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Banking, Commerce and Insurance Committee
January 19, 2010

[LB690 LB691 LB736 LB751 LB752]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 19, 2010, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB690, LB691, LB736, LB751, and LB752. Senators present: Rich Pahls, Chairperson; Pete Pirsch, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; and Dave Pankonin. Senators absent: Beau McCoy; and Dennis Utter. []

SENATOR PAHLS: I want to thank you for coming today. We're going to need to wait just a little bit more because we...a couple of our senators are presenting in front of other committees, and one is absent today, and we're trying to get Senator Christensen to come on down, so we'll have enough...so we can start doing our actual. As I look upon this group out here, I hope we're as good looking as you are looking this way (laughter). Okay. Well, I will get started and then we'll wait until we do any of the real, real tough stuff. I want to welcome you to Banking, Commerce and Insurance hearing. My name is Rich Pahls, and I'm from Omaha, and I represent District 31 which a lot of times I like to call the Millard of Omaha. It is my honor to serve as chair of this committee. The committee will take up the bills as posted, starting with Senator Langemeier's LB690 and then LB691, LB736, LB751, and LB752. And as I can see, most of you already know the process, but this is your opportunity to express your opinion on the proposed legislation in front of us today. And to make things work a little better, I have them on charts over here, some of the rules we need to follow, and you're going to hear this probably every hearing that you go to which I'd like to have you turn off your cell phones. And I'm going to ask you to come forth to the chairs reserved up here. This gives me an idea how many people that we have speaking. And, of course, the testimony as in all committee meetings we have the introducer, proponents, opponents, neutral, and then closing. If you testify, I think over here, don't we have something for them to give to you? []

JAN FOSTER: A pink sign-in sheet. []

SENATOR PAHLS: Pink sign-in sheet, but do we...(inaudible) okay. And when you do testify, please we're going to ask you to spell your name correctly. No games with us, please, and, again, we're going to ask you to be concise. I do like getting to the point. And if you have material that needs to be handed out, we need ten copies, and if you don't have ten copies, let one of our pages know that, so we can have those ran off. And to my immediate right is our committee counsel, the infamous Bill Marienau. And we moved Jan Foster all the way over there because she kept hitting me, say Rich, move this meeting along, so (laughter) did move her to the end. And, like I say, today we have several senators who are in front of other committees. Senator Utter is. I think Senator Gloor is, and Senator McCoy is absent today, so what I'm going to do is have the senators introduce themselves, starting with... []

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SENATOR PANKONIN: Senator Dave Pankonin, District 2, Louisville. []

SENATOR LANGEMEIER: Senator Chris Langemeier, District 23, Schuyler. []

SENATOR PIRSCH: Senator Pete Pirsch, District 4. []

SENATOR CHRISTENSEN: Senator Mark Christensen, Imperial, District 24. []

SENATOR PAHLS: Okay, and our pages are Abigail or Abby Greene from Omaha and Alex DeBrie from Scottsbluff. So you can see, we represent the state of Nebraska, all the way from Omaha to Scottsbluff, so we are very impartial here. Again, I'm ready to get started with the bills, and we'll start with Senator Chris Langemeier. The floor is yours, Chris. []

SENATOR LANGEMEIER: My name is Chris Langemeier. It's C-h-r-i-s L-a-n-g-e-m-e-i-e-r, represent the 23rd district. Chairman Pahls and members of the Banking, Commerce and Insurance Committee, like to thank you for the opportunity to testify and introduce LB690. I have introduced LB690 on behalf of the Nebraska Secretary of State's Office, so I'm going to be very brief in my testimony because they're going to testify in more detail, and then I can close if need be. The purpose of LB690 is to amend state statute 87-214 and 87-219 of the trademark statutes to change the deadline provisions relating to trademark name publications. It would simply extend the amount of time you have to advertise from 30 days to 45 days. And with that, I'm going to...like I said, I'm going to conclude. I'm going to let those testify behind me from the Secretary of State's Office. They can give you some examples of why the 30 days has become an inhibitor on filing, and with that, I would take questions at this time, or we can wait. [LB690]

SENATOR PAHLS: Seeing no questions, we're ready for the first proponent. [LB690]

COLLEEN BYELICK: (Exhibit 1) Chairperson Pahls, members of the Banking, Commerce and Insurance Committee, my name is Colleen Byelick. That's C-o-l-l-e-e-n B-y-e-l-i-c-k. I am the associate general counsel with the Secretary of State's Office, and on behalf of Secretary of State John Gale, we'd like to thank Senator Langemeier for introducing and sponsoring LB690. As Senator Langemeier has stated, LB690 extends from 30 to 45 days the time in which a trade name applicant has to publish their trade name registration in a newspaper and file that proof of publication with our office and with the county. We have received comments from the public that the current 30-day time period does not provide enough time to meet the publication and filing requirement. The process an applicant goes through to publish their trade name involves several steps. First the Secretary of State's Office sends the applicant a file stamp copy of their registration which the applicant sends to a local newspaper for publication. The

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newspaper publishes the notice and has to send proof of the publication to the applicant. The applicant then has to file that proof of publication with our office and with the local county clerk. The consequence of failing to file the proof of publication within the required time period is cancellation of the trade name registration and loss of the \$100 filing fee. We believe that 45 days provides a more reasonable time period to meet the publication and filing requirements given the number of steps involved with publication. We would urge that the committee advance LB690. Thank you. And I'm open to any questions you might have. [LB690]

SENATOR PAHLS: Do I see any questions? I see none. Thank you for your testimony. Any more proponents? Opponents? Neutral? Closing? Senator has waived closing. That concludes the hearing on (LB)690. Now we are ready for (LB)691. Senator Langemeier, the floor is yours. [LB690]

SENATOR LANGEMEIER: Chairman Pahls and members of the committee, my name is Chris Langemeier. It's C-h-r-i-s L-a-n-g-e-m-e-i-e-r. I'm here to do the introduction on LB691 which I have introduced on behalf of the Nebraska Real Estate Commission, and again, they will have individuals behind me to testify to give you more examples on what they would like to do. LB691 creates an authority for the Nebraska Real Estate Commission to assess administrative fines against unlicensed persons conducting and acting as a real estate licensee in Nebraska. We currently have a real estate licensing process which I...full disclosure. I am a real estate broker, and we do license individuals that engage in real estate practices in Nebraska. With the advent of the Internet and many advertising tools out there, there's a number of people, and they will give examples of situations where people are acting as marketers of real estate that are not licensed. We have no way to prevent them from doing that. The Real Estate Commission is asking for a tool to allow people if you want to get involved in the real estate, follow their criteria, learn the education, the process, and participate as a licensed agent in Nebraska. With that, I'll conclude. I know there's others to testify. [LB691]

SENATOR PAHLS: Okay. Seeing no questions, Senator. Proponents? Just by a show of hands, how many proponents? Two proponents. I like to have you move forth. That way...okay. Page. [LB691]

GREG LEMON: (Exhibit 1) Thank you, Chairman Pahls and members of the Banking, Commerce and Insurance Committee. For the record, my name is Greg Lemon, G-r-e-g L-e-m-o-n. I'm director of the Nebraska Real Estate Commission, testifying in support of LB691. I want to thank Senator Langemeier for introducing the bill. He did introduce it at our request. It was approved and supported by the Nebraska Real Estate Commission. As stated, the bill provides for the Real Estate Commission to collect administrative fines. Very briefly, how the process would work would be if we have a report of unlicensed activity, we would send out a letter saying that we had a report of unlicensed

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activity, asking them to cease and desist. In any unlicensed activity, they would have ten days to comply. If they did not comply in ten days, then the penalties of either unearned commissions or \$1,000 a day would begin to be assessed, and to be enforced, we'd have to go through the administrative hearing process. So I want to demonstrate due process and all that through the process. The why of the bill, and I think members of the real estate industry will testify to this as well, 10 years ago, 20 years ago, if somebody wasn't licensed, and they were engaged in real estate practice, there was a lot of more ease of self-policing. I mean that person was probably in the community. Even in a large community, people knew the person wasn't licensed, and the licensees would report them to us and not do business with them. With the advent of the Internet, we sort of have a twofold problem. One, we have out-of-state people who list Nebraska properties in violation of the license law. Two, the way people shop for real estate has changed. In addition to driving around the neighborhood or looking in the paper or working with a licensed real estate agent, a lot of them do the shopping on the Internet, so it's harder to self-police; the people are a little harder to track down. And so we want a new enforcement tool to work on this and discourage this type of activity. There are at least 13 other states that have similar enforcement provisions. The penalties--some of the states are greater; some are lesser. Iowa can collect up to 10 percent of the purchase price of the property if it's an unlicensed person, so their penalty is probably a little higher than ours. Some states are \$1,000 per violation rather than \$1,000 per day, but it is being done in other states. Lastly, I do want to mention that we did request an Attorney General's opinion on this bill. I'm requesting...I'm expecting that opinion to come in the next week or so. The question that we asked was the ability of the Real Estate Commission, the ability of the state of Nebraska to extend jurisdiction over out-of-state persons who were conducting this type of activity. My informal conversations with the Attorney General's Office has indicated that they will say it will be dependent on the circumstances, but that we should be able to extend that jurisdiction in many instances and so the bill should work. But I certainly wanted to let the committee know that, and if they want to await that opinion before they act on the bill, I certainly would understand that, and I wanted to let you know about that. With that, I will...I did forget about your instructions to sit in the chair, but I'll try to remember your instructions about brevity, and I will conclude my testimony and entertain any questions the committee may have. [LB691]

SENATOR PAHLS: Any questions for Mr. Lemon? Senator. [LB691]

SENATOR PIRSCH: Oh, thanks. Well, I'll just ask, are there...you're saying this is mainly within the context of the problems you've experienced of the Internet. Right? Properties listed in other jurisdictions but advertised to Nebraskans, or how is this manifested? [LB691]

GREG LEMON: Nebraska property...generally speaking, it would probably be a Nebraska property,... [LB691]

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SENATOR PIRSCH: Okay. [LB691]

GREG LEMON: ...owned by a Nebraskan, located in Nebraska, that somebody out of state, in state, I mean, they could be anywhere, but they have a site where they list property, and they've listed this Nebraska property for sale. And if you're going to be selling property for somebody else, that's the basic provision of the license law; you need to be licensed. [LB691]

SENATOR PIRSCH: Okay. Any...so the jurisdiction comes with Nebraska, any Nebraska property so. [LB691]

GREG LEMON: Yeah, yeah. [LB691]

SENATOR PIRSCH: And right now, what authority or how...if you become aware of violation of such, what kind of...what things can you do in terms of...? [LB691]

GREG LEMON: That's a very good question. There is a criminal provision for a Class II misdemeanor which I believe is a maximum of \$1,000 fine, six months in jail, and certainly, that's a good enforcement tool. But unfortunately, the county attorneys, and I am not blaming them at all for this, but they probably have more concerns about, you know, violent crime and things like that than they do about unlicensed real estate activity, so this really, you know, between the resources and the priorities they have, this shifts the burden on us or at least gives us a tool that we could use to pursue these things. [LB691]

SENATOR PIRSCH: That's essentially the only other tool in the arsenal is this criminal.... [LB691]

GREG LEMON: I believe there is also some injunctive power granted to the Attorney General's Office. [LB691]

SENATOR PIRSCH: And with respect to the fines, it's \$1,000 per day, and you'd have some administrative process. To whom would the fines flow and...? [LB691]

GREG LEMON: Like any civil penalty, to support the common schools as provided in the Constitution. [LB691]

SENATOR PIRSCH: And very good. I think that's all the questions. [LB691]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB691]

GREG LEMON: Thank you very much. [LB691]

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SENATOR PAHLS: Next proponent. [LB691]

RITA GRIESS: Good afternoon, Chairperson Pahls and senators. My name is Rita Griess, spelled R-i-t-a G-r-i-e-s-s. I am a real estate broker with Home Real Estate here in town. I am currently president of the Nebraska Realtors Association, and I am in a six-year term, having served four years as a commissioner with the Nebraska Real Estate Commission as well. But I am here, speaking on behalf of the Nebraska Realtors Association today, and I'm here to give you a couple of examples from the field that our members have experienced that show a growing need for this type of legislation. We have currently a licensed real estate broker from California who solicited on his website listings of Nebraska real estate and promised local MLS placement. What he failed to mention was that the local MLS placement was in California, and the property is in Nebraska. And there currently are properties across the state of Nebraska listed, and a cease and desist order was given by the Real Estate Commission, but it was ignored with no response. We also, with the growing numbers of foreclosure properties, are noticing real estate auctioning companies that are hooking up with other listed property and taking over and auctioning off the property, but, again, they have no license in the state of Nebraska, so they are selling real estate without a license. There are also instances, as have been historically the case, of people failing to renew their license or suspended licenses where they continue to act, but above all, realtors across the state of Nebraska are noticing an increase in this, and it's mainly precipitated by the Internet, so we strongly support the bill and feel like harsher measures are needed than what is currently available. Thank you. Any questions of me? [LB691]

SENATOR PAHLS: Senator Pirsch. [LB691]

SENATOR PIRSCH: Is it in these real-life illustrations, is it ever difficult to identify who is the actor behind these auctions, behind the advertising, the violative advertising? [LB691]

RITA GRIESS: I suppose it could be, but I think in the experiences I have noted, no, it is not. They are traceable. [LB691]

SENATOR PIRSCH: Pretty up-front about who it is and where they're at, and how to... [LB691]

RITA GRIESS: Um-hum. Because they are going ahead and functioning to sell the property, so they're reachable. [LB691]

SENATOR PIRSCH: Very good. Thank you. [LB691]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB691]

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RITA GRIESS: Thank you. [LB691]

SENATOR PAHLS: Any more proponents? Opponents? Neutral? Closing. [LB691]

SENATOR LANGEMEIER: Thank you, Chairman Pahls, and I'll be very brief. I want to make it clear that in Nebraska, you as an individual can sell your own property without being licensed. These are for individuals that are engaging in the act of selling real estate for a fee for someone else, so I just want to make sure you as individuals can still sell your own property at will within everything we're trying to do. Thank you. [LB691]

SENATOR PAHLS: Thank you, Senator. That concludes the hearing on (LB)691. We are ready for hearing (LB)736. Senator Pirsch, the floor is yours. [LB691]

SENATOR PIRSCH: Oh sure, no hurry. Thank you, Chairman Pahls, members of the Banking, Commerce and Insurance Committee, I am state Senator Pete Pirsch. Last name is spelled P-i-r-s-c-h, representing the 4th District. I am the sponsor of LB736. The provisions of the Nebraska statutes grant a condominium homeowners' association a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due, and a notice containing the dollar amount of such lien is recorded in the office where mortgages are recorded. The statute further establishes the priority of a condominium homeowners' association lien in relation to other types of liens including a first mortgage or deed of trust against the unit and liens for real estate taxes or other governmental assessments or charges against the unit. While Nebraska law sets forth the rules governing the establishment and priority of condominium homeowners' association liens, there are currently no statutory provisions that address the establishment and priority of the liens of other types of homeowners' associations such as a townhome owners' association or a one-to-four-family residence homeowners' association. LB736 would establish provisions relating to the establishment and priority of liens that are identical to the provisions of the homeowners' association statute other than condominium homeowners' associations. There will be others who will testify on this bill, so. [LB736]

SENATOR PAHLS: Seeing no questions, thank you, Senator Pirsch. [LB736]

SENATOR PIRSCH: Thanks. [LB736]

SENATOR PAHLS: Proponents? How many proponents do we have? Opponents? Okay. [LB736]

ROBERT HALLSTROM: (Exhibit 1) Chairman Pahls, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB736. As Senator Pirsch has indicated,

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LB736 is designed to create provisions of law that would relate to the attachment or creation of a lien for a homeowners' association other than a condominium homeowners' association. I've referenced in my testimony the provisions of Nebraska Revised Statute section 76-874 which established for condominium homeowners' associations the manner in which their lien for fines and unpaid assessments attaches and also creates a system for the priority of those liens in relation to other types of liens including a first mortgage or deed of trust against the unit or liens for real estate taxes and other governmental assessments or charges against the unit. The issue or the problem that we have here, again simply put, is that we have no statutory framework that applies for the attachment or the priority of homeowner association liens other than condominium association liens under (section) 76-874. So this bill would create or mirror the provisions of (section) 76-874 in order to provide a similar system of attachment and priority for these other types of homeowners' association liens. You might ask what problems have arisen, and there have been some that have been encountered by practicing attorneys in the course of trying to determine the priority of a traditional lenders' lien or for a homeowner who's trying to determine if they are taking property subject to an existing homeowners' association lien. And in the course of these attorneys contacting the NBA, they've suggested that they've had under similar facts and circumstances different decisions that have been rendered by district courts, simply by virtue of the fact that there isn't a statutory framework to provide any guidance to the courts. In my testimony starting at page 2, I've gone over about six or seven different issues that have caused problems either for a lender or for a subsequent buyer of a townhouse unit or a one- to four-family residential property that's subject to association declarations. In essence, they boil down to a few main concepts. When you look at section 76-874, I referenced earlier in my testimony that that creates the attachment of a lien which basically under that statute attaches at the time that the assessment or fine becomes due, and a notice containing the dollar amount of the lien is recorded in the office where mortgages are recorded. And, secondly, as to the priorities, if you take simply a first mortgage or a deed of trust, a first mortgage or deed of trust can take priority if it is filed prior in time to that assessment or fine becoming delinquent. What's happened in these non-condominium homeowner association lien challenges is that the homeowners' association has maintained in one instance that they take priority because, for example, the declaration that creates the homeowners' association, while it makes their lien subordinate to a first mortgage, is silent or does not reference the priority vis-a-vis a deed of trust. And so the fact that it's silent regarding the deed of trust means that if the lender forecloses in a nonjudicial fashion under the power of sale that's authorized under a deed of trust that they have not foreclosed the lien, that causes the lender problems. It also causes the subsequent buyer problems because the argument if the court buys it, and it has been bought on at least one occasion, maintains that the home is still subject to that homeowners' association lien. We've had situations where the homeowners' association has indicated since there's no statute, they're not required to record the nature of their lien. Obviously, as you might suspect, what this leads to is a hidden lien. The nonjudicial foreclosure takes place; the homeowner gets

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comfortably in the unit, and all of a sudden there's a claim that even though it was never filed of record, the homeowners' association lien was not foreclosed, and therefore, the subsequent homeowner takes subject to that lien. So those are the types of issues. There's also been filing of liens even after the foreclosure is completed. They come in after everything is cut and dried, and they come in and say, well, we can still file our lien and make it subject to the home against the new homeowner. So we think we will simply, under LB736, provide clarity in the law where none exists. We'll do so by mirroring a statute that exists currently that works quite well in determining the attachment and priority rules that apply to condominium homeowners' association liens and simply apply them to all other types of homeowner association liens. I think I said homeowner association liens 36 times during my testimony, but, nonetheless, I'd be happy to address any questions that you might have. [LB736]

