

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

COMMITTEE ON BANKING, COMMERCE AND INSURANCE
January 31, 2005
LB 450, 491, 466, 533

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, January 31, 2005, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 450, LB 491, LB 466, and LB 533. Senators present: Mick Mines, Chairperson; Pam Redfield, Vice Chairperson; Mike Flood; Jim Jensen; Joel Johnson; Chris Langemeier; LeRoy Louden; and Rich Pahls. Senators absent: None.

SENATOR MINES: We're ready. Good afternoon. Welcome to the Banking, Commerce and Insurance Committee. My name is Mick Mines. I'm Chairman of the committee. I hail from Blair. Please turn off your cell phones, beepers, or Sally will be in your face. Thank you, Sally. Let me introduce the members of the committee that are with us thus far. On your left starting at the end is Senator Rich Pahls from Omaha and Senator Joel Johnson from Kearney. On your right, my left is Senator Chris Langemeier from Schuyler. On my right, our committee counsel Bill Marienau. On my left, Jan Foster, the committee clerk. The committee will take up the bills listed in order and I encourage you throughout the process; this is your part of the process. This is your public part, so please feel free to come forward and speak. However, to facilitate our meeting I would ask that you follow a few practices and rules, complete your testifier sheets that are either on the table in front of me or at the door. And when appropriate, you need to sign in for people who wish to express their support or opposition. We have a sheet that is available if you don't wish to testify. Our process is the senator that's introducing the bill will testify first. We'll hear that testimony. Then we'll entertain testimony from proponents, opponents, and those in a neutral capacity. And we'll do everything we can to give you all the time you need and then I'll start hollering if you're taking more than your fair share. Then following testimony the senator will close. If you have a prepared statement, please hand it to Jeff and I forgot to introduce Jeff again. Our page today is Jeff Armour from Ogallala and Jeff will take your prepared testimony for distribution to the committee. When you come to testify, please spell your first and last names and if you're next in order, please come to our on-deck chair and we will get you next. So, again, welcome. We've been joined by Senator Jim Jensen

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 2

LB 450

from Omaha, Senator Pam Redfield from Ralston, and Senator Langemeier is still all by himself. With that, I'd like to open the public hearing on LB 450. Senator Wehrbein, welcome.

LB 450

SENATOR WEHRBEIN: Yes, sir, Senator Mines. Good afternoon, and members of the banking committee. My name is Senator Roger Wehrbein, W-e-h-r-b-e-i-n, here to introduce LB 450, very, very, very simple bill. I'm going to simply read the introductory reason for introduction. LB 450 would eliminate the requirement that application for trade name registrations be notarized. Based upon review of Nebraska's trade name laws this provision is not necessary and most other business filings with the Secretary of State do not require notarization. Passage of the bill would remove an impediment to electronic filing of trade name applications and streamline the application process. Secretary of State Office here to answer detailed questions, if you have them, and that's about all I have to say on the subject.

SENATOR MINES: Thank you, great introduction I might add. (Laugh) Thank you. Members of the committee, do you have questions for Senator Wehrbein? Senator Redfield.

SENATOR REDFIELD: Senator Wehrbein, are you guilty of making government more speedy and efficient?

SENATOR WEHRBEIN: Yes, I'm going to try to be (laugh) and less expensive, too. I mean, I suppose they're going to put notary publics out of business some of these days but, because we keep dropping that but I think it's fine.

SENATOR MINES: That's okay.

SENATOR WEHRBEIN: Yeah.

SENATOR MINES: Any other questions for the senator? Thank you very much.

SENATOR WEHRBEIN: And I'll waive closing.

SENATOR MINES: I understand.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 3

LB 450

SENATOR WEHRBEIN: Thank you.

SENATOR MINES: Thank you. Joining us is Senator Mike Flood from Norfolk. May I see a show of hands of those in favor of LB 450? I see one. Those in opposition? I see none. And those in a neutral capacity, I see none. The Lone Ranger.

SENATOR JOHNSON: A ranger.

SENATOR MINES: A ranger. The lone arranger.

GREG LEMON: Thank you, Senator Mines and members of the Banking, Commerce and Insurance Committee. My name is Greg Lemon, L-e-m-o-n. I'm the Chief Deputy Secretary of State representing the Secretary of State's Office and John Gale here today to testify in support of LB 450. Senator Wehrbein summed it up fairly well. He didn't say a whole lot about the bill, but there is not a lot to the bill. There is a movement afoot. The CIO's Office, and at least the former governor and presumably the present governor, are trying to move towards a one-stop, on-line business registration system and we don't have a way of doing notarizations, accepting those electronically. And so this was an impediment as was very well stated to streamlining that process. There are actually some penalties in law for falsifying documents that you submit for government filing so there's still some teeth; there's some ways to go after people if they were to do something wrong. So we don't think there's really any risk with the bill and we think it would streamline and make the process easier even for those people that still process or file on paper. With that I would take any questions that the committee might have.

SENATOR MINES: Great testimony. Members of the committee, any questions? Seeing none, thank you very much. Again, I'll call for additional proponents. Opponents? Neutral? Senator Wehrbein has waived closing and that will close the public hearing on LB 450. Is Cudaback on his way? We will wait for a minute or so on Senator Cudaback. He's been called to come down and introduce LB 491 so stand at ease.

SENATOR MINES: Senator Cudaback. I will now open the public hearing on LB 491. Welcome, Senator Cudaback.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 4

LB 491

LB 491

SENATOR CUDABACK: Mr. Chairman, banking committee members, this won't take long. I introduced LB 491, introduced it with a good idea in mind. Unfortunately, ideas don't turn into what you think they were to start with and this is the case here. The bill has ramifications that we didn't see, although it did allow for centralization of certain things so I'm just going to make a long story short and say, I do not want LB 491 advanced. Now if you would like to have it advanced you may do so but I will not back it. I don't think the Secretary Gale here...

SENATOR MINES: So he doesn't want it either evidently.

SENATOR CUDABACK: ...and he doesn't want it. So if you want it, you may do it and you can testify for it. But right now I am not going (laughter) to and you can take the hits. It does things that you wouldn't like and what I don't like when you read it further so...

SENATOR MINES: That's a great opening.

SENATOR CUDABACK: ...that's all I'm going to say.

SENATOR MINES: Thank you very much. Do you waive closing as well?

SENATOR CUDABACK: I will waive closing as well.

SENATOR MINES: Thank you, Senator Cudaback.

SENATOR CUDABACK: You're welcome.

SENATOR MINES: Members of the committee, I'm afraid you have a question. Senator Johnson.

SENATOR CUDABACK: Sir.

SENATOR JOHNSON: In my old business we used to call this DOA (laughter).

SENATOR CUDABACK: DOA. That's exactly right (laugh). Dead

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 5

LB 491, 466

on arrival.

SENATOR MINES: Any other questions? Seeing none, thank you, Senator, for the introduction.

SENATOR CUDABACK: Thank you. And I do apologize for...

SENATOR MINES: That's okay.

SENATOR CUDABACK: ...introducing a bill that I didn't know that much about. And the ramifications said no.

SENATOR MINES: It happens to all of us. Thank you.

SENATOR CUDABACK: Thank you.

SENATOR MINES: (Exhibit 1) Given the introduction of the bill, I would hope that everyone would take advantage of a very kind situation and I will ask for proponents. I will ask for opponents. I will ask for neutral. I see none. Senator Cudaback waives closing and that...I'm sorry, we do have a letter introduced by John Gale, Secretary of State and he is unable to attend and I've not read this. He hates it as well (laughter). So we'll introduce this into the record and we'll close the public hearing on LB 491 (laughter). Senator Redfield has left. I will introduce a bill. Senator Jensen, would you assume the chair?

SENATOR JENSEN: Certainly.

LB 466

SENATOR JENSEN: You may proceed.

SENATOR MINES: Chairman Jensen, members of the Banking, Commerce and Insurance Committee, my name is Mick Mines, M-i-n-e-s, representing Legislative District 18 and as principal introducer today of LB 466. I'm bringing (LB) 466 on behalf of the Nebraska Bankers Association. What this bill would do is revise the reporting requirements for a licensed executive officer indebtedness to other financial institutions. Under current law, licensed executive officers are required to report indebtedness to any other

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 6

LB 466

financial institution or institutions by the next regularly scheduled meeting of the board of directors. In contrast to this the executive officers of a national bank are required to make such reports on an annual basis. Provisions of the legislation relating to licensed executive officers' debt reporting requirements, would bring into conformance the requirements for licensed executive officers of state banks with those of national banks by only requiring indebtedness to other financial institutions to be reported on an annual basis. Additionally, the legislation would provide an alternative to the annual reports of indebtedness to other financial institutions, by licensed executive officers, by authorizing the board of directors of a bank, in their discretion, to obtain a credit report from a recognized credit agency on an annual basis for any or all of its licensed executive officers, who are not otherwise excluded by resolution of the board of directors or by the bylaws of the bank. I would like the committee to consider passage of this bill and Bob Hallstrom from the Nebraska Bankers Association is here following me to provide additional information on the bill and answer any questions you may have. Thank you, Mr. Chairman.

SENATOR JENSEN: Thank you, Senator Mines. Any questions of Senator Mines? Seeing none.

SENATOR MINES: Thank you. I will waive closing as well.

SENATOR JENSEN: Okay. First proponent.

