

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee January 25, 2019

BREWER: My name is Tom Brewer. I'm representing the 43rd Legislative District and the Chair of this committee. We will start by introducing our staff: to my right, Dick Clark, legal counsel; Julie Condon who is our committee clerk; our pages, thank you, Casey and Preston. Today we're going to be hearing three bills: LB186, Senator Lindstrom; LB64 with Senator Groene; and LB30 with Senator Kolterman. If we could have the committee meeting members starting on my right introduce themselves, please.

BLOOD: Senator Carol Blood representing District 3 which is western Bellevue, southeastern Papillion.

LOWE: John Lowe, District 37, which is the southeast half of Buffalo County.

HILGERS: Mike Hilgers, District 21, northwest Lincoln and Lancaster County.

La GRONE: Andrew La Grone, District 49, Gretna and northwest Sarpy County.

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

HUNT: I am Senator Megan Hunt, and I represent District 8, which includes the neighborhoods of Dundee and Benson in midtown Omaha.

BREWER: And Senator Kolowski is presenting in Revenue. And just so everyone understands, we're going to have some musical seat stuff going on here today because Senator Hunt and Senator Blood have presentations to give also. So don't panic. It's not that they don't care about your bill. It's just they have other duties as assigned. All right. Before we get started, couple of administrative issues here. Be sure your cell phones are on mute. You will see the senators either using their phones or electronic devices. We have got rid of our big, huge, black binders and are doing it now on our laptops. So if they're focused on that, it's because they're reading material or to find out what they need to do next as far as their committee duties. If you wish to record your attendance, the white sheets are over there on the table to record. If you intend to testify, get one of the green sheets, testifier sheets, and fill it out. If you do not wish to testify but want your position to be on record, I would also ask you to fill out one of the green sheets and give it to one the committee clerks. If you're going to pass out materials, I ask that

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you pass out 12 copies. If you did not bring that many, the pages can help you get additional copies. The policy of all committees-- of the committee is that all your materials, whether you want them to go-- if you want them to go in the official record, be submitted to the committee clerk by 5 p.m. the day prior. Just to get a head count here, how many in this room plan to testify? OK. Well, that answers another issue I have coming up then. When you begin to testify, we just ask that you state your name and spell it for the record and speak clearly so that it can be properly recorded. We will begin testimony today by introducing the first bill which is Senator Lindstrom's LB186. We will follow by those proponents, opponents, and those speaking in the neutral capacity. Today we are going to have three minutes, and you'll still get your yellow light at one minute. And then at the red light, we'd ask that you wrap it up. And if you go too long, then you get my red light and it's over. Well, with that said, Senator Lindstrom, welcome to the Government Committee.

LINDSTROM: Thank you. Good afternoon, Chairman Brewer, members of the committee. My name is Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, and I represent District 18 in northwest Omaha. Today, I bring to you LB186, a bill to adopt the Online Notary Act. The Online Notary Act would allow registered notary public-- publics commissioned in the state of Nebraska to perform notary duties remotely through an authorized on-line platform. This can be done on a laptop, desktop, or through a smartphone as long as the user has Internet connection with video and audio capabilities. Traditionally a citizen in need of a notarized signature would need to physically present before a notary public to verify their identification. The state of Nebraska currently allows electronic notary which enables the user to submit their documents for a notary signature. However, physical verification of the citizen's identification is still required. The Online Notary Act would allow the identification verification to be done via an on-line platform such as Notarize.com. And this is how it works. The user would register on a notarized app or Web site, and upload a document or documents and then verify the identity. Your identity is verified through a series of personalized questions. Once your ID has been verified, your identity is further validated using a state-issued photo ID. You are then connected with a commissioned electronic notary public via a live audio video call. The notary public reconfirms your identity, visually using the scan photo ID and then witnesses as you electronically sign the document. A payment for notarization is completed on-line and your document is then immediately accessible. A handful of states already allow on-line notarization including

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Virginia, Wyoming, and Texas. This particular legislation is modeled after the Texas program. It is my intent, with this legislation, to enable those in this state that are not physically near a commissioned notary, whether it be for sale of property or for business purposes, to have the accessibility and convenience that an on-line notary allows. You do have an amendment in front of you which I passed out that would modify some language on page 12 to satisfy some concerns on format-- formatting requirements. I'd be happy to answer any questions that you may have. Also there will be several testifiers behind me to follow-up with any technical questions regarding the mechanics of the bill that you may have. Thank you very much.

BREWER: Thank you for your testimony and for your bill. Questions? Questions? Seeing-- Oh, yes. Go ahead.

HUNT: I have a quick question. How many-- how many notaries does Nebraska have right now?

LINDSTROM: That's a great question. I think-- believe the Secretary of State's coming behind me, and he may be able to answer that question.

HUNT: OK. Well, sounds good. Thank you, Senator.

LINDSTROM: Yeah.

BREWER: And he's a proponent, right?

LINDSTROM: Yes.

BREWER: Good. [LAUGHTER]

LINDSTROM: I'm hoping for no opposition.

BREWER: All right. Thank you for your testimony. Will you stick around for closing?

LINDSTROM: I would. Yes.

BREWER: All right. Thank you. All right. First proponent up? Welcome to the Government Committee.

SAM COOPER: Thank you. My name's Sam Cooper, S-a-m C-o-o-p-e-r. I'm here representing the Nebraska Land Title Association or NLTA. I personally work for TitleCore National, which is a title and escrow company located in Omaha, Nebraska. And I'm a licensed attorney in the

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state of Nebraska. NLTA has a membership of about 500 members. We're present in almost every county in the state. And most of our membership is land title people, so think title companies. That's basically who we are. Senator Lindstrom did a good job of explaining in general terms how the bill operates. As of right now, anybody who wants a document notarized in the state has to appear physically before a notary in order to get that document signed. [INAUDIBLE] obviously remove that physical requirement in favor of an electronic presence through what the bill terms "communication technology" which-- the exact specifications of which would be approved by the Secretary of State. In our industry, we are strongly in favor of this bill. We support it very strongly. We have been involved throughout its drafting and stakeholder input process. We would use this process, whether through a third-party vendor or directly through ourselves, daily or multiple times daily if it were enacted. One of the main things in our business that we do is the procurement, preparation procurement and filing of deeds, transfer of real property. Obviously those are statutorily required to be notarized. In many of our transactions, the parties are in disparate locations. For example, I'm working on a deal today where the seller is in Hawaii but owns property in Nebraska. This would allow us a lot of flexibility and allow us to make those transactions run a lot smoother for the parties involved. So like I said, we are very much in favor of the bill. We are aware that there are several other states that are in various stages of enacting it. There are testifiers coming up behind me that can answer some more of those type of national landscape questions. And with that, I'll just close with saying we're in support and open it up to any questions.

BREWER: All right. Questions? Senator Lowe.

LOWE: Thank you, Chairman. Thank you for appearing.

SAM COOPER: Yep.

LOWE: Will there be a fee charged or would the fee be the same as a regular notary charge on this?

SAM COOPER: This bill allows for an additional fee which is \$25 for the Notarization Act. As far as getting the commission notaries, we would pay like \$100 to be-- to be commissioned. So for the ability to electronically notarize, we would pay an additional \$100 fee to the Secretary of State.

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LOWE: OK.

BREWER: And-- additional questions? Let me hit you up with one on the way out here. So if you wanted to be a notary, right now that is how many hours of training?

SAM COOPER: Oh, it's an examination. I mean--

BREWER: So it isn't a set amount. It's just a procedure you go through to get certified?

SAM COOPER: Correct.

BREWER: And there's probably no estimate that's been done as far as a cost savings to do this or anything like that?

SAM COOPER: Not that I'm aware of, but again, the Secretary of State's coming up behind me so he may have a better grasp of that.

BREWER: Well, I can see how, especially for outstate Nebraska, there are some huge advantages to not have to go to the nearest town which may or may not even have one so.

SAM COOPER: Correct.

BREWER: All Right. No additional questions?

SAM COOPER: I saw Senator Hunt raise her hand. Do you have a question?

HUNT: I found the answer.

SAM COOPER: All right.

HUNT: A little Control F; right away got it. Thank you.

BREWER: Thank you for your testimony. All right. Additional proponent testifiers? Welcome.

LIZ FACEMIRE: Hello. Good afternoon. My name is Liz Facemire, L-i-z F-a-c-e-m-i-r-e, and I'm with Quicken Loans. So for the sake of time, I'll skip past the intro part. I'm assuming that you know who Quicken Loans is. And if you don't, I'll take those questions as well. For the lay of the land, just to give you an idea, there are four states that are currently live, five states waiting for regulatory rulemaking, and eleven who have already introduced this year, including Nebraska. So I'll skip into the-- the big distinct advantages for remote

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notarization. First, and of greatest value, is the consumer choice. They would have an option to conduct closing anywhere through a digital, paperless experience and all without the burden of having to be physically present. The next value is the notary choice, allowing the notary to have the choice to utilize this advancement in technology, to offer their consumers a more efficient and secure ability to sign their closing documents, also extends the notary's ability to operate throughout with less travel time and provide more closings for them to complete. The last is the technology choice for a more secure notarial experience. Advances in identity-- identity verification would use public data sources and client-specific questions to prove a client's identity, as well as independent third-party authentication of a client's state-issued ID helps keep the process more secure for consumers. To further cement increased security and fraud deterrence, the remote notarization process has an audio/visual recording that can be referred to later if ever needed. And that's about it. I appreciate you guys' consideration of this bill. If you have any questions.

BREWER: All right. Thank you for your testimony. Senator Blood.

BLOOD: Thank you, Senator Brewer. I just have a quick question. You were talking about the technology. Can you tell me what platform this is built on, since you're saying it is secure?

LIZ FACEMIRE: There's-- there's different-- six different technology providers that currently offer this, Notarize as mentioned before, as well as NEXUS Technologies. So that's the one I'm familiar with. So they already have a platform for electronic closings, and they're kind of building off of that to provide this. So it's both the notary and the client have a secure password link to sign into. And then before the notary joins the conference, they have to show their ID and answer all their questions so that the notary has no visibility on their knowledge-based questions or anything that would be secure.

BLOOD: So that's more the process and not necessarily technology.

LIZ FACEMIRE: OK. Sorry.

BLOOD: So-- and that's fine. No, don't be sorry. No, that's fine. Do you know if they do digital ledger-- digital ledger technology? Is that what makes it so safe? What-- What platform or have you ever heard?

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LIZ FACEMIRE: I can't speak to that specific.

BLOOD: OK. I can probably discover it when I leave and look it up.

LIZ FACEMIRE: Yeah. And I can always follow-up with you guys as well. I could speak to our technology company.

BLOOD: No worries. I was just curious. Thank you.

LIZ FACEMIRE: OK.

BREWER: All right. Additional questions? Seeing none, thank you for your testimony.

LIZ FACEMIRE: Thank you.

BREWER: Additional proponents? Welcome to the Government Committee.

BETH BAZYN FERRELL: Whoops.

BREWER: Careful now.

BETH BAZYN FERRELL: I make an entrance.

BREWER: No accidents.

BETH BAZYN FERRELL: Good afternoon, Chairman Brewer, members of the committee. For the record, my name is Beth Bazyn Ferrell. It's B-e-t-h B-a-z-y-n F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm appearing in support of the bill with the amendment. We were the ones who asked Senator Lindstrom to offer the amendment, and we appreciate his doing so. Our concern with the green copy as drafted was that it would create an exemption from filing standards for electronically filed documents. And the standards are very important because we need to have the three-inch margin at the top and the margins on the side and so on for the recording information. The amendment takes care of our concerns, and we do support the bill. I'd be happy to answer questions.

BREWER: I like short and to the point. All right. Other questions? Well, you did a good job. Nobody has questions. Thank you.

BETH BAZYN FERRELL: Thank you.

BREWER: Careful. Welcome.

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ROBERT HALLSTROM: Chairman Brewer, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the Nebraska Bankers Association in support of LB186. The NBA did participate with the group that put a lot of time and effort, along with Senator Lindstrom and his staff last year and over the summer, to put this product together. The on-line remote notary system provides benefits to our customer which also then is valuable to the banking industry. With a more mobile society, the use of on-line transactions and other technologies have now evolved into the notarization area. We believe that the system and the processes, that are set up, are safe and sound and avoid fraud and things of that nature. And support the bill, and would be happy to address any questions that the committee might have.

BREWER: Well, it is some peace of mind to have you guys weighing in positively on this. So thank you.

ROBERT HALLSTROM: Happy to do so.

BREWER: Questions? Wow. This is easy. Thank you.

ROBERT HALLSTROM: Thank you, Senator.

BREWER: OK. Additional proponents? Mr. Secretary, welcome to the Government Committee. The time limit doesn't apply to you. You have special privileges.

BOB EVNEN: That's a relief, Mr. Chairman. I was prepared to address the committee for five minutes, but I can do it in three.

BREWER: All right. You're on.