SENATOR PAHLS: I see no questions. Thank you. Thank you, Bob. [LB736]

ROBERT HALLSTROM: Thank you. [LB736]

SENATOR PAHLS: Any more proponents? Opponents? Neutral? [LB736]

SENATOR PIRSCH: I think you've heard enough of the word homeowners' association (inaudible). [LB736]

SENATOR PAHLS: Okay, so Senator Pirsch has closed on this hearing. We are finished with (LB)736 and we will begin with (LB)751. [LB736]

SENATOR PIRSCH: Oh, Chairman Pahls, why don't you...? [LB736]

SENATOR PAHLS: Thank you, Senator Pirsch, members of the committee. (LB)751 may sound like something that has happened from our past. Senator Langemeier, I think you were involved with this bill also to some degree. My name is Rich Pahls, P-a-h-l-s. I represent District 31 of Omaha. (LB)751--the bill would do one thing. It would remove recently enacted nonuniform provisions from a section of Article A (sic: 9) of our Uniform Commercial Code. Article 9 governs the secure transaction. The bill would amend UCC Section 9-506 which governs the effect of errors and omissions in a financing statement. A financing statement is what a lender files with the Secretary of State to establish priority of its secured interest in personal property that serves as collateral for an obligation. UCC Section 9-506 was amended by the Nebraska Legislature in 2008 to provide that a financing statement with minor errors or omissions is not seriously misleading if a search of the debtor's correct last name in the records of the filing office would disclose the financing statement. The 2008 amendment to this section where nonuniform will not to have become applicable until September 2, 2009. This section was further amended by the legislation in 2009 to provide that the 2008 amendments would not become applicable until September 2, 2010. Well, guess what?

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Here we are in 2010. LB751 would repeal the 2008 nonuniform amendments before they could ever become effective. And the reason why commentators around the country have been expressing concerns that a number of states, with Nebraska being one of them, have been enacting a mixed bag of provisions regarding the searching of debtors' name. We do admit this was a gray area in revised UCC Article 9. It has been urged that states put their efforts on hold and give the Uniform Law Commissioners some time to come up with uniform amendments regarding this matter for all states to consider. It is expected that the Uniform Law Commissioners will be considering these amendments regarding this and other related matters as recommendations to all states yet this year. LB751 would return Nebraska UCC Sections 9-506 to its original uniform text pending completion of the Uniform Law Commissioners of their work. I would like to see this bill to be advanced. Basically, in a nutshell, we are reverting back to where we were a couple of years ago. They're saying that we are sort of ahead of the game, and they want to make sure everything is uniform. [LB751]

SENATOR PIRSCH: Very good. Thank you, Chairman Pahls. Are there any proponents for LB751? [LB751]

ROBERT HALLSTROM: (Exhibit 1) (Vice) Chairman Pirsch, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I'm here today as a registered lobbyist for the Nebraska Bankers Association, testifying in support of LB751. Senator Pahls has done a nice job of describing both the path that has brought us to this point and in discussing what the original nonuniform changes to UCC Section 9-506 consisted of. Just to kind of recap, in 2008, we had along with a number of other states, become frustrated with the manner in which the individual debtor's name was to be determined under Article 9 of the Uniform Commercial Code. The Legislature at that time adopted the nonuniform amendments regarding the searches under the debtor's correct last name that Senator Pahls referenced, and there were a couple of other states--Texas and Tennessee--that had done different, but nonuniform amendments, nonetheless, in this area of the law. Late in the 2008 session, Senator Langemeier allowed us to commandeer his A-bill to delay the effective date until 2009 of the provisions that had been adopted. Last session we came back again to further delay that until September of 2010. Since that time, the National Conference of Commissioners on Uniform State Laws have been working somewhat diligently to provide a uniform solution that can be adopted by all 50 states on this issue. We have just...I've been on a task force of the American Bankers Association to review this issue and within the last week they appear to have made final recommendations that I think will be supported by the banking industry with regard to the resolution of this issue. We are hopeful that they will get through their process in time for the introduction of legislation to adopt the uniform suggestion in the next session, the 2011 session of the Legislature. We did listen to some of the members of the committee last year who suggested, why do you continue to delay implementation of this if you don't intend to ultimately carry through with it? And so, as a result, we've switched gears a bit, and we have suggested that we repeal the

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language that's in the statute, but has not yet been implemented which will take us back on the face of the statute to where we existed pre-2008. With that, I'd be happy to address any questions of the committee. [LB751]