BOB HALLSTROM: (Exhibit 1) Acting Chairman Jensen, 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 LB 466. My testimony that I've submitted to be part of the record is almost identical to the fine comments that Senator Mines has made in support of LB 466. I would say historically that we have a situation where both the federal and state regulators have traditionally required licensed executive officers, or executive officers of the bank, to make periodic reports regarding their indebtedness to other financial institutions so that the board is aware of any outside loans that the executive officer may be obtaining from those other financial institutions, and to kind of keep an eye on their financial affairs in that regard. The banking department

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 7

LB 466

had approached us a little over a year ago with the suggestion that was not too warmly received by the banking industry in terms of having the credit report take the place of the periodic reporting requirements. As I suggested, the bankers were not too warm to that and over the interim we worked with the banking department to provide a couple of different alternatives that are set forth in LB 466. One, as Senator Mines indicated, is to dovetail the requirements in terms of periodic reporting for state and national banks to read the same and remove by the next regularly scheduled board meeting for state-chartered, licensed executive officers to only require that to be done on an annualized basis, and then to also provide an optional alternative for the board of directors, in their discretion, to get a credit report for any or all of their licensed executive officers in lieu of requiring the periodic reporting requirements that I just mentioned. With that, I'd be happy to address any questions. Given the rapidity with which these hearings have moved I want to make sure for the record that it's Senator Cudaback's bill that you've been asked to kill and not the others that are going to follow this afternoon. So we would respectfully request advancement of (LB) 466 to General File.

SENATOR JENSEN: Thank you, Mr. Hallstrom. Any questions of the committee?

BOB HALLSTROM: Thank you.

SENATOR JENSEN: Next proponent, please.

ROY PONT: (Exhibit 2) Chairman Mines, members of the banking committee, my name is Ray Pont, R-a-y P-o-n-t. I am deputy director of the Nebraska Department of Banking and Finance. I am appearing today on behalf of the department in support of LB 466. LB 466 is the result of many discussions between the department and the Nebraska Bankers Association aimed at improving the quality of personal financial reports made by a bank's executive officers to the board of directors of the bank. Current law requires that a person licensed with the department as a bank executive officer make a report to the board of directors when that officer borrows money from any other entity. Persons required by law to obtain these licenses or anyone who makes loans, investments, and/or policy decisions for the bank.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 8

LB 466

The intent of the law is to give the board some indication of the financial responsibility of its managers. Large and/or frequent borrowings could be a red flag that the officer is not handling his or her own fiscal matters in an appropriate manner and that further inquiries such as reviewing the officer's deposit accounts may be in order. In the past there have been situations where bankers experiencing financial difficulty have stolen from their employing bank. Department examiners review these reports as a normal part of their examination for the same reason. LB 466 would provide boards of directors and, consequently, the department with an alternative method of monitoring this important area. The bill proposes that in lieu of the reports prepared by the officer the board may obtain a credit report from a recognized credit agency on any of its officers. Credit reports will provide the department with a more complete range of financial information that should lead to a better analysis of the officer's financial situation during a department audit. LB 466 also changes the timing of submission of the reports. Under the bill, the reports whether prepared by the officer or obtained from the credit agency will be on an annual basis rather than the current requirement that a report be made at the next meeting of the board after the borrowing is made. The department believes that annual reporting will lead to increased and easier compliance with the statute and could assist the board in making a more thorough analysis of the information than when it is received piecemeal. Finally, I'd like the record to reflect that this amendment to section 8-143.01 is in no way intended to limit a bank's ability or authority to obtain credit reports on its executive officers at any other time or for any other legitimate reason. The department appreciates the industry's moving forward with this proposal and thanks Senator Mines for its introduction.

SENATOR JENSEN: Thank you. Are there any questions? This does not exclude...this is only for the executive officer only. Is that correct?

RAY PONT: Executive officers that the reporting is required, yes.

SENATOR JENSEN: Okay, doesn't affect the board or the other officers of the institution?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 9

LB 466, 533

RAY PONT: No, it pertains only to executive officers.

SENATOR JENSEN: All right, thank you. Any questions? Seeing none, are there any others that wish to testify as a proponent? Opponent testimony? Neutral testimony? Senator Mines, do you wish to close?

SENATOR MINES: I do not.

SENATOR JENSEN: He waives closing.

SENATOR MINES: (LB) 533.

SENATOR JENSEN: (LB) 533. Senator Mines is here to open on LB 533.

LB 533

SENATOR MINES: Thank you, Chairman Jensen, members of the Banking, Commerce and Insurance Committee. My name is Mick Mines, M-i-n-e-s, represent the 18th Legislative District and I am the principal introducer for LB 533. LB 533 is an omnibus bill introduced at the request of the Nebraska Department of Banking and Finance. The bill addresses issues related to the financial institutions and companies under the jurisdiction of the department. Its primary purpose is to revise and update laws governing these entities and amending primarily financial institution, the laws relating to banking, savings and loan associations, credit unions, and trust companies. Secondly, it would amend the sale of check and funds transmission act (Nebraska Sale of Checks and Funds Transmission Act), as well as amendments to the Mortgage Bankers Registration and Licensing Act, and amendments to the Nebraska Installment Loan Act, amendments to the Nebraska Installment Sales Act and amendments to delay deposit services business licensing act (Delayed Deposit Services Licensing Act). As you can see by the introduction, it is an omnibus bill and Ray Pont will explain in detail what the banking bill does so with that, Mr. Chairman.

SENATOR JENSEN: Thank you, Senator Mines. Any questions? I don't see any. First proponent, please.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 10

LB 533

RAY PONT: (Exhibit 1) Chairman Mines, members of the banking committee, my name is Ray Pont, R-a-y P-o-n-t. I am deputy director of the Nebraska Department of Banking and Finance. I am appearing today in support of LB 533 which was introduced by the committee at the request of the department. LB 533 proposes to revise and update the laws governing financial institutions and finance related entities under the jurisdiction of the department. I will first address changes which affect our financial institutions, banks, savings and loan companies, trust companies, and credit unions. The Nebraska Banking Act would be amended by updating the law which restricts the use of the word bank and its derivatives. Currently, banks, savings and loans, their trade associations, certain nonprofit organizations and entities operating with the term prior to October, 1963, are authorized to use the word bank. This proposal would allow out-of-state state-chartered banks and savings banks to use the term. In addition, registered bank holding companies and licensed and registered mortgage bankers would be able to use the terminology as long as modifying terms are included. These revisions add generally accepted uses of the word. A second update to the banking act is proposed for one of the laws relating to bank directors. This change would remove outdated language requiring that bank directors be selected from among the board's shareholders. This statute was inadvertently not amended in 1997 when a requirement that a bank director own a share of stock of the bank or its holding company was repealed. The issue was recently called to our attention by a bank owner preparing for the bank's annual shareholders' meeting. The department also proposes that the banking act be amended to set up a short form procedure in those situations where a bank wishes to swap its main office location with an existing branch location. Under this proposal, the main office could be moved to the location of a branch of the bank if the branch is located in Nebraska and has been operational for a minimum of one year. The main office location would then become the branch location. Current law requires the filing of two applications, publications, certified mailing of notices, and the possibility of a hearing. Under this proposal, no notice or hearing is required if the financial condition of the bank is good. The simplified process is appropriate where the bank has been serving the community or communities where the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 11

LB 533

offices are located and tends to continue to do so after the move. A fee of \$500 is proposed for this procedure. The next series of proposals that I wish to discuss are items that affect more than just one of our financial institution types. The first is a proposal that all banks and savings associations obtain and maintain federal deposit insurance for the accounts of its customers. At the present time, all of Nebraska's 184 state-chartered banks and one of its two state-chartered savings associations carry such insurance. Current law, however, provides an option permitting these financial institutions to operate without such insurance if they provide a series of notices. As such, although it would be very unlikely, the possibility does exist that any of these institutions could drop the insurance and still be allowed to operate, or that a new charter could be granted without the institution having deposit insurance. The department believes that the time has passed when a deposit-taking institution should be chartered without federal deposit insurance or be allowed to give up such insurance. LB 533 would grandfather the one existing uninsured savings and loan because it continues legislative intent expressed in 1984. LB 533 contains a proposal that addresses the application process for all financial institutions. The proposal would allow the department to send notices of applications to affected financial institutions by electronic transmission if the receiving institution has consented to receiving such notices by e-mail. An institution may opt to continue to receive such notices by certified mail which is the current statutory requirement. This proposal will save staff time and thus improve efficiency at the department level. It will have the added effect of saving money for the applicant, financial institutions responsible for paying certified mailing costs. LB 533 provides for the annual renewal of the three wild-card statutes. These laws are also known as equal rights laws in that they provide parity between state-chartered banks, credit unions, and savings and loan associations with their separate federal counterparts doing business in Nebraska. These laws require annual re-enactment due to a provision in the state Constitution that prohibits reference to federal legislation which has not yet been adopted. As the department has testified in previous years, this is sensible legislation in that it allows a state financial institution the same rights, powers, and privileges, except for payment of state taxes,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 12

LB 533

accorded to federal financial institutions without the need to enact state legislation for each specific power or privilege. The emergency clause is requested for these provisions. LB 533 would also update the investment laws of all four types of financial institutions by including a cross-reference in each set of laws to current law authorizing the institution to invest in business development corporations. In addition, the banking act is updated with a second cross-reference to a bank's current authority to invest in a subsidiary corporation. This proposal is simply for ease of reference and contains no new investment authority. LB 533 contains a proposal relating to out-of-state trust companies. This provision would authorize the department to release pledged securities to a receiver for an insolvent, out-of-state trust company upon the receipt of court order and notice publication. Current law does not allow the department to release the securities until all claims against the trust company are paid. As a result, funds that could be used by the receivership are essentially frozen. In effect, the law defeats the purpose of the pledge which is to have funds available for account holders in the event of insolvency. An existing receivership of a South Dakota chartered trust company which had its office in Omaha is being negatively affected by this law and therefore the emergency clause is requested for this proposal. There are two final items relating to financial institutions within the bill that I would like to just briefly discuss. These issues were brought to the department by the industry and will be discussed in detail by other testifiers. The first proposal would update the laws which authorize minors to have deposit accounts at banks and savings associations for providing that electronic withdrawals from these accounts are acceptable. The department believes this is a logical and sensible extension of existing law as it reflects current technology and practice. The second industry proposal would enact laws prohibiting a person from using the name, trade name, logo, or symbol of a financial institution when a person solicits a loan customer of the financial institution unless it includes a statement that that person is not affiliated with the financial institution. In addition, the personal loan information of a customer and such solicitations can be used only if certain disclaimers are made. An exemption is made for a financial institution doing comparative advertising or solicitations. The department would be given cease and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 13

LB 533

desist authority and finding authority against persons who violate a cease and desist order. The department included this proposal in LB 533 as it is a good step in reducing customer confusion and the possibility of deception. As I indicated earlier, LB 533 contains a number of provisions that relate to finance-related entities under the jurisdiction of the department. The first amendment is with respect to the Nebraska Sale of Checks and Funds Transmission Act which regulates sellers of money orders, traveler's checks, and money transmitters. The proposal provides clear authority to the department to assess fees to licensees which opt to pledge securities to the department in lieu of a surety bond. The proposed fee is the same as is currently assessed to trust companies and trust departments which pledge securities as part of their licensing process. There are currently 31 such licensees. Two of these have chosen to pledge securities. This proposal will codify current department practice. The department proposes six amendments to the Nebraska Mortgage Bankers Registration and Licensing Act in this bill. The first would provide an exemption from licensing and registration for wholly-owned subsidiaries of all financial institutions. It will provide parity between state and federally chartered institutions which currently are considered exempt as a result of federal pre-emption claims. The second would add a provision authorizing the department to issue notices of expiration for registrations which have been surrendered. In addition to clarifying that revocation procedures will not have to be instituted the proposal will promote efficiency with this short form procedure. Third would prohibit licensees from using more than one trade name or doing business as dba (doing business as) designation in Nebraska. We have had a number of instances where a licensee sets up branch offices with different names for each office. This is confusing to the public and can give the false impression that a licensee's own offices are competing for a customer's business. The fourth amendment relating to mortgage bankers would authorize the department to impose an administrative fine or take other action in cases where a licensee employs or contracts with the person who has outstanding consumer complaints relating to his or her association with a previous licensee or registrant. The employing licensee will have to exercise reasonable care in its hiring, contracting process. This should not be a difficult process because complaints under the mortgage

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 14

LB 533

bankers act are by law public information and the department's website indicates whether complaints have been filed against a licensee. This proposal is intended to preclude persons who surrender their licenses rather than resolve a complaint from continuing to work in the mortgage banking business. The fifth proposal would require a licensee to report to the department when it changes its name, trade name, dba designation, address, or opens or closes a Nebraska branch office. This information would be deemed material and have to be reported within 30 days. This amendment would allow the department to more effectively monitor the industry. A final proposal relating to mortgage bankers would provide for an increase in fees as follows. The initial registration fee would increase from \$50 to \$200 and the renewal registration fee from \$50 to \$100. The initial licensing fee would increase from \$300 to \$400 and the renewal licensing fee from \$100 to \$200. The fee increases are modest, will not create a burden on licensees and would allow the department to better cover its costs in this area. LB 533 proposes a number of changes to the Nebraska Installment Loan Act. Three of these are directed at improving a customer's position with respect to this group of lenders. First, the bill would prohibit licensees from collecting loan origination fees on more than one loan made to a consumer within a 12-month period except for that part of the loan which advances new money. This proposal would help prevent loan flipping, which is the rolling over of loans on a frequent basis in order to repeatedly collect fees. A second amendment would prohibit loans in an amount greater than \$3,000 but less than \$25,000 from being written for a term greater than 145 months unless the loan is for a mobile home. This will address those situations where a loan has such little paid on the principal that it is unlikely to be paid off. The third consumer-oriented proposal would require a licensee to provide pay-off information to a customer within ten days of receipt of a request and authorize a fee when more than one request is made by that customer within 60 days. This proposal will assist customers in getting timely responses to their requests and at the same time allow a reasonable fee for repeated requests. Similar legislation was adopted several years ago for mortgage lenders. A decrease in inquiries and complaints to the department indicates that this type of legislation can be effective. There are two additional sets of amendments for the installment loan area.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 15

LB 533

The first would provide authority to the department to impose administrative fees against licensees. There are insiders and others who violate the act and to provide that liability for fines continues even after termination of a license for acts committed prior to termination. Proceedings to impose a fine will be in accordance with the notice and hearing requirements of the Administrative Procedure Act. Fines against licensees and their insiders are considered a serious remedy and following a practice in other areas generally would not be imposed until the licensee had been warned about violations and either failed to correct them or is found to have repeated violations. This proposal is intended to give the department an additional remedy in the enforcement of the act. The second set of amendments provides for an increase in licensing fees. It is proposed that the initial license application fee be raised from \$100 to \$500 and the license renewal fee from \$100 to \$250. As with the requested fee increases and the mortgage banker statutes, the increases are modest, should be easily borne by the industry and will help defray the department's costs in this area. LB 533 includes two proposals under the Nebraska Installment Sales Act. The first would provide that liability for administrative fines under the act continues even after termination of a license for acts committed prior to termination. This proposal is intended to prevent persons from surrendering a license in order to escape liability for violations of the act. Additional amendments add language to clarify the different ways that licenses could be terminated and to allow the department to issue notices of expiration and notices of cancellation of licenses. This will promote efficiency within the department as revocation procedures will not have to be instituted for licenses that are simply surrendered or not renewed. The bill also contains one amendment under the Delayed Deposit Services Licensing Act. This amendment would add a fee of \$100 per branch on an annual basis. The department believes that LB 533 will contribute to the soundness of the state's financial industries, assist consumers in these important areas, and promote their efficient regulation. I want to close with thanks to the committee for its introduction of the bill.

