

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 22, 2020

LATHROP: I have a little thing that I read before every hearing, and I deliberately told Laurie to put introducing the senators at the end of it so that we gave them time to straggle in. And that may not be enough time. Are you ready? OK. Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12, which includes Ralston and parts of southwest Omaha. On the table inside the doors, you will find yellow testifier sheets. If you are planning to testify today, please fill out one and hand it to the page when you come up to testify. There is also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. For future reference, if you are not testifying in person and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the last workday before the hearing. Keep in mind that you may submit a letter for the record or you may testify in person at the hearing, but not both. The only-- and only those actually testifying in person at a hearing will be listed on the committee's and-- or pardon me, the bill's committee statement. We will begin bill testimony with the introducer's opening statement, followed by proponents of the bill, then opponents. And finally, anyone speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We utilize an on deck, we utilize on-deck chairs to the left of the testifier's table. Please keep the on-deck chairs filled with the next person to testify to keep the hearing moving along. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have any handouts, bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can make more. If you are submitting testimony on someone's behalf, you may submit it for the record but will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green, the yellow light is your one-minute warning, and when the light turns red, we ask that you wrap up your final thoughts and stop. As a matter of committee policy, we'd like to remind you that everyone that has a cell phone we ask that you not use it during the hearings, though senators may use them to take notes or stay in contact with staff. At this time, I'd ask everyone to look at their cell phones and make sure they're in the silent mode. Also, verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause to have you asked to leave the hearing room. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bills being heard, but senators may have other bills

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to introduce in other committees or other meetings to attend. I'd like to begin by having members of the committee introduce themselves, and we'll start with Senator DeBoer.

DeBOER: Hello, everyone. My name is Wendy DeBoer. I am the senator for District 10, which is northwest Omaha and Bennington.

BRANDT: Senator Tom Brandt, District 32: Fillmore, Thayer, Saline, Jefferson, and southwestern Lancaster.

PANSING BROOKS: Good afternoon, Senator Patty Pansing Brooks from District 28, right here in the heart of Lincoln.

MORFELD: Adam Morfeld, District 46, northeast Lincoln.

SLAMA: Julie Slama. District 1, which is Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties in southeast Nebraska.

WAYNE: Justin Wayne, District 13, which is northeast Omaha, and north-- northeast Douglas County.

LATHROP: Assisting the committee today are Laurie Vollertsen, our committee clerk; and Neal Erickson, our legal counsel. Our committee pages are Ashton Krebs and Lorenzo Catalano. Did I get that right?

LORENZO CATALANO: Catalano, yes.

LATHROP: Catalano. Both students at UNL. One more thing, so as-- it looks like we have some frequent flyers. This committee hearing room was out of use last year because they were redoing it. They put in new speakers, so that should help. But the panels that knocked down the echo were destroyed. They are-- they've ordered new ones and they're gonna to put them up. That makes it a little harder to hear, so if you can talk just a little bit slower, make sure you're talking into the mike. That will help everybody hear the testimony. And with that, we'll begin with Senator Blood and her introduction of LB756, our first bill of the year. Welcome.

BLOOD: Thank you, Chairman Lathrop, and good afternoon to the Judiciary Committee. My name is Senator Carol Blood, and that is spelled C-a-r-o-l B as in boy l-o-o-d as in dog, and I represent District 3, which is western Bellevue and southeastern Papillion, Nebraska. Today, I bring you LB756, which allows for 18-year-olds to buy and sell stock, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly,

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indirectly, or in any other manner except commodity, futures, future contracts, and the calling or putting up options on stocks or stock indexes. As the current revised statute 43-2101 reads: all persons under the age of 19 are considered minors and as such have greater restrictions under the law. In my proposed bill, I would modify the current statute to add this opportunity for those who are 18 years of age. Currently, those who are 18-years-old do enjoy some privileges that those under 18 do not. Those privileges are signing leases, taking out loans, owning property, and seeking out their own mental health treatments. This bill simply adds one more privilege that is already in line with the previously mentioned allowances. Now it's a little surprising that Nebraska is with Alabama and Mississippi as one of only three states that do not allow for 18-year-olds to invest for their future. These individuals are allowed to take out loans for their futures, but not prepare for it in other ways. Therefore, I believe that this section needs to be amended. And as we look to keep young people here in our state, one of the ways we can embrace this effort is to allow them to generate additional wealth that we hope they will keep and invest here in Nebraska. That's a win-win for all involved. And so I ask you to please consider all of these things when you discuss this bill in Executive Session. And is my hope that you will vote it out of committee and onto the floor for full debate. Thank you for your time today, and I will stay for my closing and any questions you may have.

LATHROP: OK. Any questions for Senator Blood? Seeing none, we will take proponents. Thanks, Senator Blood.

BLOOD: I think I'm probably [INAUDIBLE].

LATHROP: Anyone here to testify in support of LB756? Anyone here to testify in opposition to LB756? Anyone here in a neutral capacity? Seeing none, Senator Blood, you may close.

BLOOD: Thank you, Senator Lathrop. I do believe that we do have letters that were sent to the committee that were in support of this bill. But as promised, we, we traveled lightly today. I know you have a lot of bills on your agenda, so I will ask that you please consider it. This is a great bill and easy bill and noncontroversial bill. So let's give 18-year-olds the opportunity to create some wealth and hopefully they'll stay in Nebraska and become a Holland or, or another outstanding citizen here in Nebraska.

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LATHROP: OK. I don't see any questions. Thanks, Senator.

BLOOD: Thank you, sir.

LATHROP: Are we reading these this year? OK, we have-- before we close that hearing, we do have five letters in support and no letters in opposition or in a neutral capacity. And with that, that'll close our hearing on LB756 and bring us to LB844 and that's Senator Clements. Good afternoon and welcome.

CLEMENTS: Thank you. Thank you, Chairman Lathrop and members of the Judiciary Committee. I am Senator Rob Clements, R-o-b C-l-e-m-e-n-t-s. I represent Legislative District 2, and I'm here to introduce LB844. LB844 amends the Nebraska Construction Lien Act to eliminate the publication requirement when terminating a notice of commencement in real estate construction projects. The purpose of a notice of commencement is to notify contractors that their lien priority starts when this notice is filed and not earlier if they have already done some work on the property. Currently, Section 52-146 requires a newspaper publication once a week for three consecutive weeks, followed by an affidavit that the publication has been made. This causes a delay in the termination of the notice. A constituent of mine, Mr. Alan Mueller, brought the cumbersome publication requirement in the Nebraska Construction Lien Act to my attention. He's here to explain the problem he sees with the publication requirement and how it can create delays and add extra expense to a construction project. Mr. Bob Hallstrom with the Nebraska Bankers Association will also be testifying today, and will be able to address some of the more technical aspects. I would gladly work with the committee and other stakeholders to try to address any concerns they may have. Thank you for your consideration of LB844 and I will try to answer any questions you may have.

LATHROP: Thank you, Senator. How many people are here to testify on this bill? Looks like three. OK, we'll take proponents. I don't see any questions for you at this point anyway. Good afternoon.

JOHN MUELLER: Good afternoon, my name's John Mueller, J-o-h-n M-u-e-l-l-e-r, middle name is Alan. I go by Alan. I'm the one that Senator Clements' was referring to. I had discussed this with him earlier in the year or late last year. We'd recently attended a legal seminar put on by my employer, and there were several topics that were discussed, but the one that stuck out was notice of commencements. During the seminar, we discussed that when a developer goes in and

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buys a large piece of tract, puts it in-- of real estate, puts in infrastructure and then subdivides it into smaller lots and sells those lots off for further building and construction, there are delays that are caused because of the publication requirements in the paper, and unfortunately sometimes that gets forgotten about until closing and gets pushed back another month in, in closing process, which can cause delays for the new developer that's going to build a building, he's already got his contractors lined up. When it's held up, it can cause problems with extra costs for those delays, and, and obviously they want those free and clear of any encumbrance. So we're just trying to clean that up. In our discussion, we talked about the publication and I've asked several people, nobody really knows why the publication was there. And in talking with Senator Clements, he's done a little more investigating and thought this was something we could just clean up and, and move forward with. Often-- like I said, the construction delays can be costly because of the delay in the publication and also it's an extra cost for the, for the owner of the property to get that publication done. So I appreciate your time and consideration.

LATHROP: OK.

JOHN MUELLER: Go forward from there.

LATHROP: I do not see any questions for you today.

JOHN MUELLER: All right. Thank you.

LATHROP: Thanks for coming down and sharing your thoughts. We're working on this whole thing.

ROBERT HALLSTROM: There is an echo back there.

LATHROP: Yeah, it's, it's weird sound in here. I can't wait until they get the panels up.

ROBERT HALLSTROM: Chairman Lathrop, members of the Judiciary 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 LB844. LB844 would eliminate the publication requirement currently associated with the recording of a termination of notice of commencement under the Nebraska Construction Lien Act. Mr. Mueller, along with others that had brought this issue to our attention, and for the life of us, we've been unable and visiting with attorneys that

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work in this area to suggest why we have a publication requirement in the first place. We do have a recording requirement that the notice of termination must be recorded. There's a great deal of information that must be on that recorded notice of termination and any lien claimant or potential lean claimant can simply request either at the time of filing a notice of lien or separately to be given a specific copy of that recorded notice of termination. So thus the publication requirement may become somewhat superfluous. With regard to some of the details, I-- I've decided that reviewing the intricacies of the Nebraska Construction Lien Act are not for the faint of heart, but I do have in my written testimony kind of the background. Mr. Mueller described the situation that most frequently arises, you have one lender who makes financing arrangements on an entire development. Let's say they've got 36 lots to subdivide, another lender comes in at the time to put the residents up, and the original lender had filed a notice of commencement. The notice of commencement is very important under the Nebraska Construction Lien Act because that allows the lenders deed of trust to establish its priority with construction liens after that fact being placed immediately behind the notice of commencement. So you have a notice of commencement that allows subsequent liens to relate back to the time of that notice of commencement. When the second lender comes in, they want that notice of commencement to be cleared from the record-- terminated so that they can file a new notice of commencement and start that process over with the priority for their deed of trust, and then all of the construction liens again coming in on an equal priority basis. So that's kind of the basics that's at the heart of this. We don't-- I, I would imagine that the best [INAUDIBLE] publication requirement is that the Press Association used to come in and ask for a publication requirement on virtually anything that, that could possibly be related to that need. So with that, we'd be happy to answer any questions and would request that the committee act affirmatively on this legislation.

LATHROP: OK. Any questions for Mr. Hallstrom? I don't think so.

ROBERT HALLSTROM: Thank you.

LATHROP: This thing serves no purpose at all? So the subsequent lender is going to go do a check of the records and see that the, the first lienholder or the first developer, the bank that financed the first development has been satisfied?

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ROBERT HALLSTROM: Well, that they've, that they've released the notice of termination as to the lots that need to be released and opened up for the second lender. So once that notice of termination is, is effective, which is at least 30 days after the recording, at that point then the new notice of commencement can be filed and they start that process over again. And it doesn't allow subsequent liens that are against the rest of the subdivision to relate back to the time that that original notice of commencement was filed.