BOB EVNEN: Good afternoon, Chairman Brewer, members of the committee. My name is Bob Evnen. I am the Nebraska Secretary of State. I'm appearing before you in support of LB186, the Online Notary Public Act. My name is spelled B-o-b E-v-n-e-n. As you know, the Secretary of State registers notaries and public electronic notaries-- notaries public and electronic notaries public in the state of Nebraska and disciplines registered notaries for malfeasance in office. The traditional hallmarks of a notarized document have been the requirements that the signer be in the physical presence of the notary at the time of notarization and that the signer is provided sufficient evidence of the signer's identity. Documents requiring notarization are of special and substantial significance and importance. And for

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that reason, these procedures, physical presence and identification, have been established to safeguard the documents against fraud and coercion in execution. Over the last 10 to 15 years, we've seen many changes in technology, business practices, and laws that have advanced electronic recordkeeping and that have given legal effect to electronic signatures. A natural consequence of the changes in practices and laws has been a discussion regarding electronic notarization and now, on-line notarization. In 2016, the Nebraska Secretary of State implemented electronic notarization which moved traditional pen-and-paper notarization to a digital process that continued to require that the signer or principal of the document be in the physical presence of the notary at the time of the notarization. This bill takes the concept of electronic notary a step further and allows communication technology-- technology to be used in lieu of physical presence, thereby allowing an on-line notarization of the document. While this concept is still new, it has been adopted in some form in eight states, although I just heard nine, and has been proposed in a number of others. In order to perform an on-line notarization, the bill requires a notary public seeking to engage in these on-line transactions to register with the Secretary of State as an on-line notary public, take an educational course, pass an examination approved by the Secretary of State, and pay a registration fee. Currently in the bill, the registration fee is \$50. We would-- we would ask that the-- that that amount be at \$100, which I thought I just understood one of the proponents to agree with if I understood him correctly. The bill also requires the Secretary of State to adopt rules and regulations to create standards for on-line notarization, including standards for sufficient identification of the signer of the document, the communication technology to be used for the on-line notarial act, and approval of the on-line solution providers. While I'm generally in support of this bill, I would suggest some changes in order to improve the bill and give my office adequate time to implement the legislation. Now I request that the operative date be moved to July 1, 2020. I believe it is currently January 1. And so I'm requesting that it be moved to July 1, 2020, to allow my office an adequate opportunity to study the communication technology and the identification technology necessary for secure on-line notary transactions and to promulgate appropriate rules and regulations. In addition, the appropriate retention and storage requirements for the electronic records related to on-line notary transactions and for the retention of the necessary transactional data also will require careful study and consideration by my office. These are critical matters. If a concern arises with respect to an on- line notary

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transaction, the electronic records and associated data will be vital in providing necessary evidence to validate the transaction. For that reason, the storage and security related to the electronic records needs to be thoughtfully established and implemented. And finally, as I mentioned, I request that the fee for registration be changed to \$100 which is the fee charged for electronic notary public registration. So in summary, I am in support of LB186. I would like to work with interested stakeholders to refine the bill in light of the concerns that I have expressed today. I thank the committee for its time. Senator Hunt, there are currently approximately 28,000 registered notaries in the state of Nebraska.

HUNT: Thank you.

BREWER: Thank you, Mr. Secretary. Questions? Senator Hilgers.

HILGERS: Thank you, Mr. Chairman. Secretary Evnen, good to see you. Welcome to the Government Committee. Congratulations on your election.

BOB EVNEN: Thank you.

HILGERS: Look forward to working with you in this committee. I think we'll see you quite a bit this year. I did have one question, if you knew. I was looking at what the nexus was to Nebraska in this particular bill. It seemed like the only nexus is that the notary is-- and maybe it's not even clear that the notary has to be a Nebraska resident. That might be some other portion of the-- the-- the act that doesn't apply to the on-line piece. Does the-- maybe you can walk through some examples with me. To the extent you know, does the-- does the notary have to be in Nebraska when the on-line notarization takes place? Does the person whose signature is being notarized, do they have to be in Nebraska and do they have to be in Nebraska? Could-- could they be around the country? Maybe if you just speak a little bit to any sort of geographic limitations.

BOB EVNEN: Well, my impression is they can be around the country. But I have to say, Senator, that I-- I cannot answer your question definitively, so let me get back to you on that, if I could.

HILGERS: Thank you. Thank you, Secretary. That's all I had. Thank you.

BREWER: You'll contact a good lawyer and find out the answer.

BOB EVNEN: Yes, Senator, I'll do that.

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BREWER: Any other questions? Oh, Senator Hunt.

HUNT: Thank you, Senator Brewer. Hello, Secretary of State Bob Evnen. Thank you for coming here today to help explain this. I have a question about the fees. So-- so we're clear, it's \$50 to register or renew? Or is it \$100?

BOB EVNEN: Well, under the bill as drafted, it's \$50.

HUNT: Uh-huh.

BOB EVNEN: The registration for an electronic notary is \$100, and we would propose to make it the same.

HUNT: OK. And then I also saw in here a \$20 fee to get a copy of the certificate of-- that authorizes the notary to-- to conduct the-- what's the language?-- Like to do the thing--

BOB EVNEN: Right, the electronic notarization.

HUNT: Yes. OK. So that would be a total of \$70 then. So can we just talk [INAUDIBLE].

BOB EVNEN: Well, one is-- one is a registration fee in general, and the other has to do with the transaction itself.

HUNT: Right. OK. Thank You.

BREWER: All right. One more time around. Senator Lowe.

LOWE: What's the current fee for a-- for a notary at this time? Would we be raising it from \$50 to \$100 for the electronic?

BOB EVNEN: Well, the current fee to register as an electronic notary is \$100.

LOWE: OK.

BOB EVNEN: So this would make this equivalent to that.

LOWE: OK. And do you know what a current fee to have a paper notarized is?

BOB EVNEN: I do not. I'll find out. We'll let you know.

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LOWE: OK. Perfect.

BREWER: Senator Blood.

BLOOD: Thank you for your testimony. It's nice to finally meet you. So do you know if your platform-- if you're going to be utilizing DocVerify, or will it be a call center?

BOB EVNEN: I do not know. That's one of the reasons that we've asked for additional time for the effective date is so that we can really look into that with care and make sure that we have a platform that is-- that is robust and that is secure.

BLOOD: Thank you.

BREWER: All right. With that said, any additional questions? Sir, thank you for your testimony.

BOB EVNEN: Thank you, Mr. Chairman.

BREWER: Come back again. All right. Additional presenters in the proponent? Welcome to the Government Committee.

CONNIE BURLEIGH: Thank you. My name is Connie Burleigh, and I'm here on behalf of Nebraska Realtors Association. And that's C-o-n-n-i-e B-u-r-l-e-i-g-h, and I am here in support of LB186. So remote notary promises accessible, streamlined, and efficient and more verifiable closings, as you've heard. And we just did earlier-- the National Association did a survey. And 60 percent of realtor professionals surveyed by that-- in that survey said that in 2018, they had a close-- closing that was delayed or canceled due to one of the parties not being able to be present. And 25 percent said that it has affected or-- it has affected 25 percent of their closing. Thirty percent said that. So in Nebraska that would be about 6,000 closings that could be affected by one or more person not being able to be present. So we would like to be a part of securing an easier and better way, a more affordable for someone. And I'll just give you an example why. Property owners are on the go. We're not asking them anymore, what city are they going to be in, but what country are they going to be in today. So when there's a closing on a property, it's not just one person that it's affected if something goes wrong. So let's say you were selling your home and moving into a new home. It's the week of closing on your new home, and you must be out so the people that are buying your house can do their walk-through, usually the night before

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closing. And then they close one hour before you close on your new home. You cannot close on that home until they close. Oh, and by the way, the people that are buying your house are selling their house to a young couple who must be out of their apartment on the same day when they sell their home or when they close on their home. Now you have three sellers, three buyers, and everyone is closing on the same day. Everyone is packed and ready to move. Do you see anything that could go wrong? It does all the time. One seller or one buyer cannot, for any reason, show up to the closing or get documents notarized back to the closing table. It affects the lives of several people. I had a seller who signed his documents early because he had to be in Alaska for work the week of closing. There was a change in the closing date because of a banking glitch. Happens once in a while. The seller had to find a notary in Alaska, and the title company had to overnight the document to the seller. The documents were overnighed, but the package did not arrive on time. And the seller had to be on a plane to his next destination which was out of the country. And we had to start all over. Meanwhile, the buyers already closed on their house. And they were homeless for about five days and had to pay high fees to keep their belongings in the truck while the title company tracked down the seller, resent the documents, got his signatures, and he overnighed them back to Lincoln. This was-- could have all been prevented with remote notary. Most recently, I had a seller who already moved out of state and was staying with her parent in Bellwood until the documents were ready to sign, and she planned to drive to Lincoln. The documents were ready when a storm-- snowstorm hit, and it was very dangerous for her to drive to Lincoln. Well, there's not very many places in Bellwood to find a notary and do all of this stuff. But our only other option was to overnight the closing packet with hopes it would arrive, have her take it to the bank or title to overnight the closing packet with hopes it would arrive, and then-- OK, am I done?

BREWER: That's the signal.

CONNIE BURLEIGH: OK.

BREWER: All right. Hey, you've done a great job.

CONNIE BURLEIGH: Thank you.

BREWER: I don't think you're going to have any problem selling us on it. The-- the-- the examples are perfect.

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CONNIE BURLEIGH: OK. Thank you.

BREWER: I understand the complexities and the changes that this makes. All right. Again, around the table. Questions? All right, you did a good job.

CONNIE BURLEIGH: All right. Thank you.

BREWER: You didn't get questions. All right. Any additional proponents? All right. Seeing none, we'll go to those that are speaking as opposition. Gee. OK, those speaking in a neutral capacity? Senator Lindstrom, I need you to run more bills. Please, come on up and close.

LINDSTROM: Thank you, Chairman Brewer, members of the committee. This has been several months, actually about a year and a half, of working with the different parties. I just want to thank the Secretary of State along with all the other members that came up here and testified in support and-- and working to get this as good as it can be. And we'll work with the committee and members to satisfy the Secretary of State's request for the increase in the fee and also to help them promulgate the rules and regs for the summer of 2020. Senator Hilgers, I believe under 64-101, the notary has to be commissioned within the state of Nebraska, and so they are registered there. Senator Blood, with regards to the platforms, I have not looked at all six. I have looked at one, Notarize.com, and they do a walkthrough. So it's pretty interesting as we kind of move away from paper and go to technology and electronics. You can participate in and walk through what they-- what the process is.

BLOOD: I'm actually guessing that-- I'm sorry.

BREWER: Go ahead.

LINDSTROM: No. I'll finish there and be happy to answer any questions.

BLOOD: I'm actually guessing that they're all built on the same platform which makes them secure.

LINDSTROM: Yes.

BLOOD: I'm guessing DLT. And that's-- I was just curious because, as you know, I've tried in the past to get those bills moved forward, and everybody seems puzzled by the technology. But now that we're passing

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bills like this, hopefully we can get everybody on-board to move Nebraska forward all the way.

LINDSTROM: Twenty-first century. We can do it.

BLOOD: There you go.

LINDSTROM: Yes. So thank you to the committee. And I'd-- yeah, I'm happy to answer any follow-up questions.

BREWER: All right. Questions for Senator Lindstrom? Senator Lowe.

LOWE: Thank you, Chairman. Thank you, Senator Lindstrom, for bringing this bill. And as one who has had to travel to a different country to sign-- to have a notary sign-- actually it was a court magistrate over there.

LINDSTROM: New Zealand, right?

LOWE: New Zealand, yes.

LINDSTROM: Yes, Senator.

LOWE: This would've been very nice. So thank you for bringing this bill, and we'll look forward to seeing it on the floor.

LINDSTROM: Thank you, Senator Lowe.

BREWER: All right. Additional questions? Seeing none, thank you.

LINDSTROM: Thank you, Chairman.

BREWER: And that concludes our first bill of LB186. And now we will transition to LB64, and Senator Groene. Welcome to the Government, Military and Veterans Affairs Committee.

GROENE: Brings back old memories when I was on this committee. It was a lot of fun. [INAUDIBLE] my favorite topics.

BREWER: OK. Depends on the day, but yes.

GROENE: LB64 was brought to me by my local sheriff, Jerome Kramer, who had a hard time--

BREWER: Could we do the formal name, district?

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GROENE: I got to remember my name. Mike-- Senator Mike Groene, M-i-k-e G-r-o-e-n-e, District 42.

BREWER: Well done. Continue.

GROENE: LB64 amends statutes pertaining to the license of truth verification examiners licensed by the Secretary of State, specifically voice analysts and polygraph. Currently Nebraska is the only state that licenses voice analysts examiners. Twenty-five states do not license polygraph and ten others have either minimum-- minimal license requirements, exemptions for law enforcement, or are exploring a revision repeal of their statutes. Reality is, we can't find anybody to do it. Requirements are too high. Truth verification is an investigative tool. The results are not admissible-- admissible in court. That's probably why this bill is not in Judiciary. But it's a valuable tool for law enforcement both for criminal investigations, and perhaps most significant, the screening of applicants to join the force. Unfortunately, the current licensing requirements that you will hear from testifiers today are cumbersome and, in some cases, nearly impossible for agencies to meet, especially small rural agencies. Our folks have to go to Boulder, the closest place they can go, to upgrade or update or be qualified with classes. The most significant change to the license requirement is the removal of the internship program. Under current Nebraska law, once an examiner completes a professional training and passes all of the certification requirements from the schools, they must come home and complete a yearlong internship with a mandated number of examinations they must conduct. Oftentimes the internship has to be extended because it is nearly impossible to complete all of the requirements within a year. LB64 eliminates that-- this burdensome obstacle. We have replaced the internship with a continued education requirement that never previously existed for truth verification examiners. LB64 changes the license length to two years, so they don't have to go through it every year, and requires that a practicing examiner attend at least one continuing education seminar or workshop directly related to the field prior to the license renewal at least once every two years. The reason I brought it, the present cost of time and money to officers to acquire the background credential to become a truth verification examiner is prohibitive, not just for them but also for the law enforcement agency. In our case, it's basically a volunteer to go through it. They don't get paid anymore. The sheriff likes to have at least one individual. They use it on all their applicants for their job. They do it in investigations where it's voluntary. If a-- if a-- and those who are suspects and are

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not guilty quickly volunteer to take it. And then it helps law enforcement eliminate those suspects that aren't-- not only suspects but witnesses, to make sure the witnesses are telling the truth. But anyway I-- that's about all I know about this. I left this in the hand of my-- my LA, and the sheriff, and the State Patrol, and other industries, people involved in this practice, they will come up behind me and testify. I understand the State Patrol has a few questions now about it, but amendments are readily-- we'll work with them. But that's all I have to say, so save your hard questions for somebody who knows because if I answered them and I was hooked up to a truth verification, I'd probably fail. [LAUGHTER]

BREWER: All right. Thank you for your testimony, Senator Groene. Questions? Senator Lowe.