SENATOR JENSEN: Thank you, Mr. Pont. Any questions? Yes, Senator Flood.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 16

LB 533

SENATOR FLOOD: Thank you for your testimony today.

RAY PONT: Sure.

SENATOR FLOOD: I wanted to ask you about Section 21 of LB 533 that amends statute 8-702 subsection 2 allowing the grandfathering of one existing uninsured savings and loan because it continues legislative intent expressed in 1994. My question is, what is the purpose of grandfathering one savings and loan and the entire bank? Where is the savings and loan and why wouldn't we want to be uniform across the state?

RAY PONT: It's located in Omaha. It's a small institution. The reason that it was grandfathered in 1984, now this is my understanding of it because I wasn't doing this then, but the...at a special hearing that was held the depositor of the institution came down, indicated that they understood that it wasn't...their deposits were not insured. They didn't want the institution to be forced to gain the insurance and so that's the way it was left, at that time. And, you know, it's, you know, a public policy decision whether, you know, it's left that way or not. One thing that I might say is that if you come to the conclusion that it shouldn't, federal deposit insurance is not something that's gained real rapidly or very easily and that it would be, I think, a thoughtful thing for the institution to have at least a year of time or so to accomplish that if that's the way it turns out.

SENATOR FLOOD: Thank you very much.

RAY PONT: Sure.

SENATOR JENSEN: Senator Johnson.

SENATOR JOHNSON: I'm sorry (laugh). As you were going through the reasons, I just couldn't help but think that Commonwealth could have said the same thing the year before the catastrophe, but they chose not to do it for these reasons and so on. I don't know, it seems to me it should be uniform but I'm expressing my opinion. What would be...

RAY PONT: I wouldn't have, I guess, a further response than what I told the other senator on that.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 17

LB 533

SENATOR JOHNSON: It just seems to me that the Commonwealth people could have made the same thing the year before the disaster is what this group is now saying.

RAY PONT: They could have. The one distinction that you might be able to draw on this case is it is a much smaller institution than Commonwealth was.

SENATOR JENSEN: I'll hand off to somebody (laughter).

SENATOR MINES: Thank you, Senator Jensen. Are there other questions by the committee? Seeing none, thank you for your testimony, Ray. Could I see a show of hands of those in the pro position? I see one, two, three, four. And those opponents? There are none. Anyone in a neutral capacity? Number one of four. Mr. Hallstrom.

BOB HALLSTROM: (Exhibit 2) Mr. Chairman, 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 LB 533. Mr. Pont has done a nice job of going through each of the items of LB 533 in some detail so I will submit my written comments on a number of these issues and only make some passing remarks with the exception of the two components that Mr. Pont has suggested I'll go into greater detail on. The first one is our support of the addition of proposed exclusions from the unauthorized use of the word bank statute to cover out-of-state chartered banks and savings banks, bank holding companies, and certain mortgage bankers. Secondly, we support the electronic notice of pending applications. We had approached the department when they first talked to us about this and we asked them to consider placing in an option so that if there are banks that are not yet using electronic means of communication that they would have the right to accept either certified mail, as under the current statute, or the electronic notification. And the department was gracious enough to comply with that request. We obviously support the bank, and savings and loan wild-card bills to put those institutions... state-chartered institutions on par with their federally chartered counterparts. The next issue in my testimony regarding minors' accounts, Mr. Pont just referred briefly to the modernization of the statutory provisions relating to

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 18

LB 533

minors' accounts. Effectively, Nebraska under section 8-135 has had a long-standing recognition that minors should be able to have bank accounts. They should be able to make deposits into those accounts and make withdrawals from those accounts, but with the age of majority and the issues that are affecting the ability of minors to disavow certain contracts, the statute has also always provided protection for the bank in dealing with the minor both in terms of the deposits into the account and the withdrawals from that account. One of the items that it has not expressly recognized in the modern age is electronic transactions, whether those be withdrawals or deposits from an ATM card or some other type of ACH transaction or that type of thing that a minor would want to utilize, just as equally as an adult would so we have modernized the statutory provisions in that respect. We have also...the current law talks about language providing a valid and sufficient release and discharge for the deposit to the bank. The provisions of LB 533 to provide a corresponding protection to a bank dealing with a minor have language that subject all persons, regardless of age, to the same duties and liabilities respecting their deposit account. So we're not intending to make any change in the protections that are provided to the bank, or savings and loan in dealing with a minor's account. And we are also expanding it to include those electronic transactions expressly. The next issue that we'll talk in some detail on has to do with sections 24 to 28 of the bill regarding nonbank marketing restrictions. I have attached to my testimony a couple of examples of the issue that we're addressing in these provisions of LB 533. But essentially what has happened over the past few years, there's probably about 15 states now that have passed legislation in this arena for Nebraska to join them to address the practice of nonbank entities providing what we would refer to as deceptive marketing practices or solicitation of bank loan customers through the mail. And they are contacting the bank customers. You may have the window in the envelope that will reflect the name of your bank that you just took out a loan from. You obviously opened the mail quickly, thinking it's a communication from your own bank only to find out, at some point, that it's a solicitation for insurance products or for another loan, trying to suggest that you could get better terms and conditions somewhere else. As I noted, there are a number of states that have looked at this and have provided outright prohibitions

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 19

LB 533

against these types of activities. We have taken more of a middle-of-the-road approach I guess I'd refer to it in terms of looking at providing that there must be conspicuous disclosures by the third-party entity that's making the advertisement or solicitation, identifying that they are not affiliated with the financial institution that made the original loan, and that they have not gotten the information from the financial institution that made the original loan. A lot of times there's questions on how do they come up with this information and, obviously, when you file the mortgage or deed of trust with the public record there is certain information contained within there, within that document that will lead them to know that there is a loan, what the amount of the loan is, what the interest rate is, what the name of the individual is, and so forth so, as you might expect, one of the frustrating issues surrounding the need for this legislation is that the customer comes knocking on the bank's door where they got the original loan, wondering if we have, in fact, transferred or sold that information to the third party that's making the solicitation. Obviously, nothing further from the truth, the bank has not at all done that, but they have mined this or combed this from the public records. So we have those provisions that would take care of that issue. They do provide for enforcement authority through the banking department as provided under LB 533 and, again, we are supportive of the provisions of the bill in that regard. I was talking with Mr. Marienau, the esteemed banking counsel of this committee who became the "steamed" banking counsel when he got one of these, opened it up quickly and had the same impression of what our customers do in this area. Final issue to address that's supported by the NBA has to do with section 7 of the bill regarding the issue of bank-owned stock in the holding period. There are situations where a bank either has taken security in the form of stock certificates or may acquire stock in the corporation through some way or fashion. The current law says that any interest in a corporation of that nature that's held by the bank may only be held for a period of six months. In visiting with the department of banking, they had suggested that they had encountered specific situations in which a longer period of time might have been a benefit both for the corporation in terms of not having to have their stock foreclosed upon or sold, and in terms of the bank realizing on the valuation of that stock certificate. So they have requested of us and we've moved

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 20

LB 533

forward with section 7 of the bill which, on a case-by-case basis, would allow the department of banking to provide written authorization for a longer holding period than the current six-month time frame. Be happy to address any questions that you might have.

SENATOR MINES: Thank you, Mr. Hallstrom. Senator Langemeier.

SENATOR LANGEMEIER: What does the group you represent think of the exclusion for the one institution?

BOB HALLSTROM: We have never taken a position on that, Senator. I think that is long-standing and I don't know whether I'm older than Mr. Pont or not, but I wasn't around here either when that came about. I think the statutory section, if you look behind that from a policy perspective, provides both before or if there are any changes that there would have to be sufficient notification to the customer so that they come in with eyes wide open, so to speak, and noting full well that that particular financial institution is not providing insurance coverage, and in grandfathering that again that's a public policy decision that our organization would not have a position on.

SENATOR MINES: Any other questions? Thank you, Mr. Hallstrom.

BOB HALLSTROM: Thank you.

SENATOR MINES: Next testifier in support? Mr. Ruth, welcome.

LARRY RUTH: Mr. Chairman, members of the committee, my name is Larry Ruth, R-u-t-h. I'm representing the Heartland Community Bankers today. This is an association with a number of members in Nebraska who are savings and loan companies; one state-regulated and a number of federal regulated companies not including the one without FDIC coverage. However, I am older than Mr. Marienau; I am older than Mr. Hallstrom, and I do recall the hearing in this particular matter. We would appear in support of the bill and two points I would make. The wild-card provision in section 18 allows for state-regulated savings and loans to have the same rights and powers granted federally regulated

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 21

LB 533

institutions. We would support that. We have one state-regulated savings and loan in our membership. Also would stand in support of the sections 24 through 28 of this...usually a considerable effort is made by responsible institutions to keep names separate from each other, try not to confuse the public. However, there are instances where a company may want to take advantage of another institution's good name and good will, and we think that the prohibitions on the name logo and so on are appropriate. They appear to be a natural progression from the current statutes which require names to not be deceptively similar when it comes to financial institutions so we support those sections. With that much said, there are other good parts in the bill, but I think they've been spoken to, and I would stand for any questions.

SENATOR MINES: Thank you, Mr. Ruth. Questions? Seeing none, thanks for your testimony.