LATHROP: OK.

ROBERT HALLSTROM: You've got a new starting point in effect.

LATHROP: You're right, this is a little mind numbing.

ROBERT HALLSTROM: Yes, it is.

LATHROP: And, and maybe further than we needed to get into it. But any other questions for Mr. Hallstrom? I don't see any. Thanks, Bob.

ROBERT HALLSTROM: Thank you, Senator.

LATHROP: Any other proponents? Anyone here in opposition? And I'm going to do this, if you're in the back and you can't hear for some reason, just raise your hand and I'll, I'll try to get the-- it looks like some people are struggling to hear, so make sure you're talking into the mike if you can-- if you don't mind.

LUKE VAVRICEK: I do not mind. Good afternoon, my name is Luke Vavricek. That's V-a-v-r-i-c-e-k. I'm here on behalf of the Nebraska State Bar Association to speak in opposition to this. I agree with the gentleman from the Bankers Association that a notice of commencement is very important. And for that reason, that's-- I believe that's why the publication requirement is in there, because there are-- on construction projects-- large ones, small ones, what have you, there are, for whatever reason, some claimants who will have lien rights who will not have filed a lien, and those people are not going to be getting any sort of direct notice from the project engineer, the developer, the owner, whoever. A lot of times all they're going to have to rely on for notice is the publication requirement. I understand there might be a delay, but I think the effect-- there would be, I think, some unintended consequences here. From a practical standpoint, this particular bill doesn't even require, as far as I can tell, that claimants who have filed liens already will actually

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receive direct notice. It requires that the ones that will receive notice-- and this is in the current statute as well, will be the ones that request it from a practical standpoint-- construction projects, that's not really necessarily all that common. So the current statute doesn't say that if you recorded a lien, you will get a notice of the termination. That's just not in the bill now, and this new bill does nothing to change that. What this new bill does do, in essence though, and it hasn't been discussed a whole lot, it does a lot more than take out the publication requirements. Because this is an area of the law that's kind of confusing, and it's taking that, in my opinion, it's making it somewhat more confusing because-- and I think, again, the gentleman from Bankers Association used the term, quote, file a notice of lien. So there's two things in the NCLA, the Nebraska Construction Lien Act, there's the lien and then there's a notice of lien. The act defines both of them very specifically and sets out specific requirements for each of them. Now what's required to be filed, though, is not the notice of lien. In order to preserve your claim, you need to file the actual lien. And this statement or this bill has an amendment that says, quote, a statement that all lien claims for which a notice of lien is not recorded by the termination date may be defeated by a transfer to real estate. There might be 100 liens that have been properly filed under what the current NCLA requires, that this would arguably just render them completely deficient because they haven't filed a notice of lien that the act doesn't require them to file. And that does not make sense. It doesn't reco-- it doesn't marry with the current statute very well. And again, getting rid of notice requirements for purposes of speeding up the time line when there are going to be people out there with valid claims, I don't think is consistent with the administration of justice [INAUDIBLE]. If there are no questions, I'll leave it with that.

LATHROP: Senator DeBoer.

DeBOER: Could we just fix the wording on the notice of lien, lien piece, would that piece be eliminated by changing the wording in the bill?

LUKE VAVRICEK: If you change the wording-- and I think I-- if, if your question is, does (iv), the proposed (iv) say take out the words notice of lien and just say lien,--

DeBOER: Um-hum.

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LUKE VAVRICEK: --then that would defeat that concern. Yes, that doesn't alleviate the concerns of there are going to be people that rely on the publication.

LATHROP: I think that does it for the questions. Thanks for being here.

LUKE VAVRICEK: Thank you.

LATHROP: Appreciate hearing from the Bar Association. Anyone else here to testify in opposition? Anyone here to testify in a neutral capacity? Seeing none, Senator Clements to close.

CLEMENTS: Thank you, Chairman Lathrop. The one protection we think there still has the contractor claimants are able to request currently in statute that they be directly notified when the commencement notice is terminated. And this bill does not remove that process. It does eliminate a newspaper notice. We're thinking people aren't getting that much news from the newspaper anymore and that, that requirement is becoming cumbersome and not that effective. But we'd be glad to work-- I was glad to hear that there is a possibility we could make a change and, and be flexible. I'm glad to work with the Bar Association. If there is a way we could improve that, and we'll certainly work with them. And thank you for your time.

LATHROP: Very good. I see no follow-up questions, so I think that'll close the hearing. We have no letters one way or the other so--

CLEMENTS: Thank you.

CLEMENTS: --that'll do it. Thank you, Senator Clements. That'll close our hearing on LB844 and bring us to LB822.

WAYNE: I know houses that literally like put music in their basement. They just put up like foam. Can we just go buy some foam?

BRANDT: Did you say something? [LAUGHTER]

LATHROP: Oh, oh--

DeBOER: I can weirdly hear, like when [INAUDIBLE].

LATHROP: So we're gonna-- I know this is-- we had a conversation about this and I talked to the Clerk and to Chuck and they've ordered the

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panels, and I would think we could just put up something and it would be fine. The panels take weeks to put up.

WAYNE: I can go get some foam from, from-- some foam from Home Depot. We can make it work.

LATHROP: If you want to put anything on the wall, talk to Chuck.

DeBOER: What I need is for people in the audience to stand around the outside of the room and then--

LATHROP: OK, I got that. We need to go back and clarify. We're gonna open on LB871, and that brings us to Senator Crawford.

CRAWFORD: OK.

LATHROP: Welcome to the Judiciary Committee.

CRAWFORD: Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Senator Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. And I'm here today to introduce LB871 for your consideration. LB871 amends Nebraska's Uniform Deceptive Trade Practices Act, or UDTPA for short, to better define what constitutes an unconscionable trade practice in Nebraska. The bill identifies five specific practices that are unconscionable and, therefore, in violation of UDTPA, UDTPA, excuse me. These five practices are listed on page 2 of the green copy of the bill. While this list of practices is not exhaustive, it creates greater clarity for the Attorney General to take action against companies suspected of engaging in unfair business practices. Currently, UDTPA simply states the unconscionable act or practice shall be a violation of the law and is a question of the law for the court, but no specific factors were spelled out for the courts to consider whether or not an act meets the definition of unconscionable. The language for the bill was provided by the Attorney General's Office, and I'd like to thank the Attorney General's Consumer Protection Division and chief of staff for working with us on this bill. The impetus for the bill came out of my interest in pursuing possible avenues to help curb rising drug prices. During the course of my research on that topic, I learned that Attorney General Peterson had taken an interest in the issue of high prescription drug prices. In discussing with the AG staff what possible solutions the AG might be interested in, in pursuing to help combat rising drug prices, the AG staff indicated that consumer

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protection statutes could be a successful statutory framework for addressing unfair pricing. They shared that while other state's attorney generals have started pursuing legal action against drug companies for excessive price increases, Nebraska's law does not provide any legal avenue that would allow our Attorney General to prosecute the drug companies who may be effectively price gouging. Under LB871 cases can be brought against companies who charge unfair prices for their goods, and the court can determine whether or not the company is violating UDTPA via an unconscionable practice. The language in this bill was borrowed from a provision of the Kansas Consumer Protection Act that is currently being used in a group of EpiPen class action lawsuits consolidated in Kansas City. In those lawsuits, the plaintiffs have accused several EpiPen manufacturers of engaging in unconscionable practices by inflating the prices of their lifesaving product, the EpiPen. The plaintiffs' allegations have survived a motion to dismiss. And to date, the Kansas statute is now-- has never been successfully challenged in court. Attorney General Peterson's staff indicated that this kind of statutory addition, particularly the Provision 2, could be helpful for them, not just in the realm of drug prices, but as it would apply to any essential consumer good post natural disaster. Following the devastating floods of 2019, their office fielded a number of calls related to alleged-- alleged price gouging on essential goods such as fuel, but current statute provides no mechanism to pursue any of these complaints legally. In other words, the Attorney General's Office has no way to act on complaints they receive about price gouging. By taking the approach contained in LB871, we could provide guidance to the courts as they make determinations about unconscionability, give the Attorney General's Office a tool to prosecute businesses who have engaged in unconscionable practices, and protect consumers from unfair business practices. This will impact not only those who rely on expensive prescription drugs like insulin, but all consumers in the state and such as those affected by natural disasters such as flooding. Meghan Stoppel from the Attorney General's Office will be here to speak to the need for this legislation and can likely answer many of your questions. I'm happy to try to answer your questions now and can take additional questions at closing.

LATHROP: OK. Senator DeBoer.

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DeBOER: Senator Crawford, could the court already consider all of these factors when determining whether or not the same actions were unconscionable?

CRAWFORD: It would be up to the court to determine what's considered unconscionable. And the Attorney General's-- Meghan may be able to speak to this more accurately.

DeBOER: OK.

CRAWFORD: It is my sense that specifically having this statute-- in the statute gives them more standing in, in pursuing a suit and of unconscionable trade practices relating to these specific, these specific practices.

DeBOER: OK. Thank you.

LATHROP: Any other questions? Seeing none, you're going to stick around to close?

CRAWFORD: Yes, um-hum.

LATHROP: Terrific. Thank you. How many people are here to testify on this bill? Looks like three. We'll take proponents first. Good afternoon.

MEGHAN STOPPEL: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Meghan Stoppel, M-e-g-h-a-n S-t-o-p-p-e-l. I am an assistant attorney general and chief of the Consumer Protection Division in the Nebraska Attorney General's Office. I'm here to testify in support of LB871. As Senator Crawford mentioned, LB871 amends Nebraska's Uniform Deceptive Trade Practices Act, or as we affectionately refer to it, the UDTPA, by creating a nonexhaustive list of circumstances that the courts shall consider when determining whether a specific practice is unconscionable. Now the Attorney General already has authority to address unconscionable trade practices under the UDTPA with that same act as written provides no definition for that term nor guidance to the courts as to what constitutes an unconscionable practice. Rather, Nebraska courts have turned to our common law and contract law specifically to define unconscionability on a case-by-case basis. In a contract setting, the Nebraska Supreme Court has said that unconscionable means manifestly unfair or inequitable. It is determined in light of all of the surrounding circumstances, including: one, the manner in which the

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parties entered into the contract; two, whether the parties had a reasonable opportunity to understand the terms of the contract; and three, whether the important terms were hidden in a maze of fine print. An essential factor in determining unconscionability is a disparity in the respective bargaining positions of the parties. LB871 provides guidance to the courts regarding the type of conduct considered unconscionable, both in the contract setting and in other contexts, and therefore additional guidance to our office on which cases to bring on behalf of Nebraska consumers. Moreover, the circumstances outlined in LB871 are consistent with the Nebraska Supreme Court's existing interpretation of unconscionability. One circumstance in LB871, for example, is a transaction where and I, quote, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by similar consumers. This particular language effectively creates a price gouging prohibition in Nebraska that exists at all times, even when no emergency declaration, natural disaster, or other market disruption exists. While other states have attempted to regulate pharmaceutical pricing either through express price gouging prohibitions or by attempting to regulate pharmacy benefit managers, those states have been routinely challenged on constitutional grounds and those statutes have been struck down. The statute takes a different approach. LB871 will protect consumers from a variety of unconscionable trade practices, including price gouging, and will be a meaningful addition to the UDTPA. I'd be happy to answer any questions that you may have.

