

January 31, 1979

LB 73

balcony and welcome them to the Legislature. Now we are ready on General File for LB 73, Mr. Clerk.

CLERK: Mr. President, LB 73. Read title. The bill was first read on January 5 of this year. It was referred to the Banking, Commerce and Insurance Committee. It was referred back to General File. There are no amendments pending, Mr. President.

SPEAKER MARVEL: The Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. President, members of the Legislature, let me state as a general proposition to begin that I believe the law should generally reflect the legitimate expectations of the people. A few years ago the Supreme Court of the State of Nebraska came out with a rule of law which, in my opinion and in the opinion of many thoughtful lawyers, did not reflect the legitimate expectations of people. The small piece of legislation that is before you today is in essence an attempt to overrule that decision of the Supreme Court of the State of Nebraska which presently is the law of the land. I think that probably the effect of the present law and the intent of the proposed law can be best illustrated through the use of a hypothetical, and if you would indulge me for a couple of minutes, I would like to take you through that hypothetical, and please understand that this is not an unusual hypothetical but this is the case at which the law is primarily directed. Let's say that we have a husband and wife who own property as joint tenants with right of survivorship. Most people know and understand that if either the husband or the wife dies while the property is so owned, the survivor takes the entire property. That is the expectation of the people, and I might point out at this point, that most property, most residential property, in the State of Nebraska is held in joint tenancy with right of survivorship. Now let's add a couple of additional facts. Let's say if the husband and wife decide for any number of reasons that they want to enter into a contract to sell the property. Let's say they do this and let's say the proceeds, the payment on the contract, is not to come until sometime in the future. This is a common arrangement. Meanwhile before the payments are made, either the husband or the wife dies. I submit to you that the expectation of the people is that the entire amount of the proceeds will be paid to the survivor just as would have been the case had one of them died prior to entering into a contract for sale. But the courts of Nebraska have said that in this situation the common law of the State of Nebraska dictates that one-half of the proceeds of that sale will go to the estate of the decedent,