

April 27, 1981

LB 512

Association which I will copy and pass around to you which said that on March 12, 1981, "the Board of Directors of the Nebraska Land Title Association convened for the purpose of examining the pending mechanics lien legislation. By unanimous vote we passed a resolution to support in full LB 512 and that is without amendments. As the trade association for Nebraska's Abstractors and Title Insurance Agents we deal in the examination and underwriting of mechanics lien problems continually. We felt that relaying our position on this legislation to the Judiciary Committee was essential. May we urge you to support this bill with your utmost efforts." Now who needs this protection? And I think you have to agree that it is the homeowner who needs the protection and this homeowner has little or no knowledge whereas those involved in the industry should. The original LB 512 without these amendments still offers lien protection to all who have an interest in the construction but not at more than the contracted price between two informed parties, the prime contractor who contracts with the homeowner or homebuilder. Now in the amendments to 512 it increases the penalties to a Class IV felony and increasing the penalties is always seemingly an admirable way to deal with the problem and, in fact, sometimes an easy way for this Legislature to deal with the problem but it doesn't necessarily solve it. In the cases of mechanics lien, present law....

SPEAKER MARVEL: Thirty seconds.

SENATOR PIRSCH: ...which the committee amendments still retain, there is according to the Douglas County Attorney in Consumer Fraud Division, absolutely no way to accomplish this criminal sanction for two reasons. The courts are reluctant to give criminal sanctions in something they believe is a civil matter and the intent to defraud which is required now and will continue to be under these new amendments, is almost impossible to prove as established by past courts decisions. Bankruptcy or mismanagement is not intent to defraud...

SPEAKER MARVEL: Your time is up.

SENATOR PIRSCH: ...even if fraud is clearly obvious, it is the homeowner who carries the burden of attorneys fees and those are astronomical.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature,