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COMMITTEE ON BANKING, COMMERCE AND INSURANCE
February 14, 2006
LB 1259, 1250

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 14, 2006, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1259 and LB 1250. 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. By the clock on the wall, it's 1:30 and I'd like to welcome you to the Banking, Commerce and Insurance Committee. My name is Mick Mines. I'm the Chair of this committee and I represent the 18th Legislative District. This is your part of the process where you have the opportunity to share with us your thoughts and ideas. I look forward to hearing them and will do everything possible to make sure your views are heard. Before I introduce the committee today, I'd like to ask you to please turn off your cell phones. When you testify, please come forward and if you would fill out the form prior to testifying, that helps us a lot. That's located on the desk in front of me or over by the door. And please state your name prior to testifying and spell your first and last name. If you have copies of your testimony or any other materials to hand out, we need ten copies. Please hand those to the page who will distribute them for you. Following that, each bill will be introduced by the specific introducer, and our agenda, as posted, is the agenda we will follow today, LB 1259 and LB 1250. Let me introduce the members of the committee that are with us today. On your left, my right, Senator Rich Pahls from Omaha; Senator Joel Johnson from Kearney; Senator Jim Jensen, Omaha; Senator Pam Redfield, Omaha. On my left, your right, Senator Chris Langemeier, Schuyler, Nebraska; and Senator Mike Flood from Norfolk. Committee clerk with us today is Jan Foster. Committee counsel is Bill Marienau and our page for today is Joe DiCostanzo, Columbus, Nebraska. Having said that, I see that Senator Brashear is with us today and he will introduce LB 1259. Senator, nice to have you here.

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

Committee on Banking
February 14, 2006
Page 2

LB 1259

SENATOR BRASHEAR: Thank you, Chairman Mines, members of the Banking, Commerce and Insurance Committee, my pleasure to be here. My name is Kermit Brashear. I'm a citizen legislator representing District 4. I appear before you in introduction and support of LB 1259. LB 1259 would repeal Nebraska's rejection of federal securities rules under the federal Philanthropy Protection Act. The effect of repealing the rejection would be to place Nebraska in line with almost all other states in allowing charitable organizations to issue securities in accordance with federal regulations, without additional state level compliance requirements. The Philanthropy Protection Act was adopted by the Congress of the United States of America in 1995. The act formalized prior securities and exchange commission guidance on federal requirements related to the issuance of securities by charitable organizations. States were permitted to opt-out of the provisions of the act and continue to regulate such securities and transactions at the state level if they elected to do so. Pursuant to LB 1180 of 1998, Nebraska specifically rejected the federal standards and opted out or opted to continue to regulate the sellers of such securities under the Securities Act of Nebraska, although the securities themselves were and are exempt. This policy is set forth in section 8-1122.01 of our statutes. Following the adoption of the federal act, less than a dozen states chose to opt-out. Since that time, two of those states have reversed themselves and repealed their rejection or opt-out of the federal standards. LB 1259 would ask that Nebraska join Arkansas and Vermont in reversing its decision to opt-out of the federal standards under the Philanthropy Protection Act. What is at stake here? Certainly, everyone wants to protect investors and I believe that this bill will not affect the protection of individual investors. The state's current policy, however, severely restricts the ability of charitable organizations in Nebraska to use pooled income funds, common investment pools, collective trust funds, and similar instruments. My experience comes from my work with the Lutheran Church Missouri Synod in Nebraska. Small congregations and ministries across the state are working together and desire to work together to pool their funds as a means of enhancing their return on investment for ministry. A Lutheran foundation would act as the agent on behalf of the constituent groups and enter into an investment program.

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

Committee on Banking
February 14, 2006
Page 3

LB 1259

Federal securities law, under the Philanthropy Protection Act, would allow this program to go forward without costly compliance requirements. The great majority of states would also allow such a program since only a few states have opted out of the federal act. Nebraska, however, requires additional regulatory compliance that either limits the opportunity to participate in the program or requires registered brokers that could cost thousands and tens of thousands of dollars and severely restrict and diminish the value of the investment program. Let me assure the committee that the antifraud provisions of both the federal and state securities laws would not be changed and would still apply. Any person offering securities whether for charitable or profit-making purposes is and will be subject to the strict sanctions imposed for disclosing false information or failing to disclose information material to an investment. Furthermore, failure to comply with the requirements of the act eliminates the federal exemption from registration of securities and the charity. What we are seeking is to allow investment programs that meet the following requirements that exempt them from costly compliance under federal law and, in most states, to also be exempt and not have those requirements in Nebraska. First, the investment fund must be operated exclusively for charitable purposes. Second, each participant must be an exempt organization under section 501(c)(3) of the Internal Revenue Code. These are not individual investors; they are charitable entities qualified under the Internal Revenue Code. Third, participants would have unrestricted control over depositing and withdrawing funds. Fourth, the funds would remain unencumbered and not subject to liens or security interests. Fifth, no retirement plan monies would be or could be used. Sixth, proceeds would go only to charitable participants for charitable use. Seventh, an offering memorandum would be distributed that clearly states that the investment fund is not a registered security. Eighth, those soliciting contributions or investments from participants would be required to be employees or volunteers under the control of a charitable organization, and those people would not receive compensation based on commission. There is an anomaly in our statutes in that charitable organizations are not closely regulated when they solicit contributions from individuals. But they are subject to strict regulation when they seek to offer a program for the benefit of other charities. LB 1259 will leave the

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

Committee on Banking
February 14, 2006
Page 4

LB 1259

important protections in place, but allow Nebraska charitable organizations the flexibility to enhance their missions in a safe and fair manner consistent with federal law. I would urge the committee's consideration of the proposal and its support. Thank you.

SENATOR MINES: Thank you, Senator Brashear. Are there questions from the committee? Senator Johnson.

SENATOR JOHNSON: Senator, I don't know, but I think you said 1999 or whenever it was.