LOWE: Thank you, Chairman. Thank you, Senator Groene. So a fee of \$25 every two years, correct? You see that as saving the counties and the police departments, whoever does this, thousands of dollars per year?

GROENE: That's-- that's minor. It's sending the guy for hotel rooms and meals to Boulder and then filling in his shift on the-- to keep the training. It's the-- it's-- because that individual isn't willing to pay all his costs himself to have that certificate, so the law enforcement agency has to pay. And then if somebody leaves, they have to go through it all again. If you read the requirements, they're amazing. Don't quote me, but my assumption is, which I haven't been told is wrong, we've seen the old TV shows with the graphs and then somebody had to be trained to read that graph. This is like a breath analyzer. It just gives you the result. The training of-- of-- of a-- before you had to have an academic degree at the bachelor's level from an accredited college or university, had at least four years of investigative experience at the federal, state, political subdivision, private licensed investigator level-- level immediately prior to application, or has had at least four years' experience administering polygraph examination. And then they had to be a-- have satisfactorily completed a minimum of 250 classroom hours of formal course of polygraph or voice stress analysis-- analyzer. Now this law probably goes back to when it used to be municipal court. That's not the case anymore. It's a tool. It's an investigative tool. It's an employment tool.

LOWE: So the department could have two or three people for a whole lot less money than just have-- maybe having one.

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GROENE: Yeah. It could because it'd be easier to qualify him. It's the cost of getting that person trained and available. And it's for an investigative tool, and they don't pay that individual any more. So first they got to get a volunteer to go through it. And I guess-- the sheriff's told me one of them said, the only place to go was Florida and didn't tell him it was Boulder he could have went. So one guy got to go to Florida one time for training. But anyway, it's-- it's a tool and, you know, this affects county budgets, local police budgets, OPS, LP, you know, Lincoln Police, not OPS but Omaha Police Department, OPD, the State Patrol. But-- so it's-- it's in the-- it's in the-- what we're trying to do here is on licensing, to cut costs to not only individuals, but to government. And this one would cut costs to government.

BREWER: All right. Additional questions? You'll get this question eventually one way or the other, just so it's out in the open. Who asked you to bring this bill?

GROENE: Sheriff Kramer.

BREWER: Very good.

GROENE: He was-- I don't know if he is anymore-- he was the past president of the County Sheriffs' Association.

BREWER: Very good. All right. Seeing no other questions, thank you for your testimony. Will you stick around for the closing?

GROENE: If you keep it interesting.

BREWER: OK. Thank you. We'll start with proponents for LB64? Yeah, that's where one of you guys come up here.

CHUCK HUBKA: Senator, are we doing the calling, please?

BREWER: Oh. Stand by. I-- I-- we had someone who was en route to testify and got hung up with flights, and we were going to have them call in. But to do that, I have to get my modified script out here. OK. I guess whenever you're ready, click him in and see if we can get "comms".

CHUCK HUBKA: We'll wait for him to call. As soon as you hear the phone ring, we'll patch him in. He's been notified to call is my understanding.

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BREWER: All right. We'll give him a second here. I have to redo some of the opening stuff so he understands what he needs to do to go on the official record.

CHUCK HUBKA: Senator, he should be on.

WILLIAM ENDLER: Hello?

BREWER: All right. Bill, are you on the line?

WILLIAM ENDLER: Yes, I am.

BREWER: All right. I'm going to read through some general information, and then I'll let you take over and provide the opening information we're going to need and then make your statement. First off, welcome to the Government, Military and Veterans Affairs Committee. This is Senator Tom Brewer. I'm the chairman of the committee. What we're going to need you to do is start by pronouncing your name and then spelling it. And then we'll be starting the clock to track your-- your-- your time here. What I'll do is just to let you know when you're at your amber and then on your red, which just-- the amber means you have another minute to go. So with that said, why don't you go ahead and give us your introduction and start your testifying.

WILLIAM ENDLER: OK. My name is William Endler, E-n-d-l-e-r, and I represent the National Institute for Truth Verification Federal Services out of West Palm Beach, Florida. And I really-- I mean, as far as an opening statement, I'm just here to represent the voice-stress analysis. I was a polygraph examiner for 17 years, and I've been with voice-stress analysis now for 20. As by me, I apologize. I couldn't be there in person, but my flights were cancelled due to all the TSA stuff, I guess. But anyway, I'm really mainly there to answer any questions or any concerns or anything like that, that you might have regarding voice-stress analysis.

BREWER: All right. Well, thank you. And what we'll do now is I'll go around the committee table here and ask for questions. If there are, I'll have them introduce themselves and then ask their question. So are there--

WILLIAM ENDLER: OK. That would be fine.

BREWER: --are there any questions? All right. That means you've done a very good job.

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LOWE: Thank you for calling in and joining us. The introducer, Senator Groene, has said that this has changed quite a bit in the past. We used to see the old polygraph with the lines on it, and--

WILLIAM ENDLER: Right.

LOWE: -- he has stated that it's now much easier and pretty much just gives you an instant result. Can you kind of explain that?

WILLIAM ENDLER: Sure. Sure. Yeah. It's actually-- and again, as I mentioned, I was a polygraph examiner for 17 years, and I used to decipher all those lines and all that sort of thing. And really, the-- the biggest issue, I think personally, and the reason that I like voice-stress analysis much more, is that with polygraph, there are several countermeasures the individual can do. They can control their breathing. Any muscle movement will affect the polygraph chart. Hence, this is one of the reasons why you get a lot of inconclusives and that sort of thing. Whereas, with voice-stress analysis, there are no countermeasures. I mean there's absolutely nothing that the individual can do to basically manipulate the chart without the examiner knowing. And voice-stress analysis really is not that difficult. Basically how it works is that our voice box is a muscle. And when we speak, the air passes over that muscle and it vibrates. And it vibrates at a certain rate. And then when we-- when we get under stress and the fight-or-flight kicks in, the sympathetic nervous system kicks in and causes the physiological changes to occur in our body. And one of those physiological changes that occurs is the muscles in our voice box tighten up, so that when we speak, the air passes over it. It still vibrates, but it just doesn't vibrate at the same rate that it does when we're relaxed because of the tightening. And actually in essence what it does is it literally changes the frequency of our voice. And because it's the sympathetic nervous system, of course, we can't start it, we can't stop it. It's automatically kicked in by our brain. And the software that we have in our laptop computers basically will record the voice pattern when the subject is answering the questions. And you can tell by looking at the pattern whether the person is under stress or not when they answered that particular question because the pattern looks completely different when a person is under stress than they do when the-- when the person is relaxed. And that's basically because of the tightening of the voice box.

LOWE: Thank you very much. I just wanted to make it worth your time for calling in. [LAUGHTER]

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WILLIAM ENDLER: OK.

LOWE: You did a very good job.

BREWER: Yes.

WILLIAM ENDLER: Oh, thanks very much.

BREWER: All right. Additional questions? I would have to agree with Senator Lowe. That was an excellent description of how it works. I think up until then, it was a little bit of a mystery, but you cleared it up. So thank you and thank you for calling in.

WILLIAM ENDLER: Oh, you're welcome. Anytime. Anytime.

BREWER: All right. Have a good day.

WILLIAM ENDLER: Thank you. You, too.

BREWER: So we're good? Oh, and in case you didn't know, today is Chuck's birthday. Right, Chuck?

HUNT: It is?

CHUCK HUBKA: I heard a rumor.

BREWER: Uh-huh. We won't sing to him, but I just thought that since he was here helping us, we should at least let people know that he is older today. [LAUGHTER] All right. With that said, proponents? Yeah, that's where you come up. So you're the one that got Groene into this, eh?

JEROME KRAMER: Oh, I got him into a lot of things over the years.

BREWER: All right. Please go ahead and do your--

JEROME KRAMER: He probably needs a truth verification exam.

BREWER: [LAUGHTER] Oh boy, is that right.

JEROME KRAMER: Anyway I'm Lincoln County Sheriff Jerome Kramer, J-e-r-o-m-e K-r-a-m-e-r. Senator Groene stole my notes so some of this is going to be redundant, but I'd like to thank Senator Groene for introducing LB64. This bill's intended to eliminate some unnecessary licensing requirements that currently exist for examiners and potential examiners for the polygraph and the computerized

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voice-stress analyzer which is also known as CVSA. The purpose of these instruments is to assist in identifying deception of the person in question. Both method-- methods have a long history of assisting and solving crimes and also identifying acceptable candidates for a career in law enforcement. I have used CVSA on my agency since about 2005. We have used it in criminal cases primarily to eliminate suspects who have been suspected in-- of being involved in a crime. We also use it in preemployment background investigations. We have eliminated many undesirable candidates from pursuing a career in law enforcement. We have found that roughly 50 percent of our candidates for detention officers are undesirable for a career in law enforcement. We have found that it is very difficult to meet the Nebraska licensing requirements. The demands that are placed on the intern and the intern supervisor are difficult for large agencies to attain and impossible for small agencies to attain. This makes it impossible for small agencies to enjoy the benefits of this valuable investigative tool. Conducting conclusive investigations is difficult for these agencies, and undesirable people are finding their way into law enforcement by-- by way of the smaller agencies who cannot meet the requirements of the Nebraska licensing board. Some other states require licensing, but none require the additional supervised exams and testing that Nebraska does. I fully understand that Nebraska is attempting to control proficiency in the examiner, but the process does nothing to accomplish that goal. Every examiner is highly trained and tested before leaving the Polygraph Academy and/or the CVSA Academy, and both academies are recognized by the National Institute of Trust-- of Truth Verification. Every examiner leaves the academy with a certificate if they successfully complete the course. A certificate is all that should be required in order to use the training that officers have received at the academy. My deputies receive training and certification in radar, pressure point control tactic-- tactics, Taser training, drug recognition experts, intoxilyzer preliminary breath tests, forensics for child interview, firearms trainer, accident reconstructionist to name a few. All of these advanced training require-- require certificate-- certification, but none require licensing. Several of these certifications allow the holder of the certificate much more power than truth verification ever would. In order to meet required licensing board-- the requirements of the licensing board, I lose the full use of a newly trained deputy for a year, if all goes well, and a year and a half if an extension is needed in order to accomplish the required number of exams. I also will most likely pay overtime to the intern supervisor. The polygraph and CVSA are very adequate-- have very adequate training to ensure the

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examiner is competent to perform the exams. Also, CVSA requires follow-up proficiency training every two years, and the examiner must successfully complete this training. If they do not, they will not receive their certificate-- certification. This is much more than what is required by the Nebraska licensing board. So I would ask that you please move this bill forward and eliminate this unnecessary burden on Nebraska's law enforcement.

BREWER: All right. Thank you for your testimony.

JEROME KRAMER: And when I introduced myself, I forgot to say that I was here on behalf of the Nebraska Sheriffs' Association-- Association and the Nebraska Association of County Officials.

BREWER: Thank you. And I let you continue past the red light because you're kind of in that category of elected official too so, and you were on a roll so. Questions? Questions? Well, you must've done a good job. Thank you.

JEROME KRAMER: Thank you, Senators.

BREWER: All right. Additional proponents? Additional proponents? Though-- come on up. Welcome to the Government Committee.

NICOLE FOX: Thank you. Thank you, Chairman Brewer, members of the Government, Military and Veterans Affairs Committee. My name is Nicole Fox, N-i-c-o-l-e F-o-x, and I am here today to testify on behalf of the Platte Institute in support of LB64. During the 2018 interim, I was invited to join a group of individuals at a meeting sponsored by Senator Groene's office to discuss concerns regarding the license that is required for individuals wanting to administer truth verification exams. In most states, truth and deception examiners complete a certification program through the National Institute for Truth Verification. Recertification is then required every two years after completion of the initial certification. But in Nebraska, in addition to this national certification, an additional 250 hours of classroom instruction with written exams and an internship, with the conduction of 50 truth verification exams during this internship, are required. Of note, the original number of truth verification exams required was 100. This number was decreased because it was just too high. Some of Nebraska's law enforcement agencies were not able to find enough individuals willing to volunteer for the exam. Under current law, if the required number of-- number of exams are not completed within the internship time frame, you are allowed one extension. But if the

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required exams are not completed by the end of that time, a potential licensee must start all over again. Nebraska's licensing requirements are extremely burdensome. At the time of the interim meeting, the sole internship supervisor in Nebraska was repair-- was preparing for retirement. A representative from the Secretary of State's office was also at that meeting and related to the group that the truth and deception examiner's license is one of the most vigorous licenses the office administer. As this meeting progressed, all I could think was that Nebraska's law was crafted with good intentions but unfortunately met with unintended consequences. The law has already required changes since its inception, but burdens to complete the license's requirements still exist. A one size-- one-size-fits-all approach is not working. The current law delays the ability to be able to do the work. I'm not convinced that the current requirements benefit the public. In fact, if it were up to me, I would propose elimination of the license altogether, since a national certification already exists. I do understand, though that some in the group did not agree with full repeal. LB64 proposes several changes to the truth and deception examiner's license to lessen burdensome requirements. Two of the most significant changes are the elimination of the 250 classroom hours and the elimination of the internship. Although full repeal was decided against, this bill is a great example of how someone in law enforcement taking the initiative to update a licensing law to reduce barriers-- of someone taking the initiative to reduce barriers to their licensing law. LB64 is in line with a national effort to reduce overregulations of occupations, efforts supported by both the Obama administration and the Trump administration. Earlier this week, the Department of Defense Undersecretary recently weighed in on a reform proposed to Nebraska here in this committee. During the 2017 and 2018 Legislative Sessions, the FTC weighed in on proposed reforms. When discussing a variety of policy issues in this Legislature, we often ask, how does Nebraska compare. Currently Nebraska is an outlier. LB64 would improve this status. To those in law enforcement who are here today for this hearing, thank you for your service. Your desire to serve the public and keep us safe is greatly appreciated. And I appreciate Senator Groene's efforts to help those needing to provide polygraph or voice-stress analysis for your agencies continue to be able to keep the public safe without overly burdensome red tape. The Platte Institute supports legislation that reduces barriers to entering the work force. Senator Groene's LB64 is an example of this type of legislation, and we ask that you advance it to General File. And with that, I'd be happy to take questions. Sorry I went over.

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BREWER: No, no. You didn't know ahead of time that I was going to cut the time short, so thank you for this. It's nice to have it in a reference way to look at. Questions? Questions?

NICOLE FOX: All right. Thank you.

BREWER: All right. Thank you. All right. Any additional proponents? Welcome to the Government, Military and Veterans Affairs Committee. Please--

LARRY MEYER: Thank you, Chairman.

BREWER: --have a seat. Sit down. Make yourself at home.

LARRY MEYER: I am Sergeant Larry Meyer, L-a-r-r-y M-e-y-e-r, from the Lincoln County Sheriff's Office. I'm not as bold, Mr. Chairman, to take shots as the senator-- at the senator as my sheriff is, so I'll just begin.

BREWER: Go for it.

LARRY MEYER: I'm mostly here to very briefly explain my saga and stand for any questions. As it stands right now, as the lady before me stated, one of the internship supervisors was preparing to retire. That was Chuck Nichols. He was my intern supervisor. Luckily, he was still-- he was at my agency. So I'm it, as far as public CVSA examiners go. I started in June 2015. Sheriff selected me to travel to Boulder and take the CVSA course which I did, passed, and was certified. It took me until, with a lot of gracious assistance from the Secretary's office I must add, until November of last year to become licensed. I have had-- yesterday I did my 58-- or 59th and 60th exam on two preemployment positions for our detention center. My concern, Senators, is with an internship which this-- this bill would in essence get rid of the internship program. It would probably take me another six months or a year, with the number of exams I get, to even qualify to become the next internship supervisor to supervise the next deputy that may complete this certification. So this has been a three-year process. I, under current rules and regulations, even after 3 years and 60 examinations, would not yet qualify to supervise someone else to begin the licensing procedure. As stated before, several other states do require licensing for the CVSA. However, Nebraska is the only one with an internship program to ultimately attain a license. The day I left Boulder, Colorado, in June, you know, June of 2015, in 49 other states, I could have gave a state \$20 to

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\$25, \$50, whatever it was, and I would have been licensed and ready to go. So, Mr. Chairman, I'd be happy, since I'm the guy, to answer any questions.

BREWER: Thank you. Where do we begin? OK. Questions? Really? Lawyers have no questions? All right. Let's-- let's take a little bit of a backtrack here. So for example, if you were a law-- law enforcement agency in western Nebraska and they wanted to administer one of the CVSAs-- is that what it's called?

LARRY MEYER: Correct.

BREWER: You're-- they'd have to come to Lincoln County and you'd have to be the guy that administers it?

LARRY MEYER: So as it's set up now, Mr. Chairman, I, first of all, would have to meet the requirements to be an internship supervisor. I believe-- that is-- I have the time, the two-year timeframe. I crushed that in essence because it's taken this long. But I would need an additional 15 more exams just to apply with the Secretary to be able to supervise the next CVSA examiner. Now, if that makes any sense but.

BREWER: Well, it doesn't. But there's a lot of this that don't make sense.

LARRY MEYER: I'm glad to hear you say that, Mr. Chairman.

BREWER: No. Well now, is this an additional duty as assigned or is this your sole purpose in life?

LARRY MEYER: Oh, this is a very small portion of what I do on a daily basis--

BREWER: Really? And it has all these--

LARRY MEYER: --as an investigator.

BREWER: -- requirements.

LARRY MEYER: Yes, sir.

BREWER: Wow, I mean they-- they administered the test to us when I flew aboard the NAOC. But you would think if someone was going to give you the thermonuclear release codes, that that probably ought to be something you'd do, but I'm not so sure that we may have overstepped

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our-- our reasonable level with this. All right. No additional questions? Thank you for your testimony.

LARRY MEYER: Thank you, Mr. Chairman.

BREWER: All right. Any additional proponents? Opponents? Come on up. Welcome to the Government Committee.

RYAN PHINNEY: Thank you, sir.

BREWER: You may begin whenever you're ready.

RYAN PHINNEY: Thank you. Chairman Brewer and members of the Government, Military and Veteran Affairs Committee, my name is Ryan, R-y-a-n, Phinney, P-h-i-n-n-e-y. I'm an investigative sergeant with the Nebraska State Patrol, a licensed polygraph examiner with 11 years of experience, and I serve as the polygraph coordinator for the Nebraska State Patrol. During my 11 years, I have performed approximately 230 individual polygraph examinations. I am here today on behalf of the Nebraska State Patrol to share a few specific concerns with LB64 as proposed. The submitted changes will weaken the credibility and usefulness of truth and deception examinations in Nebraska. It will move truth and deception examiners away from established best practices which are designed to ensure the legitimacy and advancement of truth verification. The reduction of these standards will increase the liability of the state, county, or municipalities by allowing underqualified individuals to perform examinations. The consequences concerning the interpretation of polygraph examinations is enormous. These consequences have the potential to negatively affect the citizens of Nebraska by having unqualified and inexperienced examiners administering tests that often result in negative legal, civil, marital, or employment consequences. The language proposing to eliminate the requirement that a licensee have no convictions of crimes of moral turpitude and the removal of the requirement that the applicant be of good moral character are injurious to the integrity of the profession of truth verification. It would be virtually impossible for the results of an examination that hinges on honesty to be given any credibility if administered by an individual who has a conviction of a crime of moral turpitude. The Nebraska State Patrol would welcome participating in any further discussion concerning this issue. We would like to work with Senator Groene and the Secretary of State to maintain the standards and integrity of the profession while simultaneously finding a mechanism

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to improve the licensing and regulation for prospective examiners. I will be happy to answer any questions you have at this time.

BREWER: All right. Thank you for your testimony. All right. Questions? Senator Hilgers.

HILGERS: Thank you, Mr. Chairman. Thank you for being here today. I appreciate your testimony. I have a few questions, if I might, Mr. Chairman. One question is, in your testimony you-- you reference that the reduction of the standards will increase the liability of the state and county. I was wondering if you could elaborate on that.

RYAN PHINNEY: Yes. There have been multiple cases, across the country and in Nebraska, where improper examinations have led to legal consequences in the form of civil liability by not following proper procedures, being undertrained, issues with the administration of truth verification exams. It does have the ability to impact, as I stated, state, local, and city governments who do choose to administer tests if they're having people who are unqualified do that.

HILGERS: So-- so in those examples that you referenced there was a lawsuit-- a civil lawsuit filed by some individual against a county for-- for having someone who-- who negligently or somehow otherwise didn't perform an adequate examination, is that right?

RYAN PHINNEY: Correct.

HILGERS: Were there dollar--

DICK CLARK: Oh, I'm sorry.

HILGERS: --has that happened very often-- I'm just trying to get a little-- dig a little deeper into like how often that happens. It's a pretty-- you know-- by exposing any individual or county or political subdivision to additional liability is a concern, and so I just-- I want to unpack that a little bit more. I mean, has that happened quite often or what were the circumstances of those examples?

RYAN PHINNEY: Certainly, sir, it's been my experience in being in and around the polygraph profession, and I have to state that, that is my area of expertise. I am not a voice-stress analyzer, but the preemployment examinations tend to be the source of the most frequent form of lawsuit, when individuals claim that they were wrongly denied employment with an agency. That is my understanding and my experience in being around the polygraph profession that, that is where you are

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most likely to find civil liability or issues with lawsuits. But it's not unheard of also, in instances where rules have been violated or other things, that criminal cases might also bring about civil liability of the agency administering the truth verification exam.

HILGERS: OK. Thank you. I know also you-- in your testimony, you referenced crimes of moral turpitude. I know that means certain things in certain contexts. Can you just give some examples of what that would mean here?

RYAN PHINNEY: Certainly, sir. Certainly I would believe any type of crime involving dishonesty, deceit, perjury, theft by deception, false testimony, witness tampering those types of crimes of moral turpitude, and that's not an all-inclusive list, obviously. But those are the types of crimes that would concern me, due to the fact that what we're asking or what the examiner is purporting to do is, I'm offering an opinion as to the truthfulness of this individual who sat down to take the test, but I myself have a history of not being honest. I just don't see that as being in the best interest and being very professional to have people with questionable morals administering these tests.

HILGERS: My last question, if I might, Mr. Chairman, would be, you identify that concern and there's some others that I think might be implied in your testimony. But I don't-- I would like to have it explicit on the record. One of the requirements that is eliminated is the 250 classroom hours as I read it, or at least it's reduced or eliminated, but it also may be some of the changing the academic credentials. In your opinion, is your concern mostly the elimination of the crimes of moral turpitude prohibition? Is it the others, and if it's the others, could you rank order them? What's your biggest concern? What's your least concern?

RYAN PHINNEY: Sir, I find all the things that were enumerated in the statement concerning. In regards to the educational hours, all I can say is, it is the intention of the Nebraska State Patrol to maintain the same amount of hours to ensure the professional quality of our examiners and to ensure that we are properly training our people.

HILGERS: And how would you respond-- I want to follow-up, if I might. How would you respond to the statements that I heard, which-- which were largely, hey look, you know, we understand more hours are always better, but there's a minimum threshold at which people can be proficient. And if you require a bigger-- a longer threshold or a more

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robust threshold, people aren't making their hours. And it's pretty burdensome, and you don't have the examiners. How would you respond to that point?

RYAN PHINNEY: Sir, I think there's been a pretty-- kind of a gray line. There is a considerable difference between voice-stress and polygraph examinations. The professional organizations that Nebraska State Patrol personnel belong to require 400 hours of classroom education. That is the standard that we would adhere to. That's the professional standard to belong to those professional organizations. The State Patrol sends our examiners to Texas for ten weeks to learn how to administer polygraph examinations and will continue to do so.

HILGERS: OK. Thank You. Thank you.

BREWER: Additional questions? All right. I'd better throw a few in here. The concern is-- now-- first up, for yourself, your-- your mission in life, what you do every day is this, when you're not on the road, your additional duties are just making sure that this particular slice of the State Patrol's requirements are done to standard.

RYAN PHINNEY: No, sir. I'm actually an investigative services sergeant in Grand Island. I supervise criminal investigators out of the Troop C office as my primary job function.

BREWER: And this is just an additional duty, doing the polygraph.

RYAN PHINNEY: Yes, sir.

BREWER: All right. Well, obviously the concern, and that's partly from talking to the law enforcement officers in my district, primarily sheriffs, is that if we tasked them to the point where they have to stand down people that they don't have, then they just simply don't do it. And it just doesn't happen. So I understand the liability if you hire someone and the procedures weren't done quite correctly. If there is no screening other than what you would do-- your normal paper screening, I mean is there a point that we-- we set the standard at such a level as though we're not going to be able to have officers that can do it? And it's just a void. It's an abyss that law enforcement isn't going to be able to fill with anybody because of the requirements.

RYAN PHINNEY: Yes, sir. I don't feel that I can speak for other agencies. I can only speak from my experience with the State Patrol.

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And the requirements on the outside can look daunting, but they're not anything that we're having problems with right now accomplishing. And we do have examiners in rural Nebraska. I have three polygraph examiners in Scottsbluff who serve as a similar type of population, who are able to meet the educational task number and the licensing requirements as they are now.

BREWER: I'm going to throw another question at you, and this might be for the colonel not you, but I'll run it by you. If the standard-- because the Patrol in many ways maintains a higher standard than a lot of other law enforcement agencies in some areas. Your-- your level of fitness, and possibly your weapons qual. depending on the department, might be higher. If this changes, you could still keep things where you're at now and not put the Patrol at risk. Then it would become the local cities, counties, whatever. I mean, would that be accurate?

RYAN PHINNEY: Yes, sir. The only concern that I would have as a member of this profession, across the state of Nebraska, is to ensure that we're doing quality examinations across the board and that people are administering these examinations correctly. But as far as taking on the liability, absolutely. And as I stated in speaking with our command staff, it's our intention to maintain the standards where they're at for our individual examiners.

BREWER: Fair enough. All right. Well, thank you for your testimony. Any-- Oh, Senator Lowe.

LOWE: Thank you, Chairman. And thank you for being here, and thank you for your service to our state.

RYAN PHINNEY: Thank you, sir.

LOWE: Yeah. I believe you made a statement that there've been multiple cases where improper investigations have occurred.

RYAN PHINNEY: Yes, sir.

LOWE: Were those investigations done by currently qualified investigators?

RYAN PHINNEY: Yes, some of them were.

LOWE: So mistakes can happen whether you're qualified or not qualified--

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RYAN PHINNEY: Yes, sir.

LOWE: --under this. Thank you, and once again, thank you for risking your life for us.

RYAN PHINNEY: Thank you.

BREWER: All right. Thank you for your testimony.

RYAN PHINNEY: Thank you, sir.

BREWER: OK. Are there any additional that are in opposition? Come on up, sir.

VINCE HERNANDEZ: Thank you.

BREWER: Please have a seat. Welcome to the Government Committee.

VINCE HERNANDEZ: Good afternoon, Senators. Good afternoon, Chair-- Chairman Brewer. My name is Vince Hernandez. First name is-- Vincent is my legal name, V-i-n-c-e-n-t, last name H-e-r-n-a-n-d-e-z. I come here as a private examiner retired from the State Patrol after 32 years, 23 years with the State Patrol as a polygraph examiner, 10 of which I was-- I filled kind of the shoes that Sergeant Phinney had filled as the state polygraph coordinator. Since 2007-- or correction, since 1997, I've been a member of both the American Polygraph Association and a member of the American Association of Police Polygraphists. Matter of fact, with that organization, the AAPP, I was on the board of directors for six years. I'm a past president of the Nebraska Association of Polygraph Examiners, also known as NAPE. When I was given word about the changes in LB64, it's concerning to me. That's why I'm an opponent to it, in that I look at-- or at least my feelings are, being an examiner for the last 29 years, licensed here in the state of Nebraska, license number 117, currently licensed as a private examiner. And in doing so, looking at the state statute that was enacted back in 1981, so we're looking approximately 38 years ago when the standards were set up not only for polygraph, but for voice-stress. These were the minimal standards and now wanting to change those standards. To me, as I have reached those standards, maintained those standards, was able to get licensed not only as a polygraph examiner, but as an examiner that was a supervisor, and I had three-- three additional polygraph examiners that I supervised with the State Patrol. I've seen the educational-- just seen all of the background that we had to complete in order to maintain that high

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level. And now looking at LB64 of eliminating a lot of that information, a lot of-- a lot of those requirements that to me just takes us back. I would be open to any questions you individuals, senators have of me. I feel I bring a little bit of expertise being in the polygraph field for the last 29 years and still actively doing polygraph as a private individual. Thank you.

