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COMMITTEE ON BANKING, COMMERCE AND INSURANCE
February 14, 2005
LB 647, 568, 693, 688

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 14, 2005, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 568, LB 647, LB 693, LB 688 and Gubernatorial Appointment of John Munn to Dept. of Banking and Finance. 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: Ladies and gentlemen, good afternoon. I'd like to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Mick Mines. I'm Chair of the committee and I am from Blair. First order of business today, turn off your cell phones. Sally has a big stick and she will reach you if the cell phone goes off. It's my pleasure to introduce those members of the committee that are with us today. On your left, Senator Rich Pahls from Omaha and Senator Jim Jensen from Omaha. On your right, Senator Chris Langemeier, Schuyler and Senator Mike Flood, Norfolk. Committee counsel is Bill Marienau on my right and Jan Foster on my left is committee clerk. Page this afternoon is Jeff Armour from Ogallala, Nebraska. The committee will take up the bills as they are listed in order, LB 647, LB 568, LB 693, and LB 688. Our process is the senator will introduce the bill and we will then follow that with testimony in favor or proponents. Those in an opposition wishing to testify and then those in a neutral capacity. This is your part of the hearing. This is your public hearing so please feel free to come forward, offer your comments and information. There are sign-in sheets both at the table in front of me as well as at the door. Please fill those out. When you testify please state your name and spell both your first and last name because Jan gets grumpy if that does not happen. I'm sorry. That's all the rules and we will begin with LB 646 (sic: 647), Senator Brashear to introduce. Oh, I just...Senator, one momento. John...I'm so sorry. We've got a gubernatorial appointment and this is the public hearing for John Munn and he has been appointed to the Department of Banking and Finance. John, I apologize.

CONFIRMATION HEARING ON
JOHN MUNN TO THE
DEPARTMENT OF BANKING
AND FINANCE

JOHN MUNN: Okay. I thought the process was going to be a lot easier than what was told to me before (laughter). I did bring copies of the information I provided to Jan last week, in case anybody needs a copy.

SENATOR MINES: Go ahead, John.

JOHN MUNN: (Exhibit 1) I have no prepared script other than the information that I provided to the clerk middle of last week and the copies are going around now. My name is John, J-o-h-n Munn, M-u-n-n. I found this...of course, it's always exciting, I think, to be appointed to head a code agency but especially exciting this time in light of the transition in governors. Although I was appointed by Governor Johanns, probably his last appointee, all of my conversation prior to the appointment was with then Lieutenant Governor, now Governor Heineman.

SENATOR MINES: Committee, any questions? We can't let you off easy. John, we've got your biography here, your notes and you come highly recommended and your credentials are impeccable. Committee, any further comment or questions? Seeing none, thank you, John.

JOHN MUNN: Thank you.

SENATOR MINES: Is there testimony about Mr. Munn's appointment? Seeing none, we will move on to legislative bills, LB 647. Senator Brashear. Welcome to the Banking, Commerce and Insurance Committee.

LB 647

SENATOR BRASHEAR: Thank you.

SENATOR MINES: You're welcome. The floor is yours.

SENATOR BRASHEAR: Mr. Chairman, members of the committee, my name is Kermit Brashear. I'm a legislator, I represent

District 4. I appear in introduction and support of LB 647. LB 647 would require that limited liability companies file a biennial report in each odd-numbered year beginning in 2007. The bill is patterned after similar long-standing requirements for corporate reports. Recently we've changed in Nebraska from annual corporate reports to biennial corporate reports but, nevertheless, we've done them "forever" so to speak. Although statutory provisions call for both corporations and limited liability companies to file appropriate papers with the Secretary of State when they dissolve or otherwise terminate their existence, many businesses do not do so. The Secretary of State dissolves approximately 5 percent of the state's corporations per year for failure to file their report. Presumably, LLCs are going out of business at a similar or even greater rate as the LLC is rapidly becoming the preferred form of limited liability organization entity for small businesses and business start-ups. The record of the Secretary of State is relied upon by lending institutions, title insurance companies, and many others, including citizens, to determine the legal status of business entities. With a 5 percent per year rate of dissolution it is easy to see how over time those records will become less and less reliable. In addition to the general issue of the integrity of the records this situation would make it easier for someone to pirate a defunct LLC and in essence commit business identity theft and/or some other type of fraud, by operating under the name of an LLC no longer in actual existence, but still legally recognized on file with the Secretary of State. In recognizing the concern of the added red tape paperwork for business the bill has been drafted to be simple and easy to comply with. The form which has not yet been developed would be less than a page. The filing fee would be $10 and the Secretary of State would explore all possibilities to do these reports on an electronic basis. I will be followed by Mr. Greg Lemon from the Secretary of State's Office who asked that I introduce this report. If I may extemporize briefly, it's a bill you wouldn't ordinarily assume somebody would become passionate about and I wasn't when I introduced it because as we sometimes do, I hadn't spent that much time on it. After reading the bill and preparing for this hearing, I really do respectfully urge the committee to advance it. There is just no reason why we as a state, for and on behalf of the people, who grant to someone the privilege to form a business organization ought not have a good record of whether they are continuing in business, what their address is, who their officers are, and the like. I, myself, was flying this weekend and going through a list of corporations. In my private practice I advise people to do the formal dissolution because for those of us who understand the nuances of the law you don't have any protections if you don't do it that way. I understand that people may decide to do the cheap dissolution, the one that doesn't give them any protection whether they know it or not, but we certainly ought to have a formal way of maintaining the integrity of the records of the state of Nebraska for all the citizens. It's much too limited to say that just a few people check this. If anybody wants to do business with anybody for any reason they ought to be able to call the Secretary of State's Office, in this day and age, and find out that somebody is still a limited liability company in good standing. And I'd urge the advancement of the bill.

SENATOR MINES: Thank you, Mr. Speaker. Committee, are there questions? Senator Jensen.

SENATOR JENSEN: Senator Brashear, if I had an LLC that owned meat processing companies, could this same LLC purchase land in the state of Nebraska in the same LLC?

SENATOR BRASHEAR: The short answer is yes. I think the more sophisticated answer or careful answer is it ought to be consistent with the purposes set forth for the LLC. So therefore it would depend upon how the LLC was prepared and filed.

SENATOR JENSEN: Well, you know where I'm going probably on that.

SENATOR BRASHEAR: I think I have a vague sense.

SENATOR JENSEN: That has 300 behind it? (Laughter)

SENATOR BRASHEAR: All the more reason to keep track of the LLCs. The difficulty here is somebody filed one ten years ago and you aren't doing any follow-up, you aren't requiring any compliance, even a minimal one-page filing. How are you going to deal with it? Now, I'm not saying that lawyers can't work through these kinds of things in courts, but I think we ought to aid and serve the citizenry.

SENATOR MINES: That's fair. Other questions for the senator? Seeing none, thank you for your testimony.

SENATOR BRASHEAR: Thank you, Mr. Chairman.

SENATOR MINES: Nice to have you here. Are you...

SENATOR BRASHEAR: Being mindful of the economies of committee hearings, I'll waive closing.

SENATOR MINES: Thank you very much.

SENATOR BRASHEAR: Thank you.

SENATOR MINES: Thank you. May I see a show of hands, those that will testify as proponents of the bill? I see one. Those in opposition? There is one. And those in a neutral capacity, please raise your hand. All right, welcome.

GREG LEMON: Thank you.

SENATOR MINES: Welcome, welcome, nice to see you.

GREG LEMON: Good afternoon, Senator Mines, members of the Committee on Banking, Commerce and Insurance. My name is Greg Lemon. I'm the chief deputy secretary of state representing John Gale, Secretary of State, today. First of all, would like to thank Senator Brashear for introducing the bill and doing a very good job of explaining what the bill does. I'll try not to repeat what he said but go into a few other things. He did say the limited liability company is becoming the vehicle of choice for business entities forming that want to limit their liability and create perpetual existence and do all those wonderful things. In fact, last year I believe for the first time, we had more limited liability companies formed than business corporations. We currently have about 20,000 limited liability companies on record with the Secretary of State's Office. We have a little under 40,000 Nebraska corporations. We have about 80,000 business entities total if you roll in the nonprofits, the foreigns, the other limited liability partnerships, et cetera. So the limited liability company is...it seems to make sense as Senator

Brashear noted to treat them similarly to corporations. Two years ago, the Secretary of State brought a bill to the Legislature to change the filing requirements for corporations for their reports from every year to every two years. And if you look at that bill and this bill as a package, rather than increasing the burden on Nebraska businesses, I think what we're trying to do is spread it more evenly. Rather than having the corporations report every year we're going to have the LLCs report one year; the corporations report a different year, as stated. It is not our intent to put more burden or more paperwork filings on but this record was created...the Secretary of State's Office is the keeper of the record for the purpose of that being reliable and for people to be able to rely and make business decisions based on what we have. Lastly, before I start rambling, will mention we did submit a fiscal note and we did submit it late. It's not the fiscal office's fault but they did not get it updated so you probably don't have it in your book but with 20,000 limited liability companies it's not too hard to do the math at $10 a filing. That would be $200,000. That revenue is split between the General Fund and our cash fund. Two-thirds of it goes to the General Fund so roughly $140,000 in every odd-numbered year to the General Fund and a little under $70,000 to the corporation's cash fund. And lastly, just to explain the process a little bit. On the corporation side, we changed the law once again, or asked that the law be changed, so that rather than sending out the report and then dissolving corporations for failure to file that report we send out a second notice and then they have 60 days to get the report in. And that has reduced the number of businesses that get dissolved for nonpayment. We still dissolve a number of them but those are the ones that are truly out of business, not so much the ones that have forgotten to file. The provisions in this bill echo how we do it with corporations where a second notice is sent out and that we certainly would give businesses every opportunity to file that report. We always want to avoid dissolving the companies that are still out there doing business because it creates headaches all around when that happens, although the reinstatement relates back and so anything that was done in that dissolved time is still a valid act and it's as if the entity wasn't dissolved.

SENATOR MINES: Great. Greg, thank you.

GREG LEMON: With that, yeah, any questions?

SENATOR MINES: Questions? Anyone have a question? Seeing none, thanks for your testimony.

GREG LEMON: Thank you.

SENATOR MINES: Nice job. Any other proponents? Those in opposition? Kim, I think you're the only one.

KIM ROBAK: I think I'm the only one.

SENATOR MINES: And is this the first time you've testified this year in front of Banking, Commerce and Insurance?

KIM ROBAK: I think it may be.

SENATOR MINES: Welcome.

KIM ROBAK: (Exhibit 1) It is. Thank you. Senator Mines and members of the committee, my name is Kim Robak, R-o-b-a-k. I'm speaking to you today on behalf of the Nebraska Land Title Association. The Nebraska Land Title Association is an organization that's composed of title insurers, title agents, and abstractors many of whom are lawyers. The reason that the NLTA is opposed to this bill is for two reasons. First, many of the lawyers who are members of the NLTA have counseled their clients that one of the vehicles that would be a method of providing an organizational structure other than a corporation would be an LLC. And one of the reasons that is given to organize as an LLC is the lack of paperwork that is required by the law as it exists today. Therefore, it is less costly to maintain in its easier form of organization. The second reason has to do with the title business and the way that title insurers operate. They check if there is a real estate transaction involving a corporation the title agent has to check the Secretary of State's Office to determine whether or not the corporation is in good standing. What often happens is that the corporation has forgotten to file their then annual report, now biennial report, and the company or corporation has been dissolved. And what is determined is that because of this dissolution we need to reinstate the corporation and, therefore, there is a delay in the closing of the real estate transaction. With the large number of LLCs that are now in place, the title insurance industry believes that this will be a costly and it will cause delays that would otherwise be unnecessary. So because a large number of people who have formed the LLCs to begin with have relied on the fact that they do not have this paperwork, they're anticipating that folks will not file and therefore there will be difficulty in closings. I do have a letter I would put into the record on behalf of the association and I'd be happy to answer any questions.

SENATOR MINES: Thank you. Questions for Ms. Robak?

SENATOR PAHLS: How many pieces of paper will this require them to file every year?

KIM ROBAK: It only requires the filing of one piece of paper every two years. The problem is that because people believed that they didn't need to do that they'll forget to file. Or won't file at all.

SENATOR MINES: Senator Johnson.

SENATOR JOHNSON: What assurance do your people have now that these are still in place?

KIM ROBAK: There's no requirement that...

SENATOR JOHNSON: Yeah, I realize that but also that since there is no requirement, what assurance do they have? And this may be faulty, I grant you that. But...

KIM ROBAK: What they would do, Senator, is that they would contact the company and determine from the company themselves that they're still in business. So that they do have the assurance from the company that's actually making the sale or the company that's actually purchasing and so they do have that assurance. What they don't have is a piece of paper on file at the Secretary of State's Office.

SENATOR MINES: Other questions for Ms. Robak? Yes, Senator Flood.

SENATOR FLOOD: Let's just explore for a moment the cost of business, an LLC. When they receive one of these forms or possibly download one, what do you think in your opinion would be the first thing a business ought to do with that form before filing it? Would it be conceivable they'd call their attorney?

KIM ROBAK: (Laugh) Most likely. Most likely call their attorney or most likely the attorney will fill out the form for the business exactly.

SENATOR FLOOD: At an increased expense to the business.

KIM ROBAK: Well, there generally would be a charge filed or a charge that would be sent to the business.

SENATOR FLOOD: Thank you.

SENATOR MINES: Other questions? Senator Pahls.

SENATOR PAHLS: Yeah, again, I'd like to ask the question, how often would you go to your attorney to fill out that form?

KIM ROBAK: The way that the law is written right now it would be every other year, once every two years.

SENATOR PAHLS: Okay.

SENATOR MINES: Other questions? I have one, Kim. The instance that you gave where an LLC is dissolved and because of a transaction needs reinstatement. Does the organization or the association have any information on how many times that really might happen? I mean, is that a big deal?

KIM ROBAK: No. I can't answer...

SENATOR MINES: Yeah.

KIM ROBAK: ...that, Senator, but the reverse to that from the Nebraska Land Title Association would be that there isn't a problem today, that the speculation that this could be a problem in the future and therefore we want to go in this direction is really where the Secretary of State's Office is coming from but there hasn't been a problem to date.

SENATOR MINES: Great. Nice answer. Any other questions? Thanks for your testimony.

KIM ROBAK: Thank you.

SENATOR MINES: Any other testimony in opposition to LB 647? I see none. Those wishing to testify in a neutral capacity, please come forward. I see none. And with that, I will close the public hearing on LB 647. And now it's my great pleasure to open the public hearing on LB 568. Senator Landis, nice to have you here.

LB 568

SENATOR LANDIS: (Exhibit 1) Nice to be had, thank you very much. Senator Mines, members of the Banking, Commerce and Insurance Committee, David Landis, principal introducer of LB 568. I'm here representing the "Garden District" today. This bill was brought to me by the banking department and what you're seeing now is a white copy or amendments to this bill that have been the product of a discussion monitored by the Chairman, Senator Mines, for the last couple of weeks. Let me first describe the problem and then talk about the green copy of the bill and then we talk about the genesis of the white copy of the bill although I must say that I think, in fact, the department, the industry, and your chairman probably know more about it than anybody else. First, the problem. A number of years ago I introduced the delayed deposit bill because the industry was springing up, it fell through the cracks as we then defined the banking industry. There were very responsible elements of the industry who wanted to be self-regulated by the state and came forward. We drafted and introduced and passed a delayed deposit bill a number of years ago. At that time, the industry showed a high degree of responsiveness to oversight and preparedness to show that they were on the up and up, knowing that the payday lender was something that could be easily misunderstood and easily chastised for being usurious in its approach to people in need. So they were willing to say, look, we're an above board business, we'll conduct ourselves in an above board way. Give us some fair rules, we'll follow them and I was impressed with that industry and I have been ever since, by the way, in their willingness to be responsive to the needs of public policy. In the last couple of years, the banking department has found a practice in their auditing that would seemingly violate the existing state law. Existing state law says, look, you're not supposed to roll over one of these payday loans. In other words, you're not supposed to start a loan and then start another one before the first one is paid off. You can do these because they're short term, 15 days, 30 days loans. They're short term but they should be completed, wrapped up before you go on to do the next one. That phrase for when you do another transaction without having wrapped up the first one is called roll overs. And it's been the public policy that that shouldn't be done, that, in fact, one loan at a time, you prove yourself to be a legitimate borrower and pay it back. Then you can do another one as opposed to digging an ever deeper and deeper pit for people to try to climb out of at the kind of costs and administrative fees inherent in the delayed deposit business. Now those fees are high. If you were to translate them into interest, the interest would be a surprising amount of money. On the other hand, the delayed deposit industry suffers a rather good deal of bad debt from people who say they're going to pay and who don't. What a shock. So, this is the price of money for this kind of clientele and the price of money for this kind of clientele is high. The roll overs that have occurred are against public policy and we don't know them because a consumer stepped forward and said, I want you to know I rolled over my debt and got the vendor to do it. And we don't have vendors stepping forward and saying, you know what? All right, I rolled over that and...You know how we know it? We know it because we've been able to see patterns in which on the books checks that were for one pay period and then followed by a second pay period with a new check that was being paid early were, in fact, consecutively numbered out of the checkbook. Now they may be two weeks or a month apart but check 51 is to the delayed deposit and check 52 is to the delayed deposit but it's dated two weeks or 30 days later. Now the banking department, skeptics that they are, perhaps with a pessimistic view as to the human nature, I'm not sure...it was Hobbs, the English philosopher who in the Leviathan said that man is basically evil and that government serves to operate to keep people from their natural evilness. Now perhaps our Hobbsian banking department is reading too much into it when they say, hmm, this does not pass the smell test. This is a roll over. This is where they're doing multiple, you know, at a time and then they're making it look as if it's a separation appropriately for the pay period. And because of that body of evidence, they asked me to introduce this bill. Now here's where I think the banking department is spot on. That piece of evidence is persuasive to me and I don't think it takes a skeptic or somebody who is, you know, a pessimist to believe that. I think that makes perfect sense and that establishes, I think, that roll overs have occurred. Let me tell you why I don't think we should expect the vendor and the consumer to serve as policing elements. The consumer is as likely as the vendor in this circumstance, I think, to be responsible for what happened. I bet the consumer walked in and said, I really need help, I really need the money. I'm prepared to do anything. What about I write you a couple of checks right now, can we do this? I can see that the vendor might have been talked into this. But it's breaking state law. But the consumer is desperate and the vendor makes money. Between a desperate client and somebody who makes money on the other end because of that, neither one of them is going to run off to the banking department and say, oh, my goodness, excuse me, we broke state law because it's probably something that is mutually beneficial which is why we're not going to get evidence better than this about this because we're not going to have one of those two parties come to us and snitch on the deal because it's mutually beneficial. Now, that's why I think the banking department is right to seek action from us against the problem. Here's the problem with the green copy of the bill. The green copy of the bill says, look, instead of going from one transaction immediately into another which is permitted under state law right now, it's going to be one transaction, three-day waiting period next transaction. And that would become the rule for the business for everyone even though the number of license holders who have this blip in their auditing trail is very small. The number of people who seem to be doing roll overs is a relatively small, modest amount of the industry and yet the green copy of the bill would apply to everybody no matter how scrupulous they had been up until now. And we have little reason to think that the vast majority of this industry is anything less than scrupulous. They seem to be, in fact, scrupulous. So, the green copy of the bill...I was persuaded by the industry, in fact, is more overreaching than what we need to be. I'm not asking the committee to advance the green copy of the bill. I would agree with the critics of the green copy of the bill that it does, it extends further than we need to. In the intervening time the chairman has conducted at least two discussions between the industry and the banking department, trying to arrive at remedies which get at the problem, which clean up areas of the law, which, in fact, creates some bureaucratic efficiencies for the industry to package them in the white copy of the amendments. Here is what I'm asking for the committee. I'm asking, by the way the industry has not seen the white copy of this language. It was just done this morning. They are familiar with what should be in there because it was the basis, I think, of the discussions that Senator Mines sponsored and monitored. But they, I think, need a fair chance to go through the white copy of the bill to see if it comports to the elements of the discussion that has occurred. I am asking the committee to hold the bill until the industry and the banking department get a chance to go through the white copy of the bill and that we make sure that the elements that around which I think there was general agreement are, in fact, appropriately worded and when that signal is done I'm hoping that the committee will advance the white copy, the amendments, to the floor. I'm not asking that for the green copy of the bill. What else? Oh, I believe it's a source of concern for the industry since it is, in fact, easily misunderstood if not well studied and seen in the operation of it, that a bill out on the floor contains some danger because it's pretty easy to get up on a high horse and decry the operation of the delayed deposit industry. I, in fact, have told them informally but I'll recite it publicly and to the committee as well. Should the bill be pulled out of the shape that the committee would choose to report it out, I would wind up probably pulling the bill. That I, in fact, I will be pulling the bill if it winds up being in a shape that once this committee is done with its work the industry couldn't live without on the floor so that this is the best chance to draft and put it in the form that it should be. I will say this. I thought that the Chairman was masterful in his approach to bringing the parties together and if this isn't soup it's the next best thing to soup and we should be able to do that in a day or whatever once that piece of work is done. May I answer any questions?

SENATOR MINES: Thank you, Senator. Nicely done. Senator Langemeier.

SENATOR LANGEMEIER: Senator Landis, you talk about the consecutive number of checks. Would it not be reasonable to assume that if I had no money in my checking account, I wrote a check to one of these particular banks or whatever you want to call them, and they gave me, advanced me $200 cash and I over two weeks' time spent that $200 in my pocket. Couldn't it be very well conceived that that next check I go back to then would be the consecutive number if there's still no checks, no cash in my account?

SENATOR LANDIS: No (laughter). It's not. People use their checks for that. Remember that it gets renewed once you get paid so there is money in the account, you know, at some point. And people use their checkbooks. Yeah, when checks are a month apart and consecutive, it strains my credibility, my credulity. It may not strain yours but you're asking my opinion. In my opinion, no, that's not a reasonable assumption, recognizing that not all minds agree.

SENATOR LANGEMEIER: Thank you.

SENATOR MINES: Senator Flood.

SENATOR FLOOD: My phone was ringing off the hook from payday loan places today and a number of folks that called me that were in the business said, you know, we comply with the law. Even if they do this three-day deal, the guy down the street, he's so crooked he's going to still do it. What kind...I guess, (laughter) they said it didn't matter how many laws you passed, only the good ones will be abiding by them and I really appreciate the effort put into this amendment. It kind of brings both to the table and from my read of it, it just says that the three-day requirement may be waived by the department.

SENATOR LANDIS: Actually, the three-day thing, the only way that is there is in the event...it would be used as a penalty if you had violated the law. And as opposed to lifting a license, you could say, look, you can stay in business but when you do this business for the next year, you're going to have to follow this three-day rule and that's its application there.

SENATOR FLOOD: So let's say the bad egg down the street up in Norfolk continues to try this and violates the requirement of three days. What can the good actor, or violates the rule and this has restrictions...

SENATOR LANDIS: Okay. Let's just say the person down the street violates the law, right?

SENATOR FLOOD: Right.

SENATOR LANDIS: Okay.

SENATOR FLOOD: What can the good guy do or, you know, what can be done to that person that continually violates?

SENATOR LANDIS: Look, there are substantial penalties that can be done. The problem is evidentiary in nature, Senator Flood. The difficulty is, if you have a desperate client and an unscrupulous vendor,...

SENATOR FLOOD: Um-hum.

SENATOR LANDIS: ...doing something that violates state law actually happens to be in both of their short-term interests.

SENATOR FLOOD: Yes.

SENATOR LANDIS: And that's going to be the problem. The person down the street who has an unscrupulous competitor, is a piece that happens in business all the time. And on occasion, some businesses just do enough, you know, what they'll do is they'll go to the regulator and they'll say, I'm going to turn in so and so and here's what I know, here's what I've heard. Here's...his customer came back to me when that screwed up and here's what the customer told me or here's what I can prove. There's a difficulty in getting one part of an industry to rat out another part of the industry because it's a downward spiral, you know. Once you start revealing dirty laundry there's no...you know, that doesn't end easily. It's a downward spiral. But that is one place that you could look to, that, in fact, the banking department is there and does have, you know, abilities to go in and audit, follow a paper trail, and try to come up with the evidentiary standard. The difficulty is, this is a group of people who are desperate enough that they're willing to do this and even achieve a place where an objective person would say, you're being exploited. But the desperate person says, I have no money and now I have money. And that makes them subject to a good deal of coercion and pressure. That's my best answer.

SENATOR REDFIELD: Thank you. Senator Jensen.

SENATOR JENSEN: Senator Landis, why should we as policymakers even promote this type of activity or allow this type of activity? A delayed deposit is nothing more than a loan.

SENATOR LANDIS: Right.

SENATOR JENSEN: Why do we allow people to make loans without having to go through this process? In real estate you're not allowed to take a postdated check and there are other instances the same thing. So why do we even want to allow an activity like this to be on the books of our statutes?

SENATOR LANDIS: Yeah, and that's a fair question because I certainly at the moment in which this issue came to me wrestled with exactly that one. And my answer came back that you're dealing with people who cannot get credit elsewhere, which is why this is so costly. They do not have another avenue. I'm going to guess some of the money comes because of convenience and ease in bookkeeping, but others come because there isn't a small loan shop that's available. You know, your small, typical small loan companies are now doing business in second mortgages. They're not making $700 loans or $1,000 loans or $500 loans. And there is no source for this amount of capital other than a private transaction, essentially an unregulated transaction. A bank is not going to do it. A savings and loan isn't going to do it and a historical small loan house isn't going to do it. It will be done on the street or it will be done in this context. If it's done on the street, again, it has the problem of the person who is desperate, dealing with somebody who will make a loan under whatever terms. We certainly have a law against loan sharking in this state, against unregulated transactions with usurious interest rates because of the history of that phenomenon existing. This is a way to take a practice which would otherwise be unregulated but exist, and regulating it for a modicum of balancing of interests.

The interest rate when you translate it into interest is very high. It would violate a usury statute several times over. On the other hand, there isn't a financial institution that lends money to people with no money. There isn't a financial institution that lends money to people with no money. This is it.

SENATOR PAHLS: Even though I would never use this, I think there's a group of people who found a niche in the market because there is a need for this for some people.

SENATOR LANDIS: And, Senator Pahls, it's also true that when this came up, our existing banking code was not written in a way that made this obviously illegal on its face. So it sprang up without practicing banking, and without violating the law, and yet businesses were open because that niche market existed before the regulation exists. The regulation came about after the niche market revealed itself. However, I must tell you that Sam Baird went out a couple of years ago, a former banking director, and to give somewhat of a light to what I've just told you, said he was surprised he saw a doctor in line that he knew. He saw an architect in line that he knew. You know, it wasn't grizzled characters from Tin Pan Alley or whatever.

SENATOR JENSEN: No senators were there? (Laughter)

SENATOR LANDIS: No, I wasn't there that day (laughter). I do stop and there's a convenience store up by my house that have a little, some of these check cashing operations when I go in and get my Diet Coke and fill up with gas. He was rather surprised to see a broader spectrum of the public than what you might need, that, in fact, the convenience and immediacy aspect has produced part of that niche market. But also part of the niche market is people who can't get money anyplace else.

SENATOR REDFIELD: Thank you. Are there other questions? I don't see any. Thank you, Senator Landis.

SENATOR LANDIS: Thank you.

SENATOR REDFIELD: Proponents? If you would place state your name and spell it for the record.

JOHN MUNN: (Exhibit 2) My name is John Munn, J-o-h-n M-u-n-n. Acting Chairman Redfield, members of the Banking, Commerce and Insurance Committee, my name is John Munn. I'm director of the Nebraska Department of Banking and Finance. I'm appearing today in support of LB 568, which was introduced at the request of the department, and the amendments which Senator Landis has brought to the committee. LB 568 relates to the Delayed Deposit Services Licensing Act which the department regulates. Licensees under what is known as the DDS Act hold the customer's check for a set period of time. The DDS Act was enacted to enable customers to have a place where they could obtain small amounts of cash on a short term basis for unexpected needs. The act sets fees, penalties, and places restrictions on the number of checks held, the dollar amount that can be outstanding, and the maximum length of time for outstanding checks. The primary purposes of LB 568 were to provide for additional consumer protections under the act, enhance the ability of the department to monitor those protections, and to update several of the act's provisions. Section 2 of the original bill relating to the rolling over of checks was the main focus of the bill and caused concern within the industry. As a result, a number of discussions and meetings were held and the amendments were drafted which we believe addresses the industry's concern while maintaining the original purposes of the bill. The department appreciates the time and efforts of Senator Landis and Senator Mines and that of their staff in achieving the results which are reflected in the proposed amendment. Two provisions of the original bill are carried over into these amendments. The first is contained in section 3 and would create a short form procedure for license applications made by entities which have a satisfactory record as a delayed deposit services licensee. Under the act, licenses are granted on a county by county basis. A licensee may have any number of offices within that county, but has to obtain a separate license for each county in which it wants to operate. As proposed, a hearing would not be automatically required for an entity which has at least a three-year satisfactory operating history in the state of Nebraska. A notice of the application would still be published but if there are no objections filed, the department could proceed to review the application without the hearing process. The department examines every licensee on a yearly basis so it will have current information on a licensee's operations and its compliance with the act when it considers applications which qualify under this section. This short form procedure will provide efficiencies for the department and the applicants while continuing the safeguards of the application process. This section also updates the act by setting the time period for filing objections against applications that are set for hearing at five days prior to the hearing. A second proposal that is carried over from the original bill, although placed in a different statutory section than originally drafted, is contained in section 4 of the amendment copy. This proposal would update the DDS Act by allowing the department to issue notices of cancellation which are surrendered...of licenses which are surrendered rather than conducting lengthy revocation procedures. This section would also provide that surrendering of a license will not affect any liability which may exist for administrative fines if the licensee violated the act prior to surrender. This proposal is a logical extension of the statute which already provides that a licensee cannot escape criminal or civil liability by surrendering its license. A new proposal within this amendment, while related to consumer protection, does not relate to the roll over problem I will next discuss. Section 7 codifies the current directive of the department relating to the penalty that can be charged if a check is not negotiable on the date agreed upon. The proposal provides that if a licensee requires a customer to write two checks for what would have been one transaction, then the licensee can only charge one penalty if both checks are nonnegotiable. Some licensees require customers to write two checks in the belief that they will be able to collect at least one of those checks. The department did not object to that practice, but took issue with the licensees collecting two penalty fees for checks written at the same time. The department notified all licensees of its interpretation of the statute several years ago and has required refunds of all double penalty fees since that time. Section 7 protects the consumer by inserting that prohibition into law. I'd not like to turn the focus of my testimony to the heart of the bill, how to prevent roll overs in appropriately sanctioned licensees who engage in this prohibited practice. Under the DDS Act, a licensee can hold only two checks for a customer for a period not to exceed 31 days. The maximum amount of the check or checks outstanding cannot be greater than $500. The check must be paid in full either through depositing the check so that it would be charged to the customer's account, or by the customer coming into the business and paying the obligation in cash. A licensee cannot accept another check to pay off an outstanding check nor may a licensee roll over a check for an additional fee. These provisions which were part of the original DDS Act are intended to keep the consumer from paying exorbitant fees for one transaction and to be able to pay off the debt on a short and timely basis. Over the years that the department has regulated the act it has found the roll over prohibition the most difficult to monitor and enforce. Customers who are part of these transactions very seldom complain because of their financial condition. Records of a limited number of licensees, while suspicious in indicating possible violations, do not generally provide sufficient evidence for administrative action. The original version of LB 568 addressed the problem by proposing a three-day waiting period between consumer transactions with the same licensee. The industry argued that the proposal was potentially injurious and that it penalized the entire industry for the actions of a few. Industry and department concerns are addressed in the following ways by the proposed amendments. First, section 8 clearly prohibits any renewal, deferral, roll over or extension of a delayed deposit transaction with one exception. The only extension that would be permitted would occur if the due date for a check is less than the 31-day maximum. If a customer requests additional time and the licensee does not charge an additional fee, the check may then be held up to the 31st day. Proof of compliance will have to be retained or there will be a rebuttable presumption that the licensee did not comply. The department believes that complete and clear definition will forestall any claim that the act does not specifically prohibit roll over transactions. Section 8 will also allow another transaction by a licensee with a customer on the same day that a previous transaction is completed if both the customer and the licensee verify in writing on a specific form that the first transaction was completed. A licensee's failure to retain or its inability to produce this document for department examiners will create a rebuttable presumption that the licensee violated the section. The rebuttable presumptions built into this section will provide the department with an effective method to proceed against violators. Other provisions have been drafted to allow the department a number of new tools for enforcement. First, the department will have authority under section 1 to require a larger bond for licensees for any reason including violations of the DDS Act or troubled financial condition. This will provide additional resource for consumers if the act is violated. Second, licensees will be required by section 2 to notify the department if it terminates employees, agents, or insiders for violations of the act. This provision will allow the department to act quickly, to determine the impact on the licensee, and whether the licensee needs to correct any procedures. Third, section 9 provides the department with the authority to suspend or revoke a license if the licensee makes false statements or entries in its books and records, or alters, removes, or destroys any records. Accurate books and records are integral to the department's oversight and the soundness of the licensee. In conjunction with this, section 11 sets recordkeeping and record retention provisions. This proposed new statute specifies certain records which must be kept and provides for a three-year retention period which should cover most collection periods. The final and potentially the strongest enforcement provision is contained in section 10 and gives the department two new administrative remedies specifically for roll overs. This section would allow the department to order a licensee to return to the customer all fees charged plus all or part of the full amount of the checks which were rolled over in violation of the statute. In addition, the department would impose a waiting period between completion of a transaction and the start of another transaction upon a licensee. These remedies will directly address the roll over problem. The amendments presented today provide a more narrow, more clear, and more effective method of addressing the concerns which originally prompted the department to request Senator Landis to introduce the bill. I ask the committee to adopt these amendments to LB 568 and advance the bill to General File. Thank you.

SENATOR REDFIELD: Thank you. Are there any questions? I don't see any. Thank you very much.

JOHN MUNN: Thanks, Senator Redfield.

SENATOR REDFIELD: Other proponents? Are there opponents? Neutral testimony? Kurt.

KURT YOST: Madam Chair, members of the Banking, Commerce and Insurance Committee, my name is Kurt Yost. That's K-u-r-t Y-o-s-t, Ms. Janice. I'm here today representing Midwest Check Cashing Inc., a client that I have represented for 11 years. It's owned by a man by the name of Mike Medved. He could not be here today and I'm here on his behalf. He and I and the lady who is going to follow me, Ms. Trina Thomas, who owns Payday (sic: Paycheck) Advance here in Lincoln and also has delayed deposit operations in several states, were part of the original group along with your legal counsel, Mr. Marienau, and then banking chair, Senator Landis. You are sitting there looking at me saying, how did you get involved? I'm not quite sure, Madam Chair, how I got involved 11 years ago. But a friend of my father's called me and said we need your help. I said, help doing what? Well, we own a delayed deposit business and we think that the time has come that we need to be licensed; we need to be regulated; we need to be examined; and we need to be bonded, just as the Director of Banking pointed out a few minutes ago. And I said, okay, that sounds really good and good public policy but what is a delayed deposit? Never heard of it. And so over time I got to know what a delayed deposit operation was and we proceeded down the path to create legislation. And for many years our legislation was a hallmark for a lot of other states as they tried to get a handle on an industry that has, as Senator Landis pointed out, grown substantially not only in Nebraska but elsewhere. And Ms. Thomas can, I'm sure, address that better than I can. We appear here today, or I appear here today on behalf of my client in a neutral position because we have been party as the director pointed out and as Senator Landis pointed out, we've been party to the process to try to come to some workable amendments that not only address the concerns of the department, but maintain the viability of the consumer so that they don't have to go and create a new relationship down the street somewhere. And we could have, in fact, brought in several consumers to attest to the viability of this business. There are several in this building who use delayed deposit services. Senator Landis pointed out that some professional people, teachers, law enforcement, what have you. This is a business that I liken it and I may be wrong, but I liken it to middle-class Americans who, unfortunately, from time to time may be living paycheck to paycheck for whatever reason. You also have a smaller percentage of people that are called unbanked, i.e. they have no relationship with a commercial bank and never have had. They may not even have a credit history to speak of short of a relationship with a delayed deposit when needed. Senator Landis talked about the cost. I have brought along, and I would be happy to provide to the committee a booklet, and I have provided it with two or three of the members of this committee. I haven't gotten to everybody. I've tried to get it to you, Senator Redfield, but every time I came in you were busy, which is fine. The Consumer Research Credit Foundation commissioned five economists to research and analyze the payday lending industry. And I provided, if you so desire, to kind of background you on this business and this industry, who it serves and how it serves them, and I think you'd be amazed. And if you take a look at middle-class Americans they do not want to write an insufficient funds check, but yet they have an emergency. And they need $400 because somebody has shot out with a BB gun their windshield or the car windows, as I read on the front page of the Lincoln paper the other day. And, oh, by the way, the insurance isn't going to pay for it because it's only going to be $418 and my deductible is $500, but I don't have $418 and how am I going to drive my minivan and get my kids to school? Aha. Well, that's why we have this service. I can assure you that, for the most part, commercial bankers do not want to make a $400 loan. They can't afford to with the rules and regulations of today's times. They would make a $4,000 loan if you could qualify, but they aren't inclined to make that $400 loan. But the payday lender meets that need and meets the need of that middle-class American who has an unexpected emergency. As I said, we have worked with the department and we have come to what Mr. Munn pointed out is a white copy draft that we kind of put together on Friday morning in Senator Mines' office with the department. Laurel with Senator Landis' office just gave myself a copy of it. We are in a position where we want to look at it. My client only has two or three observations. One would be in the area of, and I have discussed these with Ms. Patty Herstein, legal counsel for the department. One would be in the area that Director Munn talked about where you notify the department if you let someone go. His concern is is that, are we violating privacy laws and is somebody going to get sued i.e. my client? Certainly, the department is not going to get sued. That's a concern of my client. Another concern he has would be and it has to do with that area of the 31 days. My client does not charge a fee to that point, but what happens is is sometimes you extend it as a courtesy as a good client because (A) there's an emergency in the family and they're out of town. They're sick and they can't come in and conduct business. If you cannot come in and conduct your business, how are you going to get a notice? That's his question. How are we going to be able to get both parties on a notice? He has a concern there. The department is going to work with us in the area of being able to pay off the note or the transaction either by cash, which the vast majority do, or by depositing the check, or because of check 21 in the 21st century we're looking at automated clearinghouse, the ACH electronic process. Ms. Herstein and the department tell me that is a process that can be done by director edict and so at some point we'll be talking with the new director about that. I don't think I'm missing anything here. I'm kind of shooting from the hip. We have, as Senator Landis pointed out, tried to maintain the integrity of the industry. The department is certainly looking and concerned about the potential for some bad actors, not a whole lot of them but there perhaps are. The attitude of the industry is, is fine, find them, kick them out of the industry, revoke their license, which they have the authority to do, or as Mr. Munn pointed out, there are several substantial fines and penalties that can be evoked and are proposed. The vast majority of this industry wants to conduct business in a solid, sound manner and we, too, we don't need the bad actors. And with that, I would entertain any questions, keeping in mind that I'm not a practitioner nor a technician. But the lovely lady behind me or following me is but I would certainly entertain any questions because I do have the history.

SENATOR REDFIELD: Are there questions? I do have one. More and more we're seeing funds transferred electronically checks, payday checks are deposited electronically. All of a sudden you get the notice when you appear at work on Friday, oops, we had a technical error and that deposit that you were counting on being in your bank account today is going to be delayed till Monday. But five days ago you mailed the credit card check because you knew that it was going to take time to get there. All of a sudden you have some checks that might bounce if that deposit is not there. I think that's kind of an accurate picture of what you're seeing in middle day America. What's the average bounced check charge now that a bank might have?

KURT YOST: Senator Redfield, I can't tell you for sure but you're probably looking in the $20 to $25 range.

SENATOR REDFIELD: So...

KURT YOST: Depending on where and in some situations, particularly in rural Nebraska with the community bankers, where you're known on a personal basis, you may not even get any. I mean, it runs the gamut. But I'm going to tell you that in my best guesstimate (phonetic) it would be in the $20 to $25 range. I have never had one, thank the good Lord, but, unfortunately, one or two of my children have and since I guarantee their accounts or did at the one point guarantee their accounts, I have seen some check charges come through. One of them was on a $40 range on one account.

SENATOR REDFIELD: So you could have a $10 check out there with a $40 fee for...

KURT YOST: Precisely.

SENATOR REDFIELD: ...insufficient funds and another fee for the creditor that you actually issued the check to.

KURT YOST: Precisely.

SENATOR REDFIELD: So if you somebody has a few of those out, I could see how in a situation like that, paying some interest that looks exorbitant may be a bargain.

KURT YOST: Senator Redfield, you hit the nail on the head, believe it or not. And in this study, these economists would show you the APR difference, assuming a standard delayed deposit fee vis-a-vis an insufficient fund check fee on just $100 check. I saw my one son, Senator, end up with $80 in insufficient fund check fees on a $90 check.

SENATOR REDFIELD: Okay, thank you.

KURT YOST: Now I will...let me defend the commercial banking industry here just a minute (laughter). Today, a lot of banks today offer their customer insufficient check coverage which has gained some steam. There are some skeptics, there are some regulators who are skeptical, but it has gained some steam because it does protect that bank customer against that exact notion that you just pointed out, the insufficient funds check. And the other thing, and I thank you for pointing it out, which is why the payday lending industry is what it is, and that's why middle-class America uses it. This is not a back alley operation, ladies and gentlemen. It just isn't. Now years ago it might have been perceived as that but it's not.

SENATOR REDFIELD: Thank you very much.

KURT YOST: Thank you.

SENATOR REDFIELD: Next testimony neutral?

KURT YOST: And I would be happy to provide anybody with this study if they'd like to look at it.

TRINA THOMAS: Hello, my name is Trina Thomas, T-r-i-n-a Thomas, T-h-o-m-a-s and I'm president of the Nebraska Association of Check Cashers and the owner of Paycheck Advance. I have 16 stores in the state of Nebraska. I have stores in seven states, approximately 60 stores. I've been in the industry since 1992 and was one of the original people who worked with Dave Landis on the original bill. I don't know if...you'll excuse me, please. I have a cold. If everyone knows how a delayed deposit transaction works but I thought I might tell you a little bit about that. A customer comes into the store and fills out a short application, let's say compared to what they might fill out at some other place for a loan. And we verify some items and the customer writes us a check and we know when the customer writes the check that there are no funds in the account to cover the check. However, we issue the money and we set up a due date. At that time, which the law says can be no longer than 31 days, then we take the check to the bank and deposit it or the customer comes in and pays for the check. Senator Langemeier, I know that you said something about consecutive numbers on the checks and what you said is true, that sometimes you do see consecutive numbers because the people don't have any money in their account and they don't write checks because of some of the bank charges. And I know what you were talking about, too, because one of the things that we require is a bank statement. And I've seen bounced check fees from $200 to $300 a month on some people. It's pretty incredible. But if the customer gets paid on a certain date, and writes maybe four or five bills and they bounce, then I've seen a lot of high bounced check fees. If there's any other question on how...yes.

SENATOR REDFIELD: Senator Flood.

SENATOR FLOOD: Thank you, Senator Redfield. I guess I would ask if I wanted 500 bucks,...

TRINA THOMAS: Um-hum.

SENATOR FLOOD: ...what would I have to write you a check for when I'm at your window?

TRINA THOMAS: First of all, with the law you can't get $500 (laugh).

SENATOR FLOOD: How much could I get?

TRINA THOMAS: Four...let's see, I'm not exactly sure of the number $400 and...

SENATOR FLOOD: How about if I take 395 bucks?

KURT YOST: 430

TRINA THOMAS: Is that what it is...what...430.

SENATOR FLOOD: Okay, so I want 429 bucks.

TRINA THOMAS: Yeah.

SENATOR FLOOD: What kind of check do I have to write you to get that?

TRINA THOMAS: $500.

SENATOR FLOOD: So, oh, you make 65 bucks.

TRINA THOMAS: Right.

SENATOR FLOOD: Okay. On average, what is your interest rate if we were to treat this as a loan?

TRINA THOMAS: Let's see, it varies, of course, on the number of days so if a customer has payday let's say two weeks out or 31 days...

SENATOR FLOOD: Okay.

TRINA THOMAS: ...then it's going to vary.

SENATOR FLOOD: So that 500 bucks, would that be for a two-week period or?

TRINA THOMAS: Usually we set it up until the customer gets paid the next time.

SENATOR FLOOD: Okay.

TRINA THOMAS: Or actually not the next time. We usually set it up when the customer comes in so that they get paid or the check is due not the next pay period but the one after that,...

SENATOR FLOOD: Okay.

TRINA THOMAS: ...because they usually don't have enough money.

SENATOR FLOOD: So would they pay a pro rata share of the interest to the date? Say they pay it off early.

TRINA THOMAS: Uh-huh.

SENATOR FLOOD: They wouldn't pay the full 65 bucks. They'd pay a pro rata share of that?

TRINA THOMAS: Not on this state. In Virginia they would.

SENATOR FLOOD: It would be a flat rate, 65 bucks.

TRINA THOMAS: Right.

SENATOR FLOOD: There's no incentive to pay it off early.

TRINA THOMAS: Right. But the average number of days that we hold a check is about 21.

SENATOR FLOOD: Okay. How many people bounce checks with you? I mean, is that...

TRINA THOMAS: Quite a few.

SENATOR FLOOD: What's your recourse against someone with no money when they bounce a check?

TRINA THOMAS: What we try to do, we call them in the morning, we call the banks to verify funds if a check is due. Let's say it was due today. We would call the banks to verify funds because we don't want to deposit that check and cause a customer to have more bad check charges.

SENATOR FLOOD: Okay.

TRINA THOMAS: So what we do is if I were to call a customer's account and the customer did have the money then we have a bank runner, somebody personally goes down there and gets the money.

SENATOR FLOOD: Do you find people that become customers once get into a cycle where they're kind of getting behind the eight ball where every two weeks they got to come in because they spent the next paycheck's money before next paycheck and do you see that kind of a cycle?

TRINA THOMAS: It's so kind of strange because it varies from store to store on what, you know, and it's surprising. We have what's called an update form of information if we haven't seen the customer so there is certain stores where we look at the history and we see that the customer hasn't been in for three or four months and so we have to fill out and stuff. But there's other stores where people...

SENATOR FLOOD: Well, I appreciate you answering the questions. Thank you very much.

TRINA THOMAS: Sure.

SENATOR REDFIELD: Are there questions? Senator Pahls.

SENATOR PAHLS: Yeah, I just have, because I heard some different figures than what I had looked at. It's $15 per hundred,...

TRINA THOMAS: Um-hum.

SENATOR PAHLS: ...maximum days 31. The maximum amount it says here $500 in the state of Nebraska.

TRINA THOMAS: Right for the check, that's the face of the check.

SENATOR PAHLS: Okay.

TRINA THOMAS: That includes the two.

SENATOR PAHLS: Okay. So, but basically 15 per hundred.

TRINA THOMAS: Right.

SENATOR PAHLS: Okay. I just...okay.

SENATOR REDFIELD: Other questions? I don't see any. Thank you, Ms. Thomas.

TRINA THOMAS: Okay.

SENATOR REDFIELD: Do you have any...?

TRINA THOMAS: I didn't know if you guys had any...anything else?

SENATOR REDFIELD: Did you complete your testimony?

TRINA THOMAS: I was just going to say something more about the bounced check fees or what we see, you know, coming from the banks and stuff.

SENATOR REDFIELD: Go ahead.

TRINA THOMAS: When we look at that as an interest rate, you know, for people...we see a lot of people with bounced check fees that are coming in now. And I know this week the Kentucky House just passed a bill that raises the total amount from $500 to $1,000 because when we took this bill out in '94 the amount that we set, $500 was the amount that a person would need to pay rent for a month. And there has been such inflation now that a lot of times getting 400 and something doesn't really help, it doesn't even make a car payment for them. But there have been a couple of states now that are advancing the amount in the bills to 1,000 and that's the end of my testimony.

SENATOR REDFIELD: Thank you.

TRINA THOMAS: Thank you.

SENATOR REDFIELD Is there other testimony? I don't see any. Senator Landis, would you like to close?

SENATOR LANDIS: Understand that these are fees, not interest. However, if you take a look at Senator Pahls' information which dovetails, by the way, with Ms. Thomas's information and that is, that is $15 per hundred. That $15 is for the use of $100 and we would think of 15 percent interest as the use of a hundred dollars for a year. If it was for the use of 12...if you broke that into twelves because it was doing once a month, that would then be 180 percent if you had a hundred dollars and paid $15 per month for that. But this is a payday loan which can be done every two weeks so if you reduce it to an answer as to interest, the answer is that it could be 360 percent interest which is the price of the use of a hundred dollars for two weeks at a cost of 15 bucks. But it's not interest because, in fact, as you said, it's not like it's measured day by day like interest is. It is an administrative fee. It says for the loan of a hundred bucks you charge 15 bucks till the next payday and that could be...it could be as short as two weeks. It could be as long as 30 days but it's meant to go from payday to payday. My guess as Ms. Thomas was saying, yes, there are occasions when it's the case that there are consecutive checks. I also heard her testimony to say, yes, I have instances in which people write four or five checks right in a row and they have the problem of bad checks. I'm inclined to think that people who have checking accounts use it for that purpose and so I'm inclined to think that the body of evidence that the banking department has brought you is a reasonable, rational, and shows a problem. I think it's somewhat reinforced by the fact that if I understand your argument, or that what you've got from constituents was, I'm a good actor. The guy down the street is a bad actor, but the law is not going to catch him so don't make my life more difficult. In there someplace I think is some admission that says, we could do a better job at following the law.

SENATOR REDFIELD: Thank you, Senator Landis. That will close the hearing on (LB) 568. And you may open on LB 693.

LB 693

SENATOR LANDIS: (Exhibit 1) Just for you, pal. Chairman Redfield, members of the Banking, Commerce and Insurance Committee, David Landis, principal introducer of (LB) 693. On behalf of NIFA, Tim will be up here, I think, shortly to tell you about how NIFA intends to use this authority. They actually have two bills. Your committee will see another one with respect to military housing and something else under the introduction of Senator Mines. This is a separate bill to give NIFA the authority for financing economic impact projects. Senator Jensen had made a teasing remark about the nostalgia of color-coded little maps that I used to do when I was on this committee. I find that it's helpful for me to sense what a process is if I can draw it out and so I'm imposing my own way of learning on you to tell you about accessing through this bill a federal program. The federal program's goal is actually, I suppose the goal is in this orange box at the bottom. The orange box at the bottom is where a small business or an agri-business, and a small business operating in an eligible census tract. This is not a cross border to border but census tracks that have indications of need, by the way in my own city, these are the eligible tracts of land in Omaha. It would be the tracks of area that we most specifically know as lower income, less high end areas of the city. But the federal government has a special program for small businesses and agri-business. You have to be in an eligible census tract and you can't be in essentially a sin business. A massage parlor will not be able to get one of these federal...they're not the goal for this particular federal program. I'll tell you what the goal of the federal program is and that is to create patient capital for small business in difficult census tract areas for growth, patient capital, not capital that demands immediate return. So the federal government creates a body of tax credits to support eventually lending to small businesses and agri-businesses for seven years or longer patient capital, something that's not particularly in the marketplace at the moment, for which the federal government wanted to encourage. So in the upper right-hand box is the federal government, the treasury department who has tax credit authority and they can allocate these tax credits to states, and to people who are prepared to administer them. At the bottom, the orange box is to whom the ultimate beneficiary of this program exists. Small businesses and agri-businesses in need of patient capital, could be loans, could be equity, could be convertible debt. Upper right-hand corner is the source of the tax credit which is a federal tax credit. It is given by the treasury department. It is on a competitive basis year by year as to who gets to administer the credits and what states get to give the credits. So what are the missing pieces? What's this bill about? Well, start in the upper left-hand corner, the NIFA, our Nebraska Investment Financial Authority, not backed by any state dollars, not backed by the pledge of the state of Nebraska. It is recognized in state law, but it is essentially the rough equivalent of revenue bonds. Bonds that hold an income stream from whatever source, lend out money, get the money back, pay off the bonds. NIFA is not backed by the full faith and pledge of the credit of the state of Nebraska. NIFA would make the application. NIFA would make the application to the treasury department. It would make an application for tax credit authority which is now going unused in the state of Nebraska. It's going unused elsewhere but not here. NIFA would make that application for some tax credits, federal tax credits and the treasury department, if they bought off on the application, would authorize tax credits up to "X" amount. By the way, the application that they're contemplating, I think, is for $40 million. The tax credits go to an investment consolidator, quite likely a limited liability corporation. In this case, NIFA would intend to create the investment consolidator and essentially own it. Then have a relationship with it on a contract basis in which NIFA would do administration, education, and compliance costs, and they would do that on a contractual basis in which NIFA was paid back only the actual cost of those functions that it would play for the investment consolidator. The investment consolidator is the hub; it's the most important part. By the way, a bank could become an investment consolidator. A private sector area could become, they just have never wanted to be in this state and one of the reasons is, it's relatively complex. And it's not necessarily, particularly money making to be an investment consolidator. What an investment consolidator is is it's somebody who has essentially gotten these federal credits. They then establish a link to a lender or an investor. The lender gives money to the investment consolidator. They loan it to the investment consolidator. The investment consolidator turns around to make loans to the small business and the agri-business. Now the small business and the agri-business need to repay the investment consolidator. The lender who has lent the money to the investment consolidator gets their money back, because it is a loan, and they get the interest on that loan that they've made, and they get the tax credits which are created by the federal government and essentially given to the investment consolidator to disburse. What if you don't do this bill? Well, nothing particularly bad will happen. We'll be in the status quo. Agriculture will look for their resources from among the existing lenders that they have. Small businesses will continue to go to the SBA. They'll go to any of the existing banks. They'll try to do their money in the marketplace as it exists. If you don't do this bill, people will continue to do business in Nebraska like they are because there is no investment consolidator. If you do pass the bill, NIFA will go forward with an application. The application, if the treasury department was to act on it and give them $40 million of tax credits, those tax credits would leverage potentially a greater amount of money. That greater amount of money would then be subject to loans to small business and agri-business at a patient quality, and in a patient amount that hopefully would fit their needs. The lenders and investors of this state who would make use of the investment consolidator, would get...they would have to lend for essentially small business and agri-business, but they would be motivated to do so because they would get this tax credit for their money. Otherwise, they could be the lender and investor right now who would do it for the small business and agri-business. But they might make more use of this because, in fact, they had the leverage of the federal tax credit. What I think it means is if the federal government's theory is right and a number of states use this and quite effectively, it will produce a larger pool of money to lend small business and agri-business than what now exists because lenders and investors choosing among all the things they could choose to invest in will be motivated to do it in this area because essentially the presence of a tax credit that they'll get if they choose to lend in this area. NIFA is here to explain and justify why they should do this task and what its eventual good will do. However, I thought that this was an opportunity for the state to consider. I do hear from small businesses who say that it's hard to get a commercial loan. It's hard to get a commercial loan on the terms that fit their business cycle. I hear the same thing about the agri-business but I am at arm's length and what I report to you is secondhand information at best. I, in fact, do have a small business myself and, in fact, have a lender who I have a perfectly good relationship with. I've had no difficulty getting credit but I've heard that secondhand. And perhaps you've heard that. If you have, then perhaps this idea holds some interest to you. If we don't do it, the status quo will remain what it is. If we choose to do this, we will use the tax credit mechanism to develop and leverage a pot of money, a pool of money which could be lent to small businesses and agri-businesses at a patient and, hopefully, low cost basis.

SENATOR REDFIELD: Thank you, Senator Landis. Are there questions? You must have explained it well. Thank you.

SENATOR LANDIS: Well, we'll see. We'll let Tim come up and correct my paper, see if I described the process accurately.

SENATOR REDFIELD: Proponents, please.

TIM KENNY: Thank you, members. My name is Timothy Kenny and I...T-i-m-o-t-h-y Kenny, K-e-n-n-y, and I'm the executive director of the Nebraska Investment Finance Authority. And it's been my pleasure to serve in that capacity now for almost 12 years. Very excited about this particular proposal called the New Markets Tax Credit because as a tax man and a recovering accountant I can tell you that it's the first tax incentive bill I've seen come out of the federal government for small businesses for some years that has the best of the housing tax credit program, which is a program NIFA has administered on your behalf for some 15 or 16 years, but takes into consideration the needs...the particular needs of two groups. One is the need for flexibility on the investor side and the need for flexibility on the small business side. I have a great big book of information here about the New Markets Tax Credit, probably more than you really want to know but I think I can summarize it best by saying, this is simply an opportunity to capture the opportunity, to use the New Markets Tax Credit in Nebraska and to optimize that resource for our small businesses in the state. This is unique in that it is a competitive application. We have to apply on behalf, it is not an entitlement to states like the housing tax credit. It is one where we have to demonstrate to the department of treasury through their fund that we have a proactive program to educate and train individuals in businesses as to how to access it. The targeted beneficiaries are a small growing business in Nebraska. As the senator says, it provides patient capital. It reduces the risk by providing an additional incentive and even more exciting to us, different from other venture capital type endeavors, it doesn't require the owner/operator to give away ownership which is something that small businesses often hesitate to do with respect to venture capital funds. It also has as targeted beneficiaries banks and financial institutions who try to meet their community reinvestment obligations, but have a hard time doing so on the investment side of the test. The loan side of the test is relatively easy to make, but the investment side of the test is very difficult for banks and financial institutions to comply with. This gives them a vehicle, and that's why you have that consolidator, and that gives them that vehicle to make an investment into the consolidator that then makes the loans down or the distributions down to the small businesses. The benefit to the state is that it keeps us competitive with other states. The state of Wisconsin, for example, has a hundred million dollar authority that they're already deploying into the community so it keeps us competitive. It connects us with other partners. This is a thin subsidy, about 17 to 20 percent on a net basis so it helps us leverage a resource and it helps us develop partnerships with financial institutions in the state to make loans and equity investments in these small businesses. It helps keep business, keeps businesses in this state and as you have heard previously, this is a 100 percent federal resource and does not require state funding. The benefit to citizens is jobs, jobs, jobs, jobs. It helps small businesses grow and small businesses create jobs. It creates ownership opportunities, creates opportunities for business to expand, especially in these targeted areas, and it also creates an opportunity for us to bring resources and patient capital to very small businesses. It's not hard to get the big loans. It's not hard to get loans over...a million dollars or more, $500,000 loan or more. But it is hard to get small loans. NIFA's role in this process would be to bring technical expertise to match this with other resources, to provide a statewide access to this resource because we do serve the entire state, and to mesh this with other modern resources that we can bring for job growth and business creation. We focus on job growth and business creation in our industrial side of our assignments. We provide technical expertise, consolidation, capacity. We also have other risk reduction tools that we can bring to the foray in terms of guarantees if it's necessary, collaboration with community-based organizations other than the borrowers and other resources as they become available. I would close just by saying that this looks to be the new paradigm that we're seeing out of the current administration. As you've seen, there have been a number of proposals to reduce existing programs. This program has not been impacted by the president's current consolidation of proposals. In fact, it has been supported by the administration and I think it is because it's a leverage resource that has broad distribution, so I think you might see more programs like this in the future and Nebraska certainly wants to be prepared to capture them. With that, I'm prepared to answer questions.

SENATOR REDFIELD: Are there questions? Senator Jensen.

SENATOR JENSEN: Is the $40 million that is talked about, is that allocated to Nebraska or is that...float up and down or...?

TIMOTHY KENNY: We've asked for $40 million of authority. The $40 million means that $40 million worth of authority would yield about a 39 percent tax credit on $40 million, so that would bring $16 million of tax credits into the state when $40 million was lent out or distributed or invested. So the way the math works, I'm doing 40 percent instead of 39 percent but, essentially, for every dollar invested, and we've asked for $40 million worth of authority, it will yield a 39-cent federal tax credit for every dollar invested payable out over seven years. So there's a seven-year restrictive period that the money has to stay out and has to stay out the entire seven years in order for the tax credit to be earned. And it's an annual allocation so we would apply each year for an additional authority.

SENATOR REDFIELD: (Exhibits 2 and 3) Thank you. Are there other questions? I don't see any. I want to read into the record two letters in support for LB 693, the Nebraska Farm Bureau Federation and the Nebraska Bankers Association. And Chairman Mines, I'm going to hand the chair back to you. We're working on proponents.

SENATOR MINES: Thank you. Thanks for your testimony. Have you done the show of hands? You're a proponent, is that right? Any other proponents please raise your hand. I see two more. Those wishing to speak...three more, I'm sorry. Those wishing to speak in opposition, any hands? And those wishing to speak in a neutral capacity? You're up, my friend.

JOHN JORDISON: Chairman Mines, members of the banking committee, my name is John Jordison. That's spelled J-o-h-n. Last name is J-o-r-d-i-s-o-n. I am director of Government Affairs and Economic Development for Great Plains Communications which is headquartered in Blair, Nebraska. We provide telephone, Internet, and cable services to 76 communities across Nebraska, all four corners of the state. We cover 13 percent of the state's geography. And we are truly a rural telecommunications company. Our largest community that we serve is 1,600 population. We have many, many communities of two, three, four hundred persons and in addition to providing high speed Internet access to all of our customers which is crucial to rural economic development, we also, as a company, contribute thousands of dollars each year to fire stations, community centers, truly community projects. We provide many more thousands of dollars a year in terms of helping to fund local economic development corporations, entrepreneurial and leadership development courses. And beyond that, we provide tens of thousands of dollars each year in conjunction with the USDA in terms of being the guarantor for the rural economic development loan program which would help fund small manufacturers, as an example. Now I say all this not because I think that our company deserves a pat on the back and indeed it is not just altruism. It is self-preservation because we are seeing a lot of our customers go away each year either courtesy of the mortician or courtesy of the moving van. So there's a real selfish interest on our part. When I first learned about the new era tax credits last year from Mr. Kenny, I thought this is great, this is one more tool. It is terribly difficult in our quest to help create new jobs in rural Nebraska. We need all the tools we can get. We just see this as one more tool. I would urge your favorable consideration of LB 693. I thank you for your time.

SENATOR MINES: Thanks, Jordie. Questions? Seeing none, thanks a lot.

JOHN JORDISON: Thank you, Senator.

SENATOR MINES: Good job. Next testifier in support? Testifier number two, two of four. Welcome.

TODD HEISTAND: I'm Todd Heistand. It's T-o-d-d H-e-i-s-t-a-n-d. I'll be brief as your time is valuable. I'm with Nu Style Development from Omaha, Nebraska. We've done a lot of previous low-income housing tax credit projects along with historical mix. We are in the process right now of doing a new market tax credit just north of downtown Omaha. It's a $20 million project and we started out back in July along with a national bank, national syndicator, and a national nonprofit trying to put this thing together. And they are very complex and, hopefully, we'll close maybe by the end of this month. In the meantime, we've actually had to start the project because it has taken me time to put it together. I guess we are thrilled to see that NIFA is stepping up to the plate to take on this role of helping teach, and train, and take on this part of bringing the credits into Nebraska. I had to go out of the state in order to get the credits just to start with for this project and I do get calls weekly of people calling, you know, how are you doing on this project? So I think the training piece of it is very critical for NIFA to be able to do that piece of it with all the nonprofits in the rural areas that will be doing this. We are trying also to add this to a...one world health clinic (OneWorld Community Health Center) is a nonprofit health clinic that services south Omaha. We're trying to move them into the old Livestock Exchange Building. It's a $40,000 build-out, about $4 million, and we have not been able to come up with anybody with New Market Tax Credits because it is too small of a deal at $4 million. So I guess that's another big concern that most of the projects that are going to be happening in rural Nebraska are going to be probably under $4 million, or $4 million or $5 million. There won't be anybody out there to do them so I think that's the other role that I see key for NIFA to play is they will be able to take on the smaller projects and do the deals. They aren't necessarily looking for the big dollars to do this project. On the $20 million project, for example, the fees is going out for the new market tax credits, they're almost $800,000 so, I mean, there's, hopefully, it turns into kind of like the low-income housing tax credits where after four or five years everybody's getting a feel for it and knows how it's going to work. But as you know, you know, the early tax credit deals the investments were pretty high and they were high risk, too, because nobody understood them. So I just wanted to be able to speak on behalf of, I'm very excited about NIFA stepping into these shoes.

SENATOR MINES: Great. Great testimony. Stay there just a minute. Any questions by the committee? Senator Pahls.

SENATOR PAHLS: I just have a question. Where's the project that you talked about in north Omaha?

TODD HEISTAND: It's north of Cuming Street on 16th Street, the old Tip Top building, (inaudible) building we're going to be doing and we're going to be putting a 60,000 square foot tenant on the main floor, kind of entertainment tenant on the main floor which would have never happened without the new market tax credits. It would be sitting there vacant.

SENATOR MINES: Any other questions? In our experience, Todd, have you seen the credits used as rehab primarily?

TODD HEISTAND: I think you'll see more done with new than rehab, yeah. This happened to be a project I was working on and was able to blend it into it and probably added a complication a little bit but, hopefully, it will be more in the new construction I can see as much as anything.

SENATOR MINES: Okay, and in your experience, have you worked in greater Nebraska as opposed to the Omaha metropolitan area?

TODD HEISTAND: We've done some rural and Iowa and some in Lincoln that...

SENATOR MINES: Okay.

TODD HEISTAND: ...but we haven't done...and no new markets. That's our...I mean just other than historical (inaudible), yeah.

SENATOR MINES: Right, right, great. Any other questions? Thanks for your testimony. Appreciate it. Testifier number three. Good afternoon.

MICHAEL MARONEY: Good afternoon. My name is Michael Maroney. That's M-i-c-h-a-e-l M-a-r-o-n-e-y. I'm the president of an organization called New Community Development Corporation in Omaha. It's a nonprofit 501c3. In addition, I'm also a member, for the past six years, of the board of directors of the Nebraska Investment Finance Authority so I have an opportunity to kind of look on both sides. Basically, the New Community Development Corporation is primarily an affordable housing developer. We've been in existence 13 years. We've been utilizing the New Markets Tax Credit through NIFA ever since our beginning. In addition, about ten years ago, eleven years ago, we became involved in small business development. We were in a training technical assistance and small lending program. Most recently, we have been collaborating with another organization, another nonprofit in Omaha, to do a commercial revitalization along 24th Street in north Omaha. It will be the first commercial project, retail project, in north Omaha in a long time. And I can say that directly because I'm a product of north Omaha, having been born there. I just want to make two things quite clear. One, as a board member of NIFA, I've been able to observe from the inside for the last six years as a board member the technical expertise of the staff to be able to handle this kind of program. They are very adept at the affordable housing tax credit program which is very complex in its nature. The New Markets Tax Credit is very similar and it's going to be very complex and I think that they have the capacity on the staff to make those things happen. The fact that they'd be providing mentoring, and training, and oversight I think would just add tremendous to the success of that program. Just briefly, in north Omaha, like I said, we are collaborating to create a commercial strip along 24th Street. Basically that project is actually under construction. The first phase of it will be a 22,000 square foot strip. We will have one 10,000 square foot facility and about ten 1,200 square foots for small businesses. Our second phase would be once we get that one filled up, will be a 10,000 square foot facility and the third phase will be a 25,000. One of the difficulties that we have, and having run a small business operation for ten years, is capital, capital for small businesses. Todd talked about $20 million in what the city refers to as north downtown, not north Omaha, and I'll distinguish that one there because in north Omaha we still don't have those kinds of projects. The New Markets Tax Credit would be a very tremendous tool to aid those small businesses that we've been working with and will be continuing to work with as we try to find entrepreneurs and retail businesses are going to the facility that we're creating in north Omaha. And north Omaha, if you don't know, has been very under served in terms of retail as long as I can remember. And so that the New Markets Tax Credit will be a tremendous boost to providing, as it was said before, patient capital and, believe me, it's not going to make...the New Markets Tax Credit will not make a bad deal good. But it will make a deal that's marginal happen, and we have a number of the businesses that are just on the edge, with just a little creativity, and a little patience and capital could become viable businesses. With that, I want to thank you for the opportunity to be able to speak to you and if you have any questions, I'll try to answer them.

SENATOR MINES: Thank you for your testimony. Committee, any questions? Senator Jensen.

SENATOR JENSEN: Yes, thank you. The prosecutor you were talking about, is that the one on 24th and Lake?

MICHAEL MARONEY: Hamilton.

SENATOR JENSEN: Hamilton.

MICHAEL MARONEY: Yes.

SENATOR JENSEN: A little more clear.

MICHAEL MARONEY: No.

SENATOR JENSEN: Okay, very good. Thank you.

SENATOR MINES: Without the New Markets Tax Credit...and you're with New Community Development Corporation?

MICHAEL MARONEY: Yes.

SENATOR MINES: If that funding source wasn't available to you, what are your other alternatives?

MICHAEL MARONEY: Well, I can tell you right now, we are...and the projects are already in structure, we've been working on this project for a couple of years now. And one of the things we have been trying to do is identify potential entrepreneurs that go into the facilities. It became...and we've interviewed and talked to a number of entrepreneurs. They're just not quite there where they can sign a long-term lease...

SENATOR MINES: Absolutely.

MICHAEL MARONEY: ...for a lot of different reasons. Because we believe in this project so strongly, we've stepped out and taken a risk to go ahead and start construction. And as we're under construction we're constantly looking for and trying to identify entrepreneurs to go into the facility. We think this will be just another tool to assist in making some of those entrepreneurs that we're talking to eligible to be able to go in and operate businesses.

SENATOR MINES: This is marginal money.

MICHAEL MARONEY: Yes.

SENATOR MINES: This is the last piece to make it work.

MICHAEL MARONEY: In many cases, yes, it is.

SENATOR MINES: Okay. Any other questions? Senator Louden.

SENATOR LOUDEN: Yeah. Mr. Maroney, is that right?

MICHAEL MARONEY: Yes.

SENATOR LOUDEN: I understand, you said you've been on this Nebraska Investment Finance Authority?

MICHAEL MARONEY: Yes.

SENATOR LOUDEN: How user friendly is that? Is this something that oh, the average person that's starting out that doesn't have a lot of business experience can find and work with this or do you pretty much have to go through some kind of a development corporation in order to get this?

MICHAEL MARONEY: No, the New Markets Tax Credit program, as I understand it, no. Anyone who is in the area, in the geographic area is necessary. If they have a business opportunity and idea they can come to an organization like mine. They could go directly to NIFA to get the assistance and help that they need. In fact, I would offer to say that this will be a very friendly atmosphere because we'll all be looking for the entrepreneurs that we can help make this work.

SENATOR LOUDEN: Okay. Thank you.

SENATOR MINES: Any other questions? Mr. Maroney, thank you for your testimony.

MICHAEL MARONEY: Thank you.

SENATOR MINES: Fourth and final, I think final. Any others...any show of hands, those in favor and support wishing to testify? Sir, you are the last one.

DAN KUBR: Thank you for the opportunity.

SENATOR MINES: Our pleasure.

DAN KUBR: My name is Dan Kubr, K-u-b-r, my last name. I'm the president of Vantage Point Homes. We're a manufacturing operation producing complete off-site built homes in a factory setting. By the very nature of the size of our product, we need to be a rural manufacturing business and as such, we need to position ourselves accordingly as far as our site and where we operate. Due to our own business growth and the growth of Lincoln, we are being forced to look for a new site to operate in either southern Lancaster County or northern Gage County. Upon learning of the New Markets Tax Credit at a recent NIFA seminar, we're excited about the potential of using them as a flexible resource that would allow us to lower our costs and achieve longer term financing, and we wouldn't have to give up an interest in our business. Over the years, we've provided housing to developers that has successfully used low income housing tax credits to complete their projects. And so we understand how NIFA has been instrumental in helping them realize that resource, and we need the same assistance and so we're very excited that NIFA may be able to help us do that and become successful at that. As a private businessperson, the more I learn about the New Markets Tax Credit I feel this will be an important new resource for small businesses in rural Nebraska and hope that it gets considered by everybody. Thank you.

SENATOR MINES: Great. Thanks for your testimony. Committee, any questions? Dan, thanks for coming in. We appreciate it. Any more in support? Proponents wishing to speak? How about those in opposition wishing to speak? Any opponents wishing to testify? How about those wishing to testify in a neutral capacity? I see none and with that I will close the public hearing on LB 693 and turn the chair over to Vice Chair Redfield.

LB 688

SENATOR REDFIELD: I will open the hearing on LB 688.

SENATOR MINES: Madam Chair, 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'm the principal introducer for LB 688. LB 688 would update the NIFA act. First, it would permit the financing of military housing to be occupied by military personnel serving on active duty. And, secondly, it would increase the agricultural program loan and net worth limitations. There are various opportunities that have presented themselves like privatization of the development and ownership of military housing in ways that may not always be accessed by or on behalf of the state of Nebraska. These opportunities have made it accessible, will assist in improving the condition of the housing available to those serving in the military, and provide a military friendly climate for continued economic growth in the state. LB 688 would also make changes to NIFA's first time farmer program to increase the allowable net worth of borrowers under NIFA's agriculture program from $300,000 to $500,000. It would also increase the maximum loan amount from $250,000 to half a million dollars which may be provided by NIFA. Making the suggested changes to the NIFA agricultural loan program would better provide NIFA with opportunities to continue serving the state's agricultural economy. I do have testifiers following me and with that I would entertain any questions.

SENATOR REDFIELD: Are there questions? I don't see any. Thank you, Senator Mines.

SENATOR MINES: Thank you.

SENATOR REDFIELD: Do you wish to close?

SENATOR MINES: I will. I'll waive.

SENATOR REDFIELD: Okay. All right, proponents.

TIMOTHY KENNY: Members, my name is Timothy R. Kenny, T-i-m-o-t-h-y Kenny, K-e-n-n-y. Again, I'm the executive director of the Nebraska Investment Finance Authority. This statutory update again follows the pattern of trying to capture opportunities and optimize those resources on behalf of the citizens of the state of Nebraska. LB 688 has two basic components. First, the military component and secondly, the agricultural component. With respect to the military component, our objective is simply to make Nebraska the most military friendly state in the nation and preserve the military friendly attitude of the Omaha/Bellevue area. We are currently very proactive with respect to housing that serves the military off of the base as it relates to our housing tax credit program which we are constantly working with Congress because it's a federal program to make sure that that's military friendly. And we have a number of provisions that we're working with on that. This relates to the on-base housing at Offutt, particularly as it relates to Capehart, the Capehart housing project which is influx. The size of that project changes and I think in the future as bases go through the review and closing process, and as they go through mission shifts and mission adjustments you will see the need for housing for military personnel change dramatically over the future. What we want to do is send a message to the Department of Defense and to the military people that if you want to have a flexible, positive resource in the state of Nebraska, we're your state, because we will be proactive in helping you provide that housing for military personnel. The targeted beneficiary on the military side of this equation are military personnel and their families, the Department of Defense, the Omaha and Bellevue areas and the great people, and the good people who do our work for us and do the fabulous work for us in the military community. The benefit to the state is it will demonstrate over time that we are state committed to help the military organizations fulfill their mission and we can flexible with them as they flex their needs. And we want to make sure that we can deliver on a very quick and effective way when other states, for example, cannot. Good housing builds good, strong communities whether you're on-base or off-base. We want to make sure that the military base is well received, not only for the benefit of those personnel but for the jobs direct and indirect associated with it. This is an effort consistent with NIFA's effort to make sure that all of our people, sons and daughters, as well as visitors here from the military have good, safe, sanitary, decent, affordable housing including reservists as they become activated. And, as you know, the nonmetro states provide a larger percentage of reservists into these activated units. So we're very excited about the role that we perhaps could play on behalf of the state to making sure that Nebraska is one of the most military friendly states in the nation. The second part of LB 688 relates to what I call the agricultural challenge. We're going to see some changes in the way that agricultural opportunities become available in the future. Our targeted beneficiary with respect to this is the same beneficiary we have with respect to our current ag programs that we operate on your behalf. Again, federal resources for the first time farmer and rancher program. Our targeted populations are farmers and ranchers across the state, the whole continuum of them, not only beginning farmers and ranchers but existing farmers and ranchers who are having to comply with new regulations. For example, the calf (inaudible) regulations which relate not only to livestock, but to hogs and to poultry where that group of people who have to be very, very responsible to make additional investments with respect to management of that waste has now dropped down to a much smaller level of producer. As Winston Churchill once said, we want to be...there are two kinds of success, I think is the way he phrased it. There are two kinds of success. There's initial success and ultimate success. We want to make sure that these resources are available not only for the first time farmers and ranchers, but for existing farmers and ranchers so that they have ultimate success. The benefit to the state is with the many changes ahead, with respect to subsidies and taxes and targets, we want to make sure that we have opportunities to meet that challenge with our farmer and ranching programs. The current provisions that we have were put in place 23-some odd years ago. The limitations with respect to loan limits and the limitations with respect to net worth limits, there's not many a modern tractor that will drive on 23-year-old tires. We think it's probably time to update those limitations. In our surrounding states, in the six states surrounding us the net worth limitation is present in three of those states at a level similar to ours or lower. Two of those states have no limitation at all because it's a state limitation that we put in 23 years ago as opposed to a federal limitation. I'm sorry, I have no information on Kansas. I don't know if they have a limit or not. But the current provisions with respect to net worth and with respect to net income are quite old and they need to be updated. The benefit to the citizens would allow access to these resources. It would ensure that farmers and ranchers who are fiscally conservative because one of the tests is a net worth limitation. Farmers and ranchers who are fiscally conservative who don't have debt on their property would have access to these resources. And it would certainly benefit family farm operations where property is handed down from generation to generation, but people need to update the mechanical resources that go into those farms. If you were to own a piece of handed down property in Cass County, or Lancaster County, or even Madison County where your grandpa might have bought it for 30 bucks an acre. In Saunders County it might be worth $5,000 an acre now, or Cass County it might be worth $4,000 an acre even though it's the same hundred acres that your grandpa handed down to you, and you would be outside of our net worth limitations. So we want to make sure that this resource is available to all farmers and ranchers in the community in the small amounts net worth up tc $500,000, loan amounts up to $500,00 so we can utilize the New Markets Tax Credit. We discovered that Senator Grassley over in Iowa was very proactive in creating an increase limit in the New Markets Tax Credit program for agri-businesses. The maximum limit in that situation is $500,000 and that's why we're proposing an increase in the loan limit to $500,000. NIFA again will work with the communities. We have both an ag lender on our board, as well as the chairman of the department of the Nebraska Department of Agriculture sits on our board of directors by state law. We'll work to make sure that we have resources available to meet these new challenges that come about as a result of a change in the agricultural community in these rules. We'll provide technical assistance. We'll continue to try and be innovative and, again, we have no cost opportunities for consulting and we have a statewide reach with respect to the resources. Thank you. I'm prepared to answer any questions. Yes.

SENATOR JOHNSON: Is $500,000 enough?

TIMOTHY KENNY: There's two limits. One is the net worth limit and one is the net income limit. The current program limits of the federal program which we are talking about, the New Markets Tax Credit program is $500,000.

SENATOR JOHNSON: Okay. So they've set the limit.

TIMOTHY KENNY: They've set that already.

SENATOR JOHNSON: Okay.

TIMOTHY KENNY: As I said, several states have no net worth limit. They just look to the individuals. Our state chose in its history to have a net worth limit some 23 years ago. It's within the tradition of our state. We could certainly operate without it, but traditionally we've had it and so we propose just updating it for $500,000. Yes.

SENATOR MINES: It was the Chair.

SENATOR REDFIELD: Oh, I'm sorry (laughter). Senator Louden. You're sitting in the chair (laughter).

SENATOR LOUDEN: That's the reason I was looking at you (laughter).

SENATOR REDFIELD: I apologize.

SENATOR LOUDEN: I had a young person that was wanting to start into the farming and the ranching...farming, and he looked into this farmer deal. And, first of all, it wasn't very user friendly, had a devil of a time trying to find where it was. We finally had to help him find it. After we started from the top and down then they started to hunting him up, but you had to have somebody stir somebody up. The next thing was that...and Senator Johnson asked about ($)500,000 and I question that even if it is a federal guideline, that we found that some of these younger people like that that they probably had been working at jobs someplace. They usually have a small, I wouldn't say acreage but sometimes they have maybe 80 acres, 40 acres, but they have a little bit of land that they've kind of went with. Sometimes they have a little bit of machinery but when they get ready to get a chance like this young fella had a chance to lease his grandfather's farm and start farming it then go ahead and buy machinery and stuff. The time he figured some of his net worth and a few other ifs and ands, why it didn't do him any good at all. I'm wondering, is there any way that we could raise that $750,000 for a net worth or something like that and perhaps borrow more money. I think the borrowing part wasn't as important as raising the net worth so that there would be people that were eligible to use this.

TIMOTHY KENNY: Point of clarification is, we administer currently a program called the first time farmer and rancher program which is a federal tax exempt bond program. It is horribly complex and it's all federal regulations with the exception of the net worth limit that we imposed in Nebraska. We've been working with our congressional delegation to try and get those limits changed and those program characteristics changed for years. There is, I wouldn't call it a resistance, but there's been very little effort spent to update those regulations. I think principally because nobody wants to spend any political capital on those provisions because they're working so hard on other agricultural provisions. But, nonetheless, we continue to try and get those rules changed. The exciting thing about the New Markets Tax Credit program is it's without any effort or without any input from the agricultural committees, it ended up in doing what we were achieving, attempting to achieve and that is to get any kind of agricultural activity defined as a small business and to get rid of some of the limitations in the old program. One of the ones that gives us the most grief, for example, under the current federal program for first time farmers and ranchers is the limitation on used equipment of $69,000. I mean, it was just...you know, what better tool for the first time farmer and rancher to use is used equipment. But we have this old rule that came from the eighties in that particular program that we can't seem to get changed. So part "A" to your answer is the New Markets Tax Credit provides a tremendous opportunity for us to bring new resources to farmers and ranchers, beginning and otherwise. The federal limit of $500,000 is something, that if we can deploy it successfully and get the attention of our members of Congress, we could probably get that changed. The $500,000 net worth limit is simply a state requirement. We could certainly administer the program very effectively without that limitation, but it is a state requirement that we've had in our program. We proposed increasing it to $500,000, but it would certainly be within the purview of this committee to either increase it above that or eliminate it altogether.

SENATOR LOUDEN: I see. If it wasn't in there altogether then there would be no...

TIMOTHY KENNY: We would have no difficulty administering the program. As an accountant, a retired accountant who spent the early part of my career in the agricultural community, I can tell you that net worth is a very nebulous...unaudited net worth is a very nebulous calculation because it is the net of assets versus liabilities. And assets sometimes have different values.

SENATOR LOUDEN: Then here on what, page 20, I think, line 10 or something, net worth of more than...they scratched out 3 and put 500, and scratched it all out.

TIMOTHY KENNY: The provision related to net worth could be eliminated, yes, and it wouldn't bother us in the least.

SENATOR LOUDEN: I see. One more question. Do you have very many beginning farmers and ranchers or whatever involved in this or use this?

TIMOTHY KENNY: We have...it's an interesting scenario and it's a function of the market rates of interest. When interest rates are high or on an increasing trend, we have many more than we do when interest rates are low. For the last eight to ten years we've had a very, very low period of interest rates and so the hassle of using a NIFA loan, and there is a hassle associated with it because essentially it's a bond transaction where one of our bankers originates a loan and then we originate a bond and buy that loan back. And so it's a complicated several step process by nature of federal tax law. When interest rates are low, people don't want to do that hassle and there are about ten banks in the states that are really good at it and the other banks might do one every three or four years. When interest rates are high, are increasing, or long-term financing is hard to get we'll do some 30 or 40, sometimes as many as 50 a year. Right now we probably do 10 to 20 a year.

SENATOR LOUDEN: How long a time frame is it if someone applied for this before they could get their money or get their paperwork done or something like this? I guess the reason I'm asking that is I had a son one time that was going to, believe he was going to buy some cattle. And we were going to look at Farmers Home Administration, supposed to have this deal for young people to get started. And one of the bankers up there told me that just loaning the money, he said we'll cover it. He said if you wait on Farmers Home Administration those cattle will have calves and their calves will have calves before you ever get the loan approved. Is this similar or is this a lot better?

TIMOTHY KENNY: This is for long-term assets and so it's not for any kind of operating loan with the exception of breeding livestock. And, again, I'm an accountant, not an ag person, so I won't even try to tell you that distinction. But this is principally for property and equipment and fixed assets, not including homesteads. And so we often combine it with an FSA loan for the homestead, but we cannot finance the homestead and we can only finance $69,000 of tangible personal property such as a center pivot or a tractor or something like that if it's used. Our maximum loan amount is $250,000 so the current program has a lot of rules and a lot of hoops, all of them federally imposed, all of them 23 to 25 years old that are in serious need of updating. That's why we're so excited about the New Markets Tax Credit. We think that it's much more streamlined, much more efficient, and it will be of much more benefit to the agricultural producer particularly since so many of the rural counties, the entire counties are eligible for the New Markets Tax Credit. In the urban areas we have specific census tracts and we've committed to do both urban and rural but many, many, many of the rural counties are 100 percent eligible for New Markets Tax Credits so we think it's going to be a much easier program to administer and much easier for people to access.

SENATOR LOUDEN: Could you safely say within a year?

TIMOTHY KENNY: It depends on whether we get an allocation. We will know whether we get an allocation this year under our current application in April, late April or early May. If we're not successful in getting that allocation, we'll make another application, but I do know of an organization that received an allocation in Iowa. And we would try to...this is a place where NIFA can serve as an intermediary. If we don't get an allocation we will go to national organizations and offer to provide some kind of incentive for them to use that resource here. The challenge with the New Markets Tax Credit is it's complicated and it's expensive to administer so unless you have a motivated intermediary like NIFA involved none of the big national groups will try to bring that resource here. So we would have to go out and find somebody who we could give some additional incentive to bring that resource here because there are very few organizations that have a national authority. Most of the authorities that are granted by the treasury are for specific geographic areas. And so we'd have to go out and recruit somebody to bring that resource here.

SENATOR LOUDEN: Okay. Thank you.

SENATOR REDFIELD: Senator Louden, I think if it takes as long to get the loan as it does to pin him down on how many months this might be, it could be a long wait (laughter). Senator Jensen.

SENATOR JENSEN: Yes, in regards to the military housing. It's my understanding that the military or federal government is moving to get itself out of the housing on bases, off bases.

TIMOTHY KENNY: Correct.

SENATOR JENSEN: And so this would allow the financing of base housing, either on or off, by private contractors. Is that correct or?

TIMOTHY KENNY: By private owners.

SENATOR JENSEN: By private owners.

TIMOTHY KENNY: Right.

SENATOR JENSEN: So the owner would make the application,...

TIMOTHY KENNY: Right.

SENATOR JENSEN: ...then for these loans.

TIMOTHY KENNY: Right.

SENATOR JENSEN: And if it's on base does that mean that it has all the requirements typically of a government entity on the paperwork that is required on base?

TIMOTHY KENNY: It's actually an effort to reduce that paperwork.

SENATOR JENSEN: Oh.

TIMOTHY KENNY: Currently, the reason we can't use any of our existing programs in addition to conflicts where things haven't been defined under federal law, is right now under our programs we would have to income verify everybody who appeared on a project on a development and save that for 21 years. And the government is not going to have us, you know, for people moving in and out under the existing programs that we have, is not going to let us income verify, you know, corporals and sergeants and families and whatever so the challenge is and the way the military housing privatization process works is the government retains the ground and makes a long term land lease to a developer that then develops it and agrees to operate it for military personnel and in very unusual occasions those who are providing services, direct services, to the military. So, for example, you might have...I can't tell you who it might be but it might be some kind of special forces or CIA kind of people who might, on occasion, have their family in these military bases. All the security and everything is still provided by the military. It's on base, but the operation of landlord duties are run by a private company because essentially the military wants to get out of the landlord business with respect to the rental housing.

SENATOR JENSEN: By a private company but you're not talking about private ownership on base then, are you?

TIMOTHY KENNY: We're not talking about private ownership by military personnel. This is just for rental housing provided to military personnel and people providing direct services to the military on base.

SENATOR JENSEN: On base.

TIMOTHY KENNY: Right.

SENATOR JENSEN: Now does this also apply to off base?

TIMOTHY KENNY: We have a whole array of other programs off base. This does not apply to off-base programs. The challenge with our programs off base and we're continuing to work with Congress to fix this is Congress has built some conflicts in between HUD regulations and housing tax credit regulations that effectively exclude military personnel, if you can believe this. I know you'll never believe that two branches of government, federal government, could have a conflict but they have. And so we're constantly trying to work with Congress, and we've now been working on it for three years, to get that conflict resolved on the off-base housing. But that's a whole different set of argument and a whole different set of concerns.

SENATOR JENSEN: Well, there's a company in Omaha that had gone a long ways down the road to provide military housing. I mean, a long ways, (inaudible) investments and everything else and then at the last minute that all changed and...

TIMOTHY KENNY: It all changed. This reflects the fact that the government is constantly changing their mission and they not only changed it and did a rebid on the thing, they actually resized it. And I think this is what you'll see is across the nation as the government gets out of the landlord business, they still want to have the flexibility to reshape and change their mission. And what we want to say is whatever you guys decide your mission is, we're prepared to help you achieve that objective.

SENATOR JENSEN: And along with all of that you always run the risk of a base closing...

TIMOTHY KENNY: Right.

SENATOR JENSEN: ...and I would certainly hope that doesn't happen here in Nebraska, but that is still there and I just wondered, what happens to the investor who would go into a situation like that?

TIMOTHY KENNY: That's a risk that we are aware of and we plan for and we anticipate. We are blessed in Nebraska that our base is an urban base as opposed to Minot, North Dakota, for example, or someplace that's a more rural base. And base closings that we've seen in Texas and in Colorado and in other urban areas, there's a transition that occurs and those are very valuable and important pieces of property. We would never want that to occur here, but the nice thing about having an urban environment is the risks are mitigated by the demand for housing in the area. And we measure that. I mean, those are things that we underwrite for in the evaluation process. NIFA's role in this particular process is just to help whoever the applicant is and whoever the recipient of the contracts are in the future for this base to access the capital markets. That's what we do is get long-term financing at the lowest price possible. Currently, most of the people who access these markets are by private placements. We think that this strategy will help us access the capital markets and the public markets which could reduce the cost and to make our housing product for military personnel more cost effective for the military.

SENATOR JENSEN: And I would really hope that this would be done in a size so a mid- or moderate-size company could come into something like this, not some huge contractor, developer, builder, whatever that might be, so that several people could have an opportunity to participate in this.

TIMOTHY KENNY: Right.

SENATOR REDFIELD: (Exhibits 1 and 2) Other questions? I don't see any. Thank you, Mr. Kenny. Other proponents? And while you're coming I'm going to read into the record two letters in support for LB 688, one from the Nebraska Farm Bureau Federation, and the other from the Nebraska Bankers Association. When you're ready.

ROD JOHNSON: (Exhibits 3 and 4) Chairman and committee members, my name is Rod Johnson. I'm the executive director of the Nebraska Pork Producers Association representing our industry in support of (LB) 688, specifically the ag lending, beginning farmer, livestock segments of the current statutes, as well as the proposals that are coming under LB 688. My purpose in coming before you is to give you a little bit of a picture of where our industry stands and how I see some NIFA financing being used within our industry, specifically in the livestock and beginning farmer programs. In the handout that's being given to you, I would ask you to turn to chart number I on about the fourth page in there. This basically gives us a history of the Nebraska pork industry and as you look at this, since...as it tracks the numbers of animals we have in our state since 1985 you'll notice that in the early nineties we had a peak of production in Nebraska, approximately 4.6 million animals. And since then we have seen quite a drastic reduction to the point that we're sitting at about 2.9 million animals, at this time. That reduction in animals, basically, accounts for the lost consumption of about 37 million bushels of corn each year; 37 million bushels of corn relates to approximately $210 million worth of economic activity within our state. So this is a little bit of where we're coming from. Chart II, as you look at that one it tracks the number of U.S. pork producers as compared to the number of producers here in Nebraska. The blue line is the national trend line. The red line is the number in Nebraska. As you look at that time segment of the early eighties there you'll notice that the Nebraska line deviates from the same pattern that the national line had. That just happens to coincide with the time we had a larger number of producers in Nebraska so I do see this as an opportunity to put producers back on the farm or maintain production and maintain farmers within production agriculture in our state. When you turn to chart III, this gives a comparison of where Nebraska stands as far as a percentage of the national industry. The chart starts back there in 1994 with the green line representing the slaughter, the federally inspected slaughter industry in Nebraska. The blue line, the breeding herd, and the red line, the market hog or the finishing industry in Nebraska. And as you can see, we were long on hogs back in '94. We were producing more animals than the slaughter capacity we had within the state. But as you track that across the page the green line grows and the packing industry has been enhanced considerably as far as percentage of the national industry. But then when you start looking at the other two lines you can see where we've fallen off. And specifically, looking at the red line the market hog industry in Nebraska went from over 7 percent of the nation's market hog inventory down to just a little over 4.5 percent. This basically represents about 1.5 million animals born in the state each year, hauled to Iowa, Minnesota, elsewhere, consuming corn and soybean meal, creating jobs, putting kids into schools, and everything else that happens when you have a thriving industry out there. And then they end up coming back to Nebraska for the packing industry. With this in mind, the Nebraska Pork Producers Association and working with the extension department that the University of Nebraska has developed a program we're calling a Nebraska model. And basically, we are taking this opportunity to promote the hog finishing industry, trying to rebuild that industry which we have lost in our state, and rebuild that as an opportunity for the next generation to get involved in production agriculture. This is where I see an opportunity under the NIFA program for agriculture where we can aggressively go out there and promote opportunities for the next generation like I said, and present them some opportunities to find the funding and the financing needed to go into some of these facilities. The last time we had any growth in our industry was leading up to the early '90s and those buildings that were...and facilities that were put in during the '70s and '80s are reaching retirement just as the producers are that put them in. And so now we are at a crossroads where we have an opportunity to either rebuild this industry or face the possibility of it diminishing even further. The last piece of testimony that I passed out to you is a little brochure describing our Nebraska model project. And in there is basically a written testimony from three different producer families that have taken this approach to bringing the next generation into their operation. If you'll notice in there, one of the faces probably looks quite familiar to you, those that have been in the body for a few years, Senator Jim Jones and his son have used pork production as an opportunity to add another facet to their ranching operation out there. And so this is an opportunity where I see the NIFA fund being able to work within the agricultural community and I think it becomes my responsibility or my association's duty to work closely with the NIFA people to get the information and get it out to our industry. But we certainly support the direction that this legislation is going and we urge you to seriously take a look at this, moving it forward. I would be happy to answer any questions.

SENATOR REDFIELD: Thank you. Are there questions? I don't see any. Oh, Senator Jensen.

SENATOR JENSEN: Yeah, I'm just curious. With the loss of the number of hogs, has the processing also diminished? And how...a great deal of our hogs, well, Senator Jones, his hogs I take for processing, are going down into Kansas...

ROD JOHNSON: Um-hum.

SENATOR JENSEN: ...which is seem to me, a long ride, also those are jobs down there. But if we had processing up here, would we also have more hogs up here?

ROD JOHNSON: Like the graph shows in the written handout there, the packing industry as far as the percentage in the nation, has grown and we are very deficit on the number of finished animals right now. In Senator Jones' particular situation, this depends on who the producer is working with and the location where those animals are raised out there in the western part of the state. The transportation factor to the plant that they go to, compared to coming to the eastern part of the state, is not that big of a factor in that situation. But basically right now we have three major packers in the state, and at least two of those would be very willing and eager to increase production, even going to a double shifting scenario if they had access to the animals within a reasonable proximity of their plant. So there are a lot of opportunities there. My biggest fear is the fact that because so many animals are being shipped into Nebraska right now, if one of those major plants goes down, needs a major renovation, or something happens, we could easily lose one of those facilities to another location where they have closer access to the animals. So I think this is another factor, if we can rebuild our industry we can also preserve those jobs and the economic benefits that are in those communities.

SENATOR REDFIELD: Other questions? Thank you, Mr. Johnson. Other proponents? We'd ask you to state your name and spell it for the record.

PATRICIA PETERSON: (Exhibit 5) Madam Vice Chair Redfield and members of the committee, my name is Patricia Peterson, P-a-t-r-i-c-i-a P-e-t-e-r-s-o-n. I'm an attorney with Kutak Rock and act as general counsel to the Nebraska Investment Finance Authority. I am here today to submit for your consideration an amendment to LB 688. As drafted, the bill refers to the term, military personnel on extended active duty. And we've learned that that may exclude folks on regular active duty so I've suggested in an amendment that I brought along that instead we use the term, active duty but not including active duty for training, so if someone was called up for a day which apparently can happen in the reserves and be on active duty, that person would not qualify. But this term would pick up all the folks on regular active service. I am happy to answer any questions.

SENATOR REDFIELD: Are there any questions? I don't see any. Thank you.

PATRICIA PETERSON: Thank you.

SENATOR REDFIELD: Other proponents? Any opposition? Any neutral testimony? And we will close the hearing on LB ...oh, Senator Mines, would you like to close?

SENATOR MINES: I waive closing. Thank you.

SENATOR REDFIELD: All right. We will close the hearing on LB 688. Thank you for coming.