of-- a lot in common.

**WILLIAMS:** [00:58:33] And that is Legislative District 36, Arnold.

**DON SWANSON:** [00:58:38] Thank you. Thank you. I support this bill. For starters as has already been mentioned, it removes the word "fraud" which is a gross insult to many defendants who have done no such thing. Substantively, the bill adds clarity and uniformity so that lawyers can know what they can and can't do. Estate planning is a commonly used but rarely successful justification



for hindering, delaying, and defrauding creditors. And the problem with that is that the badges of avoidability like transfer to insiders, maintaining control while there's insolvency, they're always there. And it's-- it's avoidable and people need to understand this. Attorneys need to understand this. When you get a-- an estate planning attorney who planned one of these things on the-- in a deposition, they start out kind of haughty; yeah, I can do this. And by the end, you know, it doesn't-- it's not going so well. But one of the hardest things I do as-- on the debtor side is trying to advise people not to do this. Husband and wife have a business; husband's obligated for all the debts. There is somebody been hurt so there's a tort claim against them. They've been dealing with vendors and strung them out, and there's all kinds of vendors' claims. There's a bank out there, and all of these things have claims against them. And so they come in and say, I want to transfer my half interest in our house to my wife. For what consideration? Love and affection. Can't do that; I'm sorry, you just can't do that. That's presumptively fraudulent, and it will be avoidable; easiest thing in the world. They get up and walk out and go find another attorney. And so what this does, particularly with the comments that are not part of the statute but come along with it, the commission has done wonderful work on this, help provide clarity and uniformity to help people understand what can and cannot be done. Just to give some examples, there-- there was a case in-- in the recent number of years here at Nebraska where a debtor with millions of dollars of debt filed a no asset bankruptcy saying there's nothing for unsecured creditors. There-- that's because there was an estate plan, family wide estate plan and, you know, after years of litigation, 100 percent payment of all creditors, plus-- plus payment of the opposing legal fee of council, it backfired. These things backfire, and it's important for people to be able to understand what you can do and what you cannot do. And-- and this bill, this updated version of the old Uniform Fraudulent Conveyances Act which I started practicing under, which became the Uniform Fraudulent Transfers Act in the '80s somewhere and I learned to practice under, and now this one is coming along as an updated, upgraded version. And one of the things that's important for people to understand here is that there are significant consequences beyond avoidance of the transfer that go with this. For example, there's

loss of a discharge in bankruptcy. There's loss of exemptions in bankruptcy and then every legal dispute that follows starts out with the proposition of the argument on the other side that well, you know, they're willing to defraud creditors. They've already proved that. That's a horrible place to be. And so providing this level of uniformity and of explanation and understanding is a great value to the legal profession in-- in this area. There-- there-- there are comments that come with this that are not part of the statute, but they're in the background, that kind of provide explanations of how the commissioners came up with these, and those are very helpful. And what the comments do, that come along with this, is they explain some of these things. For example, they go back to the renowned jurist Learned Hand. I still want to know if that's his original name. But Learned Hand was the fellow out of the southern district of New York that wrote a lot of these things. And-- and so the-- one of-- his proposition of law comes into play that you don't have to defraud somebody to have avoidability. If you're hindering and delaying creditors, that's enough. And for example, if you have a debtor with a cash-- pile of cash sitting there and all of a sudden it's a part of an estate plan for-- for the whole family, that's cash is turned into stock in a family corporation that has no market. Well, you've-- you've made that cash asset unavailable-- unavailable to creditors. It's the easiest thing to do. It's the most logical thing to do, but it's the wrong thing to do. And the comments help flesh that out and make it more uniform and so people can understand it better. So in conclusion, I urge this committee to move this thing along, and I appreciate the opportunity to make this statement.

**LINDSTROM:** [01:03:37] Thank you. Thank you, Mr. Swanson. Hold on one sec. Any questions for Mr. Swanson. Seeing none, thank you. Next proponent.

**JERRY STILMOCK:** [01:03:46] Mr. Vice Chair, members of the committee. My name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, pardon me, testifying on behalf of my client, the Nebraska Bankers Association, in support of LB70. Thank you, Senator Hansen, for bringing the

legislation. Just a couple of points that-- positive changes within LB70, it clarifies and sets out the choice of law that will be right in it-- right in the statute-- included right in the statute to make it clear for the parties involved and also evidentiary standards. If you've ever had a chance to be on a civil jury trial, you know, the-- the burden at the time is by a preponderance of the evidence. And that's the language that is stated in this legislation, LB-- LB-- LB70. So for that reason it clarifies what the burden of proof is on the parties whether it be debtor or a creditor that being a preponderance of the evidence. Compare that to beyond a reasonable doubt that we'd see in a criminal trial. So with those just couple of items to add by my testimony, we'd ask the committee to support legislation and advance it to General File. I do have a handout if you would, please.

Madam, please. Thank you very much. And that concludes my testimony.

**LINDSTROM:** [01:05:04] Thank you, Mr. Stilmock. Any questions from the committee? Seeing none, thank you.

**JERRY STILMOCK:** [01:05:08] Very good. Thank you, sir, members.

**LINDSTROM:** [01:05:11] Next proponent. We'll now move to opponents. Seeing none, any neutral testifiers. Seeing none, Senator Hansen, you're welcome to close.

**M. HANSEN:** [01:05:32] Thank you, Senator Lindstrom, members of the committee. I appreciate all the testimony we've had today. I think it's kind of clear that LB70 and the new Uniform Voidable Transactions Act is largely a modernization update and not necessarily a wholesale change to the prior law. There's been a little bit of testimony on some of the comments section, and that's always one of the more interesting parts of [INAUDIBLE]. You know, as I introduced the bill I introduced the sta-- the language that's, you know, in law and we've had a lot of commentary in the comments and it's not necessarily my intent to incorporate any other comments. So just making that clear for

the record. With that, I close and ask the committee to advance the bill.

**LINDSTROM:** [01:06:10] Thank you, Senator Hansen. Any final questions. Seeing none, thank you. And that'll close the hearing on LB70. And that is all we have for today. Thank you very much for coming.