LATHROP: Senator Brandt.

BRANDT: Yep. Thank you, Chairman Lathrop. What's your definition of price gouging?

MEGHAN STOPPEL: So typically price gouging is defined and, again, it depends on what statute you're looking at, right? There is no federal price gouging law. Typically, it is defined as the charging of an excessive price for a particular product or a defined universe of products. Again, depending upon the statute, it could be essential life saving products, medicines, housing, things of that nature, fuel, access to transportation above and beyond what the market would normally charge or bear for that product. Most states have a price gouging statute of some form or fashion. It's approximately 35 right about now. But again, those definitions of what constitutes price gouging and when those statutes are triggered varies widely from state to state. But by and large, they are based in large part on some sort

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of emergency declaration, either by the President, the Governor, or some other means, or through some other market disruption. Right? And that's what's a little bit unique about LB71-- 871 is that there's no threshold for that, it exists at all times in all circumstances. But it's consistent with, again, those three factors outlined by the Supreme Court in terms of unconscionability from our perspective.

LATHROP: Senator DeBoer.

DeBOER: Is there case law already defining in Nebraska what unconscionability would be under this act?

MEGHAN STOPPEL: Not under this particular act. Again-- and we just had to brief this issue in a case recently, that I argued this morning, we have to cite back to that case law that's been developed in a breach of contract setting. And typically, it's those three factors. And we're urging the court to look at the entirety of the transaction, all of the context. But what we really liked about LB871 is the fact that it not only adheres to those factors and ask the-- invites the court to really engage in a totality analysis. But it's consistent with those factors and focuses in large part on this issue of disparity between the parties, right, or some other sort of factor that would indicate that the supplier or the business was taking advantage of the consumer, whether it is because of an emergency declaration or whether it is because of some sort of-- you know, mental infirmity or physical disability. And all of that is consistent with the case law from our perspective. But under the UDTPA, no, we do not have a recorded court of appeals decision saying this is what unconscionability means.

DeBOER: So arguably, the question is still open as to what unconscionability is, and it-- couldn't you just bring a case and-- I mean, you said that obviously this gives you additional guidance on what cases to bring, but couldn't you bring a case now whether we do this or not and set a precedent that way?

MEGHAN STOPPEL: We absolutely could. And I think the question for this body is, do you want to leave that question unanswered? Do you want the courts to be defining for the consumer in the state of Nebraska what unconscionability is, or, or is it more appropriate for this body to step in and, and to help the court make that definition?

DeBOER: Thank you.

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LATHROP: Would this apply to a buy here, pay here? So people that go to, go to a car lot, they have awful credit, they pay \$7,000 for a \$2,000 car because they have awful credit, and the only place they can buy it is a buy here, pay here?

MEGHAN STOPPEL: It would. And I think what's interesting about the fact scenario, Senator Lathrop, that you just laid out is the language in LB871 would require both our office and the courts to include it in the analysis that it engaged in-- a discussion of, and an inclusion of the factors of similarly situated consumers, right? So we couldn't analyze the buy here, pay here lots' conduct in a, in a context of what is every car lot do, right? What is every car lot pricing their 2005 Toyota Camry's at? It's a what does the car lot who is selling to a consumer with this credit profile pricing a 2005 Toyota Camry do. And that's the language that you see in line-- I think it's--

LATHROP: So let's,--

MEGHAN STOPPEL: --16 of the bill.

LATHROP: --let's take the, the insulin I think is the example you used and I think we have a couple bills on insulin pricing that will-- the Legislature will hear anyway. If, if all people that sell insulation charged-- insulin, pardon me, if they all charge \$100 a dose, how do you get to a disparity?

MEGHAN STOPPEL: I don't know that this type of statute, as it's written, would be able to address that situation because as defined, it wouldn't be an unconscionable trade practice. If the market is bearing a \$100 per dose price, and that is the only price at which a consumer can purchase that product regardless of their circumstances, I don't see that that is actionable under this language as currently written.

LATHROP: So what we're talking about is a limited circumstance where something-- some outside force has provided somebody an opportunity to gouge people.

MEGHAN STOPPEL: Right. Right. So--

LATHROP: Flood, tornado, whatever.

MEGHAN STOPPEL: Exactly. Or-- and I don't remember what year it was when this hit the news, some private equity firm comes in and buys the manufacturer and overnight jacks up the price for that one particular

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product. Maybe they're not an exclusive manufacturer of that product, but they know they have a significant market share and so they raise the price by 600 percent overnight. If a consumer can also go buy that same product from a different manufacturer, but has a prescription from their doctor for that particular product because that's what works for their body, for their condition and has been recommended by their doctor, then arguably you could use this type of language to get at that type of conduct. And I think that's what fits more of a traditional price gouging definition.

LATHROP: OK. When I look at this in-- on page 2, I guess, page 2, line 21, it says, or, so any one of those things would provide a basis for determining unconscionability. And I don't know how your explanation fits with that if it was and like all these things need to be met. But if somebody-- with the or in there, any one of those things could provide the basis for unconscionability as opposed to requiring all of [INAUDIBLE].

MEGHAN STOPPEL: Absolutely. No, and I don't think the intent was to make this a list of factors where all five factors have to be met in order to establish and unconscionability. I think that, in fact, would be inconsistent with the guidance that the Supreme Court has, has put forward. I mean, if you look at (i)-- or I'm sorry, (i), (iii), and (v), right, taking advantage of infirmity or inability to understand the language of the agreement. That's in a typical breach of contract setting, you know, already a basis for voiding a contract. Right? If you've got evidence that the supplier or the other contracting party knew that a particular consumer or party could not enter, it didn't have the capacity to contract. That's already a basis for avoiding the contract. Little Roman at (iii), same thing. If, if you don't uphold your end of the bargain, right, if you don't provide the material benefit that's the basis for the contract, that's already a basis for a breach of contract claim. Same thing with (v). If you induced the consumer to enter into the transaction that was excessively one-sided, that's what we call an adhesion contract, right, that can already be the basis for avoiding a contract. So I don't think the list was-- the list was never intended to be an and you have to show all of this, it's an or. These are factors that the--

LATHROP: OK.

MEGHAN STOPPEL: --court could consider.

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LATHROP: Any other questions? I see none. Thanks for being here today.

MEGHAN STOPPEL: Thank you.

LATHROP: Any other proponents wish to testify? Seeing none, any opponents? No opponents? Those-- are you opponent or a neutral? OK, neutral.

ROBERT HALLSTROM: Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. Appear before you today in a neutral capacity on behalf of the Nebraska Bankers Association, the National Federation of Independent Business, and have been authorized to sign in on behalf of the Nebraska Chamber of Commerce and Industry. I think if you just go through the bill, it's a short bill. It's got some provisions in that I think use a fairly broad brush to paint the issue of unconscionability as we went through this and, and reviewing and getting some contacts from members who are looking at it for the first time. Obviously, the coverage is very, very broad, it applies to supplier without defining what a supplier is. I think the witnesses that have testified have, have cited some specific issues with regard to insulin and price gouging, but this covers the world with regard to supplier being undefined. I think item, item (i) is, is troublesome in terms of having to gage the physical infirmity, ignorance, illiteracy, or inability to understand language of the agreement. I think that potentially puts you perilously close to having discriminate against people if you make a decision that they're not capable or competent of understanding a particular contract or provision. There are many provisions in both the business and the banking and the insurance world where because of federal regulations we're required to have certain complicated disclosures and agreements. Are those one-sided? You know, we've heard contracts of adhesion in the insurance industry probably is excessively one-sided and those agreements that perhaps are not easily understood depending upon the individual involved. What is grossly overpriced? If I go off the interstate in the first six blocks, I see really high priced gasoline and I get into the inner city and it's 20 cents less. Is that grossly overpriced? If I go into a convenience store on Sunday because I wasn't able to go in and get my four pack of macaroni and cheese at the grocery store and it's double the, the cost. Is grossly overpriced? The situation with buying a beer at TD Ameritrade ballpark, the Attorney General representative said, well, you know, the court's gonna look at similar transactions. Are we comparing ballpark beers and, and franks or are we looking at going to a lounge where you can watch the game on TV and have the same

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conveniences and have instant replay in addition, but you're paying \$9.50 in one place and \$2.50 in another. So I think there's a lot of issues here. Material benefit, if I use CBD oil and it helps me and it doesn't help someone else, did they not get a material benefit from that product? I could go on and on, but the red light is about ready to, to come back on. And I think the final thing is also I gathered from the Attorney General's comments that they were talking about bringing actions through the Attorney General's Office, and while that is one option under the Uniform Deceptive Trade Practices Act, there's also a private cause of action. And I think this would open up the field for a heyday in terms of those types of issues. Certainly, happy to work with Senator Crawford in terms of looking if there is language-- I've got a call into my counterpart in Kansas to see if there's other issues in the Kansas law that maybe give us a little more insight as to, as to why these seem a little bit outlandish at first blush. Be happy to address any questions.

LATHROP: OK, I don't see any questions.

ROBERT HALLSTROM: Thank you.

LATHROP: Thanks, Bob. Next opponent-- or neutral, pardon me.

MORFELD: It sounded right.

LATHROP: It sounded pretty, opponent. Yeah.

KORBY GILBERTSON: Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Korby Gilbertson appearing today in kind of a weird capacity, but on behalf of my own firm, Radcliffe Gilbertson & Brady, because we simply want to have our hand up and say, don't ask us why we weren't here at a hearing. But we've had numerous clients reach out to us with concerns about this legislation. However, their associations have not yet met to take official positions on bills. So they asked me to simply come in and just raise my hand and say we have some concerns. I'll give you a few of the specifics. Obviously, Mr. Hallstrom touched on a couple of them. One is the ability of a supplier, which by the way, is not really defined in this to be able to gage the ignorance or illiteracy of someone that's signing a contract with them. We do not know the depth-- I mean, I understand that the primary objective of this was price gouging for prescription drugs. However, it appears as though this could have impacted anything. I'll give you one example: you buy a-- an extended warranty for your vehicle, you pay \$3,000 for that

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extended warranty that you never use it. Then did you actually get a material benefit from that extended warranty? And would that raise to the level-- rise to the level of what this legislation is talking about. The final comment I'll make is the concern with our clients is that this is not only voids the contract, but this creates a misdemeanor action. So that is another concern with the legislation. Be happy to take any questions?

LATHROP: I see no questions.

KORBY GILBERTSON: OK. Thank you.

LATHROP: Thanks. Anyone else here in the neutral capacity? Seeing none, Senator Crawford, you may close. We do have one letter in opposition from Rocky Weber with the Nebraska Cooperative Council.

CRAWFORD: Thank you, Committee. I just want to thank the Attorney General's Office for their work with the committee and thank those who have testified in a neutral capacity, raising some questions about the language. Again, the language, as I understand it, comes very closely from Kansas. So we have a model from Kansas in terms of what's happened with some of the questions that some of the businesses are raising, and, and I'm happy to work with the businesses, the business representatives, and the Attorney General's Office to see if there's any changes in language that may be amenable to both sides,--

LATHROP: OK.

CRAWFORD: --and willing to try to answer any other questions that you may have remaining.

LATHROP: I do not see any other questions.

CRAWFORD: All right.

LATHROP: But thanks, Senator Crawford.

CRAWFORD: Thank you.

LATHROP: Thanks for bringing the bill forward. That will close our hearing on LB871 and bring us to LB882 and Senator Matt Hansen. Welcome. This would be your only bill of the year?

M. HANSEN: I, I have less this year genuinely.

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LATHROP: Welcome.

M. HANSEN: Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Math Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here today to introduce LB882, a bill that would update some of our marriage laws dealing with annulments. It clarifies an existing right to annulment in cases where one party of a marriage has an undisclosed sexually transmitted disease, allows for actions for annulment to be brought in the county residents for either party, and updates language related to incapacity. Currently our statutes, Chapter 42, Section 102 say that, quote, no person who is afflicted with a venereal disease shall marry in the state, end quote. Obviously, this is not enforced. And there have been bills to-- as recently as 2016 by Senator Ebke to attempt to strike this language. This law dates back to 1923 when syphilis was prevalent in our state and there was an attempt to stop the spread of the disease to the children of married couples. Case law from the Nebraska Supreme Court, however, has determined that this law is currently grounds for an annulment rather than an outright ban on marriage in these circumstances. LB882 would clarify and codify this holding by including it in the statutory list of grounds for annulments in Chapter 42, Section 374, and strike the original language. It would further update the term venereal disease to sexually transmitted disease. In making this change, my intent is to update the language, take an obsolete old law off the books, but keep the existing right to annulment in the cases-- in these cases in statute. Another change is that under current law in Chapter 42, Section 373, annulments can only be brought in the county of residence of the plaintiff. This bill would update to allow that to be brought in the county of residence of either party, which is the standard in cases of divorce. And then finally, the bill updates language in Chapter 42, Section 375, but related to persons who are capable of managing their own legal affairs by striking the term under disability and replacing it with a more accurate phrase who are incapacitated. With that, I'd be happy to take any questions from the committee.

LATHROP: I see no questions.

M. HANSEN: Thank you.

LATHROP: Thank you for bringing the bill forward.

PANSING BROOKS: Wait.

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BRANDT: Wait.

LATHROP: Oh, wait a minute, wait a minute.

PANSING BROOKS: I have a question.

LATHROP: OK. Senator Pansing Brooks has a question for you.

M. HANSEN: Sure.

PANSING BROOKS: Rather than adding in 3, why didn't you strike 1 and 2 and just get rid of that? I mean, I'm not really sure why-- is the annulment for religious purposes?

M. HANSEN: It would be a legal annulment, so it would be an annulment for the state recognizing your marriage.

PANSING BROOKS: For what?

M. HANSEN: It would be an annulment of your marriage license from the state. If you wanted to do an annulment for religious reasons, you'd obviously go through your own church.

PANSING BROOKS: OK. I'll talk to you off mike. Thank you.

M. HANSEN: Thank you.

LATHROP: I don't think anyone else has questions for you, but thank you. How many people are here to testify on this bill? OK. Well, then I'll go through this, how many-- anyone here to testify in support? Anyone in opposition? Anyone in a neutral capacity? Senator Hansen, to close. He waives closing. We do have two bills [SIC] in opposition: Tim-- Tiffany from the Omaha Women's Fund of Omaha; and Meg Mikolajczyk from Planned Parenthood have letters in opposition. That will close our hearing on LB882, and bring us to LB884. Give me just a second. All right, Senator Lindstrom, you can open on LB884. Welcome to the Judiciary Committee.

LINDSTROM: Thank you, Chairman. Good timing, I guess, I just got here. Thank you members of the Rev-- or Judiciary 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 introduce LB884 to provide for legal effect on a publication concerning liability insurance. To provide a little background on this legislation, the American Law Institute, or ALI, is a Philadelphia-based organization that engages mostly law

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professors from across the country to write restatements in areas of the law like contracts, property, and torts. Restatements are regularly used in law schools by litigants, and they are relied upon by courts as dependable restatement of existing law. ALI's restatements have been considered authoritative summaries, and they continue to be regularly cited by judges because they are known for staying within the boundaries of existing law. With a restatement of law liability insurance, the ALI has shifted from its mission to explaining what the law is to stating case and statutes that are not applicable in all states. Because insurance is such a state specific area of law, the potential problems with this approach and are concerning. Courts and lawyers trust the ALI's only agenda is to faithfully restate existing law. Most are not aware that restatement contains provisions that reflect what could be aspirational views of the law regarding liability insurance. Since 2017, the National Council of Insurance Litigator-- Legislators, excuse me, have been working with the ALI to continue an agreement regarding the restatement. In 2018, while the restatement was still in draft form, Governor Ricketts joined governors of South Carolina, Iowa, Texas, Maine, and Utah in sending a letter to the ALI asking them to revise or rescind the restatement. Since 2018, Arkansas, Michigan, North Dakota, Ohio, Tennessee, and Texas have all passed legislation instructing state courts to disregard the ALI restatement. Indiana, Kentucky, Louisiana passed resolutions calling upon state courts to disregard the ALI restatement. LB884 model legislation created by NCOIL and does not go as far as the other proposals, is simply-- it simply states that the restatements shall not be used if the, if the statement of law is inconsistent or in conflict with: one, the Constitution of the United States or the Constitution of Nebraska; two, state or federal statutory law; three, the state's case law; or four, other common law of the state. Thank you. I'll try to answer any questions you may have and there will be someone following me with more specific experience and knowledge on the subject matter. Thank you.

LATHROP: I don't see any questions for you.

LINDSTROM: Perfect. Thank you, Chairman.

LATHROP: Yeah. Thanks for bringing the bill. Proponents?

KORBY GILBERTSON: Good afternoon, again. For the record, my name is Korby Gilbertson. I am a lobbyist representing the American Property Casualty Insurance Association in support of LB884. I want to first

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thank, Senator Lindstrom, for introducing this legislation. And secondly, what's coming around to you are two items. One is a letter from Steve Schneider from APCIA. He was unable to be here today. And the second is a document that I'll refer to a little bit later in my testimony. As Senator Lindstrom said, the ALI's restatements have long been considered, considered authoritative summaries, and they continue to be regularly cited by judges, legislatures, and others because they're known for staying within the boundaries of existing law. You've not seen opposition to other restatements because this is the first time that the ALI has shifted so far to the side of advocacy rather than objective reporting. Since 2018, six states have passed legislation and three have passed resolutions instructing state courts to disregard this restatement in total. LB884 is much more strict in that it just restricts courts from using it if the restatement is in conflict with the constitution, state or federal statutory law, case law, or other common law of the state of Nebraska. Some have argued that the legislation is unnecessary. That's what I've been told by some of the opponents. We would respectfully disagree. The bill represents what courts in Nebraska already do. The bill would be of no consequence rather than an affirmation or restatement of law. And if that's all it does, then we don't understand the opposition to it simply to say this is what we need to remind people that they should be doing. When for decades, ALI restatements could be relied upon to be actuary statements of law, the risk is real that some may assume the restatement of liability insurance is the same as other restatements. ALI itself finds pride in the amount of influence they have had through the number of judicial citations, legislative references, and agency rulemaking language. In an ALI article, *When Legislatures and Agencies Rely on Restatements of the Law*, published in the 2019 edition of *The ALI Reporter*, their institute staff carefully tracks and categories each citation to the restatement and the numbers are impressive. As of 2019, there are more than 210,000 judicial citations to the restatements. Agencies routinely reply on a restatement for basic expression of a rule of law relevant, relevant to agency rulemaking and restatements have influenced the legislative text. Those are direct quotes from the article. Furthermore, they say that the varied examples of the influence of our restatements are a striking and welcome reminder of how deeply the ALI's work is woven into the fabric of American law. The broad influence of our work underscores the value of the time and effort of our members, advisers, and reporters devote to each of our restatement projects. Since I'm running out of time, I gonna leave you with two thoughts: number one, I believe one of the opponents of the bill is the trial attorneys.

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Want to make a note. Can I finish one statement? Want to make a note that no other groups have opposed this legislation in any of the states where it was passed before. So this came as somewhat of a shock to us that they opposed it. And so I ask you to ask them if their real concern is that the bill is not necessary or if their concern is that the actual purpose of the restatement is to increase liability for insurers, and that's why they would support it. And furthermore, is ALI very concerned about having a piece of legislation that is not necessary, or are they concerned that more states and judges will not be buying their \$266 bill?

LATHROP: OK, any questions for Miss Gilbertson? I see none. Thanks for being--

KORBY GILBERTSON: Thank you.

LATHROP: --here today. Next opponent-- or pardon me, proponent. I'm out of practice. Welcome.

COLEEN NIELSEN: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Coleen Nielsen, and I'm the registered lobbyist for the Nebraska Insurance Information Service testifying in support of LB884. NIIS is the local trade association of property casualty insurers doing business in Nebraska. In May of 2018, the American Law Institute approved the final version of a project dealing with liability insurance. This restatement is referred to as the Restatement of Law Liability Insurance or RLLI. The adoption of the restatement has been the subject of much debate and controversy, and it's led to this bill today. The American Law Institute is self-described as the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law. ALI drafts, discusses, revises, and publishes restatements of the law, model codes, and principles of law that are enormously influential in the courts and legislatures, as well as in legal scholarship and education. It is a respected institution. The RLLI is the first restatement on liability insurance as opposed to other restatements based on the areas of loss which is torts and property. The criticism of this restatement is that it does not actually restate the law of liability insurance, but in some instances suggests what the law could or should be. Consequently, the restatement has met with opposition from the insurance industry. This proposed bill simply states that the RLLI does not constitute the public policy of this if it doesn't-- that it does not constitute the public policy of the state if it is inconsistent or in conflict with

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the constitution, state or federal law, case law, or other common law of this state. Courts do consult and often rely on restatements when rendering opinions in cases, ALI restatements have always been considered an authority of the law. If that law does not take, take into consideration or reflect our state's public policy legislation or previous court decisions, then our insurance laws become unclear and unpredictable. This bill would make clear that our Nebraska laws and precedents remain the authority of the state in which our courts rely. And with that, I'd be happy to answer any questions.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Miss Nielsen. I'm just having a little trouble wrapping my head around it because all of those-- I mean, saying that any-- that, that the constitution, the state and federal statutory law, the state's case law, and common law all trump whatever is written in a, in a, in a book which is used for, you know, knowledge and I'm sure used in writing opinions. I mean, we could write those last lines on every single law that we write. Correct? So I guess I'm trying to understand why you really feel that's necessary, because that's always true, any law that, that-- I mean, any kind of statement that is contrary to the Constitution of the United States, the federal laws, that-- that's basically a given that, that, that they are-- that they will-- if they are-- again, if they are invalid against the Constitution of the United States, or this state's case laws, or this, this state's common law, then they're invalid. So I guess I just don't understand. That's already the law.

COLEEN NIELSEN: Well, right, the constitution and the other laws in the state. But, but the restatement, as I understand it, the restatement or the RLLI is inconsistent because, because-- I think Miss Gilbertson had talked about this, because the insurance law is so state specific that this restatement doesn't react-- reflect the law of our state or every state. It's, it's, it's too, too difficult to reflect the law of our particular state in one restatement. So-- but I, but I do understand your question. I think, too, that the courts are, courts are able to rely on-- and if, you know, based on the evidence for them in a particular case rely on restatements if they choose to. And this just makes clear that they should consider the law that's already in place.

PANSING BROOKS: OK. Thank you.

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COLEEN NIELSEN: Um-hum.

LATHROP: Senator DeBoer.

DeBOER: I'm sorry. I'm kind of a similar question, isn't this something that you should be arguing, like with other members or, you know, within the, the body that, that writes the restatement rather than here for the Legislature? I mean, as, as Senator Pansing Brooks said-- I mean, you know, I remember wasn't far into law school, we learned this was the hierarchy, the constitution, you go through things. So it, it seems like (a) that part doesn't make a lot of sense. I understand your point about-- I mean, and this was a point that was made to us when we were talking about restatements is that they obviously can't be specific to every state. So I guess, isn't this a better kind of an argument to take up with them for, for purporting to create a restatement that doesn't accurately reflect the specificity of each state, rather than coming to a Legislature and asking them to say what we already know is true. I just-- I don't understand.

COLEEN NIELSEN: I think that--

DeBOER: Have you, have you tried to discuss with, with ALI? You know, I'm confused as to why we're here.

COLEEN NIELSEN: Well, I think that this has been-- this is a project that's been worked on for several years. And so the final approval was in May of 2018. But there is-- there's always been some concern from the insurance industry about this particular restatement. And so, yes, it was discussed, I think, and I think that there, there was a lot of work put into this particular restatement. I think it's a 500-page document with 50 sections in it. And so as a-- because of the concerns that the insurance industry had, this is what's been brought forward to state legislators.

DeBOER: OK.

LATHROP: I see no other questions for you. I appreciate your testimony. Thanks for being here today.

COLEEN NIELSEN: Thanks.

LATHROP: Any other proponents that wish to be heard? Seeing none, we'll take opponent testimony. Good afternoon and welcome.

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HARVEY PERLMAN: Good afternoon. It's always good to be here. Mr. Chairman, members of the committee, I'm Harvey Perlman, H-a-r-v-e-y P-e-r-l-m-a-n. I live at 9101 Pioneer Court in Lincoln. I'm a professor of law at the University of Nebraska College of Law, but I'm not here representing the university or the college. LB884 relates to a work of the American Law Institute, a national organization of which I am a 46-year member and a 25-year member of its governing council. I'm opposed to this bill and I'm authorized to say that my views coincide with that of the American Law Institute. The ALI has for over a 100 years produced restatements of the law in order to bring clarity and consistency to the law. The ALI is composed of 3,000 lawyers, judges, and legal academics representing a wide diversity of perspectives. A restatement undergoes a rigorous, peer review process before it's adopted. In the case of the restatement of liability insurance, reporters from the University of Michigan and Pennsylvania law schools produced drafts that were reviewed first by an advisory group of 43 individuals, including representatives of the insurance industry. The list of advisers is included as an appendix. Drafts are then reviewed by the council, a group of 60 lawyers, judges, and academics chosen from the membership for their professional accomplishments. A draft must be approved by the council. If approved, it's then submitted to the full membership at a meeting at which generally more than 700 lawyers debate the proposals. A draft must be approved both by the council and the membership. And throughout this process, the restatement drafters engaged the liability insurance industry, heard their concerns, and responded to many of them. Restatements are not controlling law. They are designed to assimilate the existing laws of the various states to state the rules clearly. Courts are not bound to follow a restatement. They can consult them as they often do because they provide clarity to complex legal issues. They often find them persuasive in deciding cases, particularly where it's a matter of first impression, courts regularly consult a wide variety of sources in coming to their own judgment. The lawyers, in a given case, often direct the court to secondary sources such as treatises, law reviews, and restatements. And the lawyers are positioned to argue that any particular secondary source should not be regarded as persuasive. I think it's clear the proponents of LB884 are opposed to some provisions of the liability insurance restatement, but I confess I'm not certain what LB884 is thought to accomplish. In its plainest meaning, as the senator's questions have suggests, it's merely a statement of present fact. It says that in Nebraska, Nebraska law applies, and if there's anything in the restatement that is inconsistent, it does not apply. It's pretty hard to disagree with

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that proposition. However, you've heard the proponents testify that the purpose was to get them-- lawyers not to use of the restatement. I assume that means going forward. There are some 10-- 110 different statements of law governing liability insurance in the restatement. Does LB884 mean that this Legislature has carefully considered each one, compared it to existing Nebraska law, and rejected each of those as inconsistent? And what of the restatement rules that are not inconsistent or in conflict with current Nebraska law. Has the Legislature, by implication, adopted all of those as Nebraska law, even where Nebraska has not yet addressed the issue? This Legislature has traditionally been more thoughtful about its declaration of public policy. And what are courts to think of LB884? Do you want me to stop or--

LATHROP: Want you sum-- wrap it up.

HARVEY PERLMAN: All right. [LAUGHTER]

LATHROP: You know what, I have-- we'll have like 90 bills and I got to maintain the light system. [INAUDIBLE]

HARVEY PERLMAN: Senator, I fully agree.

LATHROP: Yeah.

HARVEY PERLMAN: The last part of my testimony, which you can read on your own, basically says that if it's not just a statement of declaratory law, it's a book burning bill. It suggests that the restatement of liability insurance be burned and that the courts and the lawyers and everybody else shouldn't think about its rules. So with that, I urge you to not move that-- this bill forward.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Perlman, for testifying today. I'm probably a little more out in the woods than the rest of these people because I don't have a law background. So would I be correct in saying that this does not-- this benefits the insurance companies. This bill would benefit the insurance companies. Is-- would that be a correct statement?

HARVEY PERLMAN: Actually, Senator, that's not a correct statement.

BRANDT: OK.

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HARVEY PERLMAN: I've had an opportunity to at least look at some of the major provisions of the restatement and compare them to Nebraska law. There are some provisions that would be less beneficial to the insurance companies than existing Nebraska law. There are several provisions in which I think the insurance companies would be benefited by the law of the restatement as opposed to Nebraska law. There actually are some rules, court decisions, legislation in Nebraska that are very strongly policyholder oriented and not insurance company friendly.

BRANDT: All right. Thank you.

LATHROP: Senator Morfeld.

MORFELD: Thanks for coming in today, Mr. Perlman. So how do you respond to the, the charge that the restatement isn't just a restatement of the law, but actually creating new law? And I think you touched on it a little bit [INAUDIBLE].

HARVEY PERLMAN: Yeah. Well, restatements are designed to take the various laws of all 50 states, like the restatement of torts, courts they're going varying different ways around the country. And where jurisdictions divide, the restatement's purpose is to try and bring them together and propose a consistent uniform law. Courts don't have to adopt them, but occasionally we have to pick the one that seems the best in terms of modern social practice. But in others, courts may talk about the rule differently, but it is actually the same rule and we try and bring consistency to it. Again, you know, no court has to adopt it. It's merely persuasive. Just as a article in the Harvard Law Review might be persuasive in some jurisdictions. But it's-- this is no different than the, the restatement of torts or restatement of contracts. I, I was-- you know, they say that there was not support for some of the rules. I can point you to a South Dakota Federal District Court case just quite recently in which the insurance companies made the same argument that the restatement rule in that case was made out of whole cloth. The federal judge actually read the cases and said they're wrong, there were cases. And were obliged in the restatement to, to document the cases that we rely on for those rules.

MORFELD: OK. Thank you.

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LATHROP: I think that's it. Thanks for being here today. It's always good to see you.

HARVEY PERLMAN: Good to see you, too.

LATHROP: Appreciate your thoughts. Anyone here-- anyone else here to testify in opposition? Anyone here in a neutral capacity? Oh, I'm sorry, Kim.

KIM ROBAK: I'm in opposition.

LATHROP: Yeah. I thought you were leaving with Harvey.

KIM ROBAK: He's not leaving.

LATHROP: OK.

KIM ROBAK: He's staying.

LATHROP: All right.

KIM ROBAK: Senator Lathrop and members of the committee, my name is Kim Robak, K-i-m R-o-b-a-k. I came here today on behalf of the Nebraska State Bar Association in opposition to LB884. I'm passing out to you a letter from a lawyer from Kutak Rock by the name of Dwyer Arce, who had planned to be here today but is not here because of the weather. He is the chair of the Practice and Procedure Committee of the Nebraska State Bar Association. I won't read his letter in full because you can do that, but I will paraphrase a little of it and read one paragraph. He specifically says that LB884 is unnecessary because the restatement does not constitute the law or public policy of the state if the statement of law is in conflict or inconsistent with Nebraska law and therefore it is not the law or public policy, the restatement itself is not the law of the state of Nebraska. In other words, the restatements are nothing more than, than persuasive secondary authority for the Nebraska Supreme Court or any court to consider in articulating Nebraska common law principles just as it's done for decades. And then, if you will note on the bottom of the first page of the letter he cites to a case in which the court has adopted the Third Restatement of Torts. And if you continue, another case in which they decline to adopt Section 9 of the Third Restatement as a test for misrepresentation. So the court does sometimes adopt the restatement. Sometimes it does not. So in that regard, the law is not necessary. It is simply a, a something that the court could look at as

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authority. It does not have to adopt it. It is not the law in the state of Nebraska. Be happy to answer any questions.

LATHROP: I see no other questions. Thank you. I'm still trying to get used to not having everybody closer. New neighborhood for the hearings. Are you in opposition or in neutral?

RANDI SCOTT: Opposition, yes.

LATHROP: OK.

RANDI SCOTT: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Randi Scott, R-a-n-d-i S-c-o-t-t. I am testifying on behalf of the Nebraska Association of Trial Attorneys in opposition to LB884. The other testifiers that came up in opposition, I won't rehash what they have said really, but we do not believe LB884 is necessary as we've, we've talked. They don't have any legal-- the restatements do not have legal or precedential value on their own. They are simply a resource available to judges, legislators, and litigants, and are persuasive until adopted. We would oppose prohibiting the adoption of restatements as we think that it should be left up to the judges who decide these cases based on facts. And that is what I will present to you today.

LATHROP: OK.

RANDI SCOTT: Any questions?

LATHROP: I see no questions.

RANDI SCOTT: OK. Thank you.

LATHROP: Thanks for being here today. Anyone else here in opposition? Anyone here in the neutral capacity? Seeing none, Senator Lindstrom, may close. And as you approach, we do have a letter of support from Julie Jorgenson with the Nebraska Defense Council Association.

LINDSTROM: Thank you, Chairman Lathrop. Just gonna answer as to kind of why we brought this bill. NCOIL and back in 2017, which is the National Council of Insurance Legislators, and the Governor-- and I can send it-- hand out this letter so everybody can see it, had approached ALI about this issue. And from what I can gather, nothing was done. So resort to the Legislature taking the lead. And that's why we're having this here today. We make the laws so we can change what we want to change so that-- that's where it came from. You know,

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sitting in Banking, Commerce and Insurance Committee, we often-- this is an interesting topic because we try to put together good policies for the insurance industry in the state of Nebraska. And we like to make sure that we are competitive as a state, and we have been. Our policies have been well-crafted over the years. But at the same time, we look at it at a national viewpoint as well. As an insurance license individual, I can apply in about every state. And because the reciprocity that we have in the state, I can do that. But there also is an element of competitiveness to making sure that we take care of Nebraska first and foremost. So that's really where this-- the impetus of this bill came from. And I'd be happy to share that letter from the Governor. So thank you.

LATHROP: OK. Any questions for Senator Lindstrom? Seeing none, thanks for being here. Thanks for introducing LB884.

LINDSTROM: Thank you.

LATHROP: We appreciate it, and the people who testified. That will close our hearing on LB884, and bring us to LB940, and Senator Pansing Brooks. Good afternoon.

PANSING BROOKS: Good afternoon, Chairman Lathrop and fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I appear before you today to introduce LB940, a cleanup bill that literally just removes a comma. Unfortunately, I needed to bring this legislation because the comma was inadvertently placed in the statute last year with the passage of LB595, my bill that set forth automatic record sealing procedures for juveniles. Unfortunately, we couldn't get a reviser's bill to fix this comma issue because the clarification does create a necessary change. Professor Ryan Sullivan at the University of Nebraska Law School caught this mistake. I have a letter from him that I am submitting for the record that explains why the deletion of the comma is necessary, and I'm going to read a part of this into the record. Quote, this is from Professor Sullivan, the intent of this particular provision, as originally adopted, was to ensure that all misdemeanor and infraction level offenses committed by juveniles would be eligible to be sealed, except those that involve only a waiver-- a waivable traffic offense such as speeding or failing to use a seatbelt. As it is written, however, some courts interpreted the language to mean that those cases that involved a traffic offense in any manner could not be sealed. This resulted in thousands of eligible juvenile records remaining

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public, despite the Legislature's intent that they be sealed. For instance, a court would seal a rehabilitated juvenile's record of a conviction for marijuana possession. But if the juvenile was also convicted of speeding in the same case, the entire record would remain public, including the juvenile's possession conviction. This was not the intent of the Legislature or of that bill. LB354 sought to remove the ambiguity in the language so that all eligible criminal records of juveniles would be sealed as intended. However, during the drafting process a comma was in-- was inserted into the proposed language, which was changed, which has changed the effect of the proposed provision and, in fact, resulted in further unintended ambiguity. And I am sorry, but I missed that comma when I brought it forward finally. So Professor Sullivan goes on to state, removal of the comma will resolve the ambiguity and ensure all qualifying juvenile records will be sealed as intended by our Legislature. I just want to finally say you'll be happy to know I did not invite any testifiers to come before us today. And in closing, I ask that you advance this bill this session as a cleanup really is necessary for these kids. Thank you.

LATHROP: I'm just appreciative that you didn't throw Mr. Triebisch under the bus.

PANSING BROOKS: No way. I'll take the blame, yeah. [LAUGHTER]

LATHROP: All right. Any questions for--

PANSING BROOKS: He's, he's far better than I. I said don't worry.

LATHROP: Any questions for Senator Pansing Brooks? I see none. Thank you. Anyone here to testify in support of LB940? Anyone here in opposition? Anyone in a neutral capacity? No testifiers. Senator Pansing Brooks waives close. We do have a letter in opposition from Anthony Conner with the Omaha Police Officers' Association. And with that, we'll close the hearing on LB940. [RECORDER MALFUNCTION] LB823. And that brings us to Senator Brewer. Welcome to the Judiciary Committee.

BREWER: Thank you, Chairman Lathrop. It's good to be back in your old home. I guess, you would call it.

LATHROP: Yep.

BREWER: All right. Again, good afternoon, Chairman Lathrop and fellow senators of the Judiciary Committee. I'm Tom Brewer. For the record,

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that's T-o-m B-r-e-w-e-r. I represent 13 counties of the 43rd Legislative District. I'm here today to introduce LB823. I'm introducing this bill on behalf of a vast number of the people in my district who have suffered for many years because of the NPPD plans to build the power lines through the Sandhills. This power line is being built for one reason, a 14-state consortium of electrical utilities located in Little Rock, Arkansas, has ordered it to be built. The Southwest Power Pool, which NPPD is a member, has been ordered to build this power line and the consortium is paying 97 percent of the cost for this power line. Now a little bit of history, back in the 1930s when our laws were created for public power in Nebraska, no one could have ever imagined that there would be a day when out-of-state organizations could order projects to be built in Nebraska. When the Legislature gave public power the right to seize private property and exercise the use of eminent domain, no one in this body could have realized that a day would come when Nebraskans would have their property taken from them on behalf of an out-of-state third party. When I first came to the Legislature in 2017, I was asked-- I asked the three power organizations that are members of the Southwest Power Pool one question, was-- the question is who put this on a ballot for the people to decide? Was this a decision of the Legislature? Was there public debate? Since public power in Nebraska is a semi-autonomous agency of state government, the Governor has no role. So let's just pause for a second and think about that. There's no vote of the people, there's no vote of the Legislature, there's no public debate, and the Executive Branch has no say. And yet you can take land by eminent domain. NPPD, LES, and OPPD simply, simply came up and decided to become part of the SPP, the Southern Power-- Southwest Power Pool. I question their authority to do this. No one has thus far provided me with an answer that outlines their authority to do this. The aim of this bill is to put-- is to update the law to modern times for now, and it is, in fact, our public power organizations that create this framework for regional transmission authority. I don't think anyone's gonna argue that there is needs to be part of these pools. And I'm sure all three of our power organizations are gonna testify here today in opposition and you'll hear about how utterly essential it is for Nebraska that we somehow are, are part of this larger organization. Again, my, my concern is that the right of eminent domain law public power currently enjoys was written during a time when public power infrastructure projects were unquestioned. They were of, by, and for the people of Nebraska. NPPD, LES, and OPPD will soon tell us that in today's world we have to be a member of these-- of the Southwest Power Pool in order to reap the benefits of being

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part of this SPP, Southern Power Pool, we have to build these things. They tell us this is part of what we currently have to live with, with power and power grids. Senators, I do not think it is right to give up the sovereignty of, sovereignty of our state to some unaccountable board in Arkansas. I bring this bill so that the, the time that the Southwest Power Pool wants Nebraska Public Power to use it is, is part of this right of eminent domain is something that is only done as part of what is needed for Nebraska. Again, this should be a action that has some accountability and not just a vote of a board, which we have seen with the power and the money of large wind organizations, they can buy or provide enough resources to whoever wants to run to be a part of these boards, and then they essentially control what that board decides. So they rubber stamp whatever is put out there and there is no oversight. Anyway with that said, I would be open for questions.

LATHROP: I don't see any questions at this point, but there may be after we hear some testimony, Senator Brewer.

BREWER: And I'll stay here for closing.

LATHROP: That's fine. We'll look forward to that. Proponents of LB823? Anyone here to testify in support? Anyone here in opposition? Good afternoon.

SHELLEY SAHLING-ZART: Good afternoon, Chairman Lathrop, members of the Judiciary, Judiciary Committee. For the record, my name is Shelley Sahling-Zart, Shelley is S-h-e-l-l-e-y, Sahling-Zart is S as in Sam a-h-l-i-n-g hyphen Z-a-r-t. I am vice president and general counsel of Lincoln Electric System and I am here today testifying in opposition on behalf of the Nebraska Power Association. The Nebraska Power Association is a voluntary association representing all of the state's electric utilities, including municipalities, public power districts, rural public power and irrigation districts, rural power districts and cooperatives. We're the only state in the country that is 100 percent public power. There's a lot of things I'd like to respond to. But let me tell you, two of the most difficult things an electric utility does is raise electric rates and site a transmission line. They're not fun. They're not popular. They're difficult things to do and they are responsibilities that we take very seriously. In siting those transmission lines, there isn't anything that SPP has done that has changed our legal responsibilities with regard to eminent domain under the statutes of the state of Nebraska. We comply with the rules of Chapter 25. We are required to do that and nothing SPP does changes

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any of that. But the reality is that most of us rarely use the power of eminent domain. It is always our goal to negotiate any property rights that we need. And most of us-- and you will see, I think you have letters from NPPD and OPPD. You'll see in NPPD's letter that they have successfully negotiated their land rights in more than 90 percent of the time. That's true of us. That's true most of the time. Eminent domain is always a tool of last resort, but it's an important tool. Some of these public projects are not popular. I understand. But we work pretty hard. The other part is eminent domain comes at the end of a really long process where we have had lots of public hearings with, with customers to identify and narrow down where a transmission line will go. It's ultimately approved by a board. All of this happens before we ever get to negotiating the property rights. And then there's-- as you know, there's a long legal process and things that we have to do. We have to establish, establish there's a public purpose. Nothing that SPP has done has changed that. This would set a really an unnecessary precedent for other public projects. I get that transmission lines are difficult. We can talk about the Southwest Power Pool, but really nothing that happened there has changed any obligations that we have. And I'm about to run out of time, so I'll just answer your questions at this point.

LATHROP: Senator DeBoer.

DeBOER: Can you help me understand what was the process through which the R-Line was decided was necessary? Who made the decision? Who gave them the authority to make that decision? All that sort of thing.

SHELLEY SAHLING-ZART: Well, I'd probably defer to NPPD on a lot of that because it's NPPD's project. But let's talk in general terms. So there's a lot of ways that transmission lines can come about. Sometimes you identify a local need that has nothing to do with the Southwest Power Pool. For example Lincoln, LES has built some transmission lines to provide added redundancy and reliability coming into the city. We've done those locally. We get, we get approval from the Nebraska Power Review Board. Obviously, our board approves it. And some of those can be done without any interface with, with the Southwest Power Pool. Others are coordinated through the Southwest Power Pool. But let's back up a little bit, because in late, late 1999, early 2000, the Federal Energy Regulatory Commission issued what's known in our industry as FERC Order 2000, and in that they urged the formation of these regional transmission organizations, one of which is the Southwest Power Pool. At the time we issued that

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order, there were seven, there are today nine across the country and FERC has encouraged the creation of these. Why? For better coordination and reliability of this regional transmission grid that we all participate in. So it was really for reliability purposes. So as part of that, a lot of projects and a lot of transmission requests get submitted to SPP and there's a long process for how they evaluate those and how those interconnect with local utilities, where those should go and how the costs and benefits are allocated across the SPP members. I, I would probably not be the right person to specifically address the R-Plan. What I can tell you is that I know all of us and I know NPPD went through a series of public open houses with customers. And what you typically do is you start with a very broad corridor-- I got to get, I got to get transmission from point A to point B, and I start with a really long corridor and I have open meetings and I find out are there burial sites? Are there environmental concerns? And then you start winnowing that down and you identify a number of options and then you'll have another public meeting and you'll get more input and you winnow down to ultimately one of our boards of directors that's going to identify a route for that line. Now in terms of SPP, you got to remember we have publicly elected appointed boards in this state, the Public Power District Boards, NPPD's board, they're all elected members. The Legislature for Chapter 70 for Power District has granted those public power district boards the authority to manage the electric utility system. So I don't know if I clearly-- I put a lot out there. I don't know if I answered what you want.

DeBOER: No, no, no. Let me, let me ask a couple of questions then. What is the-- what are the responsibilities and benefits for Nebraska to be a part of the SPP?

SHELLEY SAHLING-ZART: Well, there's many, SPP serves many functions. There's the electricity market that they run, there's transmission functions. But most of it is: one, you get some economies of scale. There's-- the SPP footprint covers 14 states. So you're in a regional electricity market. You're also planning regional transmission with a whole bunch of other utilities. So you're spreading those costs for many projects. So-- and but you're also getting the added benefit of greater reliability in the region. We're all selling our generation now into these wholesale markets. So you get the added benefit of having be-- being able to share the responsibility to address transmission constraints, for example, but you also get to share the costs then. And if Nebraska were trying to do that as an island, not in one of these regional transmission organizations, especially when

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FERC has tried to stress the creation of these, I-- we, we wouldn't-- I don't know for sure, we'd, we'd probably have to run a lot, bunch of models, but I think ultimately Nebraskans would suffer from that, less reliability perhaps, perhaps higher costs.

DeBOER: So--

SHELLEY SAHLING-ZART: And we were in another-- we-- we've been in regional pools for a long time. LES was sort of in the Mid-Continent Area-- the Midwest Independent System Operator prior to SPP, we never fully joined because we couldn't get inner connectivity. But before that there was-- it wasn't an RTO, but there was the Mid-Continent Area Power Pool, which was a larger region of the upper Midwest, a power pool that we'd operated in for decades. So it's not, it's not an entirely new concept. MAPP was a little different than SPP, but it's not like the concept of being in these regional pools is anything new.

DeBOER: So one-- I'm sorry to take a lot of time, but one of the other questions I have is, you know, we already have arguably power everywhere, right, so these transmission lines, what do they do? Just-- can you give me a simple technical explanation?

SHELLEY SAHLING-ZART: Sure.

DeBOER: What is the point of them?

SHELLEY SAHLING-ZART: The point of a transmission line is wherever you generate power, you generate your electricity. Most of the time generating facilities are located in remote places. Let's take-- well, you've got Cooper Nuclear down in Brownville, you've got, you've got a coal fired power plant at Sheldon Station, you've got one out by Sutherland. Usually, they're located kind of away from population centers. Transmission is necessary to take that electricity to where it is utilized. The load centers, the city, and then ultimately it's stepped down and it's brought to each of your homes. But the transmission is necessary to get the generation, the electricity to where it's actually going to be utilized.

DeBOER: So I guess I kind of did understand that then, so then don't we already have those in place?

SHELLEY SAHLING-ZART: Yes, we do. But you also have-- because on the bulk transmission system, you have a lot of energy moving across those. And we will have congestion in some areas where you may need

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more if, if more generation is being built. And we're kind of seeing that as we see more generation being a little more distributed from where it's been. We're finding more and more transmission constraints that need to be addressed.

DeBOER: Got it.

SHELLEY SAHLING-ZART: Does that help?

DeBOER: Yeah. I think I kind of get that. So what would one of these special elections cost the--

SHELLEY SAHLING-ZART: We did, we did not go to that. I mean, that's one of the questions when you get into the bill, it provided for a special election, not that you do it at a general election or primary, it was a special election, but that would definitely be an added cost. I would point out that the statement of intent talked about this is an election for counties. It's not counties, it would be all municipalities within those areas as well. So if you take-- let's take Nebraska Public Power District, which operates in most of the 93 counties, and you have to do it not only in the counties, but in all the municipalities within that, that's probably a hefty cost. But I don't know that anybody had, had, had a chance in the last week to put that fiscal statement together. So--

DeBOER: OK. Thank you.

SHELLEY SAHLING-ZART: It would be significant though.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming. I appreciate it. I, I guess I'm just interested, you know, that this is one of the toughest issues that we grapple with in the Legislature--

SHELLEY SAHLING-ZART: Um-hum.

PANSING BROOKS: --in my opinion. We've got all sorts of competing interests. We've got the, the people that, that want wind, we want the people that believe in, in oil and gas. It's all, it's all about eminent domain. It's all about making sure people's property rights are taken care of. You know, when I transfer it to my house in Lincoln, if all of a sudden people were going to be putting some major line through my house, I, I would want to have a say in it.

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SHELLEY SAHLING-ZART: Um-hum.

PANSING BROOKS: We know how special the Sandhills are. We know how, how we have to protect that very unique piece of, of, of geological formation that we have in the western part of the state. So I'm just-- I'm back to the special election issue, is it because you'd have to have so many special elections or I don't see-- I'm having a hard time of grappling with what is wrong with going to the people?

SHELLEY SAHLING-ZART: All right. So first off, you just walked through the bill. First question I'm gonna have is what's, what's defined as an out-of-state third party? And how do you, how do you know if something is primarily benefiting an out-of-state third party, and who makes that determination? And when does that determination get made? So that's my start-- my starting point is if there's some definitional things that I think are just problematic in the bill itself. Then beyond that--

PANSING BROOKS: Well, if it's just going through-- like we, we heard testimony and I don't know if it's true or not, I don't want to bring it into a big battle, but, but the discussions about the pipeline said that actually the, the sludge, or whatever that was in the XL Pipeline, was actually gonna go down to the Gulf and be taken elsewhere, not even for usage in the United States. So I mean, I think that's pretty clear that that isn't necessarily beneficial for anybody specifically in Nebraska or anybody that is an American, really? I mean, except for businesses. So I, I think that I'm just trying to--

SHELLEY SAHLING-ZART: And I'm not trying to be argumentative, but, but, but who-- does it, does it just require one customer to challenge who's really benefiting from that? Because what if they're shared benefit? I mean, what if there is-- and on a transmission line that's traversing two or three states, I can make a pretty good argument Nebraska would benefit as well. So how do you determine who primarily benefits it? But who, who initiates some kind of action that triggers the special election for one? But the other part is, I mean, eminent domain, there are provisions in there that are designed to protect property owners. I, I would be fearful that we start with transmission lines and then we're gonna have special elections to approve eminent domain for bridges or roads or whatever. And then where do you stop? I mean, we do have provisions in there that are designed to protect landowners and the courts can be involved if I'm not establishing my case for eminent domain. Right?

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PANSING BROOKS: I just-- it's just such a hard issue because weighed into this is, you know, economic development for the state.

SHELLEY SAHLING-ZART: Well--

PANSING BROOKS: So all, all of this is, is just [INAUDIBLE].

SHELLEY SAHLING-ZART: My other, my other fear, my other fear--

PANSING BROOKS: Yeah, and it seems like the people ought to, to weigh in more than just some officials that are getting some specific benefit. So--

SHELLEY SAHLING-ZART: And that might be true, but we're talking about electric reliability, which is gonna have a huge impact on businesses across the state as well. But I challenge you a little bit, if you had a ballot question about whether or not you supported the use of eminent domain for a transmission line, I'll tell you, most people are gonna oppose that. And then where are we? Now it isn't that we can't build the transmission line, then we would have to try to negotiate easements and that line could end up going a whole bunch of places and go miles and miles out of our way. And all we've done then is add costs for Nebraskans. So it's one of those things that it's gonna be framed in a way that it's gonna be difficult for people to say, no. And in the case of a transmission line, do you want NPPD, if it's a transmission line, let's say, in western Nebraska, NPPD's got customers just south of Lincoln. Is it, is it fairer, I guess, that voters down here would be dictating what happened there or vice versa? There's, there's a lot of details if you think about how this would operate, that I think become problematic.

PANSING BROOKS: OK. Thank you for the discussion.

SHELLEY SAHLING-ZART: Yep.

LATHROP: Senator Wayne.

WAYNE: Yes, I have a couple questions, but we craft policy by county all the time. I believe you have a bill tomorrow where counties treats juveniles different. So we, we craft policy by counties all the time. I guess to the original question that Senator Brewer asked, and I've asked for a number of years, where did you-- where did the power districts get the authority to join the SPP?

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SHELLEY SAHLING-ZART: I would tell you, I think the authority is derived by the fact that you have been-- you have delegated the authority to run the operations of the power districts to the elected boards of those power districts.

WAYNE: But is an unauthorized delegation of authority of SPP actually control where lines go within our state? Are you authorized in your political authority to a party that is no longer within your jurisdiction?

SHELLEY SAHLING-ZART: SPP is not directing where that line goes.

WAYNE: SPP has final say into whether we build a transmission line or not. Correct?

SHELLEY SAHLING-ZART: Correct. They can-- they can direct that a line is necessary for reliability purposes.

WAYNE: So there is a potential constitutional challenge that you unauthorized-- you have unauthorized delegation of your authority?

SHELLEY SAHLING-ZART: Well, but they're not, they're not directing where you put it, they're not directing you to use the power of eminent domain.

WAYNE: Correct. So if I wanted to build a solar panel grid of 200 watts-- megawatts and I wanted to run a transmission line to OPPD, OPPD doesn't have final say in that anymore, correct?

SHELLEY SAHLING-ZART: Again, that's a difficult one. It depends on-- it, it-- if you're just talking about a line to interconnect your project, you do need to go get approval from SPP. But your relationship with OPPD on building that line is gonna be with OPPD.

WAYNE: But SPP has final authority to not--

SHELLEY SAHLING-ZART: And they're gonna [INAUDIBLE] the cost.

WAYNE: --allow me to build that line.

SHELLEY SAHLING-ZART: In some respects, yes. But--

WAYNE: So when we say that Nebraska has all public utilities, isn't there a private utility that operates electricity in Nebraska too, a small one?

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SHELLEY SAHLING-ZART: Not that I'm aware of.

WAYNE: How about gas? Do you consider that a utility?

SHELLEY SAHLING-ZART: I'm not your gas expert.

WAYNE: But outside of Omaha MUD, we do have private companies that operate the entire state for gas. Correct?

SHELLEY SAHLING-ZART: Correct.

WAYNE: And that's Black Hills. So we do have some that I would consider public utilities, our private utilities that operate electricity. So because this seems to be-- to go along with the theory of county by county, issue by issue, relating to eminent domain, relating to some of the transmission problems you've been-- we've been hearing about, is it better just to abolish all public power and have one entity oversee the entire state, since it's just the state then we can deal with eminent domain across the state in the same manner?

SHELLEY SAHLING-ZART: Well, if you would-- if you did away with public power, you wouldn't be dealing with eminent domain.

WAYNE: No, I'm saying create one entity across the state.

SHELLEY SAHLING-ZART: One public entity?

WAYNE: Yes.

SHELLEY SAHLING-ZART: That would be a policy decision. But it-- it's not as easy in principle as it sounds.

WAYNE: So when building these transmission line, who pays for it?

SHELLEY SAHLING-ZART: Well, if it's-- again, if it's a local transmission line like the ones I talked about LES putting in our-- those are billed into our rates. So our customers are paying those. If it's one that is for regional reliability that the SPP has played a role in, then there's a formula within SPP for how those costs are allocated amongst the members.

WAYNE: So what would a project, let's say a local project cost if we had to build a line hypothetically?

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SHELLEY SAHLING-ZART: Again, that's hard to say, it depends on what-- are you talking 115,000 volts, 345,000 volts, and what's the distance?

WAYNE: So is the R-Line a regional or a local?

SHELLEY SAHLING-ZART: I believe that's a regional.

WAYNE: Regional. OK. It does-- I guess it really doesn't matter if it's regional or not in my opinion. So if locally we wanted to say we had-- we wanted to build a \$2 million transmission, do you think that should go to the vote of the people?

SHELLEY SAHLING-ZART: Well--

WAYNE: Or do you feel like you should just be able to build it into your rates?

SHELLEY SAHLING-ZART: I guess the answer is we're-- let's just take Lincoln Electric System, because that's what I know, we're doing that now. I mean, we, we identify projects in our capital budget. Our capital budget is approved by our board and then it's also approved by the city council. So--

WAYNE: And that's just your rates that, that pay for that?

SHELLEY SAHLING-ZART: They approve our rates and they approve our budget, yeah.

WAYNE: So you have a extra step--

SHELLEY SAHLING-ZART: But some of those projects, if we're building a transmission project or any capital construction project of a large dollar amount, those costs get spread out over several years, but it gets built in-- you know, we issue bonds to pay for our capital projects so that that service on those gets built into our [INAUDIBLE].

WAYNE: Do those bonds go to the vote of the people?

SHELLEY SAHLING-ZART: No.

WAYNE: See that's where I'm struggling. Because when I was on the school board, if I wanted to build a new school on 156th and Ida or in 60th and L, I had to go to a vote of the people. And it seems that--

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SHELLEY SAHLING-ZART: Ours are not general obligation bonds, they're revenue bonds.

WAYNE: I don't think it was the bond that mattered. I think it was people wanted to say before our rates went up, before our taxes went up, we should have a vote in that. And I think that's part of the rub that I hear when I travel the third district is that they didn't really seem to have a say. And, and I guess my last question-- well, I guess my last part of my question is so we take pride in the Legislature on having a second house. And I think we take pride and that's why we elect and have so many elections across the state about electing people based off of information. We don't have that same information when it comes to public power. We don't know how much debt actually is out there. We don't know the projections. And now we passed a bill two years ago that we can't even get some RFPs that are-- the World-Herald just did an article that they couldn't even get information on RFPs when it came to the solar project up by the Norfolk area. At what point do we need to revisit public power, not just eminent domain, but the entire public power? Because I do think there has to be some validity to the fact that when we passed it is completely different than it is today.

SHELLEY SAHLING-ZART: I-- boy, we can have this discussion for a long time, because I just strongly disagree. We are public entities. I can tell you right now I can go almost the websites and I can tell you what the outstanding indebtedness is of any of them. Our official statements are all out there, our budget rate documents are all out there, and we're all public entities subject to the public records law. So with, with the exception of the certain categories in the public records law by which we can lawfully withhold records, other than that you're entitled to the records we have unless they meet one of those designated exceptions that you all have approved. Our meetings are open to the public.

WAYNE: I guess the [INAUDIBLE].

SHELLEY SAHLING-ZART: We got a lot of people that don't come to our meetings--

WAYNE: And I, I agree with you on that.

SHELLEY SAHLING-ZART: --but all that stuff is there.

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WAYNE: I agree with you.

SHELLEY SAHLING-ZART: And if you go to private power, you don't get that.

WAYNE: But I'm concerned about the liability,--

SHELLEY SAHLING-ZART: Private power companies have board of directors that aren't even in the state.

WAYNE: --but I'm concerned about the liability, the liability in which we can just raise rates without having a vote of the people, because you want to do a project in which that project there's probably eminent domain. That is a huge concern for me without the vote of the people.

SHELLEY SAHLING-ZART: OK. We-- well, we don't raise rates project by project. We raise your rates according-- you set your budget and then you set your, your rates. And those are approved by the public entity.

WAYNE: By-- yes, you guys also have a couple of extra steps. So then what-- LES left NPPD and paid a \$10 million penalty. Why was that not--

SHELLEY SAHLING-ZART: LES negotiated-- are you talking about the--

WAYNE: You left their original contract, right, and decided to do something different.

SHELLEY SAHLING-ZART: We, we had a long-term contract in the Sheldon Power Station and we negotiated an exit from that contract when the NPPD was looking at working with Monolith in converting that plant to hydrogen.

WAYNE: And do you think that South Sioux City is still a public entity, even though they buy their energy from the private market?

SHELLEY SAHLING-ZART: Yes.

WAYNE: So your definition of public utility could just be city councils owning their own public utility?

SHELLEY SAHLING-ZART: My definition of public-- publicly owned is that the electricity coming to every home and business in the state is delivered by a public entity.

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WAYNE: And that's happening in South Sioux City?

SHELLEY SAHLING-ZART: You're talking more of the wholesale power level.

WAYNE: So but they're buying it from a private company. Correct?

SHELLEY SAHLING-ZART: They're buying their wholesale power.

WAYNE: And then they're delivering?

SHELLEY SAHLING-ZART: Correct.

WAYNE: So you're OK with every city doing the same thing? Would that be, would that be considered public? I'm trying to understand the definition of public.

SHELLEY SAHLING-ZART: The distribution and the delivery of that electricity is still being done by a public entity. And they are negotiating-- they're buying capacity. But yeah, there are a number of utilities that, that do that. Actually, we're selling some capacity to South Sioux City as well, Lincoln Electric System is.

WAYNE: OK. Thank you.

LATHROP: OK, I think that's all the questions there are today. Glad-- I bet you're glad you went first.

SHELLEY SAHLING-ZART: I think I might be last.

LATHROP: Yeah. No. Thanks for your testimony. Anybody else here to testify as an opponent? Anyone here in a neutral capacity? Seeing none, Senator Brewer, you may close. It looks like that I do have three letters in opposition: Christy Abraham from the League of Nebraska Municipalities; John McClure from Nebraska Public Power; and Timothy Burke from OPPD. Senator Brewer.

BREWER: Thank you, Mr. Chairman. Well and complete transparency here, LES, NPPD, and OPPD all took the time to talk to me and, and share their issues and concerns. So they've been very open in this process and, and that part I appreciate. But just so everyone leaves here today understanding how I ended up in this position, and that's just simply because such a huge number of the people of the district were affected. And, and we've talked about the R-Line in case you don't understand the R-Line. It starts in the vicinity of the Gerald

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Gentleman power plant near Sutherland and goes north to an area near Thedford and then makes a hard right and goes over in the vicinity of Neligh. And there were three proposed routes, that was the longest, and it also went through virgin Sandhills territory to get there. And so from the very beginning, there was concerns and heartache because there were existing routes that would parallel roads, that would have got that power to where it needed to be without destroying a vast area of the Sandhills. Because this is Sandhills' ground that has never been touched, other than by cattle. And they're not existing roads, they're gonna have to cut roads through this. They're gonna have to bring helicopters in and they're gonna have to use those helicopters to move the steel because it's gonna be impossible to move it to some of the places they need it without that. But with helicopters comes all the things that are necessary to sustain it. That's not part of what was discussed. And the question is, why do you make an almost 200-mile dogleg to, to move power from one point to another? And we talked about it and I agree that that's the idea behind power lines. And if you need to get power from a power plant to Lincoln, get it to Omaha, wherever you need to move that power, you need the ability to get it from A to B. But I think in this case, we were deceived. And the power is for one purpose and one purpose only. And that's to meet wind farms that they're building in Thomas and Cherry County. If they would've been open with that, I don't think there would have been as much heartache. But there's only one logical reason why you would make this line longer, and that's to meet some purpose generating a power. And so that is what's caused this uproar. And then through that process of the uproar, we've started to figure out kind of how things are done. If the Southwest Power Pool is paying for this line and, and say it is a regional line and I put that into question, too, because, you know, where, where we're moving here is in the middle of Nebraska. It's not bordering somewhere. But we also produce more power in Nebraska than we need. Actually, it's considerably more almost as much as it takes to generate the power for Lincoln. So it's not an issue that we need the power, it's an issue of meeting certain requirements that certain groups have put on. And I have no doubt that the Southwest Power Pool wants to draw more wind energy. And again, the issue with wind energy, if you're in the power world, is that it's undependable; wind don't blow, you don't have power. So that is what's generated this fight. And as we've peeled back the layers and we've figured out that-- and anybody that's in politics understands that money can shape the fight. And if companies-- just for a second try and vision this, if companies want to spend unlimited funds, because in some cases these companies have unlimited funds to support a

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particular candidate who can be a rubber stamp for the boss and whatever he says we do, then by golly, we do it. This is your check valve. This is your, your, your hope that there won't be unnecessary expenses in the power world. And I think that the average person can all of a sudden realize that there is a bridge too far when it comes to certain offices and certain things and unless you have the ability with your own resources to be able to put up a fight to get these positions. So you're able to control who sits on those boards, they rubber stamp whatever the boss says, the boss is doing whatever the big company says, and now the big company happens to be a company that's not even a Nebraska company. And we come back to the whole issue: no vote of the people, no vote of the Legislature, no public hearings, and the Executive Branch has no oversight. If that doesn't run a cold chill down your spine, I don't know what will. Now do I think that, that the Nebraska Public Power companies are devious, and they're doing something? I, I think that they are probably working with the Southwest Power Pool. I don't have that same respect for the Southwest Power Pool, but I think at some point there has to be a way to have a Nebraska say in what happens with these projects. They're hundreds of millions of dollars. And I've challenged them that the amount that they're estimating right now for the R-Line is hundreds of millions of dollars off. I was a helicopter pilot, I know what's gonna be required. And I'm telling you that they're not even close on what it's gonna cost to do this. And once you cut a swath through those Sandhills, you will never fix the blowouts that are gonna come with it. So I'm just asking that we have this discussion, that we, we figure out what right looks like so that we don't go down a path we can't return with, with issues like these power lines that we're looking at in my district. With that said, thank you, Mr. President-- or thank you, Mr. President-- thank you, Mr. Chairman, and I'll entertain any questions you have.

LATHROP: I do not see any questions. I think it was a good hearing.

BREWER: Thank you.

LATHROP: I appreciate the, the testimony today and the bill and--

BREWER: And thanks for shifting me to the end so I can do my committee chair stuff.

LATHROP: No, that's fine, that's fine. Thanks for being here. That's our last bill of the day, so I think we're adjourned.