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Banking, Commerce and Insurance Committee
February 05, 2007

[LB129 LB346 LB380 LB381]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 5, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB346, LB381, LB129, and LB380. Senators present: Rich Pahls, Chairperson; Chris Langemeier, Vice Chairperson; Tom Carlson; Mark Christensen; Tim Gay; Tom Hansen; Dave Pankonin; and Peter Pirsch. Senator absent: None. []

SENATOR PAHLS: Good afternoon. Welcome to the Banking, Commerce and Insurance Committee. My name is Rich Pahls. I am from Omaha and I represent District 31, and I am honored to serve as the chair of this committee. The committee will take up the bills in the order posted. I am just going to go over that since we did make some changes. We will start with LB346, LB381, LB129, and LB380. Today this is your opportunity to express your position on the proposed legislation before us. And to better facilitate today's meetings I am asking you to take a look at the postcard on the side just to give you some general ideas. Turn off you cell phones. There is an on-deck chair. Please complete your testifiers sheet and put it in the box. And following the introduction of the bill we will hear testimonies from proponents, opponents, and neutral testifiers. And we will strive to provide equal time for all sides. We are asking you to begin your testimony by spelling your first and last names for the record. If you do have some written testimony that you would like to have distributed, if you do not have ten copies waive your hand now and one of the pages will do that for us. Great. As usual, this group is well prepared. And if you are following somebody please listen to what they are saying so as not to be too repetitive. To my immediate right is committee counsel Bill Marienau. To my immediate left is committee clerk Jan Foster, and I think we will start today by having the state senators introduce themselves starting over... []

SENATOR CARLSON: Tom Carlson, District 38. []

SENATOR LANGEMEIER: Chris Langemeier, District 23. []

SENATOR PANKONIN: Dave Pankonin, District 2. []

SENATOR GAY: Tim Gay, District 14. []

SENATOR CHRISTENSEN: Mark Christensen, District 44. []

SENATOR HANSEN: Tom Hansen, District 42, Lincoln County, home of the sport of rodeo, celebrating our 125th anniversary this year. []

SENATOR PAHLS: We might as well get in all of the advertising we can. I understand that. Now I don't know if it is rodeo or roday-o. I don't know for sure. []

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SENATOR HANSEN: Rodeo. []

SENATOR PAHLS: Rodeo. Okay. One of our pages is Kristine Kubik from Prague, Nebraska. Will you waive your hand. She is one of the people who help us, and Cora Micek from Hastings, Nebraska. Again, the committee will take up the bills in the order that were posted. I am just going to run up one more time because we did make some changes. We will be starting with LB346, (LB)381, (LB)129, and (LB)380. Senator Langemeier. []

SENATOR LANGEMEIER: Good afternoon Senator Pahls. We are ready for you to open on LB346. []

SENATOR PAHLS: Thank you Senator Langemeier and members of the committee. My name is Rich Pahls, R-i-c-h P-a-h-l-s. I represent District 31. Today I bring forth LB346. I will give a brief introduction of this bill because I have a number of extremely well qualified people standing behind me who will explain it more in depth. LB346 would amend Nebraska's central filing system law relating to filing effective finance statements, known as EFS, and to better accommodate the electronic filing of the EFS and amendments and continuation statements, b) provide an alternative to the current requirement to include debtor social security numbers on the EFS and therefore protect the identity of the debtor. Specifically it does about six or seven things. Authorize the use of an alternative number as determined by the Secretary of the State and approved by the Secretary of the United States Department of Agriculture on an EFS in lieu of the social security number or tax identification number of the debtor. Eliminates the secured party signature requirement for an original EFS. It authorizes the continuation of the EFS filed by the security party and the notice of lapse on the EFS to be signed, authorized, or otherwise authenticated by the secured party. It eliminates the debtor signature requirement on the amendments to EFS that are filed electronically. It authorizes an amendment to an EFS as filed in a nonelectronic form to be sign, authorized and otherwise authenticated by the debtor. And adds embryos or genetic products to the statutory list of farm products. We will also have an additional amendment, I think, that we will add a few more items to the farm products. If you have any questions. [LB346]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Are there any questions for Senator Pahls. Seeing none. [LB346]

SENATOR PAHLS: Thank you. [LB346]

SENATOR LANGEMEIER: First proponent. [LB346]

RON MORAVEC: Good afternoon Senator Langemeier and members of the banking

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committee. My name is Ron Moravec, R-o-n M-o-r-a-v-e-c. I am currently the chief deputy Secretary of State, and appear here on behalf of Secretary of State John Gale who probably would prefer to be here but he is performing one of his other constitutional duties at this at this moment with the Pardons Board. I would like to take the opportunity to thank Senator Pahls for introducing this bill, (LB)346, and also the Nebraska Bankers Association which played a major significant role in the development of this proposed legislation. Our goal in this bill is manyfold, but the main purpose is to try to establish guidelines, if you will, for the creation of a new way to identify an individual that may be involved in these kind of financial documentations. So therefore the social security number or for an corporate entity the TIN number, the Taxpayer Identification Number, can be removed from future filings with our office. In 1986 Nebraska was one of 9 states that adopted provisions of the Federal Food Security Act of 1985, one of the titles was a Clear Title Program, and this program is under the auspices of the United States Department of Agriculture. The Federal Food Security Act gives protection to lenders who extend financing to farm borrowers. If the buyer of that farm product has received direct notice from the lender about the security interest, or if the state where these transactions where these take place has adopted a central filing system under the guidance and approval of the United States Department of Agriculture. Nebraska did that in 1986. In that act it is required that on all financing documents that the individual's social security number or, again, the entity's taxpayer identification number be placed on these forms which are filed for public record. As everyone is aware, in the recent years there has been a great concern for identity theft, and that has brought about the request of the 19 states that have adopted the central filing system to request the federal government, the United States Department of Agriculture, to come up with some other type of identifying number that can be used to identify the borrower, from the lending institution, from the documents that they file to secure their interest in the farm products or whatever it may be. The USDA for several years did look at this, consider it, but finally, in September of last year 2006, decided that they were unable to arrive at this type of a number identification. And so they are leaving it to the 19 states that have the central filing system to come up with this unique identifier, as they call it. They also call it the approved unique identifier because once a state has established legislation authorizing a new type of identification to be given to individuals that program must then be approved by the United States Department of Agriculture. So therefore they call it the approved unique identifier, and as a definition they call it a number, combination of numbers and letters, or other identifiers selected by the Secretary of State using a selection system or method approved by the Secretary of Agriculture. That does sound like a typical federal description or definition of something. The purpose of the secretary asking for this legislation through Senator Pahls is to try to protect the future personal identification information of individuals that are involved in these activities. This proposed legislation would not change those documents that are on file, that exist by virtue of their social security number and/or taxpayer identification number. Those would still be there. This proposed act would not change that process. The other 18 states, to our knowledge, have not arrived at a resolution as to what their unique identifier will be,

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and I will not sit here before you today and say that Secretary Gale's office has developed this unique identifier. But if this proceeds onward through hearings, if you will, and discussions with those groups that are interested in this it would be our goal to establish some type of identification that would be unique to that specific individual other than their social security number, again. The federal act did require, as I said, the social security number or the TIN number be used. Those are nine characters in length. The application software program that the Secretary of State's office has developed years ago was made for those nine numbers of the social security number. In all probability, if this action is approved, the unique identifier that the state of Nebraska probably would adopt would be also nine characters in length, whether they be letters, numbers, or a combination thereof. To increase that identification number would result in a significant expenditure to reprogram and change the software application that the Secretary of State's office currently has. Again, with the balance of the bill that is before you, the secretary is certainly supportive of the Nebraska Bankers Association in what efforts they have made in making the changes in the bill and does support those changes. The federal rules, the commentary to them when they were discussing each state adopting the unique identifier indicated that for cost-wise they saw no cost to the producer of the farm products that is involved, and as far as the lending institutions, they felt that there would be minimal cost. That cost, if and when it occurs, is for that lending institution to be able to adopt their programs to whatever the Secretary of State's office may develop as far as the unique identifier. There would be no additional filing fees required because of this. The only additional expense foreseeable for the Secretary of State would be some reprogramming of the existing software application program. Senator Pahls did indicate that there would be an amendment to add some products to the farm product list and we would ask that the committee give consideration to that and add the five or six additional ones that the Secretary of State's office has already approved under the authority of the statutes. With that, I believe that concludes my testimony. If anyone has any questions I would be glad to answer them. [LB346]

