

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

WAYNE: Good afternoon and welcome to the Judiciary Committee. My name is Justin Wayne. I represent Legislative District 13, which is north Omaha and northeast Douglas County. I serve as the Chair of Judiciary Committee. We will start off by having members do self-introductions starting with my right, Senator Bosn.

BOSN: Carolyn Bosn, District 25, southeast Lincoln, Lancaster County, and Bennet.

IBACH: Teresa Ibach, District 44, which is 8 counties in southwest Nebraska.

McKINNEY: Terrell McKinney, north-- District 11, north Omaha.

MEGAN KIELTY: Megan Kielty, legal counsel.

ANGENITA PIERRE-LOUIS: Angenita Pierre-Louis, committee clerk.

DeBOER: My name is Wendy DeBoer. Good afternoon. I represent District 10 in northwest Omaha.

BLOOD: Good afternoon. Senator Carol Blood, representing District 3, which is Papillion and Bellevue, Nebraska.

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

DeKAY: Barry DeKay, District 40, comprised of Holt, Knox, Cedar, Antelope, northern part of Pierce and northern part of Dixon Counties.

WAYNE: Also assisting us are our committee pages Isabel Kolb from Omaha, who is a political science major and a prelaw major at UNL, and Ethan Dunn from Omaha, who is a political science major at UNL. This afternoon we will be hearing 5 bills, and we'll be taking them up in the order listed outside of the room. On the table on the side of the room, you will find a blue testifier sheet. If you are planning on testifying, please fill out one, hand it to the pages when you come up. This will ensure that we have accurate records. If you do not wish to testify but you would like to test-- record your presence here at the hearing, please fill out a gold sheet in the back area over in the same columns-- by the column over there. I would also note it's the Legislature's policy that all letters from the record must be received by the committee by 8 a.m. on the morning of the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We ask that you have 10 copies. If you don't have 10 copies

of the handout, please give them to the page ahead of time so we can have those additional copies. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill, then opposition, and followed by those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. We ask that you begin your testimony by giving us your first and last name, spelling those for the record. We will be using a 3-minute light system. When you begin it is green, 1 minute left will be yellow, and when it's red we will ask you to wrap up your final thoughts. I would like to remind everyone, including senators, to please silence or turn off your cell phones, put them on vibrate. Just so you guys know, on Thursdays I have a commitment back in Omaha around 5:30, so I will be leaving Thursdays a tad early, but I will be listening to it on my ride home. Starting-- so we'll start today with LB914. Senator Cavanaugh, welcome to Judiciary.

J. CAVANAUGH: Thank you, Chairman Wayne. Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here to introduce LB914, which would adopt the Uniform Unlawful Restrictions in Land Records Act. It is sadly a fact of our history that for many years, well into the 20th century, home sales were commonly restricted on the basis of race. Until the Supreme Court ruled in Shelley v. Kraemer in 1948 that enforcement of racially restrictive covenants were unconstitutional and the federal Fair Housing Act of 1968 explicitly prohibited the practice, it was commonplace for a deed to contain language that said a home could not be sold to people of certain races, usually black people. This practice contributed to generations of housing segregation. Despite the fact that these covenants are now illegal under the constitution, federal and state law, they remain as a historical artifact in deeds. Last session, I introduced LB186 to address this and allow for removal of such language from the deeds. I model the legislation after an Illinois law, and in the last 2 years many other states have adopted similar legislation. Over the summer, the Uniform Law Commission considered and ultimately approved the Uniform Unlawful Restrictions in Land Records Act. Larry Ruth, a Nebraska representative to the Commission, approached me about introducing the Uniform Act because of my work on LB186. I think that LB914 is potentially a better way to address the problem than LB186. LB914 will allow for an amendment to make clear that such restrictions are unlawful and no longer enforceable. One concern that has been

brought up about simply removing the offending language is that it may damage the historical record of housing discrimination and redlining. The Uniform Act takes this amendment-- amended approach in order to effectuate a removal without destroying the historical record. It also allows the amendment to be recorded in a simple and efficient manner, decreasing the strain on county resources. LB914 is a small step toward correcting a historic injustice. I ask for the committee's support, and I would be happy to take any questions at this time.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

J. CAVANAUGH: Thanks.

WAYNE: First up proponents. Any proponents? Welcome.

LARRY RUTH: Good afternoon. My name is Larry, L-a-r-r-y, last name Ruth, R-u-t-h. I am a member of the Nebraska Uniform Law Commission, and I here-- I am here today to testify in behalf of-- in support of LB914. Just a few minutes about what is the Uniform Law Commission. The Nebraska Uniform Law Commission is similar to small uniform law commissions in all of the states and jurisdictional territories. Then these state uniform law commissions also belong to something called a Uniform Law Commission, making it a little bit confusing. But we are a state agency and we do our work with all the states sort of in, in, in cooperation with them. The Uniform Law Commission of the states, so to speak, is over 100 years old. We are no-- we're at least 60 or 70 years old because I've gone back in the records and seen some old uniform laws. The point is this, as the practice of law and history of the country developed, it was quite apparent that there were sometimes advantages to uniformity of state laws. And still there were informal arrangements made between the states where they would look at it. This became regularized in such a way that the states all adopted in their statutes a uniform state law for their state-- the commission. And we did that in Nebraska. We have over 100 uniform laws in Nebraska jurisprudence right now. I did brought it-- I brought it with me, but a little body of 6 of those red books that you have in your office, it's all Uniform Commercial Code, which is perhaps the best known of the uniform laws that we have adopted and which anybody has adopted. Over the years, the state-- the Uniform Law Commission and others have looked at such things as all of the business law that we have in our state: procedural law, probate law, law that relates to children, domestic relations. This one here is one that we've selected recently because it's a-- it's more of a continuing problem that we have.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

Although these restrictive covenants were deemed unconstitutional by the Supreme Court, they live on. They are in the chain of title of a house and they can't be enforced but they're lying there. They're embarrassing to owners sometimes. They are misunderstood because somebody reading it might say, well, gee, I can't sell this to a black. There-- you need to have some way to get that repaired. The states were kind of all over the, the place as to how they did it. Some states-- yes?

DeBOER: Dr. Ruth, I'm sorry-- or--

LARRY RUTH: Thank you very much.

DeBOER: --Mr.

LARRY RUTH: But what we arrived at-- is that a stop?

DeBOER: That's a stop. Yeah, that's a stop. Sorry. We're going to be real stringent with our red lights just because we have to do it in the little hearings as well as the big hearings just for consistency.

LARRY RUTH: Well, if you would have any questions about how it works, you just go ahead and ask.

DeBOER: Are there any questions from the committee? I think we were talking about the Uniform Law Commission on the floor today so everybody's quite familiar with it right now. So thank you for your testimony.

LARRY RUTH: Yeah. Very good.

DeBOER: Next proponent testifier.

STEVE WILLBORN: Thank you.

DeBOER: Welcome.

STEVE WILLBORN: Thank you. My name is Steve Willborn, S-t-e-v-e W-i-l-l-b-o-r-n, and I'm a law professor at Nebraska and I'm a uniform law commissioner. But today, I'm testifying as a citizen about a personal experience relevant to this. 40 years ago, I bought my first home in the country club area of, of Lincoln. Most of you are familiar with that, very nice area of Lincoln. I was provided the abstract for that which I have. I don't know why I have it, but maybe they were digitizing at the time and I noticed then and I would have remembered

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

it that in the-- in the-- in the-- in, in the line of ownership in the deed that was transferred in 1937, the first item mentioned is: No person of other than the Caucasian race shall be or become the grantee or lessee of said property, or except as a servant and the family living, thereon, be granted the privilege of occupying the same. At the time I was startled and appalled by that. I'm still startled and appalled by that. What this act would do would be to give me an option to disavow that statement in the land records. I don't know how common this is in Nebraska. There is a unit at UNO that's doing research on this that may be able to provide information later about how common it is. But this small example indicates to me that it was much more common than I ever would have expected before experiencing this myself. Thank you.

DeBOER: Thank you for your testimony. Are there questions for this testifier? Thank you so much--

STEVE WILLBORN: Thank you.

DeBOER: --for being here. Next proponent testifier. Anyone else who would like to testify in favor of this bill? Are there any opponents to this bill? Anyone in opposition of this bill? Anyone in the neutral capacity? Anyone who would like to testify in neutral? Seeing no one, Senator John Cavanaugh for the close.

J. CAVANAUGH: Thank you, Vice Chair DeBoer. And thank you, members, of the Judiciary Committee. And I just want to thank Mr. Ruth and Mr. Willborn for being here and for working on this. And as you can tell by the lack of opposition, the lack of fiscal note, this is my third iteration of this bill. And I think we've got it this time. I think we figured it out. So I think we're-- unless you have any questions, I can let you guys go on to your next hearing. Oh.

