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Banking, Commerce and Insurance Committee
February 09, 2009

[LB113 LB328 LB428]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 9, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB428, LB113, and LB328. Senators present: Rich Pahls, Chairperson; Pete Pirsch, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Beau McCoy; Dave Pankonin; and Dennis Utter. Senators absent: None. []

SENATOR PAHLS: Thank you. I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls. I'm from Omaha and represent District 31 which sometimes is called Millard. I serve as chair of this committee. The committee will take up the bills in the order posted: LB428 by Christensen; LB113 by Pankonin; and LB328 by me. Our hearing today is your public part of the legislative process. This is your opportunity to express your position. To better facilitate today's proceedings, I ask that you abide by some of the following rules we have over here. They're relatively simple; asking you to turn off your cell phones. We do have reserved seating up here so to help smooth the...move the meeting along. The order of testimony, as many of you already know, is the introducer, proponents, opponents, neutral, and then the closing. We're asking that testifiers sign in and put your name in the little box up here in front. Again, we're asking you to spell your name, because we have people who are recording our words of wisdom. Again, we're asking you to be precise, try not to repeat testimony from the person in front of you. We need at least ten copies if you have materials that need to be handed out. If you need copies made, one of our pages will run those off for us. The man to my immediate right is Bill Marienau. All the way over there at the end, who runs the meeting because she can turn it off, and we're done. Right? Just push the button. That's Jan Foster. I'm going to ask the committee to start over here and introduce themselves. []

SENATOR UTTER: I'm Dennis Utter from District 33. []

SENATOR PANKONIN: I'm Senator Dave Pankonin, District 2. []

SENATOR PIRSCH: State Senator Pete Pirsch from District 4. []

SENATOR McCOY: Beau McCoy, District 39. []

SENATOR GLOOR: Mike Gloor, District 35, Grand Island. []

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial. []

SENATOR PAHLS: Okay. I see Jared Weikum is sitting over here, one of our pages; and also Rebecca or Becky Armstrong from Omaha. Okay, as I said, our first bill will be

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(LB)428, and Senator, before you begin, I'd like to...I'll let you sit down. At least I'll let you do that (laughter). Could I have the show of hands how many proponents we have to speak? I see one, two, three, four, five. This just gives us a feel of how the meeting...the length of the meeting. Proponents. Opponents? One, two. I see what, two. Neutral? Okay, looks like we have around six people speaking. The floor is yours. []

SENATOR CHRISTENSEN: (Exhibit 1) Thank you, Mr. Chairman, members of the Banking, Commerce and Insurance Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. I'm here to introduce LB428. LB428 would allow local governments of several small communities in Nebraska to deposit public funds into locally owned credit unions. The bill targets those communities in Nebraska where a credit union is present, but a bank, capital stock financial institution, or qualifying mutual fund institutions are not. Currently, political subdivisions cannot deposit public funds into a local credit union. Credit unions are the only federally insured financial institution that are left off the permissible depository list for public funds by Nebraska state statute. LB428 would help these small communities in Nebraska to become more efficient and increase local control. Nine communities in Nebraska have one financial institution in the community which is a credit union. These communities are forced by statute to deposit their public funds into a financial institution in another town. In some cases, the local officials must travel more than 20 miles to the next town to deposit funds. Credit unions are not-for-profit financial institutions that are locally owned by their members. The National Credit Union Administration, an agency of the federal government, federally insures credit unions with each account being insured up to \$250,000. Several local officials from the communities support the change in the bill, who will be following my testimony to help you understand their situation. I want to thank you for consideration of (LB)428 and urge advancement to General File. Also, I'd like to mention I'm offering one amendment here, just on page 22, line 23, and again on page 23, line 19, after "where" insert ", on the effective date of this act,". What that addresses, let's say, if a bank would choose to come into the community, would they automatically have to give up the funds? No, it's allowing them if they've once started, the local entity could choose whether to use the bank or credit union in them communities. [LB428]

SENATOR PAHLS: (Exhibit 4) Any questions for the senator? Seeing none, we'll let the proponents and...let me read into the records that letter of support for this bill from the League of Municipalities. You may begin. [LB428]