SENATOR LANGEMEIER: Are there any questions? Senator Hansen. [LB346]

SENATOR HANSEN: Thank you, Senator Langemeier. Ron, I assume that the other numbers that you are trying to protect are reachable by FOIA, the Freedom of Information Act. As long as you get someone's social security number you can find out about as much information as you want. Why would this approved unique identifier be separate from FOIA or is it? [LB346]

RON MORAVEC: It probably would still be subject to FOIA, but we have looked at one program that has the nine characters, but it is a combination of numbers and letters based upon the persons full name and their date of birth. There is a way to figure out to get certain numbers that you may see two letters followed by two numbers and followed by two or three letters again and by another number, which by looking at them in our preliminary opinion, no one would be able to decipher and use that information to steal

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somebody's identity further than they have already. [LB346]

SENATOR HANSEN: So you think a code will be unbreakable? Probably not. [LB346]

RON MORAVEC: Probably not. You are right, Senator. [LB346]

SENATOR HANSEN: What is the information that we are trying to keep from hackers, FOIA users, abusers that needs this? [LB346]

RON MORAVEC: Right now it would be the social security number because the name and address of the debtor are listed on his financial statement is a public record, and of course on the Internet anybody can find out anyone's name and address basically. So that is not something that is of crucial importance, but, again, the social security number for individuals which as you know can lead to everything about our personal and financial histories. [LB346]

SENATOR HANSEN: Thank you. [LB346]

SENATOR LANGEMEIER: Other questions? Senator Carlson. [LB346]

SENATOR CARLSON: Senator Langemeier. Ron, maybe I am just not seeing this, but why is this necessary and unique to farm products? [LB346]

RON MORAVEC: To do away with the requirement of a social security number, as I indicated, federal law provides that on these documents a social security number shall appear. This is an attempt to do away with that requirement of a social security number. [LB346]

SENATOR CARLSON: But farm products are unique then in that being a requirement versus any other manufactured product? [LB346]

RON MORAVEC: No, they are not unique, but they are in this program for lending institutions and that is what a lending institution will ask of the borrower is their social security number. [LB346]

SENATOR LANGEMEIER: Senator Pirsch. [LB346]

SENATOR PIRSCH: Just like a little bit of back...is there 18 other states kind of find themselves in the same predicament as we do as having to kind of formulate some sort of unique identification? [LB346]

RON MORAVEC: That is correct, Senator. [LB346]

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SENATOR PIRSCH: Could you comment briefly if you do know how close they are to reaching some sort of a solution or is there some sort of common way that it is being approached or have other states already reached some sort of a resolution with regard to that? [LB346]

RON MORAVEC: Senator, to my understanding no other states have reached a resolution of this. There is a national organization, International Association of Commercial Administrators which basically is composed of people like our deputy secretary of state for business services corporation UCC division. There was talk that at their next annual meeting this year maybe these 19 states try to get together and see if something can be worked out. The potential problem with that is that the states have been waiting for several years for the USDA to come up with a solution, and in September of last year they basically said we can't find one, so we will let the states do that. The secretary's concern is that we go through this other voluntary process with this organization that it is just going to take more and more time, and it is going to be difficult, I believe, for the 19 states to come up with a specific common identifier. [LB346]

SENATOR PIRSCH: Is it a concern of the Secretary of State that should we implement a particular identifier, this particular plan, that at some point then in the near future a different or opposite plan will be put forward or maybe the consensus of those 18 states such that we would have to then switch over to a new system after this? I guess the question is is this right, this calling for the change at this point and time? [LB346]

RON MORAVEC: You make a good point, Senator, but I think we believe that it is right because we will be delaying again for several more years. And whether there is one system adopted by the 19 states or any number in between, there may be some issues that arise because there is not one uniform identifying number. But our opinion is that we would like to proceed forward to begin this process and if that develops, it will be some time down the road as far as we understand it. [LB346]

SENATOR PIRSCH: Thank you. [LB346]

SENATOR LANGEMEIER: Senator Gay. [LB346]

SENATOR GAY: In follow up to Senator Pirsch's question would be how does the process work? Do we need to do this in order for you to go speak with these other 18 states to come up with a solution? Because what I am looking at is there is nothing now, we are going to go look into it and change our system to some kind of a system that we haven't agreed upon yet. But how does the process work? Do we need to do this in order for you to go visit with the other states? [LB346]

RON MORAVEC: No, Senator. It would not be necessary to pass this portion of the bill

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before we could talk to the other 18 states. That could be done without such directive. [LB346]

SENATOR GAY: Okay. Then a follow up question. Then on the fiscal note, though it said an estimate of \$23,580. But then it says depending on the length and the use of the unique identifier the cost associated with the required programming will vary. I am a little leery to put that in there and then we don't know what we are going to do and then all of sudden \$23,000 is \$223,000 the way computer programs sometimes go. But do you have any concerns about that? That if we don't know what we are after how can you make an estimate of that? [LB346]

RON MORAVEC: The estimate that was given, the 20-some thousand dollars, is based upon keeping the identifier at the nine characters. If it was to go beyond that that is one we don't know. [LB346]

SENATOR GAY: Then we don't know. Okay. Thank you. [LB346]

SENATOR LANGEMEIER: Senator Pankonin. [LB346]

SENATOR PANKONIN: Thanks, Senator Langemeier. Ron, good to see you today. [LB346]

RON MORAVEC: Thank you, Senator. [LB346]

SENATOR PANKONIN: Former Cass County residents, it is always good to see them. But really it comes down to, as I understand it, the Department of Agriculture said you are going to do this, right? I mean this is a federal type thing initiated? [LB346]

RON MORAVEC: Well, yes, Senator, they have given it to the states to develop this. [LB346]

SENATOR PANKONIN: Given or mandated? [LB346]

RON MORAVEC: They have given at this point in time. [LB346]

SENATOR PANKONIN: And so then our impetus for doing it is to protect people's identity because the change of the system, we had created, that is why we are doing it then? [LB346]

RON MORAVEC: Yes, and there are other state agencies that have contacted business services division saying that documents they were going to file with business services division would not have the social security number. Our response to that was unfortunately the statute requires that this agency include the taxpayer social security

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number when they file the documents. So it serves more than just the farming community, if you will. [LB346]

SENATOR PANKONIN: Okay. Well, my only follow up question is in foresight I think that if we have to try and take this on by ourselves, and I even could see some liability if our system is easy to break and crack and people can steal, but at least it wouldn't be their social security number which leads to a whole other trail of information. So maybe if it is just for these type of filings and programs it is maybe the consequences aren't quite as great. I don't know. But I am concerned that we are opening up ourselves by using some other system that if it is abused people can come back, well, the state came up with this system, must not be very good, then they stole my information. [LB346]

RON MORAVEC: Certainly, that is always a possibility, Senator, but I would hesitate to say that it should be a major concern of the committee in making it's decision. [LB346]

SENATOR PANKONIN: For the type of information that it is? [LB346]

SENATOR LANGEMEIER: Senator Pirsch. [LB346]

SENATOR PIRSCH: Just to follow up with you. With respect to your particular plan you are going to implement a unique identifier that includes both numbers and letters then. Is that the current plan or do you have a proposed? [LB346]

RON MORAVEC: That is just one idea at this point in time, Senator. We would certainly be open to all suggestions as to this plan. [LB346]

SENATOR PIRSCH: Sure. Well that makes sense. I think those are harder to crack. Okay. Well, thank you very much. [LB346]

SENATOR LANGEMEIER: I had one other question. What is going to be the sale barn's liability? If I take my cattle in too, I sell at Burwell every year, they run my name, my soc, they find out I have a loan, they ask me if I have one of these unique identifiers and I say nope, I use my social security number. What is that sale barn's liability for not finding if, I hate to pick a name but, let's say Pinnacle Bank went and filed against my unique number and not my soc. What would be their liability for having two different methods for them to check? [LB346]

RON MORAVEC: Your name should also be what would be checked in addition to any social security number or unique identifier number. So if that business checks properly it would find you under the social security number and/or unique identifier number. [LB346]

SENATOR LANGEMEIER: Find it both ways, okay, and then to follow up on Senator

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Carlson's question. Is it my understanding the reason we are looking at this in this livestock realm or grains and embryos and terminology is because other lending documents don't have soc numbers on them, deed of trusts for homes, for land typically aren't filed with soc numbers on them. [LB346]

RON MORAVEC: Yes. I recall a phone call a few years ago from a irate citizen that they found their home mortgage on the Internet from the local county assessor and they were quite upset because their social security number appeared on there. But this specific program, of course, is related to farm and that type of situation. [LB346]

SENATOR LANGEMEIER: Okay. Thank you. Senator Pirsch. [LB346]

SENATOR PIRSCH: Just to clarify, it was a federal act that mandated you had the social security numbers listed on them, therefore that is why it in that purview here today. [LB346]

RON MORAVEC: That is correct. And following that then the Legislature passed state statutes saying also that social security numbers or TINs had to appear on those documents. [LB346]

SENATOR LANGEMEIER: Any other questions? I think you are done. Thank you very much for you testimony. [LB346]

RON MORAVEC: Thank you, sir. [LB346]

ROBERT HALLSTROM: (Exhibits 1 & 2) Senator Langemeier, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB346. As Senator Pahls has indicated, LB346 makes a couple of significant changes. One is designed to better accommodate the electronic filing of effective financing statements under our states central filing system, and the second is to provide an alternative to the current federally mandated requirement to include the debtor's social security number on effective financing statements and thereby attempt to protect the debtor from identity theft and everything that follows from the theft of the debtor's identity. I think perhaps I should have gotten up here first and taken a little walk down memory lane for the benefit of the committee members. I think it is important to distinguish between the systems that we have in play with regard to the perfection of a security interest by a lender and the central filing system, or the effective financing statement filing system and what is to be accomplished under that particular system. We have two separate stand alone systems as we always tell our bankers. The first one is the perfection element, which is the taking of a financing statement and a security agreement, filing that financing statement in order to provide notice to the world that you are perfecting your security interest in the particular collateral, in this case farm products. Our second system, which is what we

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are talking about today, the central filing system or effective financing statement system is designed to address what has been a long-standing concept in the uniform commercial code, referred to commonly as the farm products exception. And under the farm products exception when you are dealing with farm products unlike other things like business inventory, general assets and the like, the buyer of farm products was traditionally at risk if they did not check the record, make payment in recognition of anyone that had a security interest in those farm products, and could potentially be held responsible for paying a second time for not making sure that the proceeds were properly applied to that secured interest. As a result, some of the buyers of farm products back in the mid-eighties raised concerns about what was commonly referred to as double jeopardy. I have paid once. Now the bank may sue me for conversion and come back, and seeks payment a second time because the borrower ran off with the funds and didn't apply it to the loan. As a result, congress stepped in. Congress passed the Food Security Act of 1985 and essentially said we are going to continue to provide protection for lenders who have a security interest in farm products, but we are going to do it in a little bit different fashion. Essentially what they did was they set up two methods for lenders to protect themselves. One we call prenotification has become less and less of an issue in Nebraska because of the second alternative, which is called central filing system or the filing of effective financing statements. Nebraska, along with 18 other states, have established a central filing system pursuant to the Food Security Act, and essentially what that system provides is you have a separate filing, an effective financing statements that has certain information contained therein as required by federal law, one of those requirements being the social security number of the debtor. Once that effective financing statement is filed a buyer of farm products buys those farm products and can make application to the Secretary of State to become a subscriber, if you will, of the master buyer registration list that is provided by the Secretary of State. If they check that master buyer registration list and find that there are one or more lenders who have security interest in the property who have filed the effective financing statements they are then required to make payment by check or other instrument, to all of the named security interest holders in addition to the borrower. If they do so, they then take advantage of buying the farm products free and clear of those security interests. In other words they have performed their duty, they have checked the registration list, they have made the check out accordingly, and the check then gets distributed to the proper party who holds the priority security interest. That is the way that the system is designed and intended to work to provide the buyer of farm products free and clear treatment of those farm products. Again, in adopting the central filing system Nebraska has to comply with the federal requirements, both under federal law and the regulations adopted by the USDA. One of the concerns that led to, and maybe address some of the questions that we have had here from the committee with earlier witnesses, is that recently we have had calls from bankers who have received criticism from their regulator, the FDIC in this case, for having provided their customer's social security numbers on these filings, and as unfortunately is all too often the case you have to throw your hands up and say your criticizing me for doing something that

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federal law mandates me to do. So we have been interested for a number of years and finally in November of 2006 got the word from the USDA that they, in fact in part, had eliminated the sole requirement of identification of the debtor to be the social security number and have provided the alternative of the unique approved identifier. That is why we are before you in part today. The second issue is those regulations have also clarified and provided expanded authority to file certain documents without the physical signature of either the secured party or the debtor, but rather as we have done in the UCC side many years ago, provided for authorized signatures or otherwise authenticated signatures of the debtor or the secured party. So that, simply put, it is a positive thing for debtors in terms of trying to curb some element of identity theft. Senator Pahls had indicated that there are amendments that have been proposed. I have circulated those to the committee. Under the current law the USDA recognizes that with USDA approval the Secretary of State can add or delete farm products from the statutory list from time to time. The Secretary of State has done so with the approval of the USDA, and we have simply added those items that have either been added or deleted since 1985 when the law was initially enacted to bring the statute up to speed in that respect. With that, I would be happy to address any questions that the committee may have. [LB346]

SENATOR LANGEMEIER: How many questions? Senator Gay. [LB346]

SENATOR GAY: Thank you, Bob, for that explanation. I can understand a little bit more where we are going. But I guess the question is this then, on this bill that proposes all of these we still don't have the way to implement this. I think the idea is a good one for privacy reasons. I understand that completely. So this bill would encompass everything so that when they do get this done we have already got the statute in place. Is that what we are doing here then? [LB346]

ROBERT HALLSTROM: Right, and, Senator, I think you may have asked the question as to whether or not the Secretary of State could visit with those other 18 states with or without this legislation. This issue becomes, I think the best way I can describe it is they can talk all day long, but until we change the state law to conform to what the federal flexibility has now provided us their talking isn't going to do us any good. The regulation had to be changed and then we have to likewise change our state law to allow them to come to a decision and make a result that will minimize identity theft. [LB346]

SENATOR GAY: Okay. So then what we are doing by passing this we...this is just something that has to be amended, and excuse me, being new I am trying to learn here, so this is something that would have to be amended and is amended on a regular basis then if we go create this alternative? [LB346]

ROBERT HALLSTROM: Not necessarily, Senator. There are two aspects of it. The one with regard to amending or updating the statute with regard to the farm products that

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have either been eliminated or added. We are simply, because we are in at that this time, adding them to the list. There is no requirement for us to add these new farm products to the statutory list. It just made sense since we were opening up the statute to do so. With regard to the social security number or the alternative approved unique identifier, there should be no need to change the statute. What I would perceive happening, and particularly with regard to some of the questions that were asked, is we could come up an approved unique identifier on our own or in consultation with the other states to try and come up with a unified approved unique identifier. But having decided upon one, the statutory framework is already in place for us to decide what is it that we want to implement originally. We will have to go to the USDA and get approval for that initial change, if you will. If we decide there is a better mousetrap after the fact we don't have to come back to the Legislature because you have already given us the framework to have an alternative approved unique identifier. It would just be incumbent upon the Secretary of State to go back again to the USDA and say we think we have found a better way to do this, would you now approve this as an alternative to what we initially prescribed. [LB346]

SENATOR GAY: Thank you. [LB346]

SENATOR LANGEMEIER: Good question. Senator Hansen. [LB346]

SENATOR HANSEN: Thank you, Senator Langemeier. Bob, on the amendments to LB346 you have on page 5 line 10 after "barley," insert "bees, buffalo, bull semen," could we add the word bank or banks to that? [LB346]

ROBERT HALLSTROM: Well, you could but there is another statute that you are going to be working on that may very well be in this same bill if things happen to all come together and the moons and the stars align. [LB346]

SENATOR HANSEN: That was just one the things that I made a list of what we call banks and we call nitrogen jugs semen banks sometimes. And I have noticed that on the existing list goats are not on there and there are a lot of goats in Nebraska now. So if you want to make it a little more up to date I think we need to add goats. [LB346]

ROBERT HALLSTROM: And we have had that in query. I don't think it went anywhere, but it would be within the province of the Secretary of State even if they are not in this statute today that if there was a hewn cry to add goats to the... [LB346]

SENATOR HANSEN: It is not my cry. [LB346]

ROBERT HALLSTROM: ..yes. If there was in some communities...in fact I think Senator Langemeier and I have talked about that issue in the past as well, but the Secretary of State could make a request independent because the balance of the statute says that

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they can do by regulation and USDA approval add those to the list without having to change the statute. [LB346]

SENATOR LANGEMEIER: Any other questions? I do have one. You had it on your amendment bull semen and it is also in the green copy embryos and genetic products, is that not covered there and if not, swine semen is almost getting as more popular than bull semen? [LB346]

ROBERT HALLSTROM: Senator, I cannot speak to whether one includes the other with regard to your question. The Secretary of State's office may know better than I or a practitioner could perhaps know better than I. I don't want to double up on anything in that regard, but I am suspecting they must have thought that they were two different elements because I think they have asked the USDA separately for approval. Because both the bull semen and the embryo are genetics were asked for approval at two different times. [LB346]

SENATOR LANGEMEIER: Okay. Thank you. Any other questions? Don't see any. Thank you, Mr. Hallstrom. [LB346]

ROBERT HALLSTROM: Thank you. [LB346]

SENATOR LANGEMEIER: Next proponent. Good afternoon. [LB346]

BOB ANDERSEN: Senator Langemeier, my name is Robert Andersen. I am with the Nebraska Cooperative Council, appreciate the opportunity to be here today. I do not have any testimony. I will be speaking more or less off the cuff here. I come before you today, and I want to complement the work of the Secretary of State and the bankers association on addressing this issue. We do hear a lot of discussion among the cooperatives around the state concerning identity theft. The comments that they receive from their patrons, it is a growing concern out there and rightfully so. Where I do come for you today is that I probably present a different perspective than that of Mr. Hallstrom at this point in time. We agree upon the intent here, but as I come before you a lot of our cooperatives out there, our marketing cooperatives, are very dependant on the EFSs in terms of trying to avoid what he referred to as double jeopardy on that as well as the statutory liens, which a lot of our supply cooperatives are filing and some of the ag inputs that are out there. What we are concerned about here is not so much the identity theft, excuse me, I misquoted that. We are concerned about the identity theft, but what we are really concerned about is the integrity of the process for those buyers out there of farm products to make sure that whatever comes out of this process is indeed going to be something that has been very well thought out to make sure that we can avoid some of the problems that references have been made to here earlier on this thing here, so we don't have to worry about the issue of double jeopardy. Having been involved in the process back in the seventies and eighties with Mr. Hallstrom's predecessor, Bill

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Brandt, we went through the battles concerning double jeopardy and that, and it is a real live concern out there, and that is the reason we feel very strongly that whatever comes out of here had that integrity there to provide that protection for the buyers out there along that line. And to that accord we would like to offer the opportunity to work with the committee here, or the Secretary of State and the bankers association, as this process, if it is passed, this enabling to provide that input from the purchasers of the ag inputs out there. The thing that I want to also share with here, reference has been made today in terms of the mandated in the 19 states out there, which Nebraska is one of those. I want to make sure that we all understand that in terms of what we are talking about here, in terms of updating this, it has been in the federal register, it is required for those people to have a central filing system. However, not all state have that. There are provisions in other states that do not have this and they use a different system. So to think that we have to have that in the future, that is not necessarily the way it is. We are not here to advocate you change that, but just so there is a clarification in understanding how farm products are treated throughout the Midwest between both lenders and ag purchasers there. So with that, we would encourage the support and the passage of advancement of LB346. I would welcome any questions you might have at this time. [LB346]

SENATOR LANGEMEIER: Thank you. Senator Pankonin. [LB346]

SENATOR PANKONIN: Thanks, Senator Langemeier. While I appreciate that because those of us who were around agriculture a long time, that year 1985 has significance. [LB346]

BOB ANDERSEN: Yes. [LB346]

SENATOR PANKONIN: Those that were involved, as you well know, before that time in the early eighties there were significant problems with the old system. This has been a big improvement and I couldn't agree with you more. We need to enhance it, improve it, keep the integrity because before hand you were there, I was there, it wasn't pretty, was it? [LB346]

BOB ANDERSEN: It was a bloodletting. One thing I was remiss in, with the Senator, here in terms of the amendment Bob Hallstrom had provided this to me earlier. I haven't had a chance to really study it, but it looks like it is something that is probably apropos and would encourage your consideration of this or whatever modifications to it are needed. [LB346]

SENATOR LANGEMEIER: Other questions from the committee? Seeing none, thank you for you testimony, Mr. Andersen. [LB346]

BOB ANDERSEN: Thank you. [LB346]

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SENATOR LANGEMEIER: Other proponents. [LB346]

PAT PTACEK: Good afternoon, Senator. Senator Langemeier, members of the committee, my name is Pat Ptacek, the Nebraska Grain and Feed Association. My last name is spelled P-t-a-c-e-k and we appear today in support of LB346. Unlike Mr. Andersen I do not have the background or the experience that he had in the 1980s of going through what they did go through, and we often take our lead from the Nebraska Cooperative Council on these issues, especially as they deal with the electronic filing system. And obviously given the mandate, and I would call that a mandate from the US Department of Agriculture, to do what we can to protect the identity of our customers and do it in a timely process as possible. And given the dynamics of moving commodities these days and we know that oftentimes they don't go to the elevator or the feedlot anymore, they go right to that ethanol facility right on time that we need to have these tools in place as quickly as possible to make sure that they system is protected. So with that, I won't kick a dead horse. I will try to answer any questions you might have. [LB346]

SENATOR LANGEMEIER: Thank you. Are there any questions? Seeing none, you can avoid the horse, too. [LB346]

PAT PTACEK: Thank you. All right. [LB346]

SENATOR LANGEMEIER: Any other proponents? Opponents? Neutral testimony? Senator Pahls, you are recognized to close. Senator Pahls waives closing. That closes the hearing on LB346. Thank you. Senator Pahls, I will turn it back to you. [LB346]

SENATOR PAHLS: Thank you, Senator Langemeier. Our next bill will be LB381 which was introduced by me on behalf of the Secretary of State. My opening on the bill will be limited to now asking the Secretary of State to come forward to testify on the provisions of this bill. Good afternoon again. [LB381]

RON MORAVEC: Thank you, Senator. Good afternoon. My name is Ron Moravec, R-o-n M-o-r-a-v-e-c. I am the chief deputy Secretary of State appearing here on behalf of LB381 which is before you at this time. I would again like to thank Senator Pahls for sponsoring this legislation on behalf of the Secretary of State. The purpose of LB381 is presented by us on behalf of Senator Pahls is to remove two words, I guess, from a statute that appears in our statute books, and the statute in question is Chapter 52 section 1316 and it is information provided by filing oral and written inquiries, duties, fees, and liability. This act was passed by the Legislature in 1986 when the central filing system that has been discussed on the preceding bill was passed. The effective financing statement that is mentioned in LB381 and the statutes to Chapter 52 article 13 is filed in the Secretary of State's office by a secured party that identifies the debtor, their name, address, things of that information, and the type of product that the lending

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party, the secured party, is claiming as collateral on behalf of the loan that they have given to this individual, and the EFS document also describes where the product is used in what counties. The 1986 act that created section 52-1316 provides in part that oral and written inquiries regarding information provided by the filing of effective financing statements may be made at any county clerk's office or the office of the Secretary of State during regular business hours. It is the proposal that this bill presents that the word "oral" be removed from one of those tools, if you will, whereby inquiries can be made. And as indicated in the statement of intent the Secretary of State's office Business Services Division has compiled statistics from 2000-2006 concerning oral requests, written requests, and searches that subscribers do on the Internet through Nebraska.gov. From the year 2001-2006 there have been a total of 4,883 written inquiries under this statute about information on these EFS statements. During the same period from 2001 to the end of 2006 there have been 76,796 inquiries over the Internet through Nebraska.gov, the subscribers. During that same time period 2001-2006 there have been no oral inquiries made of the Business Services Division of the Secretary of State's office for information in relation to effective financing statements. And including January of 2007 there have been an additional 37 written inquiries made for this information and, again, no oral inquiries have been made. And I mentioned January of 2007 because we can vividly remember what the majority of the state or at least the western two thirds of the state went through from January 1 through basically the end of January. Many people were without electricity, power and utility services. But still during that same time period those that had an interest did now make any inquiries orally, but some 37 at least did by writing, and I did not check to see how many made inquiries through the Internet subscription service process. It is the position of the Secretary of State that we would seek to have this oral possibility removed from the statute to preclude potential liability on behalf of the person that is making that oral inquiry. It is not difficult to perceive a situation where the person calling up may misinterpret what information they may want, may give a wrong name, misspelling of a name, may give other wrong identification, or the person in the Secretary of State's office may not clearly understand the information that is being provided to them. The Secretary of State has the statutory obligation to log in that inquiry, also the written inquiry, give it an identifying number, and to respond to that oral and written inquiry within the next business day. The concern for liability, again, is on that person that is requesting that information because if they are given incorrect data because of the misinterpretation, or wrong name, or spelling, they may suffer some financial consequences by whatever action they take involving their inquiry. Whereas if it is in writing at least the office knows specifically what that individual is looking for, and again the written opportunity has been taken care of by the citizens, they do seek that option. Another part of the 1986 act that talks about the oral or written inquiries also provides that the Secretary of State may provide for a computerized system for inquiry and confirmation which may be used in lieu of the inquiry and confirmation under subsection 1 of this section. Subsection 1 being the oral and/or written inquiries being made. And that is what is happening with the average of 12,000-13,000 inquiries per year that are

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made through Nebraska.gov in the subscription system. The Secretary does not believe that elimination of this oral phrase will cause any undue hindrance or burden upon anyone that may be inquiring. Again, there is no evidence that this takes place. When this was passed in 1986 the Legislature gave strong consideration, I believe, to the issue of oral inquiries because it stated that the Secretary of State's office had to be open from 8 a.m. to 9 p.m. Central Standard Time, Monday-Saturday and there were only six holidays that were specifically excluded from that requirement. One year later the Legislature deleted that provision and just inserted what is there now is during normal business hours. So it would appear that even back then it was decided that the oral application was not of significance as the Legislature one year later changed that. And by changing that, initially it had put in there some 94 extra days that the Secretary of State's office was open in a year just to take these potential contacts. We can probably speculate and come up with several hypotheticals of situations that may occur where possibly an oral inquiry would be made. But I put in here the January 2007 situation because that is an actual extreme situation that occurred, but, again, no one needed, if you will, to make that oral contact with the Secretary of State's office to get this information. They were satisfied going onto the written and/or Nebraska.gov online subscription process. We are of the opinion that the removal of this would not effect the state's policy established by you gentlemen that the government be open, that the government make the most expeditious use of the information and resources that it has, and the information as I indicated does not show that such would happen if the oral portion was removed. Thank you. [LB381]

SENATOR PAHLS: Do I see any questions? Yes, Senator Hansen. [LB381]

SENATOR HANSEN: Thank you, Senator Pahls. I understand the reason that you want to take "oral" out of there and I have no problem with that. What I do have a problem with is the 76,000 inquiries over the Internet. Do the people that are the participants of the inquiry, or that they are making the inquiry of, are they notified? You said there was a number of written requests, inquiries, but then the ones that were over the Internet were ten times, tenfold that. Do you notify the people that are being inquired about? [LB381]

RON MORAVEC: No. It is a public record. [LB381]

SENATOR HANSEN: It is a public record. [LB381]

RON MORAVEC: Our office nor Nebraska.gov would notify the person that the information was being sought on. [LB381]

SENATOR HANSEN: Does anyone that is being inquired upon have a right to know that they are? Can a citizen call in or online can they say have I been inquired upon this month? I just don't want to see that as being a hindrance to commerce. [LB381]

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RON MORAVEC: I would assume someone could make an inquiry of Nebraska.gov if information about them has been passed on. I don't know what Nebraska.gov would do in return, but, again, as that is public information. I, if I am the one that the information is being sought on, do not have a right to tell someone not to release that. It is a public record. [LB381]

SENATOR PAHLS: Senator Pankonin. [LB381]

SENATOR PANKONIN: This may be more a comment that kind of answers that question, but I think, so people understand what this system is about, basically people would access it via the Internet to see if there was a filing, to see if there is a bank filing or some other filing like was mentioned by Mr. Andersen that some of it is provided inputs with the lien. So if you are a producer, Senator Hansen, you are not going to be notified. It is a just a way that makes the mechanism that people can check and see if there is a filing there. So it is really just a pretty seamless way so people can find out. So using the Internet they are just trying to find out to comply with commerce that there is a filing. [LB381]

SENATOR HANSEN: Okay. [LB381]

SENATOR PANKONIN: There really isn't any reason that...would that be correct? [LB381]

RON MORAVEC: Yes, Senator, that would be. [LB381]

SENATOR PAHLS: Seeing no more questions, thank you Ron. [LB381]

ROBERT HALLSTROM: Senator Pahls, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you again as registered lobbyist for the Nebraska Bankers Association in support of LB381. We have surveyed a smaller cross section of our bankers and confirmed Mr. Moravec's figures that no one seems to be making oral requests of the Secretary of State's office for these types of filings and information related thereto. It conjures up visions of the Maytag repairman sitting at the Secretary of State's office waiting for that one call to come that is probably never going to come. So with that, we would specifically express our support on the record for LB381. [LB381]

SENATOR PAHLS: Senator Langemeier. [LB381]

SENATOR LANGEMEIER: One question and I should have asked I earlier, but in the previous testimony there was a lot of discussion about subscription service. There is no fee to check those filings, is there? [LB381]

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ROBERT HALLSTROM: I don't believe there is a fee to check the filing. There is a fee to subscribe to the service to get all of the services that flow there from, and I don't know, it seems to me there might be a \$50 subscription fee. I could be wrong on that. That is my recollection, but there is nothing that I am aware of with regard to a fee for each time you go in and check. As Senator Pankonin suggests, there might be lenders who just want to follow up and make sure that they are filings were recorded properly and that all the necessary information is there maybe to double check on when the continuation statement date might apply to those types of filings and so forth. [LB381]

SENATOR LANGEMEIER: So in those thousands of Internet inquiries they are getting they are technically getting them from subscribers not just the general public out playing on the Internet trying to find it. [LB381]

ROBERT HALLSTROM: Exactly. Yeah. You have to have a subscription to be able to get in and utilize the system. [LB381]

SENATOR LANGEMEIER: All right. Thank you. [LB381]

SENATOR PAHLS: Just for clarification, why would I be checking? [LB381]

ROBERT HALLSTROM: What you generally, Senator, from my basis it would be that a lender is, in fact, going to check to make sure that a filing was conducted properly. They may be going back through to make sure that there filings are in line with regard to all of the information that was suppose to be there. A lot of those things, if you have actually done electronic filing, but a lot of our documents are not yet ready for prime time to go to electronic filings. So there are a lot of paper filings, just double checking to make sure that the filing officer didn't put something in a stack and neglect to get it filed and things of that nature that maybe is a belt and suspenders approach, but nonetheless lenders do that to make sure everything is in order. [LB381]

SENATOR LANGEMEIER: Okay. Thank you. [LB381]

SENATOR PAHLS: Seeing no more questions, thank you, Bob. [LB381]

ROBERT HALLSTROM: Thank you. [LB381]

SENATOR PAHLS: Anymore proponents? Opponents? [LB381]

ROBERT ANDERSEN: Senator Pahls, my name is Robert Andersen. I am with the Nebraska Cooperative Council. The issue that I come before you today, is it a key cooperative issue? No. But I come before you because I think that the farmers and ranchers in the state, I wonder if they are really aware of what this says. I think that you

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have heard good testimony. The statistics verify that oral inquiries are not being pursued and I can't argue with that. But the reason that we have concerns, and as our legislative advisory committee and as we have talked to some of these farmer directors, most people don't even realize that that oral inquiry does exist, that you have the ability to do that. Why is that important? In this day and age people are using the Internet, what have you, but if I can take the liberty of an example here, let's say that, and I do on occasion, I have had some stock cows. Let's say that Senator Hansen would like to...reads in the Omaha World-Herald, I am thinking about selling him 50 head of stock cows. He drives up there just to look them over and he thinks that maybe he wants to buy those things. It is during the middle of the day. He doesn't have his laptop with him, what have you. He is not a normal purchaser of this. Maybe he is in terms of his farming operation, but to be able to use that oral inquiry he can call, at that point in time, to make sure to see what the status of Robert Andersen is so that, again, he can avoid that double jeopardy. Again, this is more the exception. Mr. Moravec is absolutely correct. It has not been used that much, but it seems to me in my opinion here that while oral inquiries might be on the decline, the ability is probably the most expedient way to get information if electronic information is not available or if time is of the essence. The example there in January of this year are the people out around Funk and Axtell, and that really effected in those people trying to buy grain. Of course, you didn't have electricity to move grain to begin with. But a lot of people were not even aware of the oral inquiry factor. I can see if the bill was coming before the committee and that there would be a significant dollar savings that the state could encounter. Why have it if it is costing the state money? But in our discussions with the people with the Secretary of State's office the other day, Mr. Moravec was very kind to visit with me and Deb Pester, but I have documentation here and it is confirmed that there is no dollar savings to the Secretary of State's office if this is removed. So it really comes back to me in terms of going back, Senator Pankonin, to the time when we had the farm crisis that groups when we created that central filing system, this was very, very important to the representatives of the farm organizations, at that time, that that be in there. Granted time has changed. The Internet, things of this nature here. But if there isn't a cost savings what harm is it doing at this point in time? It is really a matter of policy, and so I would ask that you consider that as you deliberate the fate of this particular bill. I would welcome any questions you might have at this time. [LB381]

SENATOR PAHLS: Let me speak, because I know there is the fiscal note there is not a cost savings here, but I heard the word liability from the Secretary's office. Is that if misinformation is given out? [LB381]

ROBERT ANDERSEN: Going back to my example with Senator Hansen, if he buys 50 head of stock cows and he doesn't put on there that I have a note with the local banker or the farm credit system, and he buys those and he doesn't include that name on there, he could have to pay for that farm products again a second time. That is the value of that to avoid what we refer to in the industry as double jeopardy. [LB381]

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SENATOR PAHLS: Any other questions? Seeing none, thank you. [LB381]

ROBERT ANDERSEN: Thank you. [LB381]

SENATOR PAHLS: Anymore opponents? Anybody in neutral? Yes. [LB381]

PAT PTACEK: Chairman Pahls, my name is Pat Ptacek, P-t-a-c-e-k, with the Nebraska Grain and Feed Association. I really wasn't going to testify on this issue, but we will testify in a neutral position. My legislative committee has not yet made a recommendation on this bill, but we are a little bit sensitive to the nature of eliminating a tool that we think might be valuable at some time in the future especially with the emerging ethanol industry right now. What we have come to realize within the Grain and Feed Association is that a lot of the training that they are requesting right now is in merchandising, lien searches, things of that nature. A lot of their corn they are going to source are the elevator. A lot of that corn they are going to source directly from the farmer. So they are going to need every available tool, this emerging industry, to make sure that, again, we are doing this as efficiently as possible and as time sensitive as possible. At this point in time we, again, are neutral on this issue. We would just caution the committee to move cautiously on this and, again, it is not an issue of saving money, of the liability issue, Senator, I have heard that today. That is something I am going to take back to my committee as well, but at this point in time we just leave that for the record. Thank you. [LB381]

SENATOR PAHLS: Any questions? Seeing none, thank you. Anymore neutral? Okay. The hearing is closed on LB381. [LB381]

SENATOR PAHLS: We will be opening for LB129 which was introduced by me and other members of the Banking, Commerce and Insurance Committee on behalf of the Department of Banking and Finance. My opening will be limited to now asking our Director of Banking and Finance to come forward. Good afternoon, John. [LB129]

JOHN MUNN: (Exhibit 1) Good afternoon. Thank you. Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is John Munn, J-o-h-n M-u-n-n. I am Director of the Nebraska Department of Banking and Finance. I am appearing today in support of LB129 which was introduced by members of the committee at the request of the department. LB129 proposes to update the Mortgage Bankers Registration and Licensing Act. This act regulates those nonfinancial institution entities that solicit, arrange, make, and service loans on ten or more one-to-four family homes located in Nebraska. There are 668 companies currently licensed under the act, which has been in effect since 1989. The primary focus of LB129 is to provide authorization and procedures for Nebraska's participation in a nationwide uniform system of electronic licensing of mortgage banking companies. Over 30 states, the

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Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, and the mortgage banking industry have been working for a number of years to develop a uniform system of electronic licensing of the entities that make residential mortgage loans. The licensing system, which is in development, will be quite similar to that used in the securities industry--the Central Registration Depository or CRD system for broker-dealers and agents, and the Investment Adviser Registration Depository (IARD) system for investment advisers and their representatives. The National Association of Securities Dealers, which maintains both the CRD and IARD systems, has been hired to set up and maintain the new mortgage licensing system. The mortgage licensing system is to become operational January 1, 2008, when new license applications will be accepted. All licenses processed under the system will expire annually on December 31. The system will provide for the licensing of all offices, the collection of fees, uniformity of forms, and, if requested by the individual states, processing of fingerprint and background checks on officers and directors. The states will set their own licensing fees. The system will charge uniform processing fees for applicants, renewals, and branches. It is up to the states to decide whether their license fees will include the processing fee. The working group has suggested language for states that need to update their laws to use the nationwide system, but there is no model language that the states must use. Attached to my testimony you will find an information sheet that provides additional information on the development of this system. The mortgage licensing system will provide uniformity among the states and is expected to provide savings of both time and money for mortgage banker applicants and licensees due to uniform registration process. The ability to participate in such a system will provide efficiencies for the department because it will not have to manually process hundreds of renewals each year. The Bureau of Securities, a division of our department, has had very good experience with the CRD and IARD systems that I mentioned previously. We have 1,417 broker-dealers; 62,509 securities agents; 861 investment adviser firms; and 2,498 investment adviser representatives registered as of December 31, 2006 using those 2 systems. With that background, I will discuss the specific provisions of the bill. LB129 will first update the definitional section of the Mortgage Bankers Registration and Licensing Act. Section 2 defines the terms "branch office" and "control." "Branch office" will be a three-part definition that includes offices located in Nebraska, which is in current law found in section 45-711. It will include offices located out-of-state that intend to transact business with Nebraska residents, and will also include third party or home-based locations intended for use by agents and representatives of a mortgage banker to transact business with Nebraska residents. This updated definition will allow the department to coordinate with branch office licensing procedures being set up as part of the nationwide system, and will provide the department with clear jurisdiction over all locations that conduct Nebraska mortgage banking business. Similarly, the term "control" would be a multipart definition that includes those who have the power to direct the management or policies of an entity; persons who hold certain positions in a company, including directors, general partners, and executive officers; and persons with a specified minimum amount of stock

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ownership or capital contributions. This definition is based on sample language suggested in connection with the nationwide licensing system. This provision coordinates with section 9, which proposes an approval process for the change of control of a licensee. Section 3 of LB129 would update the initial mortgage banker license application process set forward in section 45-705 by establishing a branch office fee of \$75 per branch, clarifying when an application is considered filed with the department, and providing authority for the department to require a fingerprint check and a criminal history check of an applicant and its principals. The background information would be collected and processed as part of the nationwide licensing system authorized in section 8 of LB129. Section 4 sets forth the procedures for the implementation of Nebraska's participation in the nationwide licensing system with amendments to section 45-706. Section 4 changes the March 1 annual license renewal date to December 31, and provides for the issuance and renewal of licenses during the 2008 interim period. The interim procedures are necessary because licenses issued between March 1, 2007 and December 31, 2007 will expire on March 1, 2008, and would be renewed only until December 31, 2008. Authority is given to pro rate a renewal fee during that time. This section also proposes an annual \$75 renewal fee for branch offices and coordinates with section 6 which provides for a branch application form. Section 5 is an amendment unrelated to participation in the nationwide system. This section would update section 45-708 by providing a Class I misdemeanor penalty for persons who have been convicted of, or pled no contest to, certain misdemeanors or any felony, and who become employed by or act as agents for mortgage bankers. Mortgage bankers are already prohibited from employing and contracting with these persons. However, since it is not currently illegal for the individual to be an employee or agent of the mortgage banker, enforcement has been difficult. A second enforcement update is found in section 7 of the bill. This proposal would amend section 45-714 by prohibiting licensees and their employees and agents from obtaining customer signatures on a document required to be notarized when a notary is not present. A violation of this provision will be a Class III misdemeanor. It is currently illegal for the notary to notarize a document when the signatory is not present. However, that prohibition has been insufficient to prevent this situation from occurring. We have found that it is more likely that fraud is perpetrated against the customer and that terms of the documents will get changed when a notary does not witness a signature. Section 8 is the actual enabling statute for the states participation in the nationwide electronic licensing system. Section 9 is a new section which would provide for change of control notice procedures for mortgage banker licensees, including a fee of \$200, financial and fitness standards, and a sixty-day review period. As I indicated at the beginning of my testimony, the multistate licensing system is a project nearing completion after many years of discussion and work. The final industry concerns being addressed involve the privacy and security of the data that will be input into the system and the processing fees to be charged by the system that will be in addition to the licensing and renewal fees charged by each state. The department has been working with the Nebraska Financial Services Association to resolve these legitimate issues. We have agreed on

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amendments that will provide that data is currently kept confidential under the act will remain confidential, that the system must have a privacy, data security, and security breach notification policy, and that the department will provide the system's audited financial reports upon written request. We have further agreed that no language is necessary at this time regarding the system's processing fees. I want to advise the committee that the amount of these fees is currently being considered by a nationwide working group, and are expected to be set within sixty days. The most recent information available to us indicates that neither the application fee nor the renewal fee will exceed \$200 per state. Bruce Cutshall with the association will present a copy of those amendments in his testimony today. My thanks to the committee for sponsoring this important proposal. I will be happy to answer any questions. [LB129]

SENATOR PAHLS: Do I see any questions? Senator Langemeier. [LB129]

SENATOR LANGEMEIER: Chairman Pahls. Thank you, Mr. Munn, for your testimony. How did you come up with the ten or more? What is the significance of ten? [LB129]

JOHN MUNN: That is already in the statute, and I don't know, I would actually have to ask Patti what the origin of it is, but one kind of interesting note that I have found since being in this office is the department interprets that anyone who advertises to make mortgage loans in Nebraska on the Internet, that to the department constitutes the offer to solicit ten or more. So it is automatic if you advertise in that manner. [LB129]

SENATOR LANGEMEIER: Thank you. [LB129]

SENATOR PAHLS: Senator Pankonin. [LB129]

SENATOR PANKONIN: Thank you, Senator Pahls. Director Munn, I would assume that as far as banks that offer mortgage services really wouldn't be under this. That would be my assumption, that these would be freestanding mortgage brokers. [LB129]

JOHN MUNN: Nonfinancial institution entities, correct. It would include credit unions, banks, savings and loans. [LB129]

SENATOR PANKONIN: That is what I assumed. Thank you. [LB129]

SENATOR PAHLS: Senator Gay. [LB129]

SENATOR GAY: When I was looking at the fiscal note it says the bill authorizes an office fee of \$75, and that the department estimates the fee would generate \$62,250 in '07-08 and \$75,000 for '08-09 and fiscal years thereafter. But then after that it says this estimate appears reasonable. The department also estimates that not all expenses would be incurred to process initial branch office licenses. So a nominal fee to start up,

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but then it is ongoing. Is that why we are collecting those fees ongoing for the audits enforcement of this? [LB129]

JOHN MUNN: Correct. Exactly. [LB129]

SENATOR GAY: Okay. [LB129]

SENATOR PAHLS: Seeing no more questions, thank you, John. [LB129]

JOHN MUNN: Thank you. [LB129]

SENATOR PAHLS: Proponents? [LB129]

BRUCE CUTSHALL: (Exhibit 2) Senator Pahls, members of the Banking, Commerce and Insurance Committee, my name is Bruce Cutshall, that is B-r-u-c-e C-u-t-s-h-a-l-l, and I appear here today as a registered lobbyist for the Nebraska Financial Services Coalition in support of LB129. Coalition members consist of sales finance company and installment loan companies and they are regulated by the department under Chapter 45 article III and Chapter 45 article X of our statutes. We appear in support of LB129, but I will tell you at the outset we had a number of concerns with the multistate licensing system that Director Munn just alluded to and it was mainly in the areas of clarification. We were concerned of what members would be subjected to this licensure process. As he alluded to, that does not change the membership from those who are going to be licensed today. We were concerned with privacy, and security, and notification of any brief breach in that security. That amendment that you received, I think, is the agreed upon amendment, and you will see there is a previous one there that says we will get the contract relating to that so all the members will know how that particular situation is to be treated. We were also concerned with public records, would there be anything that would be not public today that would be access by those if we entered into the system, and I think there is a provision in there that clarifies that there would precautions taken to not have that be the case. And then also we are certainly concerned with what it would cost us on an entity that maybe was not answerable to anyone, and I think we are perfectly satisfied with what Director Munn said that probably in the next sixty days we will know that and in all likelihood the outside fee will be \$200. We are certainly not opposed to the director entering into this particular system nor are we interested in having the department have to incur any cost as a result thereof. I would simply like to say I spent a great deal of time with Ms. Herstein, the legal counsel, in working on this and I am grateful for her willingness to provide this amendment to you today. I also thank Director Munn. I would like to close by simply saying I think this is agreed upon, although it is as you will note it is dated today and it was received at noon, and so if the department has a chance to look it over and find anything, I am for that because it was short notice. But I would hope that the committee finds this satisfactory and that they would amend the bill and advance it to General File. I would attempt to answer any

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questions you might have. [LB129]

SENATOR PAHLS: Do I see any questions? Senator Pankonin. [LB129]

SENATOR PANKONIN: Thank you, Senator Pahls. Bruce, thanks for you testimony. And so just to clarify then, if we take action on this bill a little bit later to advance that by that time the department would have had a chance to look over these amendments and give us any comments back. [LB129]

BRUCE CUTSHALL: I think it says as we agreed upon, but I just handed it to him at the hearing. So I think, yeah. I certainly don't want to delay the bill as a result of not having the amendments not worked out. That is right. [LB129]

SENATOR PANKONIN: Okay. But we would have chance to have their input on? I think that is important. [LB129]

BRUCE CUTSHALL: That is right. You bet. Absolutely. [LB129]

SENATOR PAHLS: I see no more questions, thank you, Bruce. [LB129]

BRUCE CUTSHALL: Thank you. [LB129]

SENATOR PAHLS: Anymore proponents? Opponents? People in the neutral? The hearing is now closed on LB129. [LB129]

SENATOR PAHLS: We are now ready for LB380 which was introduced on behalf of the Secretary of State's office. My opening will be limited to now asking the Secretary of State's office to come forward. [LB380]

RON MORAVEC: Thank you, Senator Pahls. My name is Ron Moravec, R-o-n M-o-r-a-v-e-c. I am the chief deputy Secretary of State, and, again, thank you, Senator Pahls, for bringing LB380 before this committee for a hearing. The sole purpose, if you will, of LB380 is contained on page 2 lines 24 and 25 that the application for an individual under the Mortgage Bankers Registration and Licensing Act adds a possibility rather than a requirement for an individual. If I may, the application, reading from LB380, required by the section shall include the name and street address in this state of a registered agent appointed by the licensee for receipt of service or process, and (b), the written consent of the registered agent to the appointment. What is added is that a post office box number may be provided in addition to the street address. It is not mandated. Secretary of State is not in the business of creating business for the U.S. Postal Services so there is no mandate. But it is a voluntary act on behalf of the applicant under the specific act. The purpose being to provide individuals and/or the Secretary of State with another tool in trying to locate the registered agent for this

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organization. We find historically that each year 2-3 percent of correspondence that we send out to corporate entities is returned for no valid address. When a registered agent changes, the state law provides that documents should be filed with the Secretary of State, so indicating, and who the new registered agent will be. If a change of address of that registered agent also precipitates the filing of a document indicating where this registered agent's new location is going to be. We find that that is not always happening and that is the purpose of the this LB is to give them the opportunity and encouragement, if they have a post office address, to please put that down on the documents that are filed in addition to the street address. We find that an individual may move physical locations, but unless it is a considerable distance they will more than likely keep the current post office box number that they have, if indeed they have one to start out with. So this is, as I indicated, not a mandate but a request. We this year sent out to LLC, Limited Liability Corporation, some \$25,000 biennial reports, as of this time we received approximately 9 percent of those back for bad addresses. We then go through our documents again to see if we can find another address for this LLC, and if we do we then send a second communication to that along with any reports that they need to return for processing. For instance, in 2006 there were almost 6,000 domestic corporations that were automatically dissolved by the Secretary of State's office for nonpayment of the statutorily required occupation tax. The majority of those automatic administrative dissolutions are because the document that we sent out twice has come back both times for an invalid address. There are provisions, of course, for this agency ultimately to be reinstated. But the point being that the registered agents or their entities are not always notifying the Secretary of State when a change of address occurs, and this is a hopeful tool for that, to encourage them to include that post office address when they file their documents. There is no additional filling fee when they do this and it will require no additional work on behalf of the Secretary of State as far as personnel expenses or equipment changes if this were to take place. With that, that would conclude my testimony on this and I would be glad to answer questions. [LB380]

SENATOR PAHLS: Senator Carlson. [LB380]

SENATOR CARLSON: Senator Pahls. Mr. Moravec, you mentioned you sent out 25,000. I missed the percentage that came back. [LB380]

RON MORAVEC: Nine percent. [LB380]

SENATOR CARLSON: That is a bunch. [LB380]

RON MORAVEC: Yes it is. I stand corrected, there were 25,953. [LB380]

SENATOR PAHLS: Senator Hansen. [LB380]

SENATOR HANSEN: Thank you, Senator Pahls. Can this post office box be used in

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lieu of an address? [LB380]

RON MORAVEC: No. It is in addition to an address. [LB380]

SENATOR PAHLS: Seeing no more questions...oh, I am sorry. Senator Langemeier. [LB380]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. I have one question. And I understand why we have the physical address on there and that is so we can find these individuals if there ever was a problem. And so if we add the PO Box on, how do you rectify your database if you are sending out, like you said, 25,953, is you send that out and you got 9 percent back you knew your database needed to be changed. If the PO Box was on there and they were all delivered because of the PO Box how would you ever know that a street address is wrong? [LB380]

RON MORAVEC: You wouldn't. We would not. [LB380]

SENATOR LANGEMEIER: But the whole purpose of having the street address is to know their physical location if there is a complaint. [LB380]

RON MORAVEC: That is correct. [LB380]

SENATOR LANGEMEIER: So we could just be further...so the next time you sent it out we could be not 9 percent wrong, we could be 29 percent wrong and then further be 39 percent wrong the next year if we never get any feedback back. [LB380]

RON MORAVEC: True, but of course the entities are required to file with the Secretary of State's office when they change an address or change a registered agent. Obviously in these 6,000 domestic cases last year we weren't notified by any one of these...the majority of which would be change of addresses. The other possibilities would be that the registered agent received it and said that this organization is defunct, no longer in existence, even though no documents have been filed dissolving the entity; or the registered agent is busy and said I will get to this next week and three months pass and we have sent them another notice and they say the same thing again, and it just never gets sent in. It is our opinion those two situations are very minute, but it is just that the registered agent just never gets the mailing to change. [LB380]

SENATOR LANGEMEIER: Right. Thank you. [LB380]

SENATOR PAHLS: Senator Pirsch. [LB380]

SENATOR PIRSCH: As you mentioned there is a process in place where once you ultimately contact them, say it is dissolved and then a few months later it comes to their

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attention and through inadvertence they had not renewed that. In speaking with those types of individuals do you find that is that the case that is was through inadvertence or are these smaller operations that just didn't make a go of it through the year and had just ceased doing operations? [LB380]

RON MORAVEC: I think it is a combination of both. They have just ceased and the individual may be the sole corporation, if you will, they don't have large staff. They just figure that they are dissolved, I don't need to do this any longer, and we have correspondence, communications with many that just say that I just forgot to do it and they are not going to do it. So they are automatically dissolved administratively. This is not certainly the answer that will cure the situation, but it is another hopeful tool that somebody can use to know that they should give us a current address, whether it is a PO Box or a street address. And of course, again, because there is no expense that is just added to the form that is incorporated into the database, that information is then onto form and does not require a special entry into the database. [LB380]

SENATOR PIRSCH: Thank you. [LB380]

SENATOR PAHLS: Seeing no more questions, thank you. Proponents? Opponents? Neutral? This closes the hearing on (LB)380. Thank you. [LB380]

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Disposition of Bills:

LB129 - Advanced to General File, as amended.
LB346 - Advanced to General File, as amended.
LB380 - Advanced to General File.
LB381 - Indefinitely postponed.

Chairperson

Committee Clerk