BREWER: Thank you. Thank you for your testimony. Questions? Senator Lowe.

LOWE: Sorry about all these questions. This is interesting.

BREWER: It is.

LOWE: Thank you for being here.

VINCE HERNANDEZ: You're welcome.

LOWE: Thank you for your past service to the State Patrol and then what you're doing today. You were on the national board--

VINCE HERNANDEZ: Yes.

LOWE: --of examiners? It was stated earlier that Nebraska has one of the most stringent qualifications of all the other states. Are the other states not doing it right?

VINCE HERNANDEZ: I-- I guess I cannot-- I--

LOWE: Being-- being on the national board, I [INAUDIBLE].

VINCE HERNANDEZ: Yeah. I can't testify as to whether they're doing it right or wrong. I do know that I, looking at Nebraska standards, appreciate those standards, was able to live those standards. When I completed my initial polygraph school training, which was approximately 300 hours, and at that time the law still stated it was 250. We were above-- I was above and beyond that. But I felt comfortable leading the basic course and having that internship to where I did not feel qualified to start running polygraph test on my own without having a supervisor supervise me. Likewise, those individuals-- those three individuals that I supervised, I would imagine, they had that same feeling of not-- of not being able to do it just by themselves coming out of polygraph school. It's-- it's--

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it's-- it's a learning tool, you know, you continue to learn as you continue doing polygraph examinations.

LOWE: Thank you, Mr. Hernandez.

VINCE HERNANDEZ: Yes.

BREWER: Additional questions? All right. Don't be going anywhere here. I've got questions for you.

VINCE HERNANDEZ: OK.

BREWER: All right. So what I'm trying to do is sort out in my mind because the-- the Lincoln County Sheriff was talking about voice-stress and you primarily talked about the polygraph, so if you had two people sitting in two chairs side by side, one was hooked up to one and one was hooked up to the other, what-- what would the two look like? What would be the difference in how they were being analyzed and the tests conducted?

VINCE HERNANDEZ: The difference may be the time-- the amount of time that it would take to do a voice-stress. It's my understanding reading some of their literature, it is going to be a little less time. Doing a polygraph exam, most of my exams that I do will run approximately three hours. The thing that I enjoy about polygraph is that, that individual has that right to leave at any time if they do not want to continue taking the polygraph test. With a polygraph, we're measuring more than just some tremors in your-- in your-- in your mouth as you're speaking. You know, we're measuring different physiological changes that are occurring both with movement, with respiration, with heart rate, with pulse rate, with perspiration, and-- and respiration. I don't know if I mentioned that. But those are the the major components that we look at. So we're not looking at just one component but a variety of components and making our judgment-- our opinions as to whether or not an individual is being truthful or not. And taking that time to make sure that that individual is in good health, that individual is not coming under the-- coming in under the influence of drugs. And spending a little bit of extra time doing the actual test than just a, for no better word, a wham-bam thank you ma'am, get him in and out and continue on with you-- with your testing. Throughout my career, I've completed right close to 1,000 examinations and continue to get calls. I don't advertise, but I do get calls. Some of the polygraph testing I do is for law enforcement agencies in the realm of preemployment-type tests. Those agencies know that-- that they have

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problems letting an investigator, a police officer go for a certain amount of time, so they know what my qualifications are and have hired me as a private examiner to come in and do the testing. Likewise, I do testing for the federal government, federal probation on convicted sex offenders. And same way, I do not advertise with that agen-- with-- with the federal government. They came to me. And then I do a number of tests for defense attorneys.

BREWER: All right. Additional questions? I probably should have had you as my examiner because the Department of Defense made it very clear that if they asked me questions, like whether I sold secrets to the Chinese, and I got up and left, that it was a short trip to Leavenworth. [LAUGHTER] So these tests where you get to get up and leave, I didn't get to participate in any of those.

VINCE HERNANDEZ: We could still schedule you.

BREWER: That's so generous of you. I appreciate that. Now the concern I have here is that when we talk about the polygraph and the stress analysis, we're really comparing apples and oranges, is what you're saying. One is a much more complete, a much more demanding process than the other one.

VINCE HERNANDEZ: Correct.

BREWER: OK. And that's-- that's where I think a little confusion was because I think there was a point, at least for me, that it was a different flavor of the same exam.

VINCE HERNANDEZ: OK.

BREWER: They're really different in what the end state is.

VINCE HERNANDEZ: If I may add something here.

BREWER: Yes, sir.

VINCE HERNANDEZ: When the law was enacted, the voice-stress had 150 hours of classroom instruction along with one-year internship. That was for voice-stress. For polygraph, it was 250 hours and then a-- an internship. If you look at the law, the law pretty much mirrors polygraph and voice-stress, but they're two different-- they're two different entities. They are not the same.

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BREWER: With that said, and this is just your opinion. It's not the State--

VINCE HERNANDEZ: Right.

BREWER: --Patrol's or anything like that. If the bill was narrowed so that it only addressed the-- the voice-stress piece and not the polygraph, would that make the bill more palatable to you?

VINCE HERNANDEZ: No.

BREWER: And that would be why?

VINCE HERNANDEZ: I guess I don't believe in voice-stress.

BREWER: OK. There we're getting clear. And-- and that's just because you don't think the product, the outcome is-- is what needs to be for the seriousness of what you're trying to do it for.

VINCE HERNANDEZ: Right. And the reason I say that is because, again, I go back to voice-stress monitoring one movement and that's microtremors in your throat as you're speaking, versus polygraph where you're picking up those different components that I mentioned. And you're monitoring those components, reactions or lack of reactions in those different areas, and that's what we base whether truth or deception.

BREWER: OK. Well, again, you've done a great job of explaining--

VINCE HERNANDEZ: Thank you.

BREWER: --in detail and helped us to understand it and that is exactly what we needed. So thank you for your testimony. Were there any other questions? All right.

VINCE HERNANDEZ: Thank you very much, gentlemen.

BREWER: We'll-- we'll forgo that test, OK?

VINCE HERNANDEZ: OK.

BREWER: All right. Any additional in opposition? Come on, you guys who are sitting in the front row, fight it out. Please have a seat. Welcome to the Government Committee.

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JOHN PANKONIN: Thank you, Chairman and committee members. My name is John Pankonin, J-o-h-n P-a-n-k-o-n-i-n. I'm a polygraph examiner with the Douglas County Sheriff's Office, Omaha, Nebraska. My boss is Sheriff Tim Dunning, so I serve on the Truth and Deception Advisory Board and oppose this bill. My concerns for the bill is this, I'm thinking a lot of stuff has been addressed, is that I do agree that polygraph and voice-stress, they're apples and oranges. They're two completely different entities. Polygraph is hard. It's supposed to be hard. It's-- it's 400 classroom hours, and we just-- my department just sent through an investigator to go through training in Ohio. We went through the National Polygraph Academy, and she just returned. And did so-- so I will be conducting her sponsorship here in the immediate future. My problems with the bill is this, I just think it was just quickly thrown together. And that-- what bothers me is the-- with no internship portion of it. I can tell you, I started running polygraphs in 2000. When I first started, it'd be-- it's a little nerve-racking, a little nervous. I mean it just-- it's, yes, we completed a bunch of experimental polygraphs when we were going through school, and I went through the Texas-- Texas Department of Public Safety where I got my cert-- certification. But it's just, you don't have that confidence, you don't have the experience when you first come out of class. And having somebody sponsor me I thought was critical, not only for my question formulation on how I presented my test, but also for my scoring charts to help give me that confidence to show what I was doing and I was doing it right. I'm also a member of the American Polygraph Association and the American Association of Police Polygraphists. Those-- those-- they pretty much only accept accredited schools with a minimum of 400 hours and I think it's between 10-- 10 weeks to 17 weeks. And if school doesn't fit those, I mean it's not going to be accredited by APA. And it-- so-- with this new things being proposed in this bill, with 250, with classroom hours, I mean it's-- I'm concerned is-- are they going to get these-- find a school on-line? Or just it's-- I-- I--there's concerns there for me as well because I don't even know how they're going to get accepted for any of these national associations that help protect them. Going back to the liability end of everything, not having an internship program, that does concern me because if-- if-- if an examiner happens to miss something, you know, it's-- especially that preemployment which-- which I take and I know fellow law enforcement polygraph examiners, very passionate about it because we want the very best people for our agency. And, boy oh boy, we don't want to miss

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anything and we take it-- we take it to heart. With that being said, I'm here to answer any kind of questions that you might have for me.

BREWER: Thank you for your testimony. Questions? I've got some. For Douglas County then if you're going to hire a new officer, you would use polygraph.

JOHN PANKONIN: Only for-- the only ones that we polygraph are going to be for law enforcement so that's correct. [INAUDIBLE]

BREWER: So if you're a jailer, you wouldn't necessarily fall under that.

JOHN PANKONIN: That's correct.

BREWER: All right. And then what-- I'm going to throw this one at you and I understand this would just be your opinion, but say you were the sheriff in Cherry County. You're-- you're poor old Rusty Osburn out there, and-- and you're going to have to hire a new deputy. He probably has pretty limited access to a polygraph. I mean he can go to Scottsbluff, obviously. The State Patrol's got some there. But other than that, how does he get a polygraph conducted to assess any of the candidates he has to be a new deputy?

JOHN PANKONIN: What I've done is that, like I said, I'm going to be having our new polygraph examiner going to be conducting examinations. I'm reaching out to Omaha Police. You just reach out to neighboring jurisdictions. And you-- and then what I've said is, if there's anything, any type of crime, if there's a theft, destruction of property, a sexual assault case, you've got a preemployment, we want it because we need to get our examiner numbers.

BREWER: But you can see it because if I take my 13 counties, I doubt there's a single one in the entire western part of Nebraska or at least a half, and I understand that they all need the secret decoder ring to do this, but I-- I'm afraid that we make such a void that we just have to not do it. And just drive on and hire people and hope for the best because we have no tool. Even if-- even if the tool isn't quite the ideal situation with the right number of hours because of our limitations with-- I mean I've got to tell you, I've got three counties where I got a sheriff and a deputy and that's it. So limited resources puts them in a horrible position. And I think that maybe have been some of the thought behind this. But we'll, you know, we'll find out more here at the end. But you see why sometimes if the

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demands are so great, you know, it makes it impossible to do it, you almost have a countereffect in that you have no test.

JOHN PANKONIN: I understand that. But one thing that we have done, I know being on the Truth and Deception Advisory Board, we tried limiting the number to see if that would help, OK? So originally it was 50. We lowered it down to 40, you know, for polygraphs. [INAUDIBLE] we're trying to make adjustments. Again, I got some people I work with on the board with-- in-- in voice-stress. They're very passionate about the field, and I believe we work fairly well together. And if there's things that need to be adjusted for-- on the voice-stress side, then let's-- let's look at that. And just throwing something-- I just don't believe in deregulating everything with polygraph because they are apples and oranges.

BREWER: All right. And-- and that's what has been an outcome of this-- this hearing is I think we've-- we've got much clearer on-- on the two and how they're separate. So that's been a very valuable part of this. Thank you for your testimony. Any additional questions? Seeing none, thank you for your time and your-- your testimony.

JOHN PANKONIN: Thank you, Chairman. Thank you, committee.

BREWER: OK. Any more to speak in opposition? Come on up.

CLINT ELWOOD: Good afternoon, Mr. Chairman, members of the committee.

BREWER: Welcome to the Government Committee. Please go ahead.

CLINT ELWOOD: My name is Clint Elwood C-l-i-n-t, last name Elwood, E-l-w-o-o-d. I'm here on behalf of the Nebraska Association for Polygraph Examiners, and we are here to-- we oppose LB64. Speaking on that, anytime-- I am a polygraph examiner. My public license number is 136. I've been an examiner for 12 years. Anytime that we see that there is a-- an attempt to lessen some of the requirements, we look at the current state statute as being minimum-- the minimum standard. Anytime that we see that's-- that there is going to be an adjustment to that minimum standard, as you've heard from the others that have testi-- testified before me, a lot of our schools-- polygraph schools are going above and beyond that 250 hours for accreditation. We are a proud professional bunch, and we take-- we take what we do very seriously. We want to be sure that we are not creating bad case law, that we're not harming, we're not doing more harm than we are doing. It's a-- I think it's a slippery slope. The point that I want to touch

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on is internship. We want to make sure that we have the most competent and qualified examiners doing-- doing good work. I wanted also just to make myself available to you to answer any questions that you may have on behalf of the Association of Polygraph Examiners. We do represent not just one organization; we represent members-- polygraph examiners with sheriff's departments, police departments, and the Nebraska State Patrol.

BREWER: All right. Thank you. Questions? All right. If I've got to do it, I've got to do it. Going back to your group, do you know the locations of most of the examiners across the state?

CLINT ELWOOD: Yes, sir.

BREWER: So if I give you the scenario I just gave you with you being the sheriff in Valentine, where does he go to find a polygraph examiner?

CLINT ELWOOD: He would have a couple of different options. Obviously, you could reach out to the Nebraska State Patrol. Those headquarters are-- the headquarters are North Platte, Scottsbluff, Norfolk. Make a request. Now a polygraph can be-- you know, the polygraph examiner is not just situated in those areas. Depending on the availability of the buildings, you might be able to do a polygraph locally for that sheriff's office or police department. There's also sheriff's offices and police departments that if they're contacted by other departments, they may be able to run those exams as well. But that-- the person that's being tested may have to go to that location of that examiner. The other option is-- we also not only are public examiners, law enforcement, we also, the Nebraska Association of Polygraph Examiners, we also have retired examiners. Retired examiners could also be contacted. Now obviously they would charge a fee to whereas a public examiner would not charge a fee or it might be something-- an agreement between agencies of how many exams they would run. That would be between those agencies.

BREWER: So is there a hierarchy where you have the polygraph examiners and then you have the stress-- voice-stress people, whatever they are, I mean or does everyone have to be one and he just does both or how does this work? I mean I'm trying-- I'm trying to put some, I guess, reality to these terms we're using, how you use these different roles.

CLINT ELWOOD: Yes, sir. They're-- they're two different instruments. So polygraph-- you're-- you know, poly-- just because you're a

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polygraph examiner doesn't mean that you couldn't be voice-stress. I know that I can speak on behalf of polygraph examiners. There's-- we're not supportive of voice-stress because we look at the polygraph being more reliable or more accurate. And our-- but then again, that's my-- my opinion as well as most-- most polygraph examiners. We don't have any voice-stress members in our polygraph association in the state of Nebraska. On the Secretary of State's Web page, you'll see that there are 6 listed, licensed poly-- voice-stress examiners and there are 30-- 33 private polygraph examiners or 33 public examiners and 20-- 20-some private examiners. There's a lot more polygraph examiners than there are voice-stress.

BREWER: So you guys are kind of like the Corvettes and they're the Yugos.

CLINT ELWOOD: In my-- in my opinion and in my opinion only.

BREWER: I'm just messing with you. All right. Any additional questions? Seeing none, thank you for your testimony.

CLINT ELWOOD: Thank you.

BREWER: I should have held that radio hostage.

BEN HOUCHIN: You should have.

BREWER: Welcome to the Government Committee.

BEN HOUCHIN: Thank you, sir, Captain--

BREWER: Please have a seat.

BEN HOUCHIN: --Captain Ben Houchin, B-e-n H-o-u-c-h-i-n. I'm not going to go all the way through. I am-- I'm opposed to this. I've been on the advisory committee board for 13 years now, so I have some experience on this. The one thing I want you to understand, they are two different entities.

BREWER: I'm slow, but I've figured that out.

BEN HOUCHIN: For polygraph, you're spending \$15,000 to get somebody trained. For voice-stress, it's a couple of thousand at that point. There is no federal agency that does voice-stress. There's a reason why polygraph doesn't use voice-stress as part of the testing process. So with that, that's kind of the difference on what we are seeing at

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this point in time. There's only one law enforcement agency in the state that does voice-stress, and they're the one asking for this at this point in time. So the internship-- when you go through polygraph school, it's sterile. You sit there and do your test on your roommate or your other students or an actor. It's not that way in the real world. And that's where the internship comes in and helps, so I'm strongly on that. One time, while on the board, an administrator wanted the polygraph examiner to ask certain questions in a certain way. He had no training. He ordered or made the polygraph examiner do it. Luckily, he was still an intern, and when it came in, it got found. And it got changed. And the person had to go back and redo tests to do it right because he wasn't following his training or any of that part of it because he was ordered. Luckily that got so that he was doing the test correctly, and that got changed. As a polygraph examiner, you've got to stay with how you are taught. And with administrators trying to change things, with administrators trying to do things cheaply, this is where you start to end up getting your bad case law. This is when you get sued. So with that, I'll answer any of your questions, but I've been doing this since 1999. I've been on the board since-- for about 13 years now, so I have a lot of experience with this. I went through the whole process, and I've been a supervisor on this. I have friends who do polygraphs in other states, and they tell horror stories of what these people come up-- and they throw-- throw their sign up in front and start to do these things. I don't think this is what the state of Nebraska-- and law enforcement, you know, we are trying to be transparent, trying to do things right in this day and age, again. I don't know why we want a bill that takes that away, makes it less, at this point in time. I don't understand it. At this time, we want the highest standards especially with some of the way we are being looked at, especially in the media. So I'll answer any of your questions.

BREWER: Thank you for your testimony. Senator Lowe.

LOWE: Thank you, Chairman and thank you for being here today, Captain. If a skilled voice-stress analyzer and a skilled polygraph person analyze somebody, have there been studies to see if they're similar, the results are similar on certain people?

BEN HOUCHIN: If you go and do any kind of studying at this point in time, and I hope you guys go back and do a little bit of looking, some of it is the voice-stress. They're claiming it's a coin that flipped on how accurate they are. There is a reason why, again, if-- if it

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worked, why wouldn't polygraph be part of that? Why wouldn't they want that to be one of the instruments? It doesn't make sense to me. The only reason why it makes sense is that part of it isn't what we're looking at. You know, we're-- we're looking again at the heart rate and sweat and respiratory and galvanic skin response and things like that. We're-- we're taking three or four different views. And, you know, the movement part of it they're talking about, we're required now-- they've got to have the feet sensors, the bottom sensors, the wrist sensors and all that just to make sure because we're looking for countermeasures. And there's only one type of person that does countermeasures, and that's the person who's come to lie. Because if I'm telling the truth, I'm sitting there and I'm not moving because I don't want that thing to be wrong, so--

LOWE: So what-- what you're saying is-- is the voice-stress is about fifty-fifty?

BEN HOUCHIN: What I'm saying is there are studies out there that show that-- I strongly suggest if you do any kind of research on these things, you'll begin to understand why the polygraph examiners feel the way they do.

LOWE: OK. And then what would polygraph be if-- if-- if the voice-stress is--

BEN HOUCHIN: There's studies out there that put it at 95 percent. But again, I will say, those are in sterile environments. You've got to be able to go through-- and again, that's why the internship's so important because it's not a sterile environment when you're out there doing it. And you learn so much in those internships and having somebody there: one, to just say, hey, you're doing it right; and two, to be able to say, hey, instead of doing this, do that. Learn it this way because it is a tool. But again, it is a tool-- you-- you don't want to be calling somebody deceptive. That's the worst thing I could do if they're not. I don't ever want to do that. I'd rather make a mistake the other way than this way. And that's how-- where the internship comes in. You've got an experienced examiner helping you out.

LOWE: Thank you.

BEN HOUCHIN: Um-hum.

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BREWER: Calling someone deceptive, that would never happen around here. [LAUGHTER] All right. Any additional testimony? Sir, Captain, thank you.

BEN HOUCHIN: Thank you, sir.

BREWER: OK. Any additional testifying in opposition? OK. Those in the neutral position? Senator Groene.

GROENE: No.

BREWER: Oh, hold it. I was so close. Welcome.

BOB EVNEN: One moment.

BREWER: Please, sir.

BOB EVNEN: Who left their radio?

BEN HOUCHIN: Oh, shoot. [LAUGHTER]

BOB EVNEN: Your test.

BREWER: He's consistent.

BEN HOUCHIN: Don't tell my boss.

BREWER: No. No way.

BOB EVNEN: He'll be right with you.

BREWER: Fortunately your testimony was great, so we're going to let you off with the radio.

BEN HOUCHIN: All right. Thank you, sir.

BOB EVNEN: Sorry for that interruption, Senator.

BREWER: That's all right, sir.

BOB EVNEN: Good afternoon.

BREWER: Welcome, Mr. Secretary.

BOB EVNEN: Chairman Brewer, members of the committee, my name is Robert Evnen, R-o-b-e-r-t E-v-n-e-n. I am the Nebraska Secretary of State. I'm testifying in a neutral capacity on LB64. In connection

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with this, the statutes of the great and sovereign state of Nebraska have appointed the Secretary of State as the chair of the truth and deception advisory board, so I speak to you this afternoon as that chair. LB64 would change the requirements for licensure as a truth and deception examiner in the state of Nebraska. Much of this you know. Let me just say that there are 51 licensed polygraph examiners and 7 licensed voice-stress examiners, 2 licensed interns at the present time. The parts of the bill that I support: some of the proposed changes would streamline the application process for my office, reducing staff time and easing burdens on applicants; the removal of the residency requirement for applicants is a welcome change, creating an equitable-- equitable playing field for all applicants; and, additionally, changing the renewal cycle from a one-year period to a two-year period will lower administrative burdens for my offices-- for my office and for the licensees. But I would ask that the period for the removal--renewal remain at a fixed date for all licensees rather than a rolling date be-- which creates administrative burdens if you have a rolling date. That would-- so having a fixed date further streamlines the process for everybody. And I also request the fee be adjusted to account for lost revenues. On the other hand, I also have some concerns about the bill that I'd like to communicate to the committee, although I really don't think that I need to because they've been on full display to you here this afternoon with the testimony. There are differences of view between the two different methods of truth and deception evaluation, you've heard all about that. The removal-- the complete removal of the hours requirements, the removal of the requirements for a bachelor's, four years of investigative experience, or four years of experience as an examiner, the removal of the requirement of a one-year internship, all of these-- all of these aspects, as you can see, there is not consensus in the law enforcement community concerning them. And I would have to say that the removal of the provision that an applicant who's been convicted of a felony or misdemeanor involving moral turpitude is currently prevented from-- prohibited from licensure. The-- the requirement in the bill has changed so that the prohibition against those with misdemeanor convictions involving moral turpitude is eliminated. I don't think that it should be removed. Currently a misdemeanor conviction is not necessarily a bar for an applicant. Only those with convictions involving moral turpitude such as fraud are prohibited from licensure. The role of an examiner is often to help investigators ascertain the truth. There's good consensus on that point. It would not be in the public interest to allow someone proven to have committed fraud, for example, to be able to influence

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investigations in a material way. So let me just conclude by saying that-- that I would be happy to work with all interested parties on this bill. I do think that there is some work to be done as evidenced by the lack of consensus that you've heard here this afternoon in the testimony.

BREWER: All right. Thank you for your testimony, Mr. Secretary. Questions?

BOB EVNEN: Thank you very much.

BREWER: I think we're wore down. Thank you. Any additional to speak in the neutral capacity? All right. Seeing none, we will invite Senator Groene to come up and close.

GROENE: Thank you, Senator Brewer.

BREWER: We used to have a term in Afghanistan. It's called "drawing fire." You're very good at it.

GROENE: I've never seen a worst case of professional protectionism in my life. And that is what we're up against, pride in profession. But we're looking for the consumer, the public, and as you know, rural Nebraska. This Chief Endler, who was on the phone, I just got a text from him. He was contracted by the Defense Intelligence Agency. They flew him to Iraq to do voice analysis after they captured Saddam Hussein. And he did it on the Vice President, Prime Minister, Saddam's brother, and he did 50 exams while I was there. Department of Defense thought the voice analysis was reliable. Chief Endler did both, and you heard him say they are both reliable. This is a competition, for some reason, between two methods of doing-- doing analysis of truth. I would gladly-- I wasn't involved in the writing. I will gladly just let them have their little group of people who do-- does it and take pride in it and have their meetings on polygraph. But let's give some standards for the voice analysis so that we can use it in rural Nebraska. I'd like to read this list to you. We heard also that there was a lot of cases. Name one. If you know Senator Groene, I don't say things like that, "maybes", "ifs", or "was." If you want to come up here and testify, you name me a case in the state of Nebraska where somebody was sued because a voice analysis-- analysis was used, and they won. Not getting sued is one thing; winning is another. The same with the polygraph. Don't say this general term about across the country. Tell me about Nebraska. States that license or certify all polygraph examiners, there's 16. They're Alabama, Kentucky, Louisiana,

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Maine, I can go on, Michigan, Mississippi, Nebraska, North Dakota. States that do not license polygraph examiners at all, there's 25 of them, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida. Prove to me that those are the states where the lawsuits are more prevalent than on the other 16, and I'll listen to you. I deal in facts. We will look into those facts. I told my staff we're going to get you guys the facts, not general answers. Be a good way to pass a lie detector test, just give general answers. There's lawsuits. Our method's better. Prove it to me. Prove it to me that you get better results, more accurate results, in these 25 states that don't license it. I haven't heard that today. In rural Nebraska, we need some tools that-- we can't afford what happens in eastern Nebraska and in the big agencies with bigger budgets. Nobody is stopping the State Patrol to have its own standards. Nobody's stopping the Douglas County Sheriff's Department, it's called local control, to have their own standards. We will gladly re-- amend this bill to just create a new section dealing with voice analysis. None of them are 100 percent accurate, none. And you can be sued on both. But this is just one more chink in the armor of professional protectionism. That's what it is. It's professional protectionism. You heard it. Comments were made about the other profession or the other use when they-- one of them admitted he'd never even been around a test on a voice analysis-- analysis but thought polygraph was superior. That's fine. If your agency wants to use that, do it. My sheriff wants to use a voice analysis. Let's allow them to do it. Well, they're doing it now. But remember, when it comes to voice analysis, we're the only state in the nation that even mentions it in regulation, even mentions it in statute, and it's used all across the country. So you can get sued for anything. You can get sued for asking the wrong question. Nowadays, in employment interview, doesn't make a difference if you've got something strapped to them or not, you can get sued. So-- and you can also lie. But Sheriff Kramer made a good point. In rural Nebraska, we've had too many instances. People have been hired as deputies and turned out not to have moral character because they weren't able to check them out first. As far as I was involved with that, I totally disagree. I wouldn't have not have taken out the moral turpitude just to get the ACLU to be on our side and send a letter. I wouldn't have took that out. It needs to be there because a liar is a liar and doesn't change. But I would gladly put that back in. It's-- there's certain professions in life where you better have a pretty clean record. And I'm a little disappointed to hear some of these polygraph people who don't make-- who are trained not to make judgments on who they're dealing with, to make judgments on the voice analysis without, and judgments on how much training it

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takes, without telling me that these 26-- 5 states that don't have a license and 15-- and 12 of them that have very weak licenses have more trouble with polygraph tests than we do and lawsuits. I hadn't-- didn't hear that. So we need help. My sheriff needs help. My county budget needs help. We need to make sure we can hire the right people the first time to give them a test. So I thank the committee for listening. And that won't happen again. I will be more involved in all my bills. Anyway, so thank you.

BREWER: All right. Questions for the senator? So as far as the Secretary of State's comments, you're in line with those? You're going to be--

GROENE: His cut the moral turpitude? Yeah. That's-- that's-- that's a common practice in most businesses anywhere. If a bank hires somebody, or anybody fiduciary, they want that. And by golly, we need it in law enforcement too. So anyway, that's what we'll do, and I'd like to just see two-- two sets of regulations.

BREWER: OK. Well, thank you for--

GROENE: It's just that we-- in the statutes now it was tied together, and my staff just left it tied together. And as one of the testifiers from State Patrol said, originally apparently they were separate. And somebody down the line tied them together.

BREWER: We have learned a lot today.

GROENE: Yes, we did.

BREWER: Thank you for LB64. There is a letter to read into the record from the ACLU. And while I'm on that, on the previous bill from Senator Lindstrom, LB16--186, there was a letter that should have been read in from John Thomas from the Nebraska Court Reporters Association in support. With that said, we will transition to our last bill of the day, Senator Kolterman. Switch out our plate. Sir, thank you for coming. Well, I cleaned out the room pretty good. Is Kolterman not here?

LOWE: Scheer is.

BREWER: Oh. Sir, welcome. Where-- where-- when I was looking left you were right. You got handouts. Welcome to the Government, Military and

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Veterans Affairs. I have good news. I think we have been sufficiently wore down and we're ready for you.

KOLTERMAN: Cool. You know, this is the first time I've ever testified in this committee. It's hard to believe in four years. Anyway, Chairman Brewer, members of the Government, Military and Veterans Affairs Committee, my name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. I represent the 24th District of Nebraska, and I appear afore you-- before you today to introduce LB30. Simply put, LB30 updates-- updates the Professional Landscape Architects Act which hasn't been significantly updated since 1971. Landscape architects are licensed professionals who analyze, plan, manage, and design projects that involve the functional and aesthetic uses of land and the natural environment. Licensed in all 50 states and the District of Columbia, they prepare land use plans, plan and design neighborhoods, pedestrian pathways, plazas, development sites, parks, trail systems, as well as perform site design services, including site layout, grading and draining, erosion control and construction detailing. They generally hold a professional degree from a university with an accredited landscape architecture program. They've worked three or four years under a licensed landscape architect and passed the national licensing exam. While some services provided by landscape architects may overlap with other professionals, LB30 carves out these types of services from licensure and regulations under the Professional Landscape Architects Act. Examples of projects designed by landscape architects include the recent redesign of Centennial Mall in Lincoln, Pi-- Pioneer Park in Lincoln, the Gene Leahy Mall in Omaha, the Harry and Gail Koch Tennis Center in Omaha, and the Central Nebraska Veterans' Home in Kearney. L-- LB30 does not create a new professional license. LB30 simply updates status to better define what's required to become a professional landscape architect. To explain who can practice landscape architecture in Nebraska, it removes language that unnecessarily restricts trade-- trade by associated occupations such as engineers, architects, landscape designers, realtors, clarifies when a professional landscape architect license is not required, streamlines the Nebraska licensure process for landscape architects already licensed in another state, and clarifies the state's board authority to impose penalties for violations of the act. It allows for an online application for licensure and renewal which is not allowed today. LB30 also addresses the concern raised during the hearing-- raised by the Home Builders Association during the hearing on LB364 two years ago, by incorporating an amendment proposed by the Government, Military and Veterans Affairs Committee when LB364 was

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voted out of committee unanimously, which clarifies the occupations that the bill does not have an impact on. Lastly, I'd-- I'd note that the Nebraska State Board of Landscape Architects, who oversees the state's current act, has spent considerable time vetting this with a variety of stakeholders for the last five years or so. With that, I'm happy to answer any questions you might have and would tell you that there's some very knowledgeable landscape architects and the people that helped design the bill, that can answer some of your questions behind me.

BREWER: Senator, thank you for your testimony. Questions for Senator Kolterman? You did good. Thank you.

KOLTERMAN: Thank you.

BREWER: All right. We will begin with those in support of LB30. Have a seat. Welcome, sir, to the Government Committee.

DENNIS BRYERS: Oh, thank you, Senator Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Dennis Bryers, that's B-r-y-e-r-s. I'm a land-- licensed landscape architect from Omaha, Nebraska, and I'm here today, of course, to offer testimony in support of LB30. I have been practicing for almost 40 years as a licensed landscape architect in the private, public, and academic sectors of the profession. I've spent the last 25-plus years working for the city of Omaha Parks, Recreation and Public Property Department, designing our parks, playgrounds, trails, recreation and sports facilities for the public and the Parks Department. Not only am I licensed in Nebraska but I'm also licensed in four other states in the country as well. Just-- I don't know if it's been mentioned, but the profession is actually regulated in all 50 states, the territory of Puerto Rico, 3 provinces in Canada, as well as Washington, D.C. now. I'm a former member and chairperson of the Nebraska State Board of Landscape Architects. I served on that board for 15 years from 2002 through 2017 and served 13 years as the board chairperson. During the last few years on the board, I led the effort to look at the original law, the Nebraska Professional Landscape Architects Act, which at that time when we started in 2013 was 46 years old, to look at, are there any changes, updates we need to make in order to make it a better law for Nebraska? I oversaw the establishment of a task force to look at this, oversaw the survey we sent out to all the landscape architects that are licensed in Nebraska, both those that live here and those that are out of state. I contacted the allied professionals and other stakeholders to talk to them about the existing law and what upgrades

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we should have. And also we looked at the surrounding states, not only the ones directly around Nebraska but also states within, at that time, five years that had successfully upgraded their regulations for regulating the profession of landscape architecture to see what was done there so that we could become in line. All of these concerns and information we got are in the current act, are in the current law-- bill that's before you to address all of those concerns. I said there have been a lot of people working on this over the years. I would like to urge your support of LB30 and advance it on. I'm here to answer any questions you have about the professional landscape architecture or how you become a licensed landscape architect or anything else regarding the bill. Thank you.

BREWER: Thank you. Thank you for your testimony. OK. Questions? All right. Well, again it falls on me to ask questions. OK. We just-- oh, whoa, sit down here. I'm not done with you.

DENNIS BRYERS: OK.

BREWER: I'll take my gavel out in case you do that again. All right. Now the fear is that, just like we saw in the previous bill, it's this-- this running gun battle between the big-city cops and small-town cops and figuring out what right looks like. This isn't a battle between small-town and big-city landscapers, is it?

DENNIS BRYERS: No. And I wouldn't use the term-- like there's a difference between a landscaper and a landscape designer and a landscape architect. The biggest difference is any of you could go home tonight, wake up tomorrow morning, hang out a shingle saying, I'm a landscape designer or a landscaper, and start working that way. As a landscape architect, there are a number of-- because of the type of work we do and the effect on the public health, safety, and welfare. Or a better term for welfare would be well-being. That's why the profession is regulated in all-- in all of North America, really.

BREWER: OK. Now I think we're getting down into the heart of the issue here. So could anybody have put a bid in for the veterans' home and claimed that they had the-- the skills necessary to do that project, or were they going to have to fit into a particular qualification to build a bid and do that?

DENNIS BRYERS: I'm not sure-- I'm not sure what worked the veterans' homes. I mean, if it was designing a new veterans' home, something like that really would be probably led by a prime consultant which

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would be most likely an architect. And landscape architects could be hired as a consulting profession working with the architectural firm. The in-- the way our law is and the type of work we do, really any architect, licensed architect or professional engineer, can do our work as well. So-- so someone-- the law doesn't actually come out and say, for this type of work you must hire a landscape architect. The developer, a client hiring one, has a choice really. And I said it depends on the type of work. I mean if-- give an example, I said I'm not familiar with that project. Give you some of the projects I've worked on. If you were in Omaha, the Perry and Gail Koch Tennis Facility in Omaha, that was my design. I designed, you know, 27 tennis courts. I worked on that when I started with the city in '94, and we finished up some time in the early 2000s. All of that work I designed in terms of where the courts go, how they're laid out, where all the walks are, making sure everything is handicap accessible, making sure it has the proper slopes in grade so it drains so we don't pond water on courts and all, making sure the fencing is the appropriate fencing it's the right material to use in terms of color-coding, the types of courts which in those are asphalt. That's what I was working on there, is one project. I can give you another project, too, in Connecticut where I started. I worked 12 years in the private sector. I've done two state prisons, so.

BREWER: All right. Well. All right. If I look in here, it talks about clarifying the board's authority to impose penalties for violations of the act. So there must be a tiered system-- there must be a way that you determine who is able to do certain projects and not other projects. That's the part I'm trying to visualize here.

DENNIS BRYERS: In terms of that I mean as a landscape architect, you become licensed because you meet some educational components that are experience--

BREWER: There you go.

DENNIS BRYERS: --as well as the national examination. Every person who becomes a landscape architect, whether they're going to work or live in Nebraska, California, Florida, territory of Puerto Rico or one of three of the provinces in Canada, meets all those requirements. They are basically standard throughout the whole country or North America. The experience is roughly three years. The education is-- is-- ideally it's an a-- it's a degree in landscape architecture whether it be a bachelor's or master's. But there are other breakdowns. And the experience is working under, for your license, under a licensed

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landscape architect or professional engineer or architect to get that experience. And the exam you can start taking right out of college. It's a four-part exam. I said it's the same exam in all 50 states, D.C., as well as the 3 provinces in Canada and the territory of Puerto Rico.

BREWER: That was my next question, is if it was all 50. OK.

DENNIS BRYERS: Yes.

BREWER: I've abused you enough. Thank you for your testimony. Thank you for your time.

DENNIS BRYERS: You're welcome.

BREWER: And you guys missed your chance to ask questions. You're free.

DENNIS BRYERS: Thank you.

BREWER: All right. Next presenter, welcome.

EILEEN BERGT: Hi. Thank you. Good afternoon, Senator Brewer and members of the committee. My name's Eileen Bergt. It's E-i-l-e-e-n B-e-r-g-t, and I'm a licensed landscape architect in Nebraska, and I'm the current chair of the Nebraska State Board of Landscape Architects. I have served on the board for 23 years. LB30 is a bill that updates the Nebraska State Board of Landscape Architects law which was established in 1967. As was mentioned before, the last major revision of this law was in 1971. With LB30, we're bringing this bill into the 21st century by allowing alternate licensure paths, and we're also enabling on-line renewals and electronic payments for licensees, among other things. The Nebraska State Board of Landscape Architects unanimously-- unanimously supports this bill, and we ask for your support to move this bill forward out of this committee and into the Legislature. Thank you.

BREWER: Questions? Yes, Senator Lowe.

LOWE: Thank you, Chairman. And thank you for presenting here today. Does this bill make it more stringent to become an architect, landscape architect, than prior or does it make it easier or just kind of affirms where you want to be today?

EILEEN BERGT: Yes. It actually-- it doesn't make it any more stringent, and it actually makes it easier. I mentioned that we are

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allowing alternate licensure paths which actually makes it easier for people to become licensed, so we're allowing people from-- a reciprocity from other states. If they have 15 years of experience, it just goes through. It doesn't-- we don't have to have voted on it by the board. As well as if you don't have a CLARB record, we have a-- the-- Dennis, who was just up here, he was mentioning how all the states are regulated. They're regulated under the Council of Landscape Architecture Registration Boards. We call it CLARB for short. And we also are allowing people to become registered in Nebraska without a CLARB certificate so.

LOWE: OK. So, if I worked in Colorado for ten years, I would still have to come before the board to be licensed.

EILEEN BERGT: You just submit your papers that said that you weren't there and that you were licensed there, and then usually it just goes through here.

LOWE: OK. All right. Thank you.

BREWER: All right. Additional questions? Seeing none, thank you for your time and your testimony.

EILEEN BERGT: Thank you.

BREWER: Next presenter? Welcome to the Government Committee.

JOHN ROYSTER: Thank you, Senator. And I would love to talk to you about Central Nebraska Veterans' Home because I'm the landscape architect of record for that project.

BREWER: Outstanding.

JOHN ROYSTER: Good afternoon. I am John Royster, that's J-o-h-n R-o-y-s-t-e-r. I'm a professional landscape architect from Omaha. I'm the former chair, and I also served 15 years on the State Board of Landscape Architects. I'm also a fellow of the American Society of Landscape Architects. We refer to that as ASLA. Currently I serve on the national board of ASLA as a trustee for our state's chapter which includes Nebraska, North Dakota, and South Dakota. ASLA represents 15,000 landscape architects, and we also are the authors of a model-- national model licensing law along with the Council of Landscape Architecture Registration Boards which really is the basis for the changes you're seeing in our current law. Currently in my day job is I'm a landscape architect and president and CEO of the Omaha-based

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firm, Big Muddy Workshop Incorporated. Big Muddy Workshop is privately owned. We were established in 1990, and we work primarily for local government and federal agencies. Our staff of six landscape-- of six professionals are three things. They are well-educated. They are well-paid. And they have the skills and talents to work nationally. And I want to-- I want to emphasize that because no one has talked about the national impact of our law, and that-- that's my major point today. We work throughout the central United States. Two years ago when I testified, I think we had work in 13 states. Right now, we only have work in three states in addition to Nebraska. But I want to take a national view, as I said again. I'm here today to urge you to support LB30. I have been involved with this process with Mr. Bryers since 2013. The bill updates key sections of the current statute, removes unnecessary regulation which I've been a proponent from the get-go in starting to talk about revisions to the law. It allows the board to lower some fees by eliminating a minimal amount that they can charge. It adds a very important title because one thing that we need is we need young professionals to desire to become licensed in their profession because that helps us regulate the profession better. And quite honestly, from the board's standpoint, it creates income because none of the costs of the agency of the State Board of Landscape Architects is borne by the public. It's all borne by people-- the fees that people pay that are licensed there. So anyway, and then the last thing that we'll do is the revisions in the law will better define two of our allied professions which are landscape planting-- landscape planning and landscape design, or, I'm sorry, professional planning and landscape design. The proposed changes in the law will help ensure that private businesses like mine can compete for projects both here in Nebraska as well as elsewhere in the United States. A significant portion of my firm's work brings outside dollars into Nebraska. We're working in other states, and we're bringing those outside dollars into Nebraska which only helps our economy. These outside dollars, as I said earlier, support six well-paying jobs in a small-- in a family-owned, small business in Omaha. To compete for out-of-state work, there's one thing that has to occur, and that's that I have to be able to become licensed in those states. The basis of that license is the quality of the licensure statute here in Nebraska, and LB30 will help ensure that our Nebraska-- my Nebraska landscape architect's law-- or license, excuse me, will allow me to gain licensure in other states. As a leader in the profession of landscape architecture, a private business owner, I request the committee strongly consider and support LB30 and advance it to General File. Thank you for allowing me to testimony-- to testify, usually I'm not tongue-tied, and I would be

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happy to answer any questions. I would love to talk to you about Central Nebraska Vets' Home, sir.