LARRY RUTH: You're welcome.

SENATOR MINES: The third testifier is always a welcome testifier before this committee. Mr. Yost.

KURT YOST: Chairman Mines, members of the banking committee, my name is Kurt Yost, K-u-r-t Y-o-s-t. I'm here on behalf of the Nebraska Independent Community Bankers Association and both Ray Pont and Bob Hallstrom did an excellent job of outlining the lengthy provisions of this bill. The department, as you know or most of you know, brings a bill to address the various issues that come before the industry on an annual basis and we stand in support of their efforts to bring things up to snuff.

SENATOR MINES: Thank you for your testimony. Questions for Mr. Yost?

KURT YOST: And, Senator Langemeier, we have no position on the one although I am older than Mr. Pont and Mr. Hallstrom (laugh).

SENATOR MINES: But Mr. Ruth?

KURT YOST: Probably...I don't know whether I'm older than he is or not but...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 22

LB 533

SENATOR MINES: You are. Do you have a question, Senator Flood?

SENATOR FLOOD: Let the record reflect I was in fourth grade in 1984 and he was in sixth grade in 1984. (laughter)

SENATOR MINES: Thank you for that comment. (laughter)

KURT YOST: Senator Flood, that was only 21 years ago (laughter).

SENATOR MINES: Seeing no further questions, thank you for your testimony.

KURT YOST: Thank you.

SENATOR MINES: Final testifier in support.

BRANDON LUETKENHAUS: (Exhibit 3) Mr. Chairman, members of the Banking, Commerce, and Insurance Committee, my name is Brandon Luetkenhaus, B-r-a-n-d-o-n, last name L-u-e-t-k-e-n-h-a-u-s. I'm here today on behalf of the Nebraska Credit Union League. Our organization represents over 90 percent of our state's 80 credit unions and their 420,000 members. I appear before you to offer our association's support for the measures contained in LB 533 as they pertain to credit unions. Specifically, I'm here to support the annual credit union wild-card provision as it is extremely important to state-charter credit unions. Our association strongly supports the dual chartering system whereby a credit union can choose either a state or federal charter and can move from one charter to another. Choice of credit union charter and regulation in our opinion is crucial in creating an innovative operating environment, and in for which, all credit unions and consumers can benefit. The wild-card provision is essential to state-chartered institutions because it provides clarity to those areas not specifically addressed by the state statutes and extends parity in the services which can be offered by state-chartered credit unions. Our association also strongly supports the language in section 24 through 28 that prohibits anyone from using trade names and logos of financial institutions for deceptive purposes. We believe this language will protect consumers from confusing

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 23

LB 533

misleading solicitations. We have growing concern over the prohibition of the use of the term "banking" in the verb sense of the word. Terms such as "e-banking," "on-line banking," and "home banking" have become commonplace among the general public when referencing electronic transactions vis-a-vis a financial institution. As a result, some credit unions have coined the phrase, "on-line" or "home banking" when referencing such services. The use of the term by credit unions is neither intended to confuse or mislead. Rather they are merely used as a practical matter in the ordinary course of commerce. We believe the intent of section 8-113 of the Nebraska Banking Act is similar to that of section 21-1771 of the state Credit Union Act. Both sections were originally enacted in an effort to prevent those individuals or entities that are not specifically chartered and regulated as a bank or credit union from portraying themselves as such, thereby protecting the public from misleading and/or fraudulent practices and activities. We are concerned that section 8-113 is overly broad and goes beyond its original intent. Providing banks with proprietary protection regarding the use of such terms as "home banking" would be akin to credit unions claiming eminent domain over the term "credit card." In our opinion, such descriptive phrases were neither intended nor should be subject to any exclusive restrictions. Affording financial institutions and consumers legitimate protections against unscrupulous business practices is strongly supported by our organization. However, we believe that section 8-113 of the Nebraska Banking Act has gone too far in its prohibition of generally accepted generic terms. This bill would add exclusions from the unauthorized use of the word "bank" in an attempt to clarify to whom the prohibitions do not apply. I would urge the committee to consider clarifying what the prohibitions apply to in an effort to remove the erroneous restrictions on the use of such universally accepted terms such as "home banking and on-line banking" by their financial service providers. We are unaware of any other state or federal law, rule, or regulation that prohibit financial institutions from using the term "banking" in the manner in which we propose. Our association is therefore requesting that the committee consider amending the bill by inserting "financial institutions if the word bank or any derivative thereof is used as any part of the description of any business activity," on page 3, line 19. I would respectfully request the committee's adoption of the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 31, 2005
Page 24

LB 533

suggested amendment and the advancement of LB 533. Thank you, Mr. Chairman. I'm pleased to take any questions.

SENATOR MINES: Thanks, Brandon. Committee, do you have any questions? Seeing none, nice job, thank you. Are there any other proponents that I missed? Are there opponents to LB 533? Anyone wishing to testify in a neutral capacity? Seeing none, I'll close the public hearing on (LB) 533 and that concludes our business for the day. We are adjourned. Thank you.