

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

[LB715 LB716 LB717 LB851 LB852]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 22, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB715, LB716, LB717, LB851, and LB852. Senators present: Rich Pahls, Chairperson; Chris Langemeier, Vice Chairperson; Tom Carlson; Mark Christensen; Tim Gay; Tom Hansen; Dave Pankonin; and Pete Pirsch. Senators absent: None. []

SENATOR PAHLS: Good afternoon. Welcome to 208 (sic: 2008). Welcome to the Banking, Commerce and Insurance Committee, to this hearing. My name is Rich Pahls, I'm from Omaha and represent the 31st Legislative District. I do serve as the chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the process. This is your opportunity to express your opinions on the proposed legislation before us today. To better facilitate today's proceeding, I ask that you abide by the following procedures, and you can see I have them on a board over here to my right, your left. They are basically pretty simple. You are probably going to get tired of hearing these. Turn off your cell phone. After we get started, we'd like to have you move to the first three rows, that would give us some idea how many people are going to speak. We do have an on-deck chair when you're ready to testify, because I believe that we can get the process speeded up if everyone sort of complies with some of our routines. The order of the testimony is the introducer, proponents, opponents, neutral, and closing. Testifiers, most of you come in front of our committee do understand this process, but we ask you to sign in, and again, even though it may be repetitious for some of you, we would like to have you spell your name. That would help when they're transcribing. Again, we're asking you to be concise. If you are really a speaker or a master of words, we're hoping that you master them very quickly. Written materials may be distributed to the committee members while testimony is being offered. You can hand it to our page, and if you don't have 10 copies we ask you to hold your hand up and wave, and we will have those 10 copies made for you. By any chance, do we have anybody who says hey, I don't have 10 copies? Great, love it. To my immediate right is committee counsel, Bill Marienau; to my immediate left is committee clerk, Jan Foster, those are the brains behind the organization, and today I'm going to have the committee members introduce themselves starting over. []

SENATOR CARLSON: Tom Carlson, District 38. []

SENATOR PIRSCH: Pete Pirsch, represent District 4, home of Millard North, the only international baccalaureate high school program in the state of Nebraska. []

SENATOR LANGEMEIER: Chris Langemeier, District 23. []

SENATOR PANKONIN: Dave Pankonin, District 2. []

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

SENATOR GAY: Tim Gay, District 14. []

SENATOR HANSEN: Tom Hansen, District 42. My grandson goes to that school, and North Platte, Lincoln County, is the home of the Spike, the Union Pacific Viewing Tower that views the largest rail classification yard in the world. []

SENATOR PAHLS: Thank you. This should tell you we're setting certain routines today. In the future you will be hearing all kinds of tidbits of information from our senators. Also, let me introduce our page, and he's standing bending over listening very intently to Jan. Ryan, would you just wave your hand? Ryan Behrns from Louisville. Okay, the committee will take up bills today in the following order: (LB)715, (LB)716, (LB)717, you can see my name is by that, and (LB)851, (LB)852, which are banking bills from the committee. And I think that I will start and turn it over to you, Senator Langemeier. []

SENATOR LANGEMEIER: Thank you, Chairman Pahls. We'll start with LB715. Senator Pahls, you're recognized to open. [LB715]

SENATOR PAHLS: Thank you, Senator Langemeier, committee. LB715 would amend section 81-885.17 of the Nebraska Real Estate License Act to provide that a nonresident real estate broker or salesman cannot be issued a resident's broker or salesperson's license upon becoming a Nebraska resident, or cannot be issued a nonresident broker's or salesperson's license without first providing to the state Real Estate Commission with proof of completion of a three-hour class sponsored by the commission regarding the Nebraska Real Estate License Act. That concludes my opening. [LB715]

SENATOR LANGEMEIER: Thank you. Are there any questions for Senator Pahls? Seeing no questions, they're saving it for the next. Proponents? [LB715]

KORBY GILBERTSON: Good afternoon. For the record my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association in support of LB715, and I'd like to thank Senator Pahls for introducing this measure on our behalf. As Senator Pahls said, this is a relatively simple bill. What it does is it requires nonresident real estate licensees to take a three-hour course before they are given their license. Currently, there is a requirement that they take this course within 90 days of receiving that reciprocal license. There has been an issue with folks who come over and get their license and, for whatever reason it is, don't manage to get that course taken within that 90-day period. This simply clarifies the law, makes them stand in the same shoes as any in-state real estate licensee by taking that course before they're given their license. I'd be happy to answer any questions. [LB715]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

SENATOR LANGEMEIER: Thank you, are there any questions? Senator Gay. [LB715]

SENATOR GAY: The course you're talking about, it's currently provided apparently. Who teaches it and how would the applicant, this is common practice I assume... [LB715]

KORBY GILBERTSON: Yes. [LB715]

SENATOR GAY: ...how would they assess the course? [LB715]

KORBY GILBERTSON: It is and there are courses provided by the (NE) Realtors Association, I'm not sure if there are other associations that do that. Mr. Tyrrell is going to be following me from the Real Estate Commission, he might have more insight into that. [LB715]

SENATOR GAY: Okay, I'll wait...whether it's online, easily accessible, those kinds of things? Okay, thank you. [LB715]

SENATOR LANGEMEIER: Senator Hansen. [LB715]

SENATOR HANSEN: Thank you. Is there a set fee for this? I was reading through this again real quickly and I couldn't find it. [LB715]

KORBY GILBERTSON: For the course, or? [LB715]

SENATOR HANSEN: Yes. For the three-hour class. [LB715]

KORBY GILBERTSON: I am not sure. I don't know. But this is not a new requirement, they're already required to do it, and so are resident real estate licensees. So it's not a new course, and I don't know what the charges are for it. [LB715]

SENATOR LANGEMEIER: Thank you, Senator Hansen. Senator Pirsch. [LB715]

SENATOR PIRSCH: If you know, could you tell me how many times a year...is it only offered a certain amount of times a year, or is it you can take the course whenever you'd like? [LB715]

KORBY GILBERTSON: That again, I'm not sure about the logistics of it. All I know is that it's out there, and all the licensees currently have to take it. We're just changing when, so. [LB715]

SENATOR LANGEMEIER: Any other questions? Thank you. [LB715]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

KORBY GILBERTSON: Thank you. [LB715]

SENATOR LANGEMEIER: Next proponent? [LB715]

LES TYRRELL: My name is Les Tyrrell, L-e-s T-y-r-r-e-l-l. I'm the director of the Nebraska Real Estate Commission appearing here today on behalf of the members of the commission. We are in support of this legislation and would urge you to pass it on to the floor, and enact it prior to adjournment. [LB715]

SENATOR LANGEMEIER: Thank you. Are there any questions? Senator Gay. [LB715]

SENATOR GAY: Same question, I guess, is the class available online? [LB715]

LES TYRRELL: Yes. [LB715]

SENATOR GAY: What's in the class that they teach? [LB715]

LES TYRRELL: It's information out of the Nebraska Real Estate License Act on license laws, rules and regulations that the commission have. It also has the agency relationships act, licensees have to follow. So it's basically a law-oriented course, specific, so that those people are familiar with Nebraska law. [LB715]

SENATOR GAY: Is it a pass/fail? [LB715]

LES TYRRELL: It could be, it depends on the provider of the course. It could be either pass/fail, or it could be done on a percentage basis dependent upon the... [LB715]

SENATOR GAY: So there's several providers? [LB715]

LES TYRRELL: Correct. Right, the providers would range from, as Korby indicated, the (NE) Realtors Association has a course and then there are also private providers, online providers, etcetera. [LB715]

SENATOR LANGEMEIER: Other questions? Senator Pirsch. [LB715]

SENATOR PIRSCH: So it's not a standardized test. That's what I'm getting from the follow-up? [LB715]

LES TYRRELL: It is not a standardized test in the strict meaning of the word standardized. [LB715]

SENATOR PIRSCH: Okay, and how often is that then provided? Would it vary then? [LB715]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

LES TYRRELL: Oh, yeah. [LB715]

SENATOR PIRSCH: It's provided online, so is it periodically? With what frequency is the test offered through the various providers? [LB715]

LES TYRRELL: We provide the potential licensee, the potential applicant, with a list of the schools that have the course available, and then they are able to work with either taking it on in-class basis if they work that out for those people who are moving to Nebraska that have to take it, or then it's either a paper and pencil correspondence, it could be online, it could be taken virtually whenever they get a hold of the provider that they want to use. So it's virtually available 24/7, if you will. [LB715]

SENATOR PIRSCH: Okay. Thank you. [LB715]

SENATOR LANGEMEIER: Les, I have one question. Of this three-hour class being licensed--this is all very familiar to me--what do the other states do to us as far as requirements if I wanted to get my broker's license reciprocated in Iowa or Kansas? [LB715]

LES TYRRELL: Okay. [LB715]

SENATOR LANGEMEIER: Do they require similar type continuing ed? [LB715]

LES TYRRELL: It all depends. Nebraska for years has been a license-for-license state, where we issue licenses based on the other states' license issuances, and other states have done that. Some require that a person will take the exam, the state portion of their exam; some require that they take a course similar to this; others will just issue license-for-license. But that situation has been changing over the past few years to more and more states requiring either the state portion of the exam or a course. In our case, because of the way our broker's examination is now configured, it is not possible to do a state portion of the exam situation because there is no "state" portion of the exam. It's all intermingled now, and so we'd be unable to do that, so that's why we've gone with this type of situation for the three-hour course. [LB715]

SENATOR LANGEMEIER: Okay, great. Thank you. Any other questions? Not seeing any... [LB715]

LES TYRRELL: Do you have a question on the price? [LB715]

SENATOR HANSEN: Yes, if you know. [LB715]

LES TYRRELL: There isn't a set price. Each provider of the course, whether it be a

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

community college, or a private provider, or the realtors association, or the proprietary schools, would charge whatever the going rate would be. But I would imagine it's not more than \$25-\$50. [LB715]

SENATOR HANSEN: Thank you. Okay. [LB715]

SENATOR LANGEMEIER: Seeing no other questions, thank you. [LB715]

LES TYRRELL: You're welcome. [LB715]

SENATOR LANGEMEIER: Any other proponents? Opponents? Neutral testimony? Seeing no others, Senator Pahls recognized to close. He waives closing. That concludes the hearing on LB715. With that, Senator Pahls, you are recognized to open on the hearing for LB716. [LB715]

SENATOR PAHLS: Thank you, Senator Langemeier, members of the committee. My name is Rich Pahls, I represent District 31. LB716 would amend Uniform Commercial Code section 9-506 to provide that a financing statement with minor errors or omissions is not seriously misleading if a search of the debtor's correct name in the records of the filing office would disclose the financial statement. This section of the code currently provides, as a general matter, that a financing statement substantially satisfying the requirements of the code is effective unless errors or omissions make the financing statement seriously misleading. [LB716]

SENATOR LANGEMEIER: Thank you. Are there any questions for Senator Pahls? Seeing none. Opponents or proponents? Thought we'd go in a little different order here. Proponents? We'd have to change the sign, I guess. [LB716]

ROBERT J. HALLSTROM: That would've been the wrong place, wrong time. [LB716]

SENATOR LANGEMEIER: Go ahead. [LB716]

ROBERT J. HALLSTROM: (Exhibits 1 and 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 and to testify in support of LB716. As Senator Pahls has noted, this bill is designed to make amendments to Uniform Commercial Code pertaining to the use of the debtor's correct name and the manner in which searches should be conducted, should this legislative bill become law. The problem that LB716 is designed to address is the rash of litigation that has resulted in Nebraska and a number of other states resulting from the Uniform Commercial Code requirement to use the debtor's correct name on a financing statement. Under the rules of the UCC, a financing statement filed by a secured party to perfect a security interest must sufficiently provide the name of the debtor. That financing statement can contain

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

minor errors or omissions as long as it does not render the financing statement seriously misleading. The code goes on to say that if a financing statement fails to sufficiently provide the name of the debtor, it is seriously misleading and the consequences of being seriously misleading is that a prior perfected security interest or financing statement may be rendered ineffective. There is one exception to that rule, as noted on page 2 of my testimony, and that indicates that if a searcher, searching the financial statement records at the Secretary of State's office uses the correct debtor's name and finds another filing that uses something other than the debtor's correct name, that filing will not be deemed to be seriously misleading and will remain effective. An example of that would be if a bank loans money to myself, Robert Hallstrom, and if--and this is a big if--if my name is properly determined to the debtor's correct name, in that case, determined to be Robert Hallstrom, if a check under the name Robert Hallstrom is made under the Secretary of State's search logic, it will also show financing statements that may have been recorded against me as a borrower under either Robert J. Hallstrom or Robert James Hallstrom--my middle initial or my full middle name. So in that case, the correct name being Robert Hallstrom, doing a search under that name will, in fact, pop up additional names on the screen of financing statements under either Robert J. Hallstrom or Robert James Hallstrom. And the fact that the other secured creditor had used something other than the correct debtor's name, in that case, would not render that financing statement seriously misleading, and thus, ineffective. What we have interestingly enough in the Uniform Commercial Code is the fact that if you're dealing with a registered organization, such as a corporation, a limited liability company, or a limited liability partnership, those are deemed to be subject to what I refer to as the birth certificate rule in determining what the business entity's name is in terms of satisfying that correct debtor's name requirement. And the birth certificate criteria is that each of those business entities are required to file formal documents with the Secretary of State, articles of incorporation for a corporation, articles of an organization for a limited liability company. And you can nail the debtor's name by simply going to that organizational document at the Secretary of State's office and whether you're a searcher or a filer, you will know exactly what the debtor's name is when you're dealing with a registered organization. So that has not been a particular problem area for lenders. Where the problem has arisen, again, is working with individual debtors. The UCC does not provide a similar bright line rule, if you will, for individuals like it does for registered organizations, and in kind of a circular notion, UCC section 9-503--and if you listen closely, you'll see the circular notion here--provides that a financing statement sufficiently provides the name of a debtor who is an individual only if it provides the individual name of the debtor. So if you can figure out exactly what it is that you'd have to use for the correct debtor's name, you're better off than most of us. Interchangeably, the official UCC forms provide absolutely no additional guidance by making reference to terms as the exact full, legal name, the exact legal name, or the full correct name of the debtor. So simply put, having said all of that mouthful, the problem that we have is that we have no guidance under the Uniform Commercial Code as to what the debtor's correct name is. Should a lender in filing a security instrument or a financing statement

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

look to the drivers license, the birth certificate, the marriage license, a passport--again, no guidance to provide us with any direction on how to properly perfect and/or search under the individual debtor's name. What I've provided in my testimony is a brief description of the bankruptcy case, In Re Borden, that I think may illustrate the problems that both filers and searchers will encounter in this area of the law and why we feel the need within the industry to make the changes proposed in LB716. I describe in the Borden case a bank had a prior perfected security interest. They had filed under the name Michael R. Borden. Subsequent to that time, an implement dealer sold some machinery and equipment, attempted to perfect a purchase money security interest, again subsequent in time to a prior perfected security interest of the bank, and they filed under the name Mike Borden. There wasn't enough money to go around, the debtor went insolvent and it became a question of who wins, the first perfected security interest holder or the subsequent PMSI security interest holder. Applying the logic of the current code, the court interestingly enough said we're going to determine that this individual's correct debtor's name is Michael Ray Borden. Now neither the bank or the implement dealer utilized the name Michael Ray Borden, but the court had to come up with a determination and had to pick a winner and loser, and they determined that Michael R. Borden--the name utilized by the first filer--was the correct debtor's name. And, that had a search been conducted under Michael R. Borden, pursuant to the Secretary of State's search logic, that the name Mike Borden would not have shown up. To use an example of the current state of the law and what we propose under LB716, in front of you I have a results from an official search under the Secretary of State's web site entitled, "Business Services". If you look at pages 3 and 5 of your document, I have highlighted the three security interests or financing statements that were involved in this In Re Borden bankruptcy decision. And as you can see, you have a filing under Mike Borden, and you have a filing under Michael R. Borden. They've all shown up in this particular search that we conducted, because we used the debtor's correct last name as is proposed under LB716. What would have happened under the case under the current law In Re Borden, is when Michael R. Borden was searched, Mike Borden did not show up on that search, and that's because the Secretary of State's search logic basically goes from a very narrow to a very broad spectrum. If I use my name as an example, if I search under Robert James Hallstrom, Robert James Hallstrom filings is the only filing that I will pop up on my screen based on the Secretary of State's search logic, even if there is a Robert Hallstrom or a Robert J. Hallstrom filing filed of record. So again, as proposed under LB716 had this law been in effect, someone would've known they should've searched under the last name Borden and they would've gotten each and every one of these. They would've shown Mike, Michael R., Michael Ray, if there had been any filings of that nature, and would've seen each and every filing of a financing statement that had been perfected relating to that particular debtor. In a leading Kansas case, similar problem area. In Re Kindernecht is noted in my testimony on pages 4 and 5. In that case, Kansas has determined, and again just in that case, that the use of the debtor's name Terrance J. Kindernecht, was not sufficient, but rather should have used Terrance Joseph Kindernecht--first name, full middle name, and last name. And so

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

you've got a whole bunch of different rules floating around based on the current interpretation of the code. Again, we acknowledge from the industry's perspective that searchers will need to be more diligent with the change that's proposed under LB716, but we think it's in the best interest in terms of minimizing the potential for litigation. And with an extra bit of diligence and in fact, actually reverting back to the rules of law that applied prior to 2001 when UCC revised Article 9 was adopted, that we can hopefully avoid the types of problems that are highlighted, or illustrated by the In Re Borden case. I'd be happy to address any questions that you may have. [LB716]

SENATOR LANGEMEIER: Senator Pirsch. [LB716]

SENATOR PIRSCH: Just a couple quick ones. Would it present more, logistically, would it be problematic when you encounter names more common such as John Smith or Michael Smith? [LB716]

ROBERT J. HALLSTROM: Good question, Senator Pirsch. We have checked that very issue, Smith or Jones were the names we checked with the Secretary of State's office. I think, practically speaking, depending on how you define more problematic, it's going to provide you with more names presumably that will pop up on the screen when you use Smith or Jones as opposed to Borden or Hallstrom. But nonetheless, you will get all of the names that pop up. At that point then, you need to narrow your search to determine if I've searched under Pirsch, perhaps I'm going to be looking for Pete or Peter Pirsch. I'm going to be looking for someone that has an Omaha address. Presumably, in doing my due diligence as a lender, I'm going to have all that type of information that will allow me quickly to identify that Peter Pirsch in Ewing, Nebraska, is certainly not the debtor that I'm dealing with across the table, but rather Pete Pirsch or Peter Pirsch that pops up from Omaha, Nebraska--perhaps even the same home address that I've gotten from the borrower. Then I'll know that there's a prior perfected security interest that I either need to get released or subordinated, or that I will take a security interest that is subject to or secondary to. [LB716]

SENATOR LANGEMEIER: Senator Pankonin. [LB716]

SENATOR PANKONIN: Thank you, Senator Langemeier. Actually, Senator Pirsch, that was the first part of my question was going to be the same thing. And Smith and Jones did come up as common ones, and I think that will take a little more time. On the other hand, I think it is apparent how this has been and can be a problem, and it's always a problem when things go south...(inaudible)...when there's problems and we start looking. I know my own experiences as a farm equipment dealer, I always ask for the debtor's driver's license and get the exact information they have there whether it's the middle initial, full middle name or whatever. That's how I handle it being the one that loans money for equipment, but I think this is a good initiative, but my question was similar to Senator Pirsch's. [LB716]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

ROBERT J. HALLSTROM: And Senator, I might add that's a prudent business practice. The problem is, as I've noted, you're not going to know until the court determines whether or not that full name on the driver's license is, in fact, the name the court ultimately determines was the correct legal name. We suggest to our lenders today under the current system that they not get cute, if you will, and try to check or search under, for example, Robert James Hallstrom, because they know going in it's going to be a very narrow search and that's the only name that will pop up on the screen. And if I have another loan under Robert J. or Robert Hallstrom, they're not going to find it and they may win but they may not win. [LB716]

SENATOR PANKONIN: Good point. [LB716]

SENATOR LANGEMEIER: Senator Hansen. [LB716]

SENATOR HANSEN: Thank you. Bob, you said you had a rash of cases. Can you say how many were rashes? [LB716]

ROBERT J. HALLSTROM: Barkley Clark, who's a leading commentator in this area, Senator Hansen, has compiled cases and I'm sure he's just shown the ones that he wanted to highlight because of the significance of how the court made the distinction, but we've had at least a handful of cases that I'm aware of, and I don't have access to all of the bankruptcy court decisions, and in other states they've popped up. I know of three major cases in Kansas that have all had a little bit different twist. The one that I mentioned, the Kindernecht case that ruled on the issue of whether or not middle initial was good enough or whether you needed the full middle name. There's also been cases that have dealt with nicknames, whether it's Mike or Michael--that type of issue, and they've been in more than just Kansas and Nebraska, but there's been isolated cases across the country on this very issue. [LB716]

SENATOR HANSEN: Thank you. And when you talk of search logic, is that a software program or is that just common sense that you use...search logic. [LB716]

ROBERT J. HALLSTROM: No, it's the search logic that's employed or the software program I assume that's employed by the Secretary of State's office. From state to state in talking to my counterparts, we've determined that there are, in fact, different search logics. It might make it easier if there was a uniform search logic across the country, so we could maybe make the rules fit into that. But there's different...some states, for example, disregard middle names completely, don't even bother putting them in and if you do they're going to be disregarded or kicked out. We have similar things on the business entity or corporation side where we disregard, and maybe Mr. Moravec can speak better to it, where we disregard periods or Ltds or Incs--different things that are disregarded automatically so you don't get hung up on is it "I-n-c" or is it "C-o" or is it

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

"C-o-r-p" and so forth. [LB716]

SENATOR HANSEN: Okay, so someone with a common name in Nebraska you would search, or the search engine would search for Tom or Thomas or Tommy or Parson Carlson or any of those. And so, Senator Carlson less likely to get ahead of the bankers then, right? [LB716]

ROBERT J. HALLSTROM: Well, I don't know... [LB716]

SENATOR HANSEN: One step ahead. [LB716]

ROBERT J. HALLSTROM: Yes. I don't know whether it's a question of getting ahead of the bankers. The bankers should be doing their work to determine and verify the identification. Obviously, somebody could come in and give a bogus name, but the banker had better be on top of knowing who their debtor is and verifying through their customer identification program procedures so that they know at least starting out, they may not pick what the court deems to be the correct debtor's name, but at least they're in the ball park and have identified their debtor properly so it only becomes a question of was it Tom or Thomas Hansen that they should have filed. [LB716]

SENATOR HANSEN: No, Carlson. [LB716]

ROBERT J. HALLSTROM: Or Tom or Thomas Carlson. [LB716]

SENATOR LANGEMEIER: Thank you. Senator Christensen. [LB716]

SENATOR CHRISTENSEN: If I understood you right, just by doing the search individually somebody could basically double up on what they're loaning on under Mike here, under Mike R., they basically could defraud a bank by \$100,000 both place and only have \$100,000 worth of equity? [LB716]

ROBERT J. HALLSTROM: I don't know, Senator, whether that's the way that it would actually work. What it boils down to is actually the other side of the coin, that when the lenders made the original loan to Mike or Michael, they chose to file or perfect their interest under one name or the other. And when the court has to make a determination, they may each have \$100,000 out in your example, there may not even be enough to pay one of them off. But if there's only enough to pay one of them off at the end of the day based on a flip of the coin on whether I should've filed under Mike or Michael, one of those lenders is going to prevail and the other one is not. [LB716]

SENATOR CHRISTENSEN: So are we making this so we have to file a certain way, or just a more broad search comes up for them? [LB716]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

ROBERT J. HALLSTROM: The issue is we're basically reverting back to the rules that applied before Revised Article 9 was adopted in 2001, which are to put more of the burden, if you will, on the searcher to do a broader or more diligent search to try and track down to ensure that before they pull the trigger, and make a loan, and file a financing statement to secure their loan that they know whether or not the person across the desk from them already has another lending relationship for which their collateral may be spoken for. [LB716]

SENATOR CHRISTENSEN: Thank you. [LB716]

SENATOR LANGEMEIER: Senator Carlson. [LB716]

SENATOR CARLSON: Senator Langemeier and Bob, I grew up with a wonderful set of parents. One of their mistakes was they named me Nelson and they call me Tom. So I just looked on here and I've got ten different ways that I could indicate my name, and is this really designed--and I understand this is a serious matter, you've got a lot of money involved one way or another--so I think I've heard you say that it's up to the searcher to enter the name differently, but what's the probability of picking up my ten possibilities here? [LB716]

ROBERT J. HALLSTROM: Well, that's one of the difficulties that's probably inherent and rest in mind, Senator, there probably is not a perfect solution to this situation, which is probably why the Uniform Commissioners have struggled with it, but the searching end of it probably is one that minimizes the potential for those types of problems. You can get into a situation where you might be able to address all of the possible permutations of the names that you might use, but the search logic of the Secretary of State is going to be utilized to narrow down the potential for that to be problematic. In other words, when I use the example that if I check under Robert James Hallstrom, under the current system, that is the only hit that I'm going to get. If we change (LB)716 to say the first step of your search is going to be under Hallstrom, then I'm going to obviously pull up or if I check under Carlson, I'm going to pick up T. Nelson, I'm going to pick up Thomas N., I'm going to pick up all of those. Then the question will become identifying based on the fact that in some cases there is a Social Security number, in every case there is an address, and then in determining what are the other names of the individual across the desk that might possibly be filed under. But once I get to using the last name as my initial guidepost, if you will, then I'm going to get every first name, every middle initial, every full middle name that's out there tied in or pegged into the last name Carlson. [LB716]

SENATOR CARLSON: Thank you. [LB716]

SENATOR LANGEMEIER: Senator Pirsch. [LB716]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

SENATOR PIRSCH: Yeah. It's kind of a court-centric thing, you want to have known the action that the court's going to take, or the uniform standard the court's going to take so that you can kind of change your behavior accordingly. Towards that, you've picked the last name, would it not make more sense when you're looking for a uniform standard to pick up the middle name for more specificity. There's probably 20 Tom Carlsons, but if you hit the full first name, Thomas Matthew Carlson and used that as your standard--the three names, and everyone agreed that that's what the court would look at then in uniformity around that more specific thing. Would that not help also for efficiency's sake, the researchers or is it a matter of sometimes there's middle initials F. and you don't know if that stands for a name or if it's just the letter F? [LB716]

ROBERT J. HALLSTROM: Senator, I think the search logic will take care of most of that problem because once I get it boiled down to I've got the correct last name, then in your case, I'm probably going to say I've probably got for first names I can plug in Pete or Peter. Once I plug in Pete or Peter Pirsch, then irrespective of what the middle initial or middle name is, I'm going to get all of those. So if I get a Peter F. or a Peter Franklin or a Peter Thomas, then I've narrowed down, and I'm going to know when I looked at your driver's license as Senator Pankonin does in his business, that if you're a Peter T. or a Peter Thomas that I can throw out the Peter Franklin because it's not the same person much less the fact that the address presumably will distinguish between those two. The state of Texas has gone a different route that would be a little more similar to yours in a little different context. They have evoked a rule of law that says if you use in filing the name on the debtor's driver's license or state identification card, that that's presumed to be the correct debtor's name. The problem that they've run into though is that they have no transition. So if the name on the driver's license is something different than someone before that law passed had filed under, using the correct name of Pete Pirsch, then you've got the same jump ball again because you've got no transition rules to address that. We looked at that as a solution and felt that this was a much better alternative. [LB716]

SENATOR PIRSCH: Thank you. [LB716]

SENATOR LANGEMEIER: Senator Pankonin. [LB716]

SENATOR PANKONIN: Thank you, Senator Langemeier. Just going back a couple things, Bob, one of them being when you look at this case, the example you gave of Nebraska, it might be helpful to explain, for example, the difference between purchase money, security interest, and the overall financing statements that are more in general financing and whatever, because I think what we're trying to do here is just helping people to search to find out what's out there. Correct? Is that... [LB716]

ROBERT J. HALLSTROM: Yeah. [LB716]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

SENATOR PANKONIN: ...I mean, this is what the intent is to make it easier. I mean, for example, in this case Deere and Company, the dealer that sold that equipment would've done that, but they put it under Mike Borden instead of Michael R. or Michael Ray or whatever, so any bank that might come behind them, and it might be helpful for you to explain the difference between purchase money and the general... [LB716]

ROBERT J. HALLSTROM: Well, yeah and you're taking me down the path of making this even more complicated, but that's fine. I mention that it's interesting that number one, neither party used what the court deemed to be the correct legal name. The other issue is the bank filed first in time. They filed a standard financing statement, perfected their security interest, they're filed of record first in time. They will generally win that race to the courthouse and they'll be in first priority position. The one way that they can be trumped is by a subsequent creditor coming in, generally in financing the purchase of a specific good--farm machinery and equipment, and jumping through the hoops of notification and filing before the debtor takes possession of the item to perfect what we call a purchase money security interest. And purchase money security interest simply put is I have advanced the funding to purchase a specific item and I therefore should have first dibs or first priority on that item even though I filed second in time behind a prior perfected security interest. In this case, the PMSI filed under Mike Borden which was not deemed to be the correct name, the bank who filed long before that never went to the courthouse to even conduct a search still won, because the rule of law is had they searched under Michael R. or Michael Ray Borden, they would not have, pursuant to the Secretary of State's search logic, ever found Mike Borden. So even though they didn't have to conduct a search, no need to, they didn't know that the PMSI was out there until they got notice, they still won the debt. [LB716]

SENATOR PANKONIN: Right. So the follow up question I have is it's not necessarily in this case, Deere and Company lost and the bank won, but this doesn't necessarily favor the banks over other debtors. It's just to try and make the situation clearer of what is out there in security interest. Is that a true statement? [LB716]

ROBERT J. HALLSTROM: Exactly. This doesn't pick specific winners or losers in any isolated circumstance. It tries to provide a clearer rule of law and more constant rule of law than the roll of the dice or the guessing game as to did I file or search under what a court might ultimately determine to have been the correct debtor's name. [LB716]

SENATOR PANKONIN: Which the point I was trying to make, this isn't to favor banks or other institutions, or dealers over others, or capital finance companies. It's to make it clearer for everybody that participates in the financial markets to have clearer idea of who has liens. [LB716]

ROBERT J. HALLSTROM: No question. No question. [LB716]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

SENATOR LANGEMEIER: Senator Christensen. [LB716]

SENATOR CHRISTENSEN: Thank you, Senator Langemeier. Bob, why don't we just use the Social Security number and make it simple? [LB716]

ROBERT J. HALLSTROM: There are some issues that may come into play down the road when there's a little more uniformity among the states in determining how to do that. The biggest concern right now probably stems from the burgeoning issue of identity theft. There are certainly ways that you can look at redacting and doing some things like that that we've done in other areas of the law. I am awaiting, in fact, on that very issue a paper from a University of Nebraska College of Law student that the Uniform Commercial Code professor had told me had been completed that talks about the possibility of using redacted Social Security numbers, but we're not quite ready to go there. That's certainly forward looking and something that we may ultimately be able to track down, but right now part of the issue is identity theft issues that we steer clear of putting Social Security numbers on a lot of different documents for that reason. [LB716]

SENATOR CHRISTENSEN: Yeah, I just noticed a lot of these had them. And to me that would be cut and dried if you had your tax ID number or your Social Security number. [LB716]

ROBERT J. HALLSTROM: Part of the other problem is we've also got a rash of case law from way back when that says if you transpose those Social Security numbers and it is a required component of your filing to perfect that you have just lost your perfected status as well. So there's a lot of little problem areas that we can stub our toe on in having those additional requirements as well, so it kind of comes at you from both directions. [LB716]

SENATOR CHRISTENSEN: Thank you. [LB716]

SENATOR LANGEMEIER: I have one question, Bob. In looking at this handout you gave me, who is responsible for making sure the Secretary of State gets this information in correct? [LB716]

ROBERT J. HALLSTROM: Inputs it correctly? [LB716]

SENATOR LANGEMEIER: Entered correctly, because I see one here it's got his last name and then his Social Security number for his first name. So who would be responsible for... [LB716]

ROBERT J. HALLSTROM: Well, the filing officer's going to be responsible for that. Generally, I think what the rule of law is, Senator, is that if you have provided the filing and paid the appropriate fee that it's presumed to have been filed properly. [LB716]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

SENATOR LANGEMEIER: I guess my concern was let's say that soc got put in the last name hole instead of the first name column, you wouldn't have found it on your search anyway. [LB716]

ROBERT J. HALLSTROM: Yeah. If the last name was the one that was messed up. They put something other than the last name in. [LB716]

SENATOR LANGEMEIER: It's a soc number, then Mike instead of Borden soc number. [LB716]

ROBERT J. HALLSTROM: Yeah. That could be a potential. I believe I have the utmost faith in the Secretary of State's office to do the job correctly the vast majority of times. [LB716]

SENATOR LANGEMEIER: Just reading what you handed out. Thank you. Any other questions? Thank you. [LB716]

ROBERT J. HALLSTROM: Thank you, Senator. [LB716]

SENATOR LANGEMEIER: Further proponents? Opponents? Neutral? [LB716]

RON MORAVEC: Good afternoon, Senator Langemeier, members of the banking committee. My name is Ron Moravec, M-o-r-a-v-e-c, Chief Deputy Secretary of State. On behalf of Secretary Gale, we're here in a neutral position on LB716. As it is proposed it does not create any additional duties or raise any additional fees or cost the Secretary of State's office any additional funds in carrying this out, because we will not be doing anything additional if LB716 is passed in its present form. For the last three to four years, the Secretary of State's office has allowed the type of search that Mr. Hallstrom is talking to you about today. We put in the last name, or if you wish to be restrictive you put in what you believe to be the current and/or legal name of the individual of the debtor to be involved. And unfortunately as Mr. Hallstrom indicated, there's no clear definition of what that name shall be, some place it's called exact legal, some place it's called the correct name. But again, if an individual searches under for instance, Moravec, they will receive all those filings that have the last name of Moravec. Then they would go through those and look for potentially the individual that they're going to be involved with. Senator Pirsch mentioned earlier about common names. As of last Friday morning, there were 1,611 Smiths in our UCC database. And to those 1,611 Smiths there were 3,112 documents, financing statements, whatever that had been filed for those 1,611 Smiths. So we do allow it if you type in just Smith, if you're online and type in just Smith, all of those names will appear alphabetically. It will be the name, the most recent address that the Secretary of State's office has. It will list the secured party, their name, and their address. And from that you would then look through

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

those names and try to determine which Smith you believe is appropriate to be your future debtor. So we see this certainly as like I say, not an increase in the duties of the Secretary of State but something we have been doing for those last several years. And with that, if you had no other questions, I will conclude. [LB716]

SENATOR LANGEMEIER: Senator Hansen. [LB716]

SENATOR HANSEN: Thank you, Senator Langemeier. Ron, what about interstate commerce? Do you have an interstate search? Is there any method for that because business is getting more integrated, branching out, entering more states at least on a larger scale. [LB716]

RON MORAVEC: We do not, Senator. That would be up to the lending institution to try to search other states that they may feel that are involved with the future debtor. [LB716]

SENATOR HANSEN: Similar situation, similar way to get into the search engine in other states then? [LB716]

RON MORAVEC: That I do not know. It depends upon each business filing law because basically as to the type of search engine or search logic that they will utilize. [LB716]

SENATOR HANSEN: But they're all in the Secretary of State's office of each state, or is that even true? [LB716]

RON MORAVEC: That's not entirely correct. There are other constitutional officers in different states that the filings go with. But I would surmise that a lending institution would check into that and find that out. [LB716]

SENATOR HANSEN: Thank you. [LB716]

SENATOR LANGEMEIER: I guess that leads me to one question. On this sheet it does have Social Security numbers of this individual. Who has access to actually do these searches? I mean is that a subscription that you buy to get in? [LB716]

RON MORAVEC: Yes. An individual or entity would subscribe with Nebraska.gov, the business portal manager for Nebraska, and sign an agreement and then they would be authorized with a password to get in and make their search of whatever they're looking for. [LB716]

SENATOR LANGEMEIER: And is there a fee involved in that? [LB716]

RON MORAVEC: It's a \$4.50 fee to gain that search. It would be \$4.50 to find those

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

1,611 Smiths. They also have the ability to walk in and ask for a search. [LB716]

SENATOR LANGEMEIER: Okay. Are there any other questions? Seeing none, thank you for your testimony. [LB716]

RON MORAVEC: Thank you. [LB716]

SENATOR LANGEMEIER: Are there any other neutral testifiers? Seeing none, Senator Pahls is recognized to close. He waives closing, and that concludes the hearing on LB716. With that, we open the hearing on LB717. Senator Pahls, you're recognized to open on LB717. [LB716]

SENATOR PAHLS: Thank you, Senator Langemeier, members of the committee. I must say this chair is much warmer than it was a while ago (laughing). LB717 would make some miscellaneous changes regarding banks, trust companies, mortgage foreclosures, and notaries. The bill would save money for financial institutions filing various applications for requiring notice to other financial institutions by first class mail rather than certified mail. The bill would clarify confusion about the application of insider lending restrictions to license and nonlicense bank officers. The bill would extend the statute of limitations to foreclose on a mortgage from 20 to 30 years if no date of maturity is ascertainable from the filed mortgage. The bill would apply these provisions to deeds of trust as well as mortgages. The bill would allow bank employees and agents acting as notaries to, number one, take the acknowledgement of any person to a writing instrument given to or by the bank; and, number two, to administer an oath to any stockholder, director, officer, employee, or agent of the bank. The bill would outright repeal a section regarding the short-term placement of funds awaiting investments or distribution by a bank or trust acting as a fiduciary. This section has been replaced by the Nebraska Uniform Trust Code which became operative in 2005. Thank you. [LB717]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Are there any questions? Seeing none, you're off the hook. Are there any proponents? [LB717]

ROBERT J. HALLSTROM: (Exhibit 1) Senator Langemeier, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, appear before you today as registered lobbyist for the Nebraska Bankers Association to testify in support of LB717. Senator Pahls has gone through the basic components of the legislation. I'm going to talk just a little more specifically. The first issue that we talk about is elimination of the certified mailing notice requirements. The NBA was contacted by a couple of institutions earlier this year with some concerns over the costs that were associated with their branch applications, and at least one case, if not two cases, locating branches or establishing branches at out-of-state locations. One of the requirements that we have under current law under the state Banking Code Chapter 8 of the statutes is that there's a certified mailing notice requirement to all financial institutions, banks, and branches in a

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

particular community where either a branch, a bank charter, a trust branch office, or a acquisition via cross industry merger or acquisition is to be located. What we're doing, simply put under LB717 is eliminating that certified mailing notice requirement and replacing it with the requirement to provide notice by first-class mail postage prepaid. Everyone will still get the same type of notice, we'll just spare some expense of the department not having any longer to do the certified mailing notice. Second issue in section 2 of the bill has to do with licensed executive officers. There's been a technical interpretation by the department on the books for many years relating to the issue of executive officers and the ability of state-chartered banks to exclude certain executive officers from that designation. Their national bank counterparts are not subject to licensing requirements and they also have the flexibility to exclude executive officers by either board resolution or bank bylaw from the designation of executive officer for purposes of insider lending restrictions, if that individual is not participating in major policy-making functions of the bank and is not authorized to do so. State-chartered banks have been restricted from doing so by a longstanding position of the department. We approached the department earlier this year with a suggestion that we should perhaps allow state-chartered banks to have the same flexibility and authority in this particular area of the law as their national bank counterparts, and I believe they are in agreement that that should occur. The third component of the bill has to do with what Senator Pahls referred to as the statute of limitations relating to mortgages and deeds of trust. The Nebraska Bankers Association a few years ago promoted legislation that amended a Neb. Rev. Stat. Section 76-239 that has to do with the period of time for which a mortgage or a deed of trust will be effective as the notice of the lien of record. That particular statute a few years ago was amended to in effect modernize itself to clearly on its face cover not only mortgages but deeds of trust. The other thing that that statute does is with respect to the rights of subsequent encumbrancers and purchasers for value, it says that a mortgage or a deed of trust that is on record will only be effective as notice of its lien for a period of 10 years after the stated date of maturity in the deed of trust or the mortgage itself, or if there is not a stated date of maturity for a period of 30 years from the inception of the deed of trust or mortgage. At that time we, through oversight, did not realize that the provisions of Neb. Rev. Stat. Section 25-202(2)(b) also addressed the time period for a cause of action to accrue under a mortgage. We should have amended that statute to conform to (section) 76-239 at that time but did not do so. We are simply making similar changes at this time under section 7 of the bill to, number one, specifically provide for deeds of trust on the face of (section) 25-202 when those deeds of trust are foreclosed as a mortgage, and also to increase from 20 to 30 years from inception the stated date of maturity and the cause of action for accruing a mortgage or a deed of trust. Fourth issue under section 8 of the bill has to do with bank agents and employees serving as notary publics. I had an attorney contact me, why on earth he was looking through these statutes I won't know, but he happened to come across the fact that the statutes for banks serving as notary, or bank employees and agents serving as notary, were not conforming to those for insurance companies, savings and loans, credit unions and the like, so we are simply making amendments to

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

section 64-214 under section 8 of the bill to provide uniformity vis-a-vis these various bank employees and agents to those of other financial institutions. Final issue is the outright repeal of Neb. Rev. Stat. Section 30-3206. We've been approached over the years by trust officers at small banks concerned about the restrictions that are placed on them with regard to the ability to place trust funds into an account at the bank with which the trust or the trustee is affiliated. The specific provisions of (section) 30-3206 limited those placements of funds to 30-day time periods. They felt that that was too restrictive, that there could be situations where it would be in the best interest of the beneficiary to maintain funds at an account at the bank with which the trustee was affiliated. In the meantime, as Senator Pahls indicated, we have adopted the Uniform Trust Code as pretty much the governing law over trust and trustee activities. That has a similar provision under (section) 30-3867(g)(4) that authorizes the deposit of trust money in a regulated financial service institution operated by the trustee as long as the transaction is fair to the beneficiaries. In light of the creation or establishment of that provision under the Uniform Trust Code, we should no longer have the requirement of section 30-3206 and we are advocating the outright repeal of that section of law. For those reasons, I'd respectfully request advancement of the bill and be happy to address any questions and hope that's less complicated than LB716 was. [LB717]

SENATOR LANGEMEIER: Thank you. Are there any questions? I have one. On that mailing of the notice, that was the department's expense? [LB717]

ROBERT J. HALLSTROM: No, it's at the expense of the applicant. We've provided throughout those provisions, uniform provisions, that say the applicant is responsible for the cost. The department, as I understand, actually provides the mailing, but then is reimbursed by the applicant for those costs and any cost of publication that might also be associated with the particular application. [LB717]

SENATOR LANGEMEIER: With the certification, it would give us some confidence that the notice actually got there. With first-class mail, you have no confidence it got there. What if we do a return receipt on that? [LB717]

ROBERT J. HALLSTROM: I think the banks, we could look at that, Senator. I think the banks were just more concerned that the cost is unnecessary. They feel comfortable and confident. Obviously with bigger banks you might have a question, does it get to the right division or the right portal to make sure that the people know, but I think for the most part the banking industry is confident and comfortable with the first-class mail requirement. [LB717]

SENATOR LANGEMEIER: Other questions? Senator Pirsch. [LB717]

SENATOR PIRSCH: In addition, are there other types of publication requirements in the statute in addition to the mailing? [LB717]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

ROBERT J. HALLSTROM: There's a publication requirement, and years ago because the only requirement was publication, we, in fact, as the association had come in and said maybe there ought to be a little better knock on the door. Initially it was certified mail. Over the passage of time we've decided that's probably more expensive than it needs to be. There is also an alternative for the department to provide electronic notification, but the statute requires the receiving institution to have agreed in advance that they would accept the notification. And that's probably something just a little bit difficult to handle, to go into any particular community and know in advance that you might have to send a notice via electronic, so I think most of it ends up being published notice and the certified mailing notice under the current law and would change to first-class mail under the changes proposed in LB717. [LB717]

SENATOR LANGEMEIER: Other questions? Thank you. [LB717]

ROBERT J. HALLSTROM: Thank you. [LB717]

SENATOR LANGEMEIER: Next proponent. Opponent? Neutral? We're having the closing waived already so you're going to be quick. [LB717]

JOHN MUNN: (Exhibit 2) Senator Langemeier, members of the Banking, Commerce, and Insurance Committee, my name is John Munn, J-o-h-n M-u-n-n. I'm director of the Nebraska Department of Banking and Finance. I'm appearing today on behalf of the department in a neutral position to provide the committee with information regarding one of the issues addressed in LB717. My comments are directed to section 2 of the bill, which proposes changes to section 8-143.01 of the Nebraska Banking Act. This law governs insider borrowings at state-chartered banks. These amendments represent one of the first significant changes to the statute since it was adopted in 1997 as a replacement to longstanding section 8-140. Nebraska has regulated insider borrowings in one fashion or another since 1909, including at times an outright prohibition on officer borrowings from their employing institutions. Section 8-143.01 currently applies to executive officers defined within the statute as persons with authority to participate in the policy-making functions of the bank, and also to executive officers licensed pursuant to section 8-139. Under section 8-139, an executive officer license issued by the department is required for persons who make loans or investments. While many of the persons who are in policy-making roles at a bank will also hold an executive officer license, a large number of those licenses do not have any role in policymaking. LB717 proposes to remove the phrase "licensed pursuant to section 8-139" wherever it is included in section 8-143.01, thus narrowing the applicability of the law. As set out in subsection 10 of section 8-143.01, interpretation of the law is to be consistent with Federal Reserve Board Regulation O, which, through the Federal Deposit Insurance Act, applies to all federally-insured banks, whether chartered by a state or by the federal government. All of Nebraska's state-chartered banks are members of the FDIC and

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

therefore are all subject to Regulation O. Section 8-143.01 tracks Regulation O very closely, except for its inclusion of executive officers "licensed pursuant to section 8-139." The department was primarily responsible for the inclusion of that term when section 8-143.01 was adopted, due to its belief that the soundness of a bank could be adversely affected if all insider borrowing, except for clerical and maintenance staff, was not strictly regulated and controlled. The department continues to believe that borrowings by policymakers must be regulated by the state because in many instances there is no strong internal oversight of those persons, particularly if they have an ownership position in the bank. A policymaker's bad loans could cripple an institution's financial condition before the abuses are discovered by examiners. The amendments proposed to LB717 do not change those restrictions in the slightest. Unless a bank has an extremely small staff, the risk described above does not appear to be present for nonpolicymaking executive officer licensees, and the limitations currently in place no longer appear necessary. We note that the law will continue to provide that these persons remain subject to the overall lending limit of the bank, so that none of these persons could borrow more than any regular customer of the bank and would have to do so on the same terms and conditions specified by the bank's loan policies. As such, the department is taking a neutral stance on the section 2 amendments. Thank you for this opportunity to comment today. I will be happy to answer any questions. [LB717]

SENATOR LANGEMEIER: Thank you for your testimony. I have one question. So I want to make sure this is clear. You're testifying strictly to that one section and taking no position, plus, minus, or neutral to any of these other four changes in this bill. [LB717]

JOHN MUNN: That's correct, Senator. [LB717]

SENATOR LANGEMEIER: Okay. Are there any other questions? Seeing none. [LB717]

JOHN MUNN: Thank you. [LB717]

SENATOR LANGEMEIER: Any other neutral testimony? Seeing none, Senator Pahls, you're recognized to close. Senator Pahls waives closing. That closes the hearing on LB717. I turn it back to the chairman for LB851. [LB717]

SENATOR PAHLS: Thank you, Senator Langemeier. LB851 is introduced at the request of the director of the Department of Banking and Finance. The bill makes changes regarding banks, trust companies, savings and loans, and credit unions. Director John Munn is here to give us a detailed explanation on this bill. Thank you. [LB851]

JOHN MUNN: (Exhibit 1) 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 on behalf of the

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

department in support of LB851 which was introduced by the committee at the request of the department. The bill relates to financial institutions under the jurisdiction of the department. The first four provisions of the bill address the chartering process for new state banks. Section 1 proposes to amend section 8-115.01 of the Nebraska Banking Act as it relates to scheduling hearings on charter applications. Current law provides that hearings are to be scheduled not more than 90 days after the filing of an application with the department. This amendment will change that time frame to 90 days after the department accepts the application for filing as being substantially complete. The proposal is made to allow the department the time to conduct the extensive review and analysis of the information required in these applications and, if necessary, obtain additional data and clarification so that the application is complete, prior to setting the hearing. Sections 2, 3, and 4 of the bill propose to revise the capital standards for a bank charter applicant and for a bank on its opening day. The capital accounts of a bank in operation consist of paid-in capital stock, surplus, and undivided profits. Section 2 would amend section 8-116 which provides that, at opening, a bank must have, in addition to capital stock and surplus, undivided profits in an amount equal to 20 percent of the paid-in capital stock. As a bank not yet in operation does not have any undivided profits, this requirement represents an incorrect accounting treatment. Section 2 will repeal the undivided profits requirement and increase the required amount of surplus, currently set at 50 percent of paid-in capital stock to 70 percent of capital stock, so that there will be no reduction in the overall amount of capital required to open as a bank. Similarly, section 3 will amend section 8-120 which currently provides that at the time the charter application is filed, at least 20 percent of the undivided profits must be paid in. Section 3 will strike this requirement. Section 4 provides another corresponding amendment by amending section 8-122 of the Nebraska Banking Act. This law also provides that a charter shall not be issued unless undivided profits are paid in, so the reference to undivided profits will be removed. LB851 provides two amendments to the Nebraska Trust Company Act. This act applies to freestanding trust companies and to trust departments of banks. The first amendment is in section 6 of the bill and would amend section 8-223 to clarify that trust departments of banks do not have to file with the department the two reports of condition required under the act if such reports are already included in the banks' reports of condition that are required to be filed under the Nebraska Banking Act. The second amendment to the Nebraska Trust Company Act is proposed in section 7, which would amend section 8-224 to allow freestanding trust companies an alternative to the requirement that reports of condition be published. The proposed alternative would allow a trust company to provide a written disclosure of the company's financial condition to any member of the public who requests that information. The amendment provides that a trust company choosing this option must provide notice of the availability of the disclosure document and how it can be obtained, and authorizes the department to prescribe the form of the disclosure. LB851 also contains the annual wild-card update for Nebraska's state-chartered depository financial institutions. Wild-card legislation provides the same rights, powers, and privileges to state financial institutions as those enjoyed by like federally chartered institutions doing

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

business in Nebraska, and essentially gives equal rights to these institutions. Within the bill, section 5 provides equal rights between our 182 state-chartered banks and those banks chartered by the Office of the Comptroller of the Currency. Section 8 provides for equality between the one state-chartered savings and loan association and those associations chartered by the Office of Thrift Supervision. And section 9 provides the same rights for Nebraska's 20 state-chartered credit unions as those held by credit unions chartered by the National Credit Union Administration. As my testimony before this committee in prior years has indicated, wild-card legislation is sensible legislation in that it provides parity for our state-chartered financial institutions with their federal counterparts without the need to enact state legislation for each specific power or privilege. The savings and loan wild-card has been in effect since 1971, the credit union wild-card since 1977, and the bank wild-card since 1999. Under these three sections, there is no exemption from the payment of any taxes imposed by the state. The annual enactment is necessary to forestall any state constitutional challenges. The sections are important in maintaining the ability of our state institutions to compete with the national entities. These three sections carry the emergency clause. I want to thank the committee for sponsoring this bill for the department. I will be happy to answer any questions. [LB851]

SENATOR PAHLS: Do I see any questions? Seeing none, thank you, John. [LB851]

JOHN MUNN: Thank you, Chairman. [LB851]

SENATOR PAHLS: Proponents? [LB851]

ROBERT J. HALLSTROM: Chairman Pahls, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB851. We appreciate the department coming forward with the annual wild-card update for state-charted banks and savings and loans, also appreciate the inclusion of a little bit of reduction of duplicative reporting requirements for bank trust companies that are contained within the bill. Be happy to address any questions. [LB851]

SENATOR PAHLS: Do I see any questions? Seeing none, thank you, Bob. [LB851]

ROBERT J. HALLSTROM: Thank you. [LB851]

SENATOR PAHLS: Any other proponents? Opponents? Neutral? Okay. This closes LB851. LB852 was introduced at the request of the director of the Department of Banking and Finance. This bill makes changes regarding some of our regulated nondepository financial services with businesses, mortgage bankers, delayed deposit services, and installment loan licensees. [LB851]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

JOHN MUNN: (Exhibit 1) 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 on behalf of the department to support LB852 which was introduced by the committee at the request of the department. The bill relates to financial entities under the jurisdiction of the department. The first four sections of this bill propose amendments to the Mortgage Bankers Registration and Licensing Act. Of these, sections 1, 2, and 3 relate to an exclusion from the definitions of mortgage banker and mortgage banking business. These terms are currently defined to exclude persons and entities who make, or offer to make, less than 10 mortgage loans in a year. This exclusion is actually quite narrow, because advertising in the media or on the Internet constitutes an offer to an unlimited number of persons. The result is that unlicensed mortgage banking continues to occur in the state. The department proposes to address this in section 1 by removing the exclusion from these two definitions. At the same time, however, the department recognizes that there are certain types of mortgage financing that should continue to be exempt from licensing. These include individuals who make a purchase-money mortgage, finance the sale of their own property, or finance property for their own individual investment on a very limited basis. As such, section 2 proposes an exemption from licensing for these types of transactions, and section 3 provides a cross-referencing amendment necessitated by this additional exemption. These three sections will provide a bright-line test which will lead to better enforcement of the act while continuing to allow a person to finance the sale of their own residence. Section 4 proposes to amend section 45-722 of the Mortgage Bankers Registration and Licensing Act relating to change of control of licensees. Control is defined as the right to vote or direct the vote of 10 percent or more of an entity's securities, or holding specified positions such as director, chief executive officer, or managing member. In the 2007 legislative session, a number of changes were made to the act to facilitate Nebraska's participation in a nationwide mortgage licensing system that was under development. One of those amendments provided for a change of control procedure. While the definition of control adopted was based on uniform language, the states at that time, had not determined a time frame for review and approval. The department proposed a 60-day prior notice period as there was precedence in other Nebraska law. Since that time, the more uniform time period among the states participating is now proving to be the shorter period of 30 days' prior notice. Because the object of the nationwide mortgage licensing system is to provide for a uniform process among the states, section 4 would accordingly amend the change of control time frame to 30 days' prior notice. The emergency clause is requested for this provision because the nationwide system is operational. Nebraska is one of the first seven states in this system. Sections 5 and 6 of the bill propose amendments to the Delayed Deposit Services Licensing Act. The first amendment is to section 45-907 to provide that when the director waives the hearing requirement for a DDS license application, the costs of the required publication are to be paid by the applicant. The statute already provides that when an application is set for hearing, notice is to be published and the applicant is to pay the publication costs in

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

those situations. This is a cleanup item. The second proposed change to the Delayed Deposit Services Licensing Act is in section 6 of the bill. It would amend section 45-922 which provides authority to the department to take disciplinary action against a licensee for violations of law and other specified actions. Disciplinary action includes fines, suspension and/or revocation of a license. The proposed amendment would provide that disciplinary action may be taken if a licensee knowingly violates a voluntary consent or compliance agreement that it has entered into with the director. The amendment is prompted by such a violation within the past year. LB852 proposes one amendment to the Nebraska Installment Loan Act. Section 7 would amend section 45-1006 to change the time frame for setting a hearing on an installment loan license application. Current law provides that the hearing be held not less than 30 days after the filing of the application. The law, however, also requires publication of a notice of hearing for three successive weeks. In those cases where an incomplete application is filed, this time is not sufficient as the notice of hearing will not be published until after the application is complete. In addition, the time frame is very short for anyone wishing to file an objection to the application. Section 7 remedies this by providing that the publication be made after the application for the new license is accepted by the director as being substantially complete and the hearing be held not less than 30 days after the last publication. It would also clarify that costs of hearing are to be paid by the applicant. I want to thank the committee for sponsoring this bill for the department. I will be happy to respond to any questions. [LB852]

SENATOR PAHLS: Do I see any questions? Seeing none. Thank you, John. Any proponents? Opponents? Neutral? The hearing is closed on LB852. That concludes our hearing for today and I would like to go into executive session. [LB852]

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

Banking, Commerce and Insurance Committee  
January 22, 2008

---

Disposition of Bills:

LB715 - Advanced to General File.  
LB716 - Advanced to General File.  
LB717 - Advanced to General File, as amended.  
LB851 - Advanced to General File, as amended.  
LB852 - Advanced to General File.

---

Chairperson

---

Committee Clerk