SENATOR BRASHEAR: 1995.

SENATOR JOHNSON: Okay, '95. What were the arguments then to leave it alone so to speak or not join?

SENATOR BRASHEAR: I have read those once, but I did not commit them to memory.

SENATOR JOHNSON: Okay.

SENATOR BRASHEAR: And I'm (laugh)...I'm certain there were some and I'm not demeaning those. And we've actually gone through this process for and on behalf of an organization that I represented in private practice. I just think it's a little...once again, we're out of step in terms of what everybody else has found to be satisfactory. Is there a reason when all the federal law still applies?

SENATOR JOHNSON: Yeah, it just seems to me from first blush here or first glance is to be so obvious that you do this that I was curious as to what the arguments were the other way.

SENATOR BRASHEAR: And I'm sorry I didn't come prepared to...

SENATOR JOHNSON: (Laugh) All right.

SENATOR BRASHEAR: ...(laugh) represent the other side. I'll bet they're probably here, though.

SENATOR MINES: Are there other questions for the senator? Senator Louden.

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

Committee on Banking
February 14, 2006
Page 5

LB 1259

SENATOR LOUDEN: Yeah, thank you, Senator Brashear. This will mostly just bring us in line with the federal regulations, is that what...?

SENATOR BRASHEAR: That is my view.

SENATOR LOUDEN: Do you remember when you were a kid out west and there was a preacher that started a corporation called God, Incorporated, you know, and took securities and sold securities and got himself in a whole passel of trouble? That won't change any of that. He could still get himself in a passel of trouble, right?

SENATOR BRASHEAR: Yeah, and he can still do that in Nebraska with any member of his congregation or any other congregation or any nonbeliever that he could get to do it. The only people we'd take care of, he couldn't do it with his church which probably had a board that would've controlled it anyway.

SENATOR LOUDEN: Thanks.

SENATOR MINES: I neglected to introduce...

SENATOR BRASHEAR: And I do recall it (laugh).

SENATOR MINES: ...introduce Senator LeRoy Loudon joined us from Ellsworth, didn't come from Ellsworth today. He was here (laughter). He's from Ellsworth. Any other thoughts or questions for Senator Brashear? Senator, this is the last time you're in front of this committee. Thank you.

SENATOR BRASHEAR: I fear that's so (laughter). I hope I've done all right.

SENATOR MINES: (Laugh) You did just fine.

SENATOR BRASHEAR: I'll waive closing so I don't screw it up.

SENATOR MINES: Thank you, thank you so much. Can I see a show of hands those wishing to testify in support of the bill? There's one. Those wishing to testify in opposition? There's one. And those wishing to testify in a neutral

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

Committee on Banking
February 14, 2006
Page 6

LB 1259

capacity. I see none. One and one. Let's have the proponents first. Welcome.

KURTH BRASHEAR: (Exhibit 1) Thank you, Chairperson Mines and members of the committee. My name is Kurth Brashear, K-u-r-t-h B-r-a-s-h-e-a-r. I'm a resident of Omaha, 4531 Hickory Street in Omaha. I do have a copy of my testimony for the committee.

SENATOR MINES: Thank you. The page will take that.

KURTH BRASHEAR: I appear before you today as chair of the legislation committee of the Nebraska State Bar Association and on their behalf, to testify in support of LB 1259 which would repeal the opt-out by the state of Nebraska from the provisions of the federal Philanthropy Protection Act of 1995. The act generally exempts charitable organizations from federal securities regulation. The act also pre-empts state securities regulations that require the registration of both securities issued by charitable organizations and individuals selling such securities. The act permitted states to opt-out of this preemption, and as you are aware, Nebraska, in 1998, chose to do so and opted out. Consequently, securities offerings by charitable organizations in Nebraska are subject to state regulation where federal regulation is not otherwise required. In particular, while the act excludes charitable organizations from the definition of broker, dealer, agent, or investment advisor under federal securities law, thereby permitting employees or volunteers of those charitable organizations to sell those securities, Nebraska law currently requires a charitable organization to either have an employee or volunteer register as a broker-dealer, to retain a third-party registered broker-dealer, or to limit the scope of their offering in a manner not required by federal law due to the act. As a result of Nebraska's opt-out from the act, charitable organizations in Nebraska must incur additional costs to fully realize the intended benefits of the federal act. To comply with state law for an offering which is exempt under federal law, as we've stated, a charitable organization must either have an employee or volunteer take and pass necessary exams to become a registered broker-dealer in Nebraska which they would not be required to do absent state provision or to retain a third-party broker-dealer, incurring costs which they would

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

Committee on Banking
February 14, 2006
Page 7

LB 1259

not be required to do absent the state provision. Neither of these I would submit to you is a minor requirement. When Nebraska...to answer Senator Johnson's question, when Nebraska opted out of the act, one of the key rationales given was to prevent fraud. That continuing state regulation of these individuals would ensure that fraud would not occur. As Senator Brashear has noted, however, the act does not exempt charitable organizations from the antifraud provisions of federal law, nor does it from state law nor would LB 1259. The application of different requirements to the same securities offering creates opportunities for confusion amongst charitable organizations. LB 1259 would establish consistency in the application of securities laws to the same offering both at the federal and state level, reinforcing the requirements for charitable organization exemptions that Senator Brashear laid out for you under federal law and state law. Furthermore, LB 1259 would bring Nebraska in line with the vast majority of states that chose not to opt-out of the act. For these reasons, the bar association supports LB 1259. Thank you.

SENATOR MINES: Great. Great testimony. Questions for Mr. Brashear? Senator Johnson.

SENATOR JOHNSON: I just have one and it's kind of tangential to this. At the dinner table at home, did you have a set of lights that gave you five minutes to speak? (Laughter)

KURTH BRASHEAR: It was generally in my head, Senator, so you (laughter) came to know what it was. It wasn't quite this formal, however.

SENATOR MINES: Any other questions? Other questions? Kurth, I have one. Section 501(c)(3) is, and I just moved beyond my pay grade; (section) 501(c)(3) is classification for a charitable organization. Are there other classifications that I'm not aware of that might also be included with this bill or unintended consequences for those that may purport to be a charitable organization and would not be included?

KURTH BRASHEAR: The (section) 501(c)(3) is the most common notation for a charitable organization. There are

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

Committee on Banking
February 14, 2006
Page 8

LB 1259

(section) 509 organizations which are supporting organizations. In other words, they would not be exempt, but for the fact that they directly support a charity. There's also references in the code to (section) 170. I think the answer to your question, Senator, would be that the act is very clear in defining who is and is not a charitable organization for purposes of the federal act and therefore how that would apply at the state level. So I do not believe there would be unintended consequences.

SENATOR MINES: Okay, so (section) 501(c)(3) is clearly the one that's targeted.

KURTH BRASHEAR: It has been defined in the federal act who is eligible.

SENATOR MINES: Great, thank you. Any further questions? Seeing none, nicely done. Thank you.

KURTH BRASHEAR: Thank you, sir.

SENATOR MINES: Anyone else wishing to testify in support of the bill? How about opposition? Please come forward. Welcome to the committee.

SHEILA CAHILL: (Exhibit 2) Thank you. Chairman Mines, I am Sheila Cahill, legal counsel for the securities division of the Nebraska Department of Banking and Finance. I'm appearing on behalf of the department in opposition to LB 1259...

SENATOR MINES: Sheila, could I get you to spell your name? I'm sorry.

SHEILA CAHILL: Oh, I'm sorry. It's S-h-e-i-l-a. Last name is C-a-h-i-l-l.

SENATOR MINES: Thanks so much.

SHEILA CAHILL: I'm appearing today on behalf of the department in opposition to LB 1259, legislation which would effectively repeal section 8-1122.01 of the Securities Act of Nebraska. Section 8-1122.01 was enacted in 1998 to exercise the state's ability to opt-out of the provisions of the Philanthropy Protection Act of 1995. The stated intent

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

Committee on Banking
February 14, 2006
Page 9

LB 1259

of the Philanthropy Protection Act was to facilitate contributions to charitable organizations. The act generally exempted securities issued by the charitable organization, or by a pooled income fund, collective trust fund, collective investment fund, or similar fund maintained by the charitable organization, from the provisions of the federal securities laws. It also exempted the charitable organization, or any trustee, director, employee, or volunteer of such organization when acting within the scope of his or her employment or duties, from registration as a broker, dealer, agent, or investment adviser under federal law. The act also pre-empted similar provisions of state securities laws, but allowed the state to opt-out of those provisions. section 8-1122.01 codifies Nebraska's exercise of that option. By enacting section 8-1122.01, the Legislature maintained Nebraska law as it existed prior to the passage of the Philanthropy Protection Act. Securities issued by charitable organizations, whether sold to other charitable organizations or sold to individuals, are exempted from the registration of the securities act. However, securities must be offered and sold through a registered agent of a registered broker-dealer or, in the case of a Nebraska-based charitable organization, a registered issuer-dealer. By opting out of the Philanthropy Protection Act, no new requirements were placed on charitable organizations. Nine other states opted out of the federal act as well. There are currently 11 charitable organizations registered as non-NASD broker-dealers in Nebraska in order to offer their securities to Nebraska residents. Several of those organizations were registered in 1998, when section 8-1122.01 was enacted. None appeared at the committee hearing in opposition to the opt-out proposal. The Securities Act (of Nebraska) and the department rules placed certain obligations on persons who are registered as broker-dealers or agents. For example, broker-dealers and their agents are required to ensure an investment is suitable for the client before recommending or selling the security. Department rules also require that a person applying to be registered as a securities agent in Nebraska pass an exam that demonstrates knowledge and understanding of the securities laws and the ethical obligations that are placed on registered persons. LB 1259 would remove those protections from Nebraska individuals and companies investing in securities of charitable organizations. The vast majority of charitable

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

Committee on Banking
February 14, 2006
Page 10

LB 1259

organizations operate in a legitimate and legal fashion. In recent years, however, there have been several highly-publicized frauds perpetrated under the guise of charitable foundations, including, for example, the Baptist Foundation of Arizona which resulted in losses of more than \$500 million nationwide. The act, as currently exists, strikes the necessary balance between providing a basic level of protection to Nebraska investors, without placing undue burdens on charitable organizations. The department respectfully requests the committee not advance LB 1259. Thank you.

SENATOR MINES: Thank you, Sheila. Are there questions for Ms. Cahill?

SENATOR FLOOD: I have a question.

SENATOR MINES: I'm sorry, Senator Flood.

SENATOR FLOOD: Thank you, Chairman Mines. Thank you for your testimony today. A lot of times the department of banking is in here saying, we need to conform to other states when it comes to the uniformity of our laws. In this case, is it your testimony today that we should depart from what other states have done and not pass this bill out of committee?

SHEILA CAHILL: This would be a departure from what other states have done, and I am not familiar how other states, how their laws were enacted prior to 1998. All I can tell you is this preserves Nebraska law as it has existed since the securities act was originally passed in the mid sixties. We vary from other states in one particular instance which probably has a huge impact on this particular issue, and that is a lot of states, the vast majority of states allow issuers to sell their securities directly. We do not. We require a broker-dealer to be involved in the sale of all securities except certain transactional exemptions that appear in section 8-1111. Every other exempted security which is what the charitable organization exemption is, it's an exemption addressed to the security, not the transaction. Every other exempt security is required to be sold by a registered broker-dealer. Again, a lot of other states allow an issuer to sell directly; we do not. This is a continuation of a long-standing Nebraska legal precedent

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

Committee on Banking
February 14, 2006
Page 11

LB 1259

that, you know, it's been in place since 1965.

SENATOR FLOOD: It's been in statutes or?

SHEILA CAHILL: It's been in the statutes, yes.

SENATOR FLOOD: Courts haven't ever considered this issue before?

SHEILA CAHILL: Not that I'm aware of.

SENATOR FLOOD: Some Catholics, though, the archbishop is my broker-dealer (laughter).

SENATOR FLOOD: But the Lutherans have Thrivent Financial (for Lutherans). That's separate. I mean, we're not talking about the same thing here. This is...

SHEILA CAHILL: No, we are not because, I mean, well, I'm not familiar with those organizations. I do know... what we're mainly talking about here is one of the big things, churches will sell bonds to finance a construction. And those bonds, while the bonds themselves are exempt, the people who sell them have to be registered because then they know that, you know, or they understand that they have an obligation not to make an unsuitable recommendation to say, an 85-year-old woman or 85-year-old widow or widower that, you know, this bond is going to pay off in 20 years, and that's their life savings.

SENATOR FLOOD: But if we had, and I'm almost done here, but if we did allow or passed this bill, there are still some protections and some enforcement actions the Department of Banking and Finance can take against a charitable organization that misleads, or fraudulently, or misrepresents an investment or an opportunity to invest to an investor. There's still protection for the consumer, isn't there?

SHEILA CAHILL: There is still some protection. Probably what I would say, there are two big differences, one being that a registered entity, we have the authority to take action against them if they engage in a dishonest and unethical practice which oftentimes may not rise to the level of fraud. It may not qualify as fraud, therefore,

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

Committee on Banking
February 14, 2006
Page 12

LB 1259

it's not okay for a general person, it's not a violation but where there is that established relationship, they have a higher standard of protection. The other one is that where they are required to have a license with us, our administrative action is probably a little more effective because we have the ability to take their license, and without that license, they are effectively required to go find a new job...

SENATOR FLOOD: But this...

SHEILA CAHILL: ...in...

SENATOR FLOOD: ...in your testimony, you didn't share with us any administrative actions, did you? You just shared with us...

SHEILA CAHILL: No, I...

SENATOR FLOOD: ...this \$500 million debacle which would have been prosecuted by an Attorney General, I would assume.

SHEILA CAHILL: Yes, I mean, that is a criminal fraud but with...and there's other requirements like a broker-dealer has to keep certain books and records. They have to cooperate with us. I mean, it's a separate violation if they don't cooperate with us. Those rules would apply to charitable organizations that are also registered as broker-dealers. There are some advantages, obviously, to us in those instances.

SENATOR FLOOD: But in Chapter 81, you...and the executive branch has the power to subpoena any records it wants in any investigation concerning anything. I mean, you've got pretty broad powers to get in the middle of something in the event that somebody isn't licensed. I think it's (Section) 81-119.

SHEILA CAHILL: Yeah, and to some extent it's a matter of administrative convenience. We don't have to subpoena them from broker-dealers. They're required to turn them over to us without a subpoena.

SENATOR FLOOD: But you do have the power...

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

Committee on Banking
February 14, 2006
Page 13

LB 1259

SHEILA CAHILL: We do have the authority to subpoena them.

SENATOR FLOOD: Okay. Thank you very much, appreciate it.

SENATOR MINES: Thank you. Other questions? Senator Langemeier.

SENATOR LANGEMEIER: Thank you, Chairman Mines. Ms. Cahill, thank you for your testimony. It was said earlier in some testimony that this bill comes from a federal regulation that changed in 2005. Is that...are you aware of that legislation that changed on a federal level as of 2005?

SHEILA CAHILL: The federal legislation actually changed in 1995 that codified, apparently, federal laws that existed or SCC interpretation is it existed prior to 1995, and I am unaware of any change that took place in 2005.

SENATOR LANGEMEIER: Okay, thank you.

SENATOR MINES: Any other questions for Ms. Cahill? Sheila, I have one, maybe two. As I understand right now, broker-dealers are required in a transaction under current statute. Is that right?

SHEILA CAHILL: Yes.

SENATOR MINES: Or you require the transaction to be handled by a broker-dealer.

SHEILA CAHILL: Yeah, for exempt securities. Correct.

SENATOR MINES: And do those broker-dealers receive compensation?

SHEILA CAHILL: They may or may not. I mean, as I testified, we have 11 charitable organizations that have registered with us as broker-dealers, and they've registered anywhere between one, and I think, six individuals to act as agents and sell those. I don't think they probably receive any additional compensation.

SENATOR MINES: But using a broker-dealer in a transaction, in my world, typically involves a fee paid or received for administering a transaction. Is that not the same in this

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

Committee on Banking
February 14, 2006
Page 14

LB 1259

arrangement?

SHEILA CAHILL: The definition of broker-dealer does not require compensation be involved. It requires that the person effect a securities transaction either on their own account or on the account of some...of another person. And we have several issuers of mutual funds, again, the charitable organizations that are registered with us because of...we don't allow issuers to sell their securities directly. In those instances, I mean, the mutual funds are paying commissions to their agents. But, you know, I don't know whether the charitable organizations pay commissions or not.

SENATOR MINES: Yeah, one would suspect that there's a transaction fee, but I don't know that either.

SHEILA CAHILL: Yeah.

SENATOR MINES: And then secondly, I'm not familiar with the securities division in the department of banking, but if this bill were advanced and were to become statute, what might happen to the securities division in the department of banking? Does this remove a lot of the workload? Does it remove any other...?

SHEILA CAHILL: No, it has...I mean, fiscally, it would remove 11 broker-dealers at \$250 a year registration plus, you know, 30 to 40 agents at \$40, you know, it has it...

SENATOR MINES: Not much. Has no impact.

SHEILA CAHILL: No, it has. No, it has no impact on the workload or a minor impact on finances.

SENATOR MINES: Okay. Thanks, Sheila. Any further questions? Thanks for your testimony. Appreciate it, nice job. Once again, anyone else in opposition to LB 1259? Anyone in neutral? I see none. That will close the public...I'm sorry, let's have a close. Do you wish to close, Senator?

SENATOR BRASHEAR: May I?

SENATOR MINES: Yes, you may.

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

Committee on Banking
February 14, 2006
Page 15

LB 1250, 1259

SENATOR BRASHEAR: I thought maybe it would be helpful to put this in more graphic terms. We're not dealing with an 85-year-old individual investor buying a bond that will mature over 20 years. That's federally regulated. Anybody who doesn't comply with the federal regulation will be guilty of all the federal sanctions and everything else. We are only talking here about whether 5, or 10, or 15, or 20, or 30 ministries, not individuals; (section) 501(c)(3) in each and every instance qualified and annually reporting can aggregate sums like \$30,000, \$40,000, \$90,000 sitting in a low interest-earning or no interest-earning account can aggregate that money in order to meet a \$500,000 minimum and get more sophisticated and better services, and a better return on the investment. And they must use those monies they earn for (section) 501(c)(3) allowed purposes. There's nothing individual involved in this particular situation at all.

SENATOR MINES: Thank you, Senator. Questions for Senator Brashear? That ends his closing and I will now close the public hearing on LB 1259. Thank you all and open public hearing on (LB) 1250. Senator Landis, once again. You're becoming a regular here, Senator.

LB 1250

SENATOR LANDIS: (Laugh) Thank you, Senator Mines. Well, it's nostalgia. It's my last session and...

SENATOR MINES: Uh-huh.

SENATOR LANDIS: ...my chance to come back to...

SENATOR MINES: And this will be your last opportunity to testify as well.

SENATOR LANDIS: (Exhibit 1) Well, I'm used to dealing with the philosopher kings on this committee (laughter) and so I feel a little kinship. 1921 came, Nebraska did about what every other state did and they said, you know, the word "bank" is special. You can't use the word "bank", you can't use a derivative of the word "bank" to describe a business activity unless you're a bank. And that worked all the way

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

Committee on Banking
February 14, 2006
Page 16

LB 1250

up until the savings and loan industry and others gradually worked their way into our financial system. And here's what our current law says, and, by the way, this is basically the same since 1921. No individual firm, company, or corporation shall use the word "bank" or any derivative thereof as any part of a title or description of any business activity period. This section...and this is where it gets interesting, does not apply to banks. They get to use the word "banks". However, it continues. Building and loan associations can use the word "bank." Savings and loan associations can use the word "banks". Savings banks can use the word "bank" or a derivative. Bank holding companies can use that. Mortgage bankers can do that. Trade associations which are exempt from taxation under (section) 501(c)(6) of the code, which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary, they can use the word "bank", or a piece of it, in their title or in their description of their activity. And such other firms, companies, corporations, and associations have been in existence and doing business for a period of ten years or more prior to October, 1963. Under a name, composition (phonetic), part of the word "bank" or some derivative thereof. You know who can't use the word "bank"? And you might think the answer is credit unions. Onk. No, that's not right. The federal credit unions get to use the word "bank" because the federal regulator allows them to. We're down to 24 state-chartered credit unions that can't use the word "bank". And, by the way, I don't think they should be able to use the word "bank", not in their title because they're not. They're a credit union, they're not a bank, shouldn't be able to use a title. That's not what I'm after. I think when people have checking accounts and savings accounts, when they get onto a computer and start making transfers, the shorthand word for that action, that verb, is doing your banking. The bill that I brought to you says this. Any federally chartered or state-chartered credit union, if the word "bank" or any derivative thereof is used as an appropriate description of a business activity of such credit union. Notice what I left out of there quite specifically. It didn't say, use the word "bank" as a title or as a description of a business activity. I don't think they should be able to use the word "bank" in their title. They're not, not entitled to it. But when you got a savings account and checking account and you're online, and you're doing transfers, the shorthand

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

Committee on Banking
February 14, 2006
Page 17

LB 1250

word for that is "banking"; that's what you're doing. People use it. It's the common parlance of the word "banking". That's the way people talk. And I think the 24 state-chartered credit unions ought to be able to use that. By the way, 22 states specifically allow this to happen; 11 states specifically don't allow it to happen. Twice as many do as don't. Nebraska is one of the eleven states that basically says you can't do it. And there are 17 states that are unknown, I mean, they're silent. And I'm not sure what happens in those situations. Here is a federal credit union in Nebraska, it's on their web page. Federal credit union now serving a (inaudible). We will also be offering online banking in the near future, online banking. Common phrase. Why? Because you're going to get on and you're going to use your savings account, your checking account, you're going to make some transfers. That's the word for it. Now, this is a federal credit union, not regulated by the state of Nebraska and they get to do it. The 24 state-chartered credit unions can't. Understand what I'm asking for. I'm not asking for them to use the word "bank" in their title which, by the way, a savings and loan can use the word "bank" in their title, for God's sakes. Or a building and loan could use that. I am saying they ought to be able to use the verb, banking, not the noun, the verb. And I've written it in whatever way I can to essentially say, it's got to be a verb. I'm not sure we should be able to outlaw verbs by state law. You know what I mean? Nouns I get because that's truth in advertising, but not a verb that's as common as banking. I would answer any questions that you might have. Here, by the way, is another federal credit union. Same thing. Centris Federal Credit Union, business banking, one of the things you could get up here and even for them, not for the 24 state-chartered.

SENATOR MINES: Questions for the senator? Senator Langemeier.

SENATOR LANGEMEIER: Thank you, Chairman Mines and Senator Landis. Would it be acceptable to you to strike the word "bank" and put banking?

SENATOR LANDIS: Sure.

SENATOR LANGEMEIER: In your...

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

Committee on Banking
February 14, 2006
Page 18

LB 1250

SENATOR LANDIS: Absolutely.

SENATOR LANGEMEIER: ...green copy.

SENATOR LANDIS: Absolutely. Understand, I was trying to parallel some language, Chris,...

SENATOR LANGEMEIER: Right.

SENATOR LANDIS: ...I'm not after using the word "bank" in any kind of a titled thing. I think the word "banking" is a verb that people ought to be able to use that verb to describe activities which are pretty common, pretty generic, I think. I'll be happy to take the word "banking". You bet.

SENATOR LANGEMEIER: Thank you.

SENATOR MINES: Other questions? Senator Redfield.

SENATOR REDFIELD: Are there any other instances where we take the dictionary and say, thou shalt not use this word?

SENATOR LANDIS: If there is, I don't know what it is. I suppose there might be. We might not allow people to permit to say certain things in maybe health businesses. Off the top of my head, I can't think of one. What I sure don't think is the case is, however, you don't get to use a verb.

SENATOR REDFIELD: I mean...

SENATOR LANDIS: That strikes me as odd.

SENATOR REDFIELD: Is this a First Amendment issue? I'm...

SENATOR LANDIS: Now, I think you want to not have a distortion and a diminution of a bank because in our minds, we think of banks as having certain guarantees and, by the way, these days credit unions match the guarantees of banks. But we protected that word, I think, probably because certain institutions had greater protection than others. And it meant something. And I don't want to disturb that meaning. Banking is when you get out your check and you write a check and you cash it, and you turn around and you

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

Committee on Banking
February 14, 2006
Page 19

LB 1250

get some money from the account and you transfer. A verb, I don't think we ought to be able to control in the statutes. Seems reasonable to me to not do it as most other states allow.

SENATOR MINES: Other questions? Senator Jensen.

SENATOR JENSEN: Yes Thank you, Senator Mines. Senator Landis, we do allow people to call themselves different things, however. And...

SENATOR LANDIS: Yeah, we allow savings and loans to call themselves banks.

SENATOR JENSEN: Yeah, but we allow individuals to call themselves things and some you cannot call yourself because perhaps of a title. Or you can't call yourself a real estate broker unless you are a broker, and so there are instances.

SENATOR LANDIS: Yeah.

SENATOR JENSEN: I can't call myself "doctor" unless I'm a doctor.

SENATOR LANDIS: Um-hum. In the event somebody went out at the site of an accident, bandaged a person, put on antiseptic, didn't have the right title, could you say they were doctoring a sick person? When your wife helps out one of your kids, was she doctoring a sick child? And, by the way, should it be against the law if you said that she was doctoring a sick child? She's not a doctor because that's the title, but is she doctoring a sick child? And there's a big difference there. And that's the...I'm not saying call a credit union a bank. I'm saying this is a verb; we all do it. Now, of course, Joel is sitting right next to you. Maybe he does not want your wife to be said to be doctoring a sick child, but I'm betting that he doesn't...I bet he thinks it's okay if you called it that.

SENATOR MINES: Other questions for the senator? Senator Flood.

SENATOR FLOOD: Chairman Mines, Senator Landis, you're proposing to amend section 8-113 of the statutes. What does

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

Committee on Banking
February 14, 2006
Page 20

LB 1250

it say on the outside of my Chapter 8 book? How do, you know, I assume Chapter 8 also contains statutes that regulate and govern state-chartered credit unions.

SENATOR LANDIS: Chapter 8 is a banking section of the code, is my recollection. Yeah, this is the...I think this is the I'm going to turn around to see if it...I'm going to guess it's the banking code among other things. That volume is banking...

SENATOR FLOOD: In fact, your bill drafted by bill drafters on the first page says, for an act related to banks and banking. Even our statutes recognize this as a banking issue.

SENATOR LANDIS: Yeah, it's related to banking in the sense of saying what it isn't (laugh) or where you can't use the word in so doing. Yeah.

SENATOR FLOOD: Thank you, I appreciate it.

SENATOR MINES: Other questions? Senator Johnson.

SENATOR JOHNSON: Just a comment. As I was listening to you, I just hate to testify after you (laugh), and, frankly, it could be the last time that you're in front of this committee. It's...

SENATOR LANDIS: It's probably the last time I'm here. Yeah,...

SENATOR JOHNSON: It's a very enjoyable experience.

SENATOR LANDIS: ...and I have found that the intellectual interplay of the people who wind up being on this committee has been one of the most delightful things that I've had. I think I will have served as the Chairman the longest of anybody including John DeCamp, by the way, of the banking committee. And I've probably found the executive sessions among the most interesting work that I ever did, and service with Senator Jensen for many of those years.

SENATOR MINES: David?

SENATOR LANDIS: Yes.

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

Committee on Banking
February 14, 2006
Page 21

LB 1250

SENATOR MINES: A couple of things. In the new language, page 2, line 16, it states, "Any federally chartered or state-chartered credit union". If federally chartered credit unions already have authority, why are we listing them here?

SENATOR LANDIS: Should there be any attempt to try to reach them for some reason, this would answer that question. They are doing it now. Maybe they're within the ambit of the department. I don't know if the department is making an attempt to reach them. My expectation is that they could not be successful, but this would say to the department, don't bother. You got other things to do.

SENATOR MINES: Okay. And you've been on this side of the table for a lot of years, and this has been one of those issues where banks don't want to forgive and...

SENATOR LANDIS: That's right.

SENATOR MINES: ...let anyone else use "bank". Why now?

SENATOR LANDIS: By the way, I side with the banks on that issue. I side with the banks that we should, that we have a conceptualization of what a bank is as a noun. The 22 states that allow this to happen don't restrict it to business activity, generally. They just let the term be used in common parlance. I quite specifically differentiated between the noun and the verb on purpose because I side with the banks. And, by the way, I'm not crazy that savings and loans are called banks or can be called banks. I'm not crazy about that. I, in fact, would return to that situation if I could, and buildings and loans the same way. I want the public to know that there's a difference in the construction, and the investment, and the structure of those organizations. I'm with the banks. I'm not with them on the verb.

SENATOR MINES: Got it, thanks. Other questions for Senator Landis? Thank you, David. Nice to have you here.

SENATOR LANDIS: You bet.

SENATOR MINES: A show of hands, please, those in support of

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

Committee on Banking
February 14, 2006
Page 22

LB 1250

the bill? I see one. Those in opposition, a show of hands? I see one, two, three. And those neutral? I see none. You're on.

BRANDON LUETKENHAUS: (Exhibit 2) Thank you. Senator Johnson, I will say that I'm honored to follow up Senator Landis...

SENATOR MINES: David, are you waiving? Excuse me. David, will you be waiving or are you going to be here?

SENATOR LANDIS: Even now I'm waiving.

SENATOR MINES: Thank you so much (laughter). I'm sorry, go ahead.

BRANDON LUETKENHAUS: I won't be able to do as good of a job as he does, but certainly am honored that he brought this bill and introduced it. Mr. Chairman, members of the Banking, Commerce and Insurance Committee, my name is Brandon Luetkenhaus, B-r-a-n-d-o-n L-u-e-t-k-e-n-h-a-u-s. I'm here today on behalf of the Nebraska Credit Union League. Our association represents both state and federally chartered credit unions in Nebraska and their 420,000 members. And I'm here before you today in support of LB 1250. I want to be clear that our association strongly supports the concept of prohibiting anyone from using trade names and logos of financial institutions for deceptive purposes. We understand and support the need for protecting consumers from confusing and misleading solicitations. However, we do have a growing concern over the unwarranted and unnecessary protection of the term, "banking" when it is used as a description of business activities. Terms such as "e-banking," "online banking," and "home banking" have become commonplace among the general public when referencing electronic transactions vis-a-vis a financial institution. As a result, some credit unions have coined the phrase, "online" or "home banking" when referencing such services. The use of the term by credit unions is neither intended to confuse nor mislead. Rather, they are merely used as a practical matter of ordinary course of commerce. We believe the intent of section 8-113 of the Nebraska Banking Act is similar to that of section 21-1771 of the state Credit Union Act. Both sections were originally enacted in an effort to prevent those individuals or entities that are not

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

Committee on Banking
February 14, 2006
Page 23

LB 1250

specifically chartered and regulated as a bank or credit union from portraying themselves as such thereby protecting the public from misleading and/or fraudulent practices and activities. We are concerned that section 8-113 is overly broad and goes beyond its original intent. Providing banks with proprietary protection regarding the use of such terms as "home banking" would be akin to credit unions claiming eminent domain over the term "credit card". In our opinion, such descriptive phrases were neither intended nor should be subject to any exclusive restrictions. As previously mentioned, affording institutions and consumers legitimate protections against unscrupulous business practices is strongly supported by our organization. However, we believe that section 8-113 of the Nebraska banking code act has gone too far in its prohibition of generally accepted generic terms. LB 1250 simply removes the erroneous restrictions on the use of such universally accepted terms as banking by other financial institutions, service providers for legitimate business purposes. I respectfully urge the committee to support and advance LB 1250. I would entertain any questions you may have.

SENATOR MINES: Thank you, Brandon. Questions? Senator Langemeier.

SENATOR LANGEMEIER: Chairman Mines, thank you. Brandon, thank you for your testimony. What is your thoughts if we struck the word "banking" or "bank" and inserted the word "banking"?

BRANDON LUETKENHAUS: That would be fine; we'd be supportive of that.

SENATOR LANGEMEIER: Thank you.

BRANDON LUETKENHAUS: Um-hum.

SENATOR MINES: Other questions? Thank you, Brandon. Nicely done. Any other proponents? Okay, opponents. We have three of you. Come on forward. Mr. Hallstrom, we're very green today, aren't we?

ROBERT HALLSTROM: (Exhibit 3) Thank you. With envy. Chairman Mines, members of the Banking, Commerce and Insurance Committee, my name is Robert J. Hallstrom and I

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

Committee on Banking
February 14, 2006
Page 24

LB 1250

appear before you today as registered lobbyist for the Nebraska Bankers Association to testify in opposition to LB 1250. The banking industry is opposed to extending to the credit union industry the ability to use our good name in any form or fashion. Senator Landis, I think, has properly pointed out that there's certainly no justification for credit unions to use the term "bank" in the aspect of a noun as opposed to a verb. We would also take exception to using any form of the word "bank" whether verb, noun, transitive or intransitive verb, or any of the like. We point out in our testimony, there are bright line distinctions between credit unions and banks. We've been here before this committee, same song, second verse. Until the credit unions bear the same tax burden, are subject to the Community Reinvestment Act and so forth, we do not believe that they should describe their products or services in any way remotely related to the use of the word "bank". I have attached to my testimony kind of an interesting article that came, written into a national publication by a marketing director from a credit union in Tennessee that basically says, what's all this nonsense about wanting to use the term "bank" in your marketing activities? We can use other terminology that highlights the credit union difference. We certainly think there are differences. We would probably cast them in a less positive light than perhaps the credit unions would in terms of them not paying the same tax burden that we do and so forth. But I think it's enlightening to see someone from the credit union industry themselves say, let's highlight our differences and do things other than resort to use of the word "banking" whether it be as a noun or a verb. The example that they give and most often you will hear Internet banking. We like to use that term. The individual in this Tennessee example referred to it as online account management. I have another ad here from a state-chartered credit union...mortgages, auto loans, and leases, home equity, checking, savings, free access online, safe deposit boxes, all bank-like products described without use of the word "bank" and done so properly. And I would suggest effectively without use or resort to the term "bank." In the testimony earlier provided, I think Senator Landis and I must have read different statutes or I read them later at night and didn't interpret them in the same way which, I think, is part of the problem in this area when you have to resort to whether or not the banking department is going to hire someone

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

Committee on Banking
February 14, 2006
Page 25

LB 1250

proficient in English and grammar to detect nouns versus verbs, transitive, intransitive, and the like, that a lot of states have language that talks about not deceiving the public, not confusing the public, not being seriously misleading. None of those elements would be inherent in this particular statute and we'd just be left to the grammatical sense in which the word is used. My research showed, of the 34 states that had specific recognition of restrictions on the use of the term "bank" in any form that close to 25 of them tied it either to a standard of seriously misleading or, in many cases, restricted the advertising to a calling other than the business of banking. So I found, or at least I interpreted, that there were a number of more statutes, in fact, the majority of which that don't just limit it to using it in your name or your title but also to advertise and promote your products and services. And, for those reasons, we would oppose LB 1250 and ask the committee to indefinitely postpone it as well. Be happy to address any questions.

SENATOR MINES: Thank you, Bob. Questions for Mr. Hallstrom. Some day you've got to give up, don't you think?

ROBERT HALLSTROM: Yeah, not today, Senator (laughter).

SENATOR MINES: (Laugh) But, at some point, at some point using the word "bank" or "banking" as Senator Langemeier suggested, doesn't injure the banking industry. I don't know what point that is. Maybe it's not today, but, at some point.

ROBERT HALLSTROM: Well, Senator, I think the issue still becomes whether or not there is the potential, depending on the type of marketing that might be employed, even using it as a verb to where it could be confusing or misleading as to the types of services that are being provided. I don't think without exception, just using the word in the form of a verb is going to completely eliminate the potential that the public could be misled or confused in terms of the utilization.

SENATOR MINES: Okay, fair answer. Any other questions? Thanks, Bob.

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

Committee on Banking
February 14, 2006
Page 26

LB 1250

ROBERT HALLSTROM: Thank you.

SENATOR MINES: Oh, I'm sorry, Senator Pahls.

SENATOR PAHLS: In other words, like an advertisement you'd say, do your banking with us. That was how you think it's going to be utilized? Is that what...

ROBERT HALLSTROM: Well, it could. It could be used to compare and contrast banks, to downgrade or degrade banks in terms of, you know, whatever marketing provisions. I think Senator Landis referred to the use of the verb, "doctoring". The significant difference is that if I suggest that I was doctoring my child in a private conversation is one thing as opposed to publicly promoting, soliciting, advertising for services unless, of course, you were doctoring and you happened to stay at a Holiday Inn Express the night before, then I assume it's okay, as the commercial goes.

SENATOR PAHLS: Then I should say my...I have a bank card instead of a credit card to be fair in some ways, would I not?

ROBERT HALLSTROM: Well, the witness for the credit union suggested perhaps they ought to try and protect the word "credit". Credit isn't what they are. Credit unions are what they are.

SENATOR MINES: Senator Redfield.

SENATOR REDFIELD: So you can use the word "credit," banks can use the word "credit".

ROBERT HALLSTROM: Yes.

SENATOR REDFIELD: Is there any proprietary domain on words like "check," "account," "interest," "loan," any of the other terms?

ROBERT HALLSTROM: Well, I would assume, Senator, only if they are trademarked in the legal sense of the word. You know, Pat Riley, coach of the Los Angeles Lakers trademarked the term, "threepeat" and someone tried to put "threepete," p-e-t-e on a t-shirt. And the legal determination was that was infringing on their trademark rights. But unless you

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

Committee on Banking
February 14, 2006
Page 27

LB 1250

trademark the word, no, most words do not have that type of protection.

SENATOR REDFIELD: Is bank trademarked?

ROBERT HALLSTROM: Bank is not trademarked in the normal source of the word. I don't know whether anybody with regard to...it more likely is a trade name in connection with the name of the bank. That they may have filed for trade name protection.

SENATOR REDFIELD: But not as a verb.

ROBERT HALLSTROM: Not that I'm aware of.

SENATOR REDFIELD: Okay. Thank you.

SENATOR MINES: Any other questions? Thank you, Bob.

ROBERT HALLSTROM: Thank you.

SENATOR MINES: Mr. Yost, a most appropriate tie.

KURT YOST: Thank you. It's that day of the year. Senator Mines, members of the Banking, Commerce and Insurance Committee, my name is Kurt Yost, K-u-r-t Y-o-s-t. I'm a registered lobbyist for the Nebraska Independent Community Bankers and we, too, appear here today in opposition to LB 1250. Historically, our little organization does not appear on a regular basis before this committee unless it involves structure issues or the question of the credit union issue. But we do appear here today in opposition to (LB) 1250.

SENATOR MINES: Thanks, Kurt. Questions for Mr. Yost? I don't see any.

KURT YOST: Mr. Chairman, I might, if you would indulge me just a second, if I'm not mistaken, today is the last day of public hearings for this committee.

SENATOR MINES: It is.

KURT YOST: And we...we being myself and many others, some of whom are still in this room, have had the good fortune to

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

Committee on Banking
February 14, 2006
Page 28

LB 1250

appear before this committee for many years, some of us longer than others. I've been doing this for 31 years. And with the changing of the guard that's going to happen in April, we're going to lose Senator Jensen and Senator Redfield, and their service to our state and to good public policy, and on this committee. And I personally want to thank you for that service. Senator Redfield, we have not always agreed but we certainly have enjoyed the opportunity to exchange. And, Senator Jensen, thank you. And I think I convey that on behalf of everybody in this room. Thank you.

SENATOR MINES: Thanks, Kurt, very nice. We have one more opponent.

AUDIENCE MEMBER: I have nothing further to add to the opposition.

SENATOR MINES: Thank you. Anyone else wishing to testify in opposition? How about neutral capacity? Seeing none, I'll close the public hearing on LB 1250. And that will conclude our hearings for the day. Thank you so much.