DeBOER: Oh, it seems like there's going to be some questions, Senator Cavanaugh.

J. CAVANAUGH: All right.

DeBOER: Senator DeKay.

DeKAY: Thank you. Just a little bit of history on it. How come it took 3 tries to get to the point we are now?

J. CAVANAUGH: It's a great question, Senator DeKay. Well, when I originally brought the bill, I, like I said earlier, I took it from

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

Illinois and tried to match it to Nebraska. And, you know, that makes it maybe not quite a perfect fit. And there was a cost associated with it to the counties that they opposed. And so then we took another swing to maybe make it a little-- work a little bit better for them. But fortunately, in the intervening time, the Uniform Law Commission was working on it themselves, and they came up with the solution that is different than mine, but more elegant than I'm-- so it's not-- this is not my idea and not my solution, but it is better than the one I proposed.

DeKAY: Thank you.

DeBOER: Senator Holdcroft.

HOLDCROFT: So this would-- thank you, Vice Chair. So this would replace the-- LB186 wouldn't be the bill? Sorry. Yes.

J. CAVANAUGH: Yeah, I mean, if-- I would ask the committee to move this bill rather than LB186 out of committee at this point in time.

HOLDCROFT: OK. And quick summary, what, what are the differences? I mean, the explanation you just gave is that the main difference between LB186 and this, this bill?

J. CAVANAUGH: The biggest, biggest differences are LB186 would strike the, the section of the deed entirely. This does preserve it in a historical record. And this has a one-- it's only got one cost so it's a consistent cost. Under LB186, the counties' complaints was more that they didn't know if-- if a title was particularly long, it would actually cost them more to do it and so this would be a consistent application of the cost.

HOLDCROFT: OK. Thank you.

DeBOER: Thank you. Are there any other questions? Thank you, Senator Cavanaugh. There are no letters in support or opposition, I'll note for the record. And that will end our hearing on LB914. And we'll move on to our hearing on LB1119. That's Senator Dungan. Welcome.

DUNGAN: Thank you. Good afternoon, Vice Chair DeBoer and Judiciary Committee members. I'm Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent Legislative District 26 in northeast Lincoln, and today I'm introducing LB1119. LB1119 is a relatively simple bill that prohibits homeowners associations from adopting or enforcing restrictive covenants regarding solar energy collectors. Existing

prohibitions would be void and unenforceable. This bill would also provide a civil cause of action against any HOA or similar organization that violates this, this section. The motivation for bringing this legislation is borne from the simple belief that homeowners should be able to do what they want with their property for-- within reason. Installing solar energy collectors does not have a negative impact on neighboring properties. I introduced a similar bill last session, you might remember. We ran into a lot of roadblocks with that legislation, so we decided to start over with the language that was more direct and straightforward. Since introducing that bill last year, our office has received numerous calls from all over Nebraska on this issue. We heard from one south Lincoln resident being forced to remove solar panels at her own expense. This caused a lot of financial stress due to being a retiree on a fixed income. Most of our calls came from within the Omaha metro. With the increasing benefits of solar energy, this issue will persist. This does not harm anyone or any single entity. It simply allows landowners to improve their property without infringement on the rights to personal property restricted by HOAs or other similar entities. I'm happy to answer any questions the committee might have, but I do believe there's some people behind me who probably have a little bit more personal experience with this so I'd hope they will be able to testify about their experiences.

DeBOER: Are there any questions from the committee for Senator Dungan? I don't see any. We'll have our first proponent testifier, please.

DEBRA NICHOLSON: Senator Wayne and members of the Judiciary Committee, my name is Debra Nicholson, N-i-c-h-o-l-s-o-n. I am here to support LB1119. Last year, I testified about the previous version of the bill and I did-- I did support it. I did have a couple of reservations about specific provisions. Not anymore. This bill addresses all of my concerns. I support LB1119 because it guarantees homeowners the right to produce their own electricity, which they can use in their homes or sale to their public utility. By allowing solar installations in all neighborhoods, this bill is good for local economies. For example, getting solar for my home required upgrading my electrical service and panel which costs \$3,200. With the solar equipment and installation, I expect to spend approximately \$20,000. If I do it this year, I can expect rebates from the federal government and LES. I hope to live in my house long enough to recoup my initial costs and enjoy free electricity well into the future. But if I sell my house before then, I expect to get back my investment because added value. According to cnet.com, 29 states and Washington, D.C. already have statutes that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

guarantee the right to solar access. Those states include our neighbors: Iowa, Missouri, and Colorado. Wyoming is not on their list, but another website, Palmetto, says Wyoming considers solar access to be a property right. So they don't have an additional provision. To summarize, adoption of LB1119 shows respect for homeowners' property rights and their choices regarding use of their property. It offers homeowners the opportunity for long-term savings on energy. It leads to greater investment in our housing stock and more business for local electricians and solar installers. Most importantly, it enables all homeowners who are so inclined to add to our supply of clean energy and increase reliability in our grid. Thank you for your time and attention.

WAYNE: Thank you. Any questions? Senator DeKay followed by Senator Holdcroft.

DeKAY: Thank you, Speaker [SIC] Wayne. I was just wondering, you live in Lincoln area?

DEBRA NICHOLSON: Yes, I do.

DeKAY: Would you have to be signing an agreement with, like, LES for retail wheeling because you're producing your own electricity? I know-- I know in a rural sector you can only have retail wheeling up to 25kW, so those are--

DEBRA NICHOLSON: I see. I know that LES is very supportive of private solar panels. I don't know about an agreement. I do understand that I can use-- I can use what I need and then sell the remainder to LES. So I, I don't know specifically the answer--

DeKAY: All right.

DEBRA NICHOLSON: --to your question.

WAYNE: Senator Holdcroft.

HOLDCROFT: Thank you, Chairman. So are you restricted now from being able to put solar panels on your house?

DEBRA NICHOLSON: Personally, I don't believe I am. I live in a 1963 home which predated solar panels, I think, and I don't know that we have an active HOA.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee January 25, 2024

Rough Draft

HOLDCROFT: OK. So, so this bill, whether it passes or not you could probably go ahead and do your solar panels. Correct?

DEBRA NICHOLSON: I'm going to do a little more research before I spend the money, but, yes, I think so.

WAYNE: Any other-- any other questions from the committee? Seeing none, thank you for being here.

DEBRA NICHOLSON: Thank you.

WAYNE: Next proponent. Welcome to your Judiciary. How are you doing, sir?

AL DAVIS: Good. How are you, sir?

WAYNE: Good.

AL DAVIS: My name is Al Davis, A-l D-a-v-i-s, and I'm here today representing the 3,000 members of the Nebraska Chapter of the Sierra Club in support of LB1119. You have my handout, and I'll probably read most of what I have to say, but you could read it yourself, but. Multiple surveys over the past decade have indicated an increasing acceptance of solar and wind energy as the keys to building a sustainable future. Solar energy has become much more popular as the panels become more efficient, have more durability, and are so much cheaper than they once were. The solar industry is expanding rapidly and has largely been responsible for a flattening in the price of electricity over the past decade. Many bills have been introduced in this body to promote the industry, but few bills have been introduced to remove barriers to broaden consumer adaptation of solar energy. The opposition of proponent-- the opposition to prohibit installation of solar panels by HOAs would be swept away if this bill becomes law. Solar panels on a roof are not an eyesore, but an adaptation to a new technology which is helping our planet reduce the use of fossil fuels and should be encouraged, rather than opposed by local and state government. There is no evidence that solar panels depreciate the value of neighboring properties, contrary to what is sometimes claimed by the detractors. They do not detract from the overall appearance of a neighborhood and they contribute to the grid by providing stability and distributive electrical services. On occasion, the stars line up to offer real wins to homeowners. The Inflation Reduction Act is one example of that, providing Nebraska homeowners an opportunity to invest in the new energy economy by offering generous tax credits for

solar panel installation on residential properties, while at the same time lowering homeowners' electrical bills. Injecting the new money into our state is boosting the state's revenue through increased sales and income taxes, and provides good jobs for Nebraskans. Rooftop solar also offers our power providers additional energy generation during peak usage to reduce the need to burn additional fossil fuels. HOAs should be forgiven-- forgive-- forbidden from standing in the way of this investment. We want to thank Senator Dungan for introducing LB1119 and urge the committee to send to the floor for full debate. Just on a personal note, I live across the street from a development in Lincoln known as the Bridges, which is a very prestigious area. Several homes over in that neighborhood are, are putting solar panels in and have been doing so. So, you know, the trend is there. We need to open the doors so people can take advantage of it. Thank you.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here.

AL DAVIS: Thank you.

WAYNE: Next proponent. Next proponent. Welcome.

CHRISTY EICHORN: Christy Eichorn, E-i-c-h-o-r-n.

WAYNE: Go ahead.

CHRISTY EICHORN: Chairperson Wayne and members of the Judiciary Committee, I'm here in support of LB119 [SIC--LB1119]. I don't live in a neighborhood that has a homeowners association. I'm here representing myself as a community and regional planner. I work with communities at the intersection of energy and land use planning, and during my outreach efforts I often hear people suggest that we should use more roofs and less agricultural land for energy production. However, I believe that we need to strike a balance between the needs of both agricultural and urban property owners. We should not close the door on one sector and create problems for another. LB119 [SIC--LB1119] allows for options and opportunities to promote a holistic approach to energy solutions that considers the interests of all stakeholders. Thank you.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Next proponent. Proponent. Seeing none, we'll go to opponents. O-- are you a proponent?

ERIC HAMILTON MOYER: Yes, sir.

WAYNE: OK. Come on up. Still on proponents. Go ahead.

ERIC HAMILTON MOYER: Thank you so much. My name is Eric Hamilton Moyer. I'm a resident of Lincoln, Nebraska at 1220 Thunderbird. I have worked in the solar industry for the last 7 years and act as the residential operations manager for Nelnet Renewable Energy but I'm here representing myself. Just suffice to say that these covenants, which are at times quite restrictive to the potential development of residential solar in neighborhoods where we've encountered this and it has caused limitations as far as what could be constructed are, you know, obviously it's problematic. Finding homeowners that are interested in doing solar, it shouldn't be dissuaded, nor should they be punished for being able to, you know, want to create something that benefits the community as well as reduces their reliance upon the grid. The biggest point that I would like to drive home, and really the focus of why I wanted to speak, is because on each project that we develop, I have 4 installers. These are full-time workers, 4 full-time employees that are Nebraska residents that work on every single project. We have one master electrician, a Nebraska resident working on every single project. Each project employs a designer as well as an engineer. A certified engineer has to stamp the plan sets that we submit for approval or permitting from the authority having jurisdiction, as well as to the Electrical Board to receive an electrical permit. We employ a lot of people. There is a lot of individuals with the utilities that we interact with that also employ a lot of people that have a hand in each of these projects, whether it's providing a witness test, a meter exchange, or the electrical inspectors that come out and inspect each individual project to ensure its compliance and safety. These are a lot of jobs, local people, local workers, local money. And it's to our benefit to allow that to continue and to remove barriers. Thank you.

WAYNE: Thank you. Any questions? Senator DeKay.

DeKAY: Thank you, Speaker Wayne. Are there different types of solar panels, rather than the big shields that we see mounted to the roofs or are there--

ERIC HAMILTON MOYER: Certainly.

DeKAY: --solar, solar shingles that would lay down like shingles and still be absorbing the sunlight that would--

ERIC HAMILTON MOYER: There are a number of different products that are on the market today that would mimic what a shingle looks like, more or less. It's not necessarily a roofing product per se. They're still solar panels. They just look like shades, but, yes,--

DeKAY: Yeah, exactly.

ERIC HAMILTON MOYER: --there, there are alternatives that are out there. The one thing that I would note is that they're far less practical than a traditional solar panel, as far as the area of the roof space that is consumed by those individual shingles compared to a panel, for example. So for just as an example, a shingle from a popular manufacturer, which I will not name, that is a solar panel, it looks like a shingle has an output capacity of 72W per shingle section. OK. An individual solar panel at this point, just the typical run-of-the-mill installation would have a shortage of 415W for a single panel. So for the amount of roof area available, you can accomplish a lot more with just a standard panel at this point.

DeKAY: With solar shingles, I'll call them, can, can they be laid on a, a roof of a house so, I guess, the part of the roof that would be exposed to the sun to absorb it you could use those shingles and then use a shingle that would look almost identical to them, a regular shingle, so you didn't have the cost in putting those on the roof?

ERIC HAMILTON MOYER: Well, the issue there also comes down-- you mentioned cost. When it comes to solar shingles, they're usually considerably more expensive than a traditional solar power system that puts them out of reach for 99% of the homeowners that we would encounter.

DeKAY: I was just wondering if, if that would be more appeasable to an HOA or--

ERIC HAMILTON MOYER: At some point those might be viable. At this point in time, it is not my opinion that they are.

DeKAY: All right. Thank you.

ERIC HAMILTON MOYER: You're welcome.

WAYNE: Can you spell your name for the record?

ERIC HAMILTON MOYER: Yes, sir. It's Eric, E-r-i-c, Hamilton, H-a-m-i-l-t-o-n, Moyer, M-o-y-e-r.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

WAYNE: Thank you.

ERIC HAMILTON MOYER: Thank you.

WAYNE: Any other questions from the committee?

BOSN: I just have a clarification.

WAYNE: Senator Bosn.

BOSN: Thanks. Can you tell me how long have you been working in this space?

ERIC HAMILTON MOYER: 7 years.

BOSN: OK. Can you tell me approximately how many neighborhoods in the Lincoln area have HOAs that would exclude solar panels?

ERIC HAMILTON MOYER: Off the top of my head, I can think of at least 2.

BOSN: OK. And-- OK. You don't know how many houses are in those? So that's a tough question to answer, but they're-- they do exist in Lincoln?

ERIC HAMILTON MOYER: Absolutely.

BOSN: OK. Thanks.

ERIC HAMILTON MOYER: Thank you.

WAYNE: Any other questions? Seeing none, thank you for being here.

ERIC HAMILTON MOYER: Thank you.

WAYNE: Any other proponents? Proponents? How about opponents? Opponents? Anybody testifying in the neutral capacity?

MERLYN BARTELS: Good afternoon, Senators. Excuse me. I'm here in opposition of this because it raises a few concerns as I was reading this and studying it a little bit, and I know that some of the HOAs here in Lincoln provide the insurance for their buildings on the roofing and the structures of that. And my question is, does this bill address who would stand the insurance of that solar panel put on a particular house? Does the whole HOA have to absorb part of that? Because our insurance dues-- our, our insurance is covered in our

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

dues. So if I say I don't really want that on my house, but my neighbor does and it's OK with the HOA, which this law would say it was, do I have to help pay for his insurance of insuring his panel? Because imagine there would want to be some insurance on those panels if you had a major event that would destroy them. And the other thing I would ask is when we have a major weather event and roofs do need to be replaced, who is going to have to stand the cost of taking those panels off of the roof and putting them back on? Does the HOA and their insurance cover that, or does the individual owner have to stand that, that put it on because he wanted that? I'm not against the energy saving and all of that, but I think we're bringing up some issues that need to be addressed, either by you or someone that can give the HOAs the power to deal with these issues of the cost of the person or the HOA. So I guess that's my biggest concern right there. So thank you for your time.

WAYNE: Any questions from the committee? Senator Holdcroft.

HOLDCROFT: Name?

MERLYN BARTELS: Merlyn Bartels, M-e-r-l-y-n B-a-r-t-e-l-s, and I live here in Lincoln.

HOLDCROFT: Thank you.

MERLYN BARTELS: Thank you.

WAYNE: Any other questions? Seeing none, thank you for being here today.

MERLYN BARTELS: Thank you for your time, Senator.

WAYNE: Yeah. Any other opponents? Anybody testifying in the neutral capacity? Senator Dungan, do you want to close?

DUNGAN: Sure. And just to be clear, was the last testifier neutral or opponent?

WAYNE: Opponent.

DUNGAN: OK.

WAYNE: I-- he started getting up when I called.

DUNGAN: OK. My apologies. Just wanted to make sure. Colleagues, I think we've had a good conversation about this today. You know, all things considered, I think that implementing this policy is a win, win, win. It allows individuals to protect their personal property rights. It also allows people to collect their own energy if they want. And I actually really appreciated the testimony with regards to the workforce issue and the job creation that comes out of this. And I think that's a really important point. I was contacted by a number of people last year when I introduced my earlier version of this bill, who had been directly affected by this issue. Where you see this come up probably most nefariously, whether it's intentional or not, is HOAs that don't outright prohibit solar panels, but can say, you know, we're not going to approve improvements upon your home without a certain amount of votes of the HOA or something like that. So what ultimately ends up happening, and this has happened at least 2 or 3 times by people in Lincoln who called me, I don't have their names right now, is they think they're fine because the HOA doesn't specifically prohibit the solar panels. They install them, spend upwards of \$5,000 to \$10,000, and then they get a letter from the HOA saying, you got to take these out. And that's the calls we got last year from people saying, now I have to spend literally thousands of dollars to take these down or else I'm in trouble with my HOA from an HOA agreement that wasn't even clear in the first place that these were not going to be approved. So I think that's one of the problems. The other problem, obviously, is I just think the limitation on these is problematic from a policy standpoint, again, with regards to personal property. We changed this from last year by taking out a number of other provisions. Right? So landlords can still prohibit solar panels from people who are leasing from them. We took that out. There were a number of other questionable provisions we took out. We really wanted to drill it down to what the actual problem here is. If you own your house outright, it's your home. And, and you just happen to be a part of an HOA, you should be able to do with it as you please. With regards to the, the testimony at the end there or witness at the end of there talking about the insurance issue, you know, my answer, I think just off the top of my head is that that's going to ultimately be up to the HOA, right? They can handle that how they see fit. But generally speaking, you know, individual homeowner insurance policies are going to cover their house or whatever improvements are on that. And if the HOA decides to try to cover some additional insurance with regards to their HOA fees, that would be up to them. I don't think that's something that we need to address in this legislation. I think individual HOAs have the statutory provisions

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

currently in place to address those problems. This is going at-- or this is getting at a totally separate issue where individuals are being prohibited from doing things with their property as they see fit. And I think that's something that's problematic. So I would appreciate your support of LB1119 and I'm happy to try and answer any questions if anybody has some at this time.

WAYNE: Senator DeBoer.

DeBOER: Thank you. So when the, the last gentleman was talking, I was thinking about the fact that I used to live in a neighborhood until recently where we contracted together for our snow removal and our, you know, things like that. It sounds like maybe there are some that contract together for their homeowners insurance, but it seems like that would be something that they could illustrate in their-- in their contract that if you participate in this then, you know, it will not cover solar panels [INAUDIBLE], and they could probably put that in that way. Does that seem right to you?

DUNGAN: Yeah. I mean, nothing in this proposal would limit the HOA's ability to say, you know, we're not agreeing to cover any additional insurance for improvements. They can handle that however they see fit. They just would be prohibited from outright saying you're banned from putting these on your property.

DeBOER: OK. All right. Thank you.

WAYNE: Senator DeKay.

DeKAY: Thank you. Living in rural Nebraska, I don't have to worry about HOAs. So just to understand a little bit. Would this jeopardize the HOA's covenants at all as, as it-- when it comes in regards to, like, shaker shingles compared to asphalt shingles or brick homes compared to wooden homes if they start-- if homeowners are starting to pick and choose or setting an address?

DUNGAN: No, I don't believe so. You know, I, I-- the last thing that we're intending to do here is to dissolve HOAs or take away their authority, in general, to have those agreements with individuals who own the homes. This is a very limited and specific policy area that I think when we look at the overarching public policy, both of the benefits of solar panels and also the personal private rights or property rights, this is something that I think is worth legislating. But, no, we're not going to be coming for individual, you know,

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee January 25, 2024

Rough Draft

[INAUDIBLE] HOAs can or can't do in certain circumstances. And our statutes are pretty clear about what rights are afforded to HOAs and how they operate and what their governing structure is. So we're not modifying any of that. They can absolutely still exist and are free to contract with regards to snow removal or things like that. We just want to make sure they're not prohibiting what individual property owners can do on their house.

DeKAY: So you're fairly confident that this won't open up a can of worms going forward to have people do what they want to?

DUNGAN: Yeah, I am fairly confident about that.

DeKAY: Thank you.

WAYNE: Any other questions? Seeing none, we have 25 letters: 19 in support, 5 in opposition, and 1 in neutral. And that'll close the hearing on LB1119.

DUNGAN: Thank you.

WAYNE: Now, we'll open the hearing on 11-- LB886. Senator Conrad.

CONRAD: Thank you, Chairman Wayne, members of the Judiciary Committee. My name is Danielle Conrad. That's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I am happy to introduce LB886 today. LB886 is about the interplay with homeowners associations' policies or covenants that may restrict the ability of the homeowner to display a political sign for a candidate or issue of their choice. This is a bill idea that was brought to me by a constituent who lives in an HOA in my district in north Lincoln, and he's been perpetually frustrated with the ability to express his preferences for candidates during election times because of the restrictive nature of the covenants in the HOA that he lives within. When the idea for a bill came in, it really struck a chord with me, really resonated because during my 8-year absence from the Legislature when I was directing a civil rights organization, typically around election time, we would get a lot of intakes from Nebraskans all across the political spectrum who would kind of wake up and, and recognize some of these restrictions that it came to expressing their, their political preferences. And so I know from that experience as well that different states have moved in different directions. Some prohibiting HOAs from putting these sort of, of restrictions on political speech, some leaving it to the local level, and then some having a, a prohibition as well. Since we introduced the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

legislation, I've also received a great deal of feedback from civil rights stakeholders who would like us to consider removing the time component in the legislation as proposed as arbitrary and, perhaps, out of step with existing case law. And then I've heard from a lot of folks that live in apartment complexes in my district, in particular, and we have one of the highest amount of residents that live in rentals in north Lincoln in the Fighting 46. And they said, well, what about us, too? What about us, too, at apartment complexes? So I said, well, I would definitely make sure to give voice to those ideas at the committee level. And if the committee is interested in moving a measure like this forward, I'd be happy to work with you on the technical aspects in relation to the time components or in terms of the overall application. But I think what's most important to remember about this measure is I really see it as having 2 quintessential key issues, key values, key liberties in it: the importance of private property and the importance of free expression. And this ensures that we honor both of those if we remove arbitrary restrictions. So happy to answer questions.

WAYNE: Senator DeBoer.

DeBOER: Thank you.

CONRAD: Yes.

DeBOER: It was-- Senator Conrad, it was always my understanding that the Supreme Court had ruled on the ability to restrict this kind of First Amendment expression since its political expression. Are you aware of that?

CONRAD: Are you talking about, like, the Reed case, perhaps, or just,--

DeBOER: Perhaps.

CONRAD: --in general, long line of jurisprudence in regards recognizing political--

DeBOER: I assume you know more about that than me. So can you speak to what the Supreme Court has said about the ability to restrict political speech in that sort of way?

CONRAD: Sure. So, in general, there's a pretty long line of case whole-- case law that's consistently held that political speech is the type of speech that receives the highest protection because of its

importance in our democracy. And so it should be subject to the least amount of restrictions possible, whether that's from the campaign finance realm, whether that's signage, whether that's speech on the legislative floors and for people criticizing their speech on the legislative floor. Right? So, generally, I think the Supreme Court has recognized or characterized political speech as really at the, the zenith or the apex in terms of, I guess, a speech hierarchy, so to speak. I'm not sure, and I will go back and triple check, if there's been any specific case law and whether or not, from the Supreme Court anyway, whether or not HOAs can have restrictions in their covenants on political signage. There is kind of another track of First Amendment speech cases that are out there that aren't necessarily squared up in just political signs. But years ago, there was a case, I think it's the Reed case, that essentially was looking at a localities restrictions, time, place, manner restrictions on, I think, it was a church's sign about when they could put out this kind of sign to direct folks to their congregation. And the court basically said, like, you can't really put a lot of restrictions on, on that kind of signage. There may be some narrow examples for public safety, right? You don't want people to be blocking intersections and things like that. But I'm not sure if there's specific case law on point in regards to restrictive covenants in HOAs, but I think, in general, the court has said political speech deserves the highest protection and signage restrictions are suspect.

DeBOER: So my understanding or the folklore around wherever is that the, the sort of restrictions that's put on political signs by maybe a city or a HOA or whatever would be unconstitutional as a violation of the First Amendment. So that's the folklore that I have received from others--

CONRAD: Yes.

DeBOER: --is that that is already sort of been decided. So I'm happy, I guess, to learn that maybe it hasn't been.

CONRAD: Yeah, I, I, think you're right. I think that, generally speaking, you're right. And so you may-- let me put this into practical terms. So sometimes I think even it here in Lincoln for a long time they had a restriction that you couldn't put political signs up until, like, 60 days before the election or something like that. That would usually be kind of a, a local ordinance that would be out there. And as the, the case law continued to come down on the side of free expression, those kinds of restrictions essentially were struck

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

down. Now, they weren't automatically repealed in all jurisdiction. And so from time to time, like when I was at ACLU, we'd get a call from, you know, somebody in Eagle or somebody in Ainsworth or somebody in Lincoln saying they want me to take my sign down. They have this old law on the books that says it's, you know, too far beyond the election period. And we'd usually be able to knock that out pretty quickly with a call to the city manager or the county attorney or something like that. But I do think it's probably a gray enough area when it comes to the HOAs, because it's not exactly the government entity that's restricting your right to put up signs, right, it's as a contracting party where you're the private homeowner that enters in that contract with that association voluntarily. So I think it, it may cut just a little bit differently there. Is that helpful?

DeBOER: Yeah. Thank you.

CONRAD: OK.

WAYNE: Any other questions? Senator DeKay.

DeKAY: Yes. I agree with a lot of what you're saying here.

CONRAD: Great, let's end there. Right there. [LAUGHTER]

DeKAY: Strike that from the [INAUDIBLE]. [LAUGHTER] But I do have a question--

CONRAD: Yeah.

DeKAY: --about the timeline. It says-- what I'm reading in my notes it says: 90 days before they can go up and 10-- up to 10 days after. Could that timeline be amended? That seems to me like especially-- I don't have a problem with the time before the election because there's a lot of campaigning going on,--

CONRAD: Sure.

DeKAY: --but the 10 days after, especially when you're walking 10, 12 steps to the sign it shouldn't take-- in my mind, it shouldn't take 10 days to remove the sign. Do you have a problem amending that?

CONRAD: No. Thank you so much, Senator DeKay, and I would-- personally, I would not like to see any time restriction on that kind of similar to how we see it apply for governmental restrictions. But I would be happy to work with you and others to maybe tighten that up

if, if we can make it a little bit more manageable, strike the right balance. But, you know, I will tell you just in terms of enforcement as well, you know, in the last election cycle. And, you know, the cool thing about political speeches doesn't single out any one candidate or one point on the political spectrum or it shouldn't. Right? There were a fair amount of supporters of President Trump who, after he was unsuccessful in the last election, have continued to keep his yard signs up or fly his presidential campaign flag. So sometimes that show of political support can extend beyond the campaign period as well. And so we'll need to think carefully about, about not quashing political speech beyond just the parameters of the campaign, I think. But let's, let's definitely keep talking and I can see how other states handle it if they have a better time frame on it.

DeKAY: Thank you.

CONRAD: Yeah.

WAYNE: Any other questions? Seeing none, thank you for being here.

CONRAD: Great. Thanks.

WAYNE: First, we'll start with proponents. Proponents. Welcome.

GRANT FRIEDMAN: Senator Wayne, members of the Judiciary Committee, my name is Grant Friedman, G-r-a-n-t F-r-i-e-d-m-a-n. And I am here on behalf of the ACLU of Nebraska, testifying in support of LB886. The First Amendment in Article I, Section 5 of the U.S. Constitution prohibit the government from encroaching a resident's right to free speech, which includes the right to speak in political and electoral issues. While private organizations like HOAs have the ability to regulate private property within their associations, they cannot disregard the free speech rights of the residents. Getting at the question that was asked earlier. The two Supreme Court cases on point are members of the City Council of Los Angeles v. Taxpayers of Vincent, where the Supreme Court held that public cities cannot regulate residents' rights to, to have property displays and political displays on their private property. The Reed v. Gilbert case held that the city cannot regulate public spaces, such as in front of the courthouse or in front of the legislative building, that those spaces are all public and, therefore, allowed to have political displays. The only case to directly address the HOA issue of regulation is the New Jersey Supreme Court, which held that courts have-- that courts held HOAs violate the state free speech clause when they ban all political

signs within their residential areas. At the ACLU, we have received numerous intakes regarding HOAs prohibiting individuals from displaying political signs on their property. We are grateful for Senator Conrad and Senator Blood for seeking to protect the rights of Nebraskans to, to state their political opinions under LB886. This provides specific guidance to HOAs on the ability to regulate signs without interfering with the residents' free speech rights. By allocating a specific period of time a sign may be posted regarding either candidates or ballot measures, without restricting the more esthetic methods HOAs seek to regulate HOA cohesiveness, LB886 does well to protect the free speech rights of the residents, while maintaining the desire of HOAs to maintain their communities. For these reasons, the ACLU asks the Judiciary Committee to advance LB886 to General File. I'm available for any questions.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Next proponent. Proponent. Next opponent. First, we'll start with opponents. Any opponent? Anybody testifying in a neutral capacity? Seeing none, Senator Conrad, would you like to close? Senator Conrad waives closing. We have 6 letters: 3 in support, 2 in opposition, and 1 in neutral. That'll close the hearing on LB886. We will open the hearing on LB1268. Senator Conrad.

CONRAD: Thank you, Chair Wayne. Thank you, members of the committee. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d, here today proudly representing the Fighting 46th Legislative District of north Lincoln. And I am happy to introduce LB1268. Just very briefly, the Legislature really last took up this issue in earnest during my previous service in the Legislature and last really opened up these statutes back in 2007. After talking with some members who at UNL law school who have worked very diligently to engage in debtor defense and consumer rights, they brought this issue to my attention and I know have discussed it with other members of the Legislature, including Senator Bosn, who got up to speed on kind of where we are with this legislation and why we might need to make an update at this period in time. But basically, what this bill would do is that it would open up and amend Section 40-101, specifically addressing the homestead exemption in Nebraska. The objective is to elevate the exemption from judgment liens and for sale to \$120,000 for individual residents. It's currently capped at \$60,000. And, again, that existing exemption has remained unchanged since 2007. So we all know that home values are on the rise, exponentially so. And this aspect of our law protecting homeowners who are working through some tough times hasn't really kept pace. And so I think it is a good time to bring this issue

forward. I want to leave plenty of space and plenty of time for the law students and Professor Ruser, who will come behind me today to talk about how this impact-- this practice impacts low-income, working families in their practice and particularly elderly Nebraskans. So with that, I will stick around just in case there are any questions. But I think you'll enjoy hearing about kind of what's happening in the courts in regards to these issues with the current low exemption and why it needs to be updated.

WAYNE: Thank you.

CONRAD: Thanks.

WAYNE: Any questions from the committee? Seeing none, thank you. We'll start with proponents. Proponents. Proponent.

ALEC STONCIUS: Members of the Judiciary Committee, my name is Alec Stoncius, A-l-e-c S-t-o-n-c-i-u-s, and I'm a senior certified law student with the Debtor Defense Clinic at the University of Nebraska. I'm testifying today in support of LB1268 in my personal capacity, not on behalf of the University of Nebraska. LB1268 is an update to the housing exemption against judgment liens from unsecured creditors. Currently, homes in Nebraska are exempt from judgment liens from unsecured creditors if the debtor's equity in the home does not exceed \$60,000. This \$60,000 figure was last updated in 2007, and was determined by taking the average home price in each county, adding those averages and dividing the total by the total number of counties. Today, using the same formula, the average figure totals around \$120,000. Our state should strive to incentivize investment in personal real estate. This outdated figure of \$60,000 disincentivizes this investment. Under the current law, an individual with more than \$60,000 in equity could have their home sold from underneath them for a \$200 medical bill. In other words, a family could be forced to the streets while a debt collection agency profits. This is not only unfair to the individuals, but the costs of local government are significant. A 2007 study done by Congress estimated that the total cost of foreclosure is around \$20,000, and that \$20,000 is borne by local governments. Adjusted for inflation, these costs would amount to local governments potentially footing a bill of nearly \$30,000. Most of these losses stem from unpaid property taxes, unpaid utility bills, and any clean up or removal required after the property is foreclosed on. Furthermore, studies have shown that the long-term effects on families or individuals is that they are less likely to purchase a home in the future and more likely to default on future debts. All of

this because of a potentially small unsecured debt. Lastly, it's important to note that compared to rural states like Nebraska, this bill is still a conservative increase in the homestead exemption. For example, in neighboring states like Iowa and Kansas, the homestead exemption is unlimited. In Iowa, the purpose is to promote stability and independence among its citizens. And in Kansas, the justification is to prevent citizens from needing government aid. Today, I'm asking the committee to consider LB1268 because it protects citizens from homelessness and the state itself from undue costs. I'm open for any questions.

WAYNE: Any questions from the committee? Senator Ibach.

IBACH: I'll ask one. Thank you, Mr. Chairman. Do you have an idea of how many people in Nebraska take advantage of the homestead exemption?

ALEC STONCIUS: It's-- we try to do a lot of research at the clinic. It's been difficult to kind of find figures and we've been working with the Legislative Research Office to kind of find more concrete, we would imagine it impacts more elderly people who have more equity in their home, so.

IBACH: I think that's correct. OK. Thank you. Thank you, Mr. Chairman.

WAYNE: Any other questions? Seeing none, thank you for being here.

ALEC STONCIUS: Thank you.

WAYNE: Next proponent. Proponent.

MATT LEUTY: Good afternoon, members of the Judiciary Committee. My name is Matt Leuty, M-a-t-t L-e-u-t-y. I'm a senior certified law student with the Debtor Defense Clinic at the University of Nebraska. I'm testifying today in support of LB1268. I appear today in my personal capacity and not in any capacity as a student representative of the University of Nebraska College of Law. LB1268 will make two substantive changes to the current statutes that allow Nebraska homeowners to shield some of the equity in their homes from claims of unsecured creditors. In addition to raising the dollar amount of the homestead exemption, LB1268 would clarify that each natural person residing in Nebraska could claim their homestead as exempt. This change would harmonize the homestead exemption statute with the provisions of the personal property exemption statutes made by the Legislature in 1997. Amending the language of the homestead exemption to apply to all natural persons serves two purposes. First, as

mentioned above, it harmonizes the homestead exemption language with the personal property exemption language. In 1997, the personal property exemption was amended so as to exempt the personal property of each natural person. This amendment, along with LB964, which was passed in 2014, reflect the intent of the Legislature to move away from the concept of family exemptions and replace them with individual exemptions. LB1268 follows in that same vein by amending the homestead exemption to be available to each natural person. Second, LB1268 will make the statute clear as to who is entitled to receive the exemption. As the homestead exemption is currently written, an unmarried couple could effectively receive the \$120,000 exemption, whereas a married couple would only be entitled to a \$60,000 exemption. In effect, the statute punishes couples for getting married. It seems highly unlikely that it was the intent of our Legislature to give a larger exemption to unmarried couples than to married couples. LB1268 would allow married couples to claim the same amount of exemptions as an unmarried couple who live together. Thank you.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Oh, Senator Bosn has a question.

BOSN: Can you-- can I just have you clarify that? So my-- what you're saying that the current statute says is that my husband and I would be preempted from each of us applying for this even though we jointly own the home.

MATT LEUTY: That has been the experience of couples who have-- married couples who have tried to claim this exemption. Yes.

BOSN: OK. So under the current law, essentially I'd be entitled to \$30,000 and he'd be entitled to \$30,000. Jointly our home, we would be exempt for the \$60,000 together.

MATT LEUTY: Correct.

BOSN: And how did you get to \$120,000 exemption? Can you explain that to me then?

MATT LEUTY: Yes. So under the current statute, in effect, each individual can claim \$60,000. So an unmarried couple who live together as opposed to a, a married couple who live together. The unmarried couple as individuals can each claim the full \$60,000 exemption, in total giving them a \$120,000 exemption as a couple. Whereas, a married couple has only been able to claim \$60,000 as written in the statute.

BOSN: OK. So then essentially if we change this, and my understanding that if we increase the amount and clarify that each person in the household, married or otherwise, qualifies, we would be then at the-- now I'm forgetting where I'm at. What, what is the amount we're changing this to, 120?

MATT LEUTY: Correct.

BOSN: It would still be 120 whether my husband and I are married or whether my husband and I are unmarried.

MATT LEUTY: That's correct. Yes.

BOSN: So the cap at the house would be \$120,000 or would the cap at the house be \$240,000 in that circumstance?

MATT LEUTY: I believe the cap would be-- would, would effectually be \$240,000 then.

BOSN: OK. So, essentially, we're changing this-- really, what we're changing is the requirement that the individuals be married or not married.

MATT LEUTY: I'm sorry, the--

BOSN: Because in addition to increasing the amounts for married individuals, the amount doesn't just go from \$60,000 to \$120,000 for a married couple, the amount goes from \$60,000 to 240. And unmarried couples, it goes from \$60,000 to \$120,000.

MATT LEUTY: For an unmarried couple, yes, it would go from \$60,000 to \$120,000 each. And for a married couple, yes, it would be what is effectively \$30,000 to \$120,000 each.

BOSN: OK. That's right. That's a better way to say that. Thank you.

MATT LEUTY: Thank you.

WAYNE: Any other questions? Next proponent.

KEVIN RUSER: Thank you, members of the committee. My name is Kevin Ruser, K-e-v-i-n R-u-s-e-r. I'm testifying today in support of LB1268. I'm here in my personal capacity, not as a representative of the University of Nebraska. I grew up on a farm near Grant, Nebraska, and I've been practicing law since 1979. During my time as a practicing

lawyer, I represented exclusively low-income clients. From 1979 to 1985, I worked with Legal Aid in Grand Island first and then Scottsbluff, and since the mid-1980s, I've worked with law students at the College of Law representing low-income clients. LB1268 would make two salutary changes to the statutes that allow Nebraska homeowners to shield some of their equity in their homes from the claims of unsecured creditors. Most basically, it would update the amount of the homestead exemption from where it was last established in 2007. And, relatedly, it would resolve in ambiguity that resulted in the 2007 amendments that would clarify that each natural person residing in Nebraska could claim their homestead as exempt. This would harmonize the homestead exemption statutes with the personal property exemption statutes, which were amended to read like that in 1997. I also have a couple of other observations that I think recommend the bill. First of all, just to be clear, this only applies to unsecured debt. It wouldn't affect the rights of secured creditors. So in other words, anyone holding a mortgage or a trustee on a property wouldn't be affected by this bill. And second, to echo what you've heard already, it's my experience during my time in practice that the population most at risk of losing their homes to unsecured debt are elderly homeowners because, by and large, they have the most equity in their homes. They spent their lives paying down their mortgages and building home equity. Many of them are on fixed incomes and they have trouble servicing debt. And so it would be nice to have a little more help for them to protect the equity that they've spent their lifetime building. And with that, I'm happy to answer any questions.

WAYNE: Questions? Senator DeBoer.

DeBOER: Thank you. So I also was a little confused before. I thought I had it, and then after the questions, now I'm a little more confused again. So currently it's \$60,000 each so-- but if you're married, you count kind of as one person.

KEVIN RUSER: It's \$60,000 per homestead. All right?

DeBOER: So--

KEVIN RUSER: And so this comes from what happened back, and you're going to hear some other people talk about it who probably know more about it than I do because they work in this field every day, but, originally, the homestead exemption could only be claimed by the head of a family, right, the head of household, which in the old days was the man. Right? So it was limited to the homestead rather than to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

individuals who own a home. All right? Each individual might have an interest in a home, but that depending it might be a, a, a joint tenancy or it might be a tenancy in common. But whatever their interest is, what this bill would do is harmonize it with the personal property exemption statute, saying whatever each individual's ownership interest is in their home they could exempt up to a total of \$120,000. So to, to address Senator Bosn's point, yes, if there are two people and they each own 100% of the property, they could each under these, these amendments claim \$120,000, right? It could be a joint debt or it could be debts against the individual homeowner. But each natural person having equity up to \$120,000 in the homestead, and their homestead would be able to claim that amount of equity as exempt.

DeBOER: So if there were 3 persons that owned a home together in joint tenancy, then all 3 would get it and it would go up to--

KEVIN RUSER: If, if, if there was a judgment jointly against all 3. Yes.

DeBOER: OK.

KEVIN RUSER: But that's the key, who's the judgment against? Right.

DeBOER: All right. Thank you.

WAYNE: Senator Ibach.

IBACH: Thank you, Mr. Chair. Can you just clarify one thing for me? I was under the impression that depending on the average assessment per county, that had some bearing on how much the homestead exemption--

KEVIN RUSER: I think you're thinking of the homestead tax exemption as opposed to the homestead exemption to shield it from a debt collection.

IBACH: OK.

KEVIN RUSER: Yeah.

IBACH: Thank you. Thank you. Thank you, Mr. Chair.

WAYNE: Any other questions? Senator Bosn.

BOSN: Thank you. Professor Ruser, can you explain then-- I, I guess the concern that I have, a little bit piggybacking off of what Senator DeBoer said with multiple, more than 2 owners, is now that equity will almost certainly exceed. What if you had 6 co-owners of the home, the value of the house, or not certainly, but could very quickly exceed the value of the home. And I think that creates its own-- now we're putting a Band-Aid on a problem that we created by trying to protect that class. So how do we fix that?

KEVIN RUSER: So with all due respect, you sound a little bit like a law professor, Senator Bosn. [LAUGHTER] I think-- I think you're spinning hypotheticals that may not actually exist in reality. But to answer your question, yes, that is something-- I mean, to be clear, that's what this would do. I really wonder how often that would happen in practice. That's my response.

BOSN: Thank you I think. [LAUGHTER]

KEVIN RUSER: You're welcome.

WAYNE: Any other questions? Seeing none, thank you for being here. Next proponent. Go ahead, sir.

SAM TURCO: Good afternoon, my name is Sam Turco. That's T-u-r-c-o. I am a bankruptcy attorney practicing throughout the state of Nebraska. Practiced law since 1992. And I deal with this homestead issue every day and every week in my practice. I meet clients in every county of this state. I-- you know, bankruptcy, the practice where, you know, there's, there's two judges for the whole state. We deal with every type of family, every small business, every individual. This problem keeps coming up, especially since the skyrocketing house prices that were lit off by the COVID virus. Home prices, as we all know, have just escalated. Recently, I dealt with a client in Omaha, a retired woman who lives in the Florence Boulevard neighborhood of Omaha. Her home in 2018 had an assessed value of \$26,200. Currently, has an assessed value of \$98,400. Gone up \$70,200 since 2018. I meet these people on a fixed income. Retired people, people who have always paid their bills, but with medical bills and, and insurance claims, very often they wind up deeply in debt. Normally those people we would have an option of taking them, if needed, into a Chapter 7 bankruptcy to clear these debts. But on a weekly basis when I talk to these people, the first question I ask them is what is the address of their home? How much do they owe on the mortgage? And I, I type their address into the Internet to see what valuations I see on websites like Zillow or

realtor.com. And these people are shocked to find that their home values have escalated 50, 60, \$70,000 in the last 3 to 4 years, and I cannot protect their home in a Chapter 7 bankruptcy, that \$60,000 exemption just doesn't cut it. And so the option is we have to tell these people they can't go into a Chapter 7. Rather, they have to opt for the expensive Chapter 13 case and pay back their creditors, you know, an amount of money equal to what we can't exempt. And so senior citizens, people on disability, who are in this situation are forced into payment plans that are difficult to afford and sometimes they're not affordable. So--

WAYNE: Thank you, sir. Let me see if there's any questions. Can you-- can you wrap up your final thoughts?

SAM TURCO: So that's the first issue that this, this statute addresses very well. It says, look, \$60,000, which that change occurred in 2014. And in 2014 the Legislature increased that exemption to \$60,000. And I think we all thought that was a very decent level and the last 4 years that changed and, and, and it-- and we're just meeting people that shouldn't be in the 3- to 5-year payment plans who are now forced into it.

WAYNE: All right. Thank you. Any questions? Senator DeBoer.

DeBOER: So the discussion that we were having earlier, Senator Bosn and I put some hypotheticals forward, if there were 3, if there were 6, if there were some number of people. How often do you see a situation where there are 3 or 4 people who own a home and then are also in debt together?

SAM TURCO: Almost never do you see 3 to 4. What, what is common, though, is that a married couple, so you have two owners of the house or an unmarried couple, and there is a judgment against one of the homeowners but not the other. And this, this kind of comes into the second part of the statute, which is, is absolutely critical. The current statute-- you know, prior to 2014, before we increased it to \$60,000, it was very clear the homestead only was given to either married couples or individuals who were head of household. They had dependent children. It was not available to, to single people without children and dependents. Well, in 2014, we updated our law to say that's, that's kind of not representative of what we want to do. We're going to give that homestead exemption to everybody, whether you're single, whether you're married, whether you have children, whether [INAUDIBLE].

BLOOD: I'm sorry.

SAM TURCO: And that was a good change in the law. But it also introduced tremendous confusion into our statute. And the confusion is, OK, so now an individual gets a \$60,000 homestead and we-- they changed the part of the law that addressed individual, unmarried people. But it didn't address the issue about-- what about married people? Do they-- do they get \$60,000 per, you know, husband wife or are they just getting 60? And it's a very confusing issue. We are litigating that issue at our firm. We had a hearing just this past Monday in the United States Bankruptcy Court, where we are challenging what this law means. And we're asking our court to, to rule on that issue. Do, do married couples each get a \$60,000 exemption, or are they limited to one \$60,000 exemption? We spent nearly an hour with Judge Kruse in the Bankruptcy Court going over this issue. And everybody in the room is intelligent, is well read, they understand the issue. We don't know the answer. And I have stared at the statute for hour after hour after hour and I don't know the answer because it's just one of those things where we changed something in the law in 2014, but we really didn't think about what that means to the other parts of the law. And so intelligent people on both sides are coming up with opposite answers. And so when people call me every week to say, is my home protected? And they're-- and they're a couple, they're a married couple and they have more than \$60,000 of equity, I say, I don't know-- I don't know the answer. I've been doing this for 30 years, I should know the answer. And this statute gives us the answer. It says it very clearly. So whether you think we should go from \$60,000 to \$120,000 per individual for the exemption, what is absolutely clear is we need to answer this question. What does a married couple get? Because I cannot believe that this Legislature in 2014 had the intention of saying that an unmarried couple who own a house together, you know, they can each claim a \$60,000 exemption and they get a \$120,000 exemption, but that we're not going to give that same privilege to a married couple. I can't believe this Legislature ever had that intention. But when you read the statute, we just don't know. And when judges read a statute, they're very conservative. You know, their attitude generally is if there's something that's not clearer let the Legislature, you know, make it clearer. So that's why I'm here. Let's make it clearer because I just don't think-- I can't imagine we'd say, well, if you're-- if you're not married, you get \$120,000, but if you're married you only get 60. I know that's the one answer that doesn't make sense. And so on-- just on a simple sense of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

fairness between unmarried couples and married couples, the rule should be the same, so.

DeBOER: Thank you.

WAYNE: Senator Blood.

BLOOD: Thank you, Senator Wayne. I just have a really quick question. Based on your experience, because this helps us in the future when we go to pass more legislation, what would you say is the number one reason that young families in Nebraska have to claim bankruptcy?

SAM TURCO: What is the, the--

BLOOD: The number one reason why you think that young Nebraskans--

SAM TURCO: Number one reason, and, and research after-- you know, nationwide research that's gone on for years, medical. Because medical debt turns into credit card debt and, and so people file cases and it's mostly credit card, but it's credit cards because of medical.

BLOOD: Right.

SAM TURCO: And there are other reasons, family breakups are a major issue, factories closing down can be a, a major issue. And we've dealt in Nebraska with, with our manufacturing jobs disappearing quite frequently. I'm kind of remembering the, the Vise-Grip Factory in, I think, Beatrice closing down and, and so we get waves that come in. And then 2008, you know, mortgage meltdown crisis, which was huge. But year after year, week after week, the number one thing that comes in is it tends to be medical. And even people with health insurance, I mean, it's confusing, you know, they don't know how to respond when the insurance company doesn't pay the claim. I had a client whose husband was-- had heart issues and was constantly, you know, his heart would be stopping. They would call emergency and the emergency people came out and said he has to go on a helicopter. And they, they flew him to the hospital and unfortunately he passed away. They send in a claim for a \$30,000 helicopter ride. The insurance company denied it, saying it wasn't necessary. Because he died, it wasn't necessary. And my client tells me this and I said, that's wrong. It's not like when they come out you have an option, like they tell you he's going on a helicopter. Appeal that deny. And she did, and the insurance company paid it. And I think the insurance companies deny a lot of claims just to see if we respond. And from a business standpoint, I guess I understand that. But it's a complicated system and that there's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

confusion on how to file claims. There's confusion on what to do when they're denied. I had a client who was-- worked in Omaha, he had health insurance that covered Omaha doctors. He's delivering a machine in Norfolk, Nebraska, and he decides to have a heart attack. And the insurance company denied his claim for \$50,000, saying that's out of network. And I sit down with him and I said, that's not true. I said, there's no such thing as out of network for emergency medical services. They wrongly denied your claim, but it was too late to appeal. And when he comes to me there's judgments, there's garnishments, he can't pay his rent. And so we have to go in and clear up the debt. And so medical is the number one thing. And there's many factors, but that's always number one.

BLOOD: Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. Thank you for your testimony. Next--

SAM TURCO: Thanks.

WAYNE: --proponent.

PAUL REA: Good afternoon. Paul Rea, P-a-u-l R-e-a. Like my colleague, Mr. Turco, who was actually a classmate of mine in law school, we both have been bankruptcy attorneys for over 31 years. I am pretty much in the cleanup, I hope, to answer any last questions or anything that have come to mind to the senators here today. I can only reiterate. It's just a question of public policy of whether or not we're going to allow certain debtors to be allowed to keep a certain amount of real estate even though they may owe money to their various creditors. I think everyone before me has pretty much stated anything I was going to state. Does the committee and/or any of the-- any of you have any questions?

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Next proponent. Now, we'll switch to opponents. Opponents. Neutral testifiers? All right. Any closing thoughts, Senator Conrad? There's 2 letters: 1 in support and 1 in opposition. And that will close the hearing on LB1268. And that will close today's-- next we'll go to LB1220. Senator Bosn.

BOSN: You lied once on coloring, so I'm not asking. You're working for me.

WAYNE: Welcome to your committee.

BOSN: Thank you, Chairman Wayne, and good afternoon, members of the Judiciary Committee. For the record, my name is Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n. I represent District 25, which consists of southeast Lincoln, Lancaster County, including Bennet. LB11-- excuse me, LB1220 is an effort on behalf of attorneys from the Nebraska State Bar Association's Real Estate, Probate, and Trust Section to update and clarify provisions of Nebraska statutes that govern a person's ability to manage and transfer their property in the event of a death or an incapacity, and in planning for the event of their death or incapacity. This bill makes a number of minor changes meant to modernize and update provisions of statute that estate planners have identified in assisting their clients. I'll go section by section. First, Section 1 clears up an inconsistency in statute by providing explicit authority for a person 18 years of age or older to waive bond on their own behalf when a personal representative is appointed to manage an estate of which the 18-year-old is a beneficiary. Under existing statute, an 18-year-old has an explicit authority to a personal representative to manage an estate, but does not have clear statutory authority to waive the bond requirement for personal representatives. This comes up in situations, for example, when one parent dies and the child is 18 years of age. The 18-year-old can nominate the surviving parent to serve as a personal representative, but cannot waive the bond requirement on their own behalf. Because such explicit authority does not exist, it has caused inconsistency across the state, as some jurisdictions will allow it on their own, while others will deny it, requiring a bond then. Moving to Section 2. Section 2 increases the threshold for the value of real property, for which a small estate affidavit can be used in lieu of the need to use probate for transfers of real property from the existing value threshold of \$50,000 to \$100,000. In 2022, the Nebraska statutes were amended by the passage of LB1124 to increase the threshold for transfers of personal property by affidavit. So personal property in that bill went from \$50,000 to \$100,000. That's in Nebraska Revised Statutes, Section 30-24,125. Even so, the statute still provides that real property instead of personal property may not be transferred by affidavit unless it is valued at \$50,000. This inconsistency causes confusion and serves no real purpose. Section 2 of this bill would increase the real property value to mirror the value applied to personal property, so they would be the same both at \$100,000 when using an affidavit and is consistent with the increase in the exemption amount that the Legislature adopted in 2021 in LB310 with respect to inheritance tax for first-class relatives. Moving on. Section 3 and Section 9 serve to update the amount of money that can

be transferred directly to a minor without the need to establish a conservatorship or a trust. Under the Uniform Transfers to Minors Act, Section 43-2707, subsection (3) limits a transfer to a minor to not exceed \$10,000 without a court order. That limit has been the same since 1992. Nebraska statute currently sets the facility of payment to a minor in sub-- excuse me, in Chapter 43-2707 at \$25,000 annually, and that amount has not increased since 2006. Attorneys believe that the inconsistency in the amounts in these two statutes is unnecessary and confusing, and that the amount should be increased for both. For example, Iowa recently raised its limit to \$50,000. Additionally, inflation when accounting for inflation since 2006 would bring that amount to \$25,000-- of \$25,000 to almost \$37,600. This bill proposed that the amount would be increased to \$40,000. Moving to Section 4, this addresses an inconsistency in Nebraska law, in a situation in which a person becomes incapacitated and a conservatorship is sought. Under current statute if a guardianship is established, the person has an expressed statutory ability to hire an attorney for the purpose of challenging the establishment of a guardianship. However, no such similar provision exists in instances in which a conservatorship is sought. Section 4 takes the language included in the guardianship statutes, and provides that the same would be-- language would be applied to conservatorships in section-- Chapter 30, Section 2537. Moving to section-- and just for clarification, because there was some question about this, guardian is a person who's appointed to make personal decisions for protected persons, think decisions such as where to live, medical decisions, and education, whereas a conservatorship is more specifically tailored towards having someone who can make financial decisions for that protected person. Sections 5, 7, and 8 include an update to the probate code considered by this committee in Senator Ballard's LB549 from last session. Nebraska law presently authorizes an 18-year-old to establish a will. However, the statutes that deal with other important estate planning mechanisms, like trusts and powers of attorney, reference the need for a person to have full capacity to execute those documents. This causes practitioners issues as they advise clients who may be leaving home to attend college out of state, or for some other reason need those types of planning documents. Finally, Section 6 clarifies language in statute that provides for the optional registration of a trust. Current law allows for such registration, but makes it optional. Nevertheless, the title to the statute as pulled from the Uniform Trust Code references a duty to register. Since no technical duty exists, a provision is added to clarify that registration is not required to establish the court's jurisdiction. A clarifying provision

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

is also added to address how registration might occur in the instance in which there are cotrustees appointed. Thank you for your time and attention. I would be happy to try to answer any questions. And Tim Hruza with the Bar Association will be following me and may be more qualified to answer detailed questions.

WAYNE: Thank you. Any questions? Senator DeBoer.

DeBOER: This isn't a question. I'm just going to comment and say, I'm very, very pleased to see that you have taken over the esoteric death bills for me and I don't have to do them this year. So thank you for bringing these.

WAYNE: OK.

BOSN: Maybe.

WAYNE: I have some questions. Why are we going with 18 versus 19, which is the age of majority in Nebraska?

BOSN: Are you talking about the Section 6?

WAYNE: Yeah.

BOSN: I believe Tim Hruza would probably be better able to answer that question. Can I defer that question to him?

WAYNE: No, I was asking you. [LAUGHTER]

BOSN: I don't really know how to answer that.

WAYNE: That's fine. Thank you. Any other questions? Seeing none, thank you for being here. Can you waive closing? Appreciate that. [LAUGHTER]

BOSN: You shouldn't [INAUDIBLE].

WAYNE: First proponent.

TIM HRUZA: Good afternoon, Chairman Wayne, members of the Judiciary Committee. My name is Tim Hruza, last name is spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association. Let me first start by thanking Senator Bosn for introducing LB1220. The intro that she read does outline each of the sections of the bill that deal with a pretty comprehensive update from a state planner on provisions in Chapter 30. There is one stray provision from 43 that crosses over and deals with how we handle giving property or money to

minors in certain instances. Maybe I'll just start by answering Senator Wayne's question. The reason that the-- that those portions of the bill deal with 18 years of age instead of 19, general age of consent in Nebraska is 19, our Wills Act that currently exists allows clear authority for an 18-year-old to do it. The sections that deal with trusts from the Uniform Trust Code, which hasn't been updated broadly since the '80s or '90s, whenever that was adopted, reference capacity instead of an actual age. They don't represent-- they don't reference an age of majority. They don't represent 8-- they don't reference 18. Whereas, that's specifically stated in wills. What that results in is an 18-year-old can do a will before they go off to college, but they can't right now execute a power of attorney or a, a living, living will for, like, healthcare or something like that. And so our position has been it should be consistent and, and clear because those are typically documents that you do for when you're planning for an estate. This comes up like-- you have an 18-year-old in Texas, the one example I've heard is, like, they go to the hospital and need care. They-- it's a power of attorney that's not recognized or authorized under this statute because they're 18 years of age wouldn't be acceptable to help provide them care. So you get some weird loopholes that happen and attorneys just want to make sure that there's consistency in that age for estate planning purposes. With that, I'm happy to answer any other questions about pieces of the bill that you might have.

WAYNE: Any questions? So in one of the sections it talks about after the appointment, the protected person may retain an attorney.

TIM HRUZA: Yes.

WAYNE: Doesn't the court already have to appoint one if they challenge? It's a constitutional right.

TIM HRUZA: And so what-- the instance that we've run into is that, at least on the guardianship side, the language that's in here, we took the word-- we just changed it to protected person to refer to a guardianship or to a conservatorship instead of a guardianship. The problem that you have is the conservatorship is a more limited restriction in ability. Right? So if you got a guardianship, it's all of your choices. There's clear authority in that statute, which is word for word what this is. On the conservatorship side, though, there's nothing akin to that. So, you know, we've had two attorneys that have given us examples of how conservatorship is entered. The client comes in and wants to hire the lawyer to help them avoid that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 25, 2024
Rough Draft

or to, to combat that. They don't technically have the ability under statute to contract with somebody because it's been taken away from them by the court. So all this would do is just give clear authority for the lawyer to take that hiring and know that they'll eventually get paid. Right? And that that person has capacity for that purpose to hire a lawyer in their own entrance-- instance. To your question about appointment, sometimes a GAL gets appointed. It's-- there's some inconsistency there, as I understand it, but.

WAYNE: No, I'm saying if the-- if, if the protected person wants to challenge a, a guardianship or a conservatorship, that is a constitutional right that a judge has to appoint counsel or that's appealable. So I don't-- I don't know why they're making it [INAUDIBLE], I guess, is my point.

TIM HRUZA: You probably know more about it than I do in terms of that. Like I said, I think the issue that we're looking for resolving is just making sure that there's no question, if that person wants to hire a private attorney, that the lawyer can do that, right? Once the conservatorship order is issued, I don't have the ability to enter in a contract on my own, like, my conservator would have to do that on my behalf. But if the conservator says, look, I'm not gonna pay your attorney to challenge whether I can handle your financial stuff, I'm kind of in limbo here on what I can and can't do.

WAYNE: OK. Any other questions? Seeing none, thank you.

TIM HRUZA: Thank you.

WAYNE: Any other proponents? Any opponents? Anybody testifying in the neutral capacity? Senator Bosn, would you like to close?

BOSN: I will waive.

WAYNE: Senator Bosn waives closing. There's no letters in opposition or support. And that closes the hearing on LB1220 and today's hearings. Thanks.