NICOLE WIESE: (Exhibits 2 and 3) Mr. Chairman, members of the Banking, Commerce and Insurance Committee, my name is Nicole Wiese spelled N-i-c-o-l-e W-i-e-s-e. I serve as the clerk/treasurer for the village of Palisade, Nebraska. I am here today on behalf of the village board and the citizens of Palisade. I appear before you today to offer our village's support of LB428. I want to thank my senator, Senator Mark Christensen, for introducing this important piece of legislation. LB428 would allow our

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community to deposit public funds into our local credit union. Palisade is a community of 386 people, and it is a part of Hitchcock and Hayes Counties. We are proud of the businesses that reside in Palisade which include not only a credit union but a grocery store, a gas station, cafe, beauty shop, licensed plumber, construction company, library, antique store, thrift shop, service station, post office, grain elevator, the main office of Southwest Public Power District, and in the last few months a new wireless internet company. Palisade is a community that has worked together to overcome many obstacles to keep our businesses and improve our community. Passing LB428 would allow us as the village to support a business in Palisade, the Pioneer Community Federal Credit Union. Not only the village office would benefit, Southwest Public Power District would also be given the opportunity to support this local business and community as they serve in so many ways. In my duties as clerk/treasurer for the village of Palisade, one of my many responsibilities is to receive payments for utility bills which include water, sewer and trash. The payments are made by check, cash, and automatic withdrawal. Currently, Nebraska state statutes does not include credit unions in the list of permissible depositories for public funds. Therefore, I am forced to drive 30 miles to McCook carrying cash and checks, after business hours, to deposit these funds. I am not able to make these deposits on a daily basis by any means. I'm lucky to make deposits once every two weeks. If you think about it, you would pay your bill on the 15th of the month; your check may not clear your bank before your monthly statement is mailed to you. I have been frequently reminded of these delays by the complaints that I receive from my customers and not having checks clear their bank accounts in a timely manner. I believe not being able to deposit these public funds into our local credit union is unreasonable and problematic to the customers and citizens of Palisade, given the fact that the Pioneer Community Federal Credit Union is less than a block away from my office. The Pioneer Community Federal Credit Union opened its doors in Palisade in 2003. It is a credit union that is not owned by one specific individual or entity. It's owned by its members, and is directed by a nonpaid, seven-member board that is elected by the members of the credit union. Our credit union has two paid employees and the committees are staffed by volunteers from the credit union members. The credit union serves Palisade with members from Hitchcock and Hayes Counties by offering checking and savings accounts, direct deposits and automatic payments, CDs, secured and home equity loans. Senators, by passing LB428, you would allow me to talk directly to an employee of the credit union if I have problems, issues or questions on an account, instead of describing the problem via long distance telephone, mail or fax. As clerk/treasurer, I feel it is my responsibility to ensure that our funds are taken care of and spent reasonably, not by absorbing the high gas prices and postage by making deposits in out-of-town banks when there is a credit union in Palisade. In conclusion, I'm asking this committee to move LB428 and its amendment to General File, and ultimately, the Legislature to pass this bill. Thank you for your attention, and I will try to answer any questions that you have at this time. [LB428]

SENATOR PAHLS: Do we have any questions? Senator Langemeier. [LB428]

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SENATOR LANGEMEIER: Thank you for your testimony and coming down here to testify. You did a great job. Do you live in Palisade? [LB428]

NICOLE WIESE: Yes, I do. [LB428]

SENATOR LANGEMEIER: And how long have you been the clerk/treasurer? [LB428]

NICOLE WIESE: Four years. [LB428]

SENATOR LANGEMEIER: Four years? [LB428]

NICOLE WIESE: Um-hum. [LB428]

SENATOR LANGEMEIER: How long was the clerk/treasurer before you, do you know? Is that a longstanding position? [LB428]

NICOLE WIESE: I think seven years. [LB428]

SENATOR LANGEMEIER: Okay, that's all I had. Thank you. [LB428]

NICOLE WIESE: Um-hum. [LB428]

SENATOR PAHLS: Senator Pirsch. [LB428]

SENATOR PIRSCH: Now, Palisade is a part of both Hitchcock and Hayes Counties? Kind of unique, isn't it, in that respect? [LB428]

NICOLE WIESE: Yes, it is. [LB428]

SENATOR PIRSCH: Okay. That's interesting. How... [LB428]

NICOLE WIESE: Not very much. It's mostly Hitchcock County, but the last...the very northern part, the county line goes straight through Palisade on the north side. [LB428]

SENATOR PIRSCH: Hmm. And how big is the...how many people live in town? [LB428]

NICOLE WIESE: 386. [LB428]

SENATOR PIRSCH: 386, okay. Thank you very much. [LB428]

NICOLE WIESE: Um-hum. [LB428]

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SENATOR PAHLS: Seeing no more questions, thank you for your testimony. Again, I'm asking those people who are going to speak, if you'd come up to the reserved chairs, it makes it easier for me to know what's going on. Good afternoon. [LB428]

LANA SVOBODA: Good afternoon. Mr. Chairman, members of the Banking, Commerce and Insurance Committee, my name is Lana Svoboda, spelled L-a-n-a. My last name is S-v-o-b-o-d-a. I serve as the clerk/treasurer for the Village of Glenvil, Nebraska, which is located in Legislative District 33. I am also here today on behalf of the village board and the Glenvil citizens. Our village is here in support of LB428. Glenvil is located in Clay County. It's about 13 miles south of Hastings, and our population is 332. Glenvil is very fortunate. We still have a grocery store, a service station, our post office, and we also have a credit union. We have lost our school. We've unified with Sandy Creek, so it's really hard to get businesses to come into town and stay there. I want to share with you how this bill, if it were passed, would help our village. The ability to deposit our funds into the local credit union in Glenvil has been and continues to be a real necessity. At this point, it is necessary for me to drive to Hastings, which is about 26 miles round trip. I am employed part time with the village, about 14 hours a week is what our budget allows. So it takes about an hour, at least, for me to go to Hastings to do our banking. This is not always convenient. Our credit union is just a few doors down from me. There's times that we've had CDs, and I've checked interest rates, and quite a few times our local credit union has been higher on interest rates. When you're as small as we are, every little dollar counts. We try and save in every area that we possibly can. I bill out on the first of the month. Our bills are due by the tenth. I also have residents that pay check, cash, and money orders. Lately, I have received a lot of insufficient fund checks which, therefore, my residents then have to come in with cash, and if I've already gone to Hastings to do my banking, that makes another trip for me to take the cash to our bank. We also have some bond payments that have to be wired. Therefore, I have to drive to Hastings to wire my funds to pay for our bond payments, not always convenient, and it doesn't always happen where I can do all of my banking in one shot. If you would allow us to be able to use our local credit union, that would be very beneficial for us. It would also save in our budget for my mileage, not to mention our time. As the clerk, I encourage local support of our businesses, and it's hard when our village can't even support our local credit union. I believe it would help our village save time and money if our funds are federally insured. I encourage the ability to use our local credit union. In conclusion, I am asking this committee to advance LB428 to General File, and ultimately, the Legislature to pass the bill. Thank you for your attention, and I will try to answer any questions. [LB428]

SENATOR PAHLS: Senator Christensen. [LB428]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, Lana. How big is your town, did you say? [LB428]

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LANA SVOBODA: We have 332. [LB428]

SENATOR CHRISTENSEN: Okay, thank you. That's all. [LB428]

LANA SVOBODA: Um-hum. [LB428]

SENATOR PAHLS: I see no more questions. Thank you for your testimony. [LB428]

LANA SVOBODA: Thank you. [LB428]

SENATOR PAHLS: Next proponent? [LB428]

SONET SMUTNY: I'm really nervous so (laugh). [LB428]

SENATOR PAHLS: You should be because I know these people on this side.
(Laughter) [LB428]

SONET SMUTNY: (Exhibit 5) My name is Sonet Smutny. It's S-o-n-e-t S-m-u-t-n-y, and I am the chairman of the village of Meadow Grove. They asked me to come and speak on very short notice, and I just will warn you that I worked overnight last night, so I've had two hours of sleep (laugh). Anyways, I'm here to address the use of our credit union for our village. As you can see in the picture I passed out, the doors are about 10 or 15 feet away from each other. We currently drive to Battle Creek to do all of our banking, which is about 20 miles round trip. We have to go to the credit union and get cashier's checks for...or money orders for all of our cash, so that our clerk is not driving with hundreds of dollars. So she has to go to the credit union, and then drive the 20 miles to Battle Creek and back and deposit the cash. We also had an incident in the last month where one of her cashier's checks came up missing, and so that caused a big problem, too, where she could, just as you see, walk next door. We only have, in our town of 322, a library, a post office, and our credit union, that's it. Our gas stations closed. We don't have a school or anything. We also only have the one clerk in the office. She works part time due to our budget, and for her to go to the Battle Creek bank, she has to close the office and drive to Battle Creek, and it takes an hour or whatnot, so we're paying her mileage, and we're also paying for her hourly wage while she's gone, which is also an inconvenience to our community, who only has a limited amount of time that they can visit her in the office anyways. So that's about all I have to add. Thank you for your time, and I also support Senator Christensen's amendment to grandfather these communities as well. Do you have any questions? [LB428]

SENATOR PAHLS: Senator Christensen. [LB428]

SENATOR CHRISTENSEN: Senator Chairman...(laugh) Chairman Pahls, thank you. What district...who's your senator or which district is he from? [LB428]

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SONET SMUTNY: Senator Flood. [LB428]

SENATOR CHRISTENSEN: Senator Flood. [LB428]

SONET SMUTNY: Um-hum. [LB428]

SENATOR CHRISTENSEN: That's who I thought. Thank you. [LB428]

SENATOR PAHLS: Is that good or bad? [LB428]

SENATOR CHRISTENSEN: Well, I just want to know where everybody's from. [LB428]

SENATOR PAHLS: Any other questions? Seeing none, thank you for your testimony. [LB428]

SONET SMUTNY: Thank you. [LB428]

SENATOR PAHLS: And your picture. [LB428]

SONET SMUTNY: Yes (laugh). [LB428]

BRANDON LUETKENHAUS: (Exhibit 6) Thank you, Mr. Chairman, members of the Banking, Commerce and Insurance Committee. My name is Brandon Luetkenhaus spelled B-r-a-n-d-o-n, last name is L-u-e-t-k-e-n-h-a-u-s. And I am here today on behalf of the Nebraska Credit Union League. Our association represents 96 percent of our state's 73 credit unions and their 420,000 members. I appear before you today to offer our association's support of LB428. I want to thank Senator Christensen for introducing this important piece of legislation. Although our association strongly believes in local control, and the ability of every community across Nebraska to consider a local credit union when they decide where to deposit their public funds, we do understand and appreciate the fact that these specific communities are in a unique situation. I want this committee to know that our credit unions are ready and willing to accept these deposits should any of these communities decide that depositing their funds into the local credit union is in their best interests. From a public policy perspective, we believe there are numerous benefits when allowing public entities such as the ones who have testified before you today, to deposit funds into federally insured, not-for-profit credit unions. First, we believe that increased competition for public funds, public deposits would produce better rates of return for the public dollar. Secondly, deposits would stay in the community and, therefore, could be used in making loans to the citizenry of those towns and villages. Third, these communities would have more local control by having the ability to choose for themselves whether they want to spend the time and money associated with taking their deposits to another community to deposit. And fourth,

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communities would be able to retain and to possibly increase jobs in their communities by supporting the local businesses that serve their people. I have provided you with a news update from the Nebraska State Chamber of Commerce dated January 29, 2009. In this update you'll see that they list 20 keys to community survival as provided by Visions magazine. I want to direct you to point number 15, which states, the need for a strong presence of traditional institutions that are integral to community life. There is no doubt that a financial institution such as a credit union would be considered a traditional institution. It is an empirical observation that when our small communities lose their school, their church, and their financial institution, they will soon lose their town as well. These institutions are critical for these small communities to survive and to thrive. I also want to direct you to point number 17, which states the need for the careful use of fiscal resources. Before you today, you have public servants who seek to do the best job possible for their constituents. They have been entrusted with the financial resources of their communities, and they are dedicated to being wise custodians of it. Our political and community leaders often talk about helping our small towns in Nebraska. Passing LB428 would be an easy, noncost way of doing just that. In discussions about this bill, we have heard some ask, why can't these communities use on-line banking or an ATM? First, these communities cannot make deposits on-line. There may be a sophisticated technology out there that allows for the deposits of checks on-line, however, that technology would be cost prohibitive for these small communities, and it still wouldn't allow them to deposit cash. Even if that technology was available, should these communities not have the choice to support the financial institution in their own town and village? These are small and proud communities that look after one another and want to support their local businesses. Second, should they accept such an assumption that an ATM is sufficient to serve their community, and they don't need nor deserve a branch location in their community where they can talk to an actual person and solve any issues they may have that may arise on their accounts? We believe this would suggest that this state no longer cares about the employment of citizens in small towns, and that somehow they can be replaced by a machine or an ATM in this case. We heartily reject these suggestions and question whether these same suggestions would be made to other larger communities like Omaha, Lincoln, Hastings, Grand Island, Scottsbluff, and all other communities across Nebraska. We don't believe so, absolutely not. To suggest that to our small communities...to the smallest communities amongst us, it's irrational and unreasonable. As I mentioned briefly, credit unions are federally insured financial institutions. Like bank accounts, credit union accounts are federally insured with the full faith and backing of the U.S. government up to \$250,000 per account. Credit unions are regulated by the National Credit Union Administration, an agency of the federal government, and by the Nebraska Department of Banking. I urge this committee to do what's right for these small communities by advancing LB428, as amended, to General File for the whole Legislature to consider. Thank you for your consideration, and I would entertain any questions you may have. [LB428]