SENATOR PIRSCH: Very good. Are there any questions for this testifier? Seeing none, are there any other proponents of LB751? Seeing none, we'll move on. Are there any opponents for LB751? Any desiring to testify in a neutral capacity? Okay. Very good. [LB751]

COLLEEN BYELICK: Senators, as I previously stated, my name is Colleen Byelick. I'm the associate general counsel with the Secretary of State's Office. On behalf of the Secretary of State's Office, we just wanted to testify that we've been aware of the legislation, you know, that we agree with attempting to find a universal approach, since Revised Article 9 has been adopted in all of the states, and as a uniform law. So we've kind of been aware of the ups and downs. This is putting us back to where we currently are at, so it's not going to change anything currently that we do within our office, so we just kind of want to let you know that we've been aware of it, and we kind of support a uniform approach to looking at this issue. [LB751]

SENATOR PIRSCH: Very good. Are there any questions based on this testimony? Don't see any. Thank you very much for this, and Chairman Pahls. [LB751]

COLLEEN BYELICK: Thank you. [LB751]

BILL MARIENAU: Make sure... [LB751]

SENATOR PIRSCH: (Exhibit 2) Oh, yeah, before we close, I just wanted to announce the receipt of a letter in favor of LB751 for the record from the Nebraska Cooperative Council signed Robert Andersen on January 19, 2010. (inaudible) Chairman Pahls waives his closing. That will end this hearing on LB751. We will proceed then to LB752. Chairman Pahls, you are the sponsor again, if you'd like to start at your leisure. [LB751]

SENATOR PAHLS: Thank you, Senator Pirsch and members of the committee. Maybe we can create a little more excitement on this bill. My name is Rich Pahls, P-a-h-l-s. I represent District 31 in Millard, Omaha. LB752--Trust companies and trust companies departments of banks must pledge securities to the Department of Banking to maintain their status as trust companies or trust departments. Last year in a bill introduced at the request of the department, the Legislature increased the amount of securities that must be pledged. That bill created a sliding scale in which the amount of securities to be pledged is based on the market values of trust assets held by the institution. The intent was to provide greater security in the event of a liquidation of the institution. Now that brings us to this bill. LB752 would repeal the restrictions on pledges by trust companies and trust departments of certificates of deposit. The bill would also include the

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requirements that a trust company or trust department which has pledged certificates of deposit shall not assign, withdraw, or redeem them without substituting other securities of equal value. I do believe we will have testimony following to explain this in more detail. [LB752]

SENATOR PIRSCH: Very good. And I'll just ask this, though. I see no hands. Are there any questions for Chairman Pahls? Seeing none, thank you, Chairman. Are there any proponents of LB752? Welcome. [LB752]

JOHN GUENZEL: I'd be one of those, Senators. Thank you. My name is John Guenzel. I'm president of First Nebraska Trust Company. My name is spelled J-o-h-n G-u-e-n-z-e-l. Thank you. We have offices located in Lincoln and Omaha. The new increased pledging requirements have caused us to have more interest in what qualifies as an appropriate pledge, and it's what brings me here today to speak in favor of certificates of deposit being used to meet the pledging requirements for a couple of reasons. First on my list would be the ease of administration, I would hope for both the Department of Banking and for the trust companies providing these pledges. The certificates of deposit could be placed in the safekeeping accounts and pledged appropriately, and it wouldn't be necessary at their maturity to replace them. They could be automatically renewed which would make life easier, I think, for all parties concerned. Secondly, it solves another problem that can exist if we make use of other approved securities such as bonds. The current market climate makes Nebraska certificates of deposit a very favorable investment for our trust clients as well as us as a trust company. They offer above market rates of those other securities that are approved such as United States Treasuries, federal agency bonds, local municipality bonds, and they keep our money local which we think is a very good thing to do. The bonds will fluctuate in market value, and as you, I'm sure are aware, we're at kind of all time low interest rates. If interest rates were to return to normal, and we had pledged a bond today at current interest rates, that bond's market value would drop, and we would run the problem of possibly being out of compliance. If the value of that bond dropped significantly, we would have to add additional collateral into that pledge to bring our pledged amount which ours has tripled from \$100,000 to \$300,000 with this new legislation, so it becomes a significant amount of dollars that we want to try to manage efficiently. Lastly, we think keeping invested in Nebraska and having FDIC insurance on top of the already good investment in a bank CD offers the state assurance that the funds would be there in case a pledge was needed to be called upon. It offers a good investment return for those putting up the deposit. We also think that we feel comfortable that the Department of Banking is holding that as a pledge because they're examining most likely the banks that we'll be buying the CDs from, so if they're concerned about their pledge we should have concern about our CD, so there's some real benefits to allowing CDs to be used, in this case for meeting these pledge requirements. I hope that you will consider that, and I'd answer any questions you may have. [LB752]

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SENATOR PIRSCH: Thank you, Mr. Guenzel. Are there any questions for Mr. Guenzel? Seeing none, thank you very much and we'll move on to our next proponent of LB752. [LB752]

JOHN GUENZEL: Thank you. [LB752]

ROBERT HALLSTROM: (Exhibit 1) Senator Pirsch, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I am a registered lobbyist for the Nebraska Bankers Association, appearing in support of LB752. As Senator Pahls indicated, we are essentially trying to reinstate the ability of trust companies and bank trust departments to utilize certificates of deposit in complying with the pledging requirements that are established under state law. What we have attempted to do in order to address some concerns that have been raised historically by the Department of Banking with regard to the use of certificates of deposit is to provide language in the statute which on the face of LB752 would specifically prohibit a trust company or bank trust department from assigning, withdrawing, or redeeming a certificate of deposit that has been pledged without substituting other securities of equal value in lieu of the certificates of deposit that have been assigned, withdrawn, or redeemed. This concept is very similar to provisions of the statute that apply to banks who are required to pledge for public funds in terms of having to substitute securities or permissible collateral of like value at any time when some of the collateral is removed. With regard to the history surrounding this issue, and I think the department is going to come up and testify and will give their perspective on this issue. Back in the early nineties, I think 1993 was when the law was changed to prohibit the use of certificates of deposit to meet the pledging requirements. At that time, the banking department had expressed concern that in some cases, upon examination of the trust company or the bank trust department, they had discovered that a CD that had been pledged had been liquidated, and that there had not been a replenishing of the account, so to speak, to have the collateral requirements complied with. And so, at that time, we removed the CDs as a permissible form of collateral. As Mr. Guenzel pointed out, I think in today's market environment, there are a number of reasons to look favorably upon this proposal. I think there are banks out there who for liquidity reasons are looking for other institutions that would acquire or purchase certificates of deposit from them. Mr. Guenzel noted the issue with the potential for rising interest rates to make it more convenient to have certificates of deposit as security rather than bonds whose market value may fluctuate downward and require some type of ongoing substitution or replacement in that particular situation. I would note for the committee's consideration that we have met recently just this morning with the Department of Banking. We have heard some of their specific concerns and desires to have more complete protections in cases where trust companies would be using certificates of deposit if LB752 were to be adopted. I would ask the committee to temporarily hold the bill to allow us to work with the department in putting together some additional language that will provide them, hopefully, with the

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comfort level to be able to support a resolution of this issue that is favorable both for the industry and for the protection of the trust assets for which the pledging requirements apply. Be happy to address any questions that the committee might have. [LB752]

SENATOR PIRSCH: Thank you. Are there any questions? [LB752]

ROBERT HALLSTROM: Thank you. [LB752]

SENATOR PIRSCH: Seeing none, thank you for testifying, and we'll move on. Are there any other proponents of LB752? Seeing none, we'll move on to opponents. Is there anyone here today to testify against LB752? Seeing none, is there anyone here to testify in a neutral capacity with respect to the bill? Director. [LB752]

JOHN MUNN: (Exhibit 2) Thank you. (Vice) Chairman Pirsch, members of the Banking, Commerce and Insurance Committee, my name is John Munn. Last name is spelled M-u-n-n, and I'm Director of the Nebraska Department of Banking and Finance. I'm appearing today on behalf of the department in a neutral position regarding LB752. The Nebraska Trust Company Act requires that all trust companies and depository financial institutions with trust departments operating in Nebraska pledge securities to the department. These securities are to be used by the department to make up losses and obligations of a trust company in accordance with section 8-202 of the act. Primarily, the securities are to serve as a backstop in the worst possible case scenario--failure of the institution. To understand the process of pledging securities to the department, it may be helpful to compare the more familiar process of the pledges that financial institutions must make to their public funds depositors, such as cities, to secure funds that exceed the federal deposit insurance limit. The city as pledgee does not take possession of the security pledged to it. Rather, it will receive a receipt documenting that the institution holding the city's deposit has placed security with another institution, known as a safekeeper, and the safekeeper has noted the pledge to the city. The city will have to sign a written release before the safekeeper allows the security to be released back to the institution which holds the city's deposit. This is the same process that the department uses as it does not take possession of any security pledged to it. The Trust Company Act provides that with five exceptions, any securities that are eligible for investment by these companies and institutions are eligible for pledge to the department. One of these exceptions is the subject of this bill. LB752 would reinstate certificates of deposits or CDs as one of the instruments acceptable for pledge to the department. Does the senator have a copy of the... [LB752]

SENATOR GLOOR: Yeah. [LB752]

JOHN MUNN: Okay, great. [LB752]

SENATOR GLOOR: Yes, thank you, John. [LB752]

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JOHN MUNN: I'm on the last paragraph on page 1. Prior to 1993, certificates of deposit were eligible for pledge to the department. In that year, a comprehensive rewrite of the Trust Company Act was adopted by the Legislature. That rewrite reflected an initiative by the department which brought together representatives of trust companies, state banks with trust departments, and the Nebraska Bankers Association. As part of the rewrite, and at the specific request of the department, certificates of deposit were added to the list of instruments ineligible for pledging. The department requested the 1993 legislative change because it had experienced instances where institutions which had pledged certificates of deposit to the department had convinced the safekeeper to cash out the certificates without obtaining a release of the pledge from the department and without the pledge of a replacement security. As certificates of deposits are essentially cash instruments, it is much easier for an employee of a pledging institution to obtain the instrument without having a release from the department than it would be for any other pledged instrument. It is also much more likely that an employee of the safekeeper will err and allow this to occur. The safest way to know that a pledged CD will be available is for the person to whom it is pledged to take physical possession. However, there is still no guarantee that the issuing institution will not pay it out even though no release has been signed. The department does not currently have the capacity to properly safekeep such instruments, and we do not think it appropriate to maintain such instruments on premise. This bill does not provide authority to the department to contract with an outside party for safekeeping. It sets no restrictions on the type and denominations of certificates, and it provides no safeguards necessary because of the cash nature of the instrument. Section 3 of LB752 was promoted as an additional safeguard to address the concerns of the department. However, this is already standard practice of the department. The department does not release a security until an acceptable substitution of securities has been made. As currently written, this legislation has the potential for leaving Nebraskans who have placed assets in trust with an institution we supervise at risk of loss in the event of the failure of that institution. Four trust companies are currently chartered in Nebraska. Unlike the banks and savings associations which have trust departments, none of the trust companies are eligible for federal deposit insurance, so the pledged securities take on added importance for those companies. There is a very real and relatively recent example of this. In 2003, Presidents Trust Company, a South Dakota state-chartered trust company, operated its primary office in Nebraska. Nebraska's Interstate Trust Company Office Act requires compliance with the pledging requirements of sections 8-209 and 8-210, so the company pledged a security to the department in order to operate in Nebraska. The company was placed into receivership by the South Dakota Banking Commission. Due to dishonest business practices, the only sizable asset remaining for distribution to trust accounts was the \$100,000 security pledged to our department. The department submits that this issue requires much more study before any change to current law would be affected. We have had discussions with the Nebraska Bankers Association regarding the department's concerns and would certainly be willing to

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review any amendment in this regard by the NBA that provides the same protection to Nebraskans for pledged certificates of deposit as exists for pledged marketable securities. I therefore respectfully request that LB752 not be advanced at this time. I'll be happy to answer any questions. [LB752]

SENATOR PIRSCH: Thank you, Director. Are there any questions? Senator Pankonin. [LB752]

SENATOR PANKONIN: Thank you, Senator Pirsch. Director Munn, this has been helpful, and I just want to make sure I understand. Does this bill apply to these four trust companies that are not associated with banks or savings and loans or savings associations...? [LB752]

JOHN MUNN: It would apply to all. [LB752]

SENATOR PANKONIN: It would apply to all. [LB752]

JOHN MUNN: Um-hum. [LB752]

SENATOR PANKONIN: But your biggest concern is the four that aren't associated with banks or are they all of them? [LB752]

JOHN MUNN: Biggest concern is taking physical possession of an instrument that is pledged in order to meet the requirement of the department. [LB752]

SENATOR PANKONIN: Okay. And does your department examine these four trust companies that are not part of the banks? [LB752]

JOHN MUNN: Yes, we do. [LB752]

SENATOR PANKONIN: You do, and you're probably the only regulatory agency that does. [LB752]

JOHN MUNN: Correct. [LB752]

SENATOR PANKONIN: Okay. Just some assumptions I was trying to make and make sure I understand this. I appreciate your testimony and know a little bit about what you're up against and, hopefully, you'll have successful negotiations. [LB752]

SENATOR PIRSCH: Are there any other questions? Seeing none, I thank you for your testimony here today, Director, and we'll move on. [LB752]

JOHN MUNN: Thank you. [LB752]

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SENATOR PIRSCH: Are there any other testifiers here to testify in a neutral capacity? Seeing none, is there any...Chairman Pahls, do you want to close? []

SENATOR PAHLS: My closing would say I think we are in negotiations. Thank you. [LB752]

SENATOR PIRSCH: Thank you, Chairman. And with that, let's see, anything else... [LB752]

BILL MARIENAU: No. [LB752]

SENATOR PIRSCH: Okay. Well, it looks like we have no further bills listed for hearings today. Is that what I understand? So I'll turn it back to Chairman Pahls. [LB752]

SENATOR PAHLS: Thank you, Senator Pirsch. You guys have a good day. We are finished. Thank you. [LB752]