BREWER: All right. Thank you for your testimony. Questions? Senator Lowe.

LOWE: Thank you, Chairman. And thank you for being here. And I want to stomp on Senator Brewer first. The Central Nebraska Veterans' Home is beautiful, and I can't wait for those trees to grow to full height. It'll be a little windy out there for the next couple of years without those trees being there. Thank you. So this does reduce some of the qualifications that are needed to become an architect, some of the regulations?

JOHN ROYSTER: Well, as-- as-- as Eileen said, it allows alternate paths to licensure. One thing that's in the current law right now is if you are doing landscape design services and charging a fee for those, you also have to sell plans. Which-- that made sense in 1967. It doesn't make sense in 2019. So that's been something that, when I was on the board for 15 years, I wanted to get rid of. And it's something that will be removed from the current statute. So it will allow landscape designers to charge a fee and not have to sell plans as part of the process.

LOWE: Thank you.

BREWER: Any additional questions? All right. Thank you for your testimony.

JOHN ROYSTER: Thanks.

BREWER: Come on up. Welcome to the Government Committee.

VANESSA SILKE: Thank you. My name is Vanessa Silke, V-a-n-e-s-s-a S-i-l-k-e. I'm an attorney with Baird Holm, and I represent the Great Plains Chapter of the American Society of Landscape Architects. So I'm up here basically about cleanup for any questions that you might have and give-- give a little bit of background on some of the path of this bill over the last few years. As Dennis and John and Eileen testified, this has been a full-court press effort by everyone in the profession, not only to look and reflect internally within Nebraska on how to improve this license process and make things better for folks that want to engage in this profession here, but also to make us competitive on a national scale. To that extent, much of the language,

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if not all of it, that you see here in LB30 was incorporated from the Council of Landscape Architects [SIC] Registration Boards in addition to the American Society of Landscape Architects on a national level. So they've modeled this legislation, as much as possible, off of what we see in other states to ensure that it's as easy as possible to recognize who is a valid landscape architect. I want to highlight, too, that we have worked tirelessly with folks in relevant, related professions within the industry. They noted engineers and architects often work on similar projects or engage in an interconnected fashion as a team. And so it's really important that everybody understand the different licensed professions and the statutes that govern each of those professions. And so to that end, over the last few years, we've conferred with architects and engineers in Nebraska that they do not have opposition to this language and that there's no confusion over when this particular type of license is required. Also noted in a prior session, the Home Builder's Justin Brady had noted-- noted on one area where it wasn't quite clear. I think the example he gave was, if you're building a new housing development, do you need a landscape architect's license to plant a tree in the front yard of those houses? And the answer is no. So starting on page 17 of the bill, you can see where exceptions have been embedded in the language to make it abundantly clear, specific circumstances for which you do not need to obtain a license. That's one of many good-faith examples of my client's efforts to make sure, and the State Board's efforts to make sure, that we've incorporated everyone's comments to the extent possible. As of late yesterday and today, we were made aware of a couple of other general concerns. We're still trying to understand what they might be. I believe they deal with the intern license and possibly some criminal provisions in the bill. I'll note that, you know, we'll be as flexible as possible to make sure that our licensed professionals are going to be recognized in other states for reciprocity. I understand that the intern license provision, it's on page 19, that tracks what has been offered in other states as a-- as a kind of an award or a merit for people who are working towards full professional licensure. We're certainly flexible on those provisions, but that's why it's there. The criminal provisions, in the short time I've had to research it, they match or are very similar to what's required in Colorado, Kansas, South Dakota, Missouri and Iowa just to name the few states I was able to look at. So again, we'll be as flexible as possible to get this bill through to the floor with full vote in support of the committee. And on that, I welcome any questions that you might still have.

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BREWER: Senator Hunt.

HUNT: Hello, Ms. Silke. Thanks for being here today. I love this bill. I think it's important. I think it's going to be great for Nebraska business. But I'm really hung up on this part on page 9 which I think you may have alluded to. In Section (3)(f), this "Demonstration of good reputation and character" when talking about what is considered the minimum evidence satisfactory to the State Board for licensure. It seems to me that all of the requirements above that, submission of a council record, graduation from a program, passage of an examination, a record of three more years, none of that would be possible for someone to achieve if they didn't have good reputation and character. So--

VANESSA SILKE: Sure.

HUNT: --do you-- I know it's not your bill, but can you say more about that section and maybe--

VANESSA SILKE: Certainly.

HUNT: --the intention with that?

VANESSA SILKE: And certainly we have experts, as they noted, over 20 years on the board. So if I can't answer the question, I hope that we can pull them back up to make sure you got the answer. My understanding of this provision is simply references. Most jobs that we apply for, they ask for references. Functionally speaking, that's what this means. And so as they describe through that process of going through school and passing tests, you've also got to work on the job underneath a licensed professional. And so the board would be looking to confirm, just like any of our employers probably have, hey, did-- does-- can someone say something good about the work that you've done so far? Again, I'll confer with folks back there to make sure that I've covered that. I can also confirm with them and get back to you to confirm whether or how often or if ever the board, in their experience, has denied a license on that basis. In the quick time that I had to ask them about this, they had not encountered an issue where someone, for a criminal background or any of that, had ever been denied or not admitted to get a license here in Nebraska.

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HUNT: That would be my fear of an unintended consequence with this bill. Is someone-- you know, good reputation and character, just ask anyone in the Legislature, it's like extremely subjective and so.

VANESSA SILKE: Well, the board wouldn't be seeking this out on their own, so this would be--

HUNT: Yeah.

VANESSA SILKE: --the applicant providing that. So again, when you or I apply for a private job anywhere else, they ask for references. They don't start calling everybody that they might find you friends with on Facebook. They ask you for references, and you affirmatively provide those. So they would have some control over the record, pardon me, that they're making with the board for their application.

HUNT: Understood. Thank you.

VANESSA SILKE: Yep.

BREWER: Additional questions? I will-- just one here. On the-- the part that I highlighted talks about clarifies the board's authority to impose penalties for violations of the act. Is that in line with, nationally, what those violations-- the penalties for those violations would be or is, that is?

VANESSA SILKE: I understand that it is. And certainly, a part of this effort isn't to expand the authority of the board. It's to confirm very clearly what they can and can't condition their decisions on so.

BREWER: OK. Any additional questions? Seeing none, thank you for your testimony.

VANESSA SILKE: Thank you very much, and again, we'll get back to you with any other information. Thank you.

BREWER: Any additional testifiers in support, proponents? Seeing none, opponents? Wow, it's Friday afternoon. Those in the neutral position? Welcome, Senator Ebke, good to see you.

LAURA EBKE: Thank you and good afternoon, Chairman Brewer and members of the committee. For the record, my name is Laura Ebke, L-a-u-r-a E-b-k-e, and I serve as the senior fellow for job licensing reform with the Platte Institute. I come to you today, and you're-- the handout says that I'm in partial opposition of LB30, I come to you

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today actually in a conditional neutral position on LB30. Our opposition would be neutral if certain changes were to be made, and I've been-- I've been informed that they could be made. The Platte Institute certainly likes competition. We like the elements of the bill that increase our competitiveness among states. It expands and clarifies some elements of the already existing landscape architects licensure. Land-- Landscape architects were, according to my-- my history review, originally recognized as a profession in Nebraska back in 1967. The current-- most current licensing regime update was modestly done about seven years ago in 2012. The other thing that is probably more concerning for us is the creation of the landscape architect interns. Let me deal with that. I'm not going to get into a discussion about the need for-- for licenses for landscape architects. What I will suggest with respect to the licensing of interns is that we seem to have taken this to a whole new level of regulation. Some have suggested that this is a means of recognizing folks who've graduated. However, I'm not really sure that we want to require people who, by my reading, were previously eligible for full licensure once-- once they had served some time under supervision, and we want to have them have to get a learner's permit in order to gain experience and be able to get full licensure. Now it may be that it's important for recent graduates to have some supervised experience. I'm not arguing about that. The question is what that supervised experience looks like and what it's called. And I think it's also important to remember that minimum postgraduate training for full licensure of physicians in Nebraska is only one year. So let me offer an option. You know, as many of you will recall, LB299 last year was passed with the idea that the Legislature would review its job licensure requirements on a regular basis and consider whether the state is using the least restrictive means possible. It encouraged using the so-called inverted pyramid for considering those options. The inverted pyramid from LB299 is just the next step. There is a, for those who are interested, there's a link there that you can find information. This-- this coincides with our Uniform Credentialing Act ideas. I'll let future committees discuss the need for landscape architecture license altogether as part of the review process. But my question is why require a register-- why not require instead of a licensure, a registration of internship. If it's really necessary to require an internship, why don't we allow them to have those-- those who are going to be interns submit their resumé and the name of their license supervisor? As I read the bill, I see no independent practice capability for the interns, so calling it a license means that they really are licensed to do nothing. Finally, one more comment. This

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bill adds criminal penalties, so it has-- as has been mentioned, a Class I misdemeanor for a first offense and a Class IV felony for a second and subsequent offenses for someone practicing landscape-- landscape architecture without a license. As one who has some experience with our criminal justice challenges, I get very nervous when new penalties are being created. Although I would expect to see civil fines and civil causes of action, should there be some sort of malpractice associated, if this bill is going to go forward in some form, I would encourage you to rethink both the criminal penalties and the intern licensure. Ultimately this bill and several others introduced this session-- this session seem, at least in part, to be flying in the face of a nationwide effort to reduce overregulation of occupations. I would be happy to answer any questions.

BREWER: Thank you for your testimony. Questions? I-- I-- I like what you've done. I think you read through and thought through some of the challenges that we-- we had questioned earlier so.

LAURA EBKE: Let-- let me just remind you since-- since you opened the door here for me. Let me just remind you, you know, I did-- I did include the-- the-- the inver-- in-- inverted pyramid that encourages us to use the least restrictive means possible. The idea being that licensure should be sort of our last-gasp effort to-- to regulate, that there are other ways. And then on the reverse side and the back side, ways that we protect consumers using the least restrictive form of regulation, and ways that we can rethink how we can protect consumers, how we can have some level of control without full-blown licensing.

BREWER: I think the other part was the felony offense that I saw in here, kind of caught my eye, because it--

LAURA EBKE: Yeah.

BREWER: --it's a pretty serious change.

LAURA EBKE: It is.

BREWER: All right. Now one more time for questions? Seeing none, thank you, Senator Ebke.

LAURA EBKE: Thank you.

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BREWER: All right. Additional testimony in the neutral position?
Seeing none, Senator.

KOLTERMAN: Thank you, Chairman Brewer, members. Welcome, Senator Hunt. You weren't here when we opened on this. I just have a couple of general comments. We have worked openly with constituents that had concerns about the bill from two years ago that you heard, and we made changes to the bill in that regard. After over four years of collaborating and working with relevant stakeholders on licensing bills such as this, I present this bill to you with no industry opposition. The only opposition to this bill showed up last night in a letter from the ACLU that they were in opposition. And I just heard this today that there was going to be a neutral position which was really opposition. I just have to say, I don't think I'm a hard person to get along with. If somebody has a concern about one of my bills, rather than wait until the 12th hour to come to me and say, hey, we're going to oppose it-- I worked openly with a lot of people in this body, so I'm somewhat offended. I've made a good-faith interest in working with people. And I'm willing to try to address those concerns outside of committee hearing, but instead, here we are. Members of the committee, I ask that you support this bill. We'll do what we have to to update the status, to better define the profession, to streamline the licensure process for individuals moving into the state, and to follow-- allow professional landscape architects the ability to register on-line. I did support on General File, Select File, and Final Reading LB299 last year. I'm in no way attempting to go around that. I think you just need to know that first of all, if we've made mistakes, we're willing to admit that. But people have to meet us, at least, on middle ground. So with that, I'd try to answer any questions you might have.

BREWER: Questions? Questions? Seeing none, thank you, sir, for your testimony on LB30.

KOLTERMAN: Thank you.

BREWER: OK. We do have some letters to read into the record. This is on LB30. These are letters that are proponents: we have Dennis Scheer from Clark Enersen Partners, Lincoln; we've got Lynn Johnson, Director of Parks and Recreation for Lincoln; Marti Neely, past president of the Association of Professional Landscape Designers and past president of the Nebraska Nursery and Landscape Association, Omaha; and let's see, we got one letter from the following employers, we have Regan Pence, Robin Fordyce, Karen Nalow, and John Royster and Chris Vedova.

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What else we got here? In opposition, we've got: Amy Miller, legal director, ACLU; Wes Wilmot, Beaver City, Nebraska; Nancy Carr, Lincoln, Nebraska; and, Ron and Nelly Nash of Lincoln. One letter in the neutral and that is Jon Wilbeck, director-- executive director of the state of Nebraska Board of Engineers and Architects, Lincoln, Nebraska. With that said, that will conclude our testimony and our session this afternoon. Thank you for your attendance.