SENATOR PAHLS: Senator Langemeier. [LB428]

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SENATOR LANGEMEIER: Thank you, Chairman. Mr. Luetkenhaus, thank you for your testimony. [LB428]

BRANDON LUETKENHAUS: Um-hum. [LB428]

SENATOR LANGEMEIER: So you're in support of the amendment that was handed out? [LB428]

BRANDON LUETKENHAUS: Correct. [LB428]

SENATOR LANGEMEIER: Now, I insert that into this language, and you put in here that, a state in which...located in a community where, the new language says "on the effective date of this act, there is no bank." Don't we create a closed class? We're setting one specific date in time to those communities that that class can't be...no one new can come into it. Technically, nobody could go out of it. [LB428]

BRANDON LUETKENHAUS: Well, Senator, I don't think that's the intention if that's indeed what it would do. The intention is so that if a bank would come into these communities, that these political subdivisions would still have the choice to either keep their money in the credit union which would be permissible, or to move that to the bank if they so choose. They would have that option as well. [LB428]

SENATOR LANGEMEIER: That would be my interpretation of the amendment... [LB428]

BRANDON LUETKENHAUS: Yeah. [LB428]

SENATOR LANGEMEIER: ...but I understand your intent. Thank you. [LB428]

BRANDON LUETKENHAUS: Okay. [LB428]

SENATOR PAHLS: Senator Pirsch. [LB428]

SENATOR PIRSCH: Just a question. It seems like the really...I mean, it's a lengthy...the underlying bill, the green copy so to speak, is some 46 pages but the...I guess if you had to single out one page which is the heart of the bill is page 22... [LB428]

BRANDON LUETKENHAUS: Um-hum. [LB428]

SENATOR PIRSCH: ...of the original bill, and the rest is just kind of clean-up language. But the underlying key, I guess provision, would be...it says the old language, of funds and banks and capital stock financial institutions, and then under the amendment,

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"except that a political subdivision of the state which is located in a community where there is no bank, capital stock financial institution, or qualifying mutual financial institution may deposit such funds with a state or federal mutual organized credit union located in the community where the office of the political subdivision is located." The use of the term, community, there...is that...do you know if that...and I'm referring to line 23 which is at the bottom of page 22, and then again on line 1 on the top of page 23,... [LB428]

BRANDON LUETKENHAUS: Um-hum. [LB428]

SENATOR PIRSCH: ...is the use of the term, community, a statutorily-defined word, or is that just kind of interpreted in the general context in the ordinary meaning of the word or...? I'm sure this term, community, comes up in other issues or debates. Is that defined by statute? Is that a clearly kind of recognizable, or is that an area of...? [LB428]

BRANDON LUETKENHAUS: Senator, I actually couldn't answer that, but my guess is that it would be. Our intention is, that it's within a village or town. That would be the intent. [LB428]

SENATOR PIRSCH: Within the... [LB428]

BRANDON LUETKENHAUS: Or at least that's the way we understand it, yes. [LB428]

SENATOR PIRSCH: Within the political subdivision even is how you interpret it. [LB428]

BRANDON LUETKENHAUS: Exactly, yeah. [LB428]

SENