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April 14, 2003      LB 494

Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Quandahl, on LB 494.

SENATOR QUANDAHL: Thank you, Mr. President, members of the body. LB 494 was heard by the Banking, Commerce, and Insurance Committee on February 10, 2003. It was advanced to General File on an 8-0 vote. In short, LB 494 amends the Uniform Commercial Code Section 9-516 regarding secured transactions. LB 494 would amend the current Uniform Commercial Code Section 9-516 by adding a new subdivision, that being (b)(8), which would provide that filing does not occur with respect to a record that a filing officer refuses to accept because, in the case of a financing statement or an amendment to a financing statement, the same person or entity is listed as both the debtor and the secured party. Just a little bit of background. For an effective secured transaction to take place in the state of Nebraska, basically two things are needed. First, you need a signed security agreement signed by all the parties. And then second, you need a properly filed UCC-1 financing statement that goes to the Secretary of State. Secretary of State is a centralized filing depot for records of these sort. And that gives notice to the world of this secured transaction. Well, now why do we need an LB 494? On a financing statement, it serves no legitimate commercial purpose to list the same person or entity as both the debtor and a secured party. Second, filings of this type, that being the ones that list a same party as a secured party and the debtor, they thwart the legitimate bankruptcy process by clouding title, and most often are utilized in an attempt to avoid legitimate creditors. The Secretary of State has seen filings of this type basically increase over the past couple of years. And under the current UCC Chapter 9, the Secretary of State is obligated to file these. But under LB 494, such a financing statement listing the same person as both a secured party and a debtor would not be effectively filed with the Secretary of State. The operative language is actually just a couple of lines. It's found on page 4 of the bill, lines 1 through 3, subsection (8): "in the case of a financing statement or an amendment to a financing statement, the same person or entity is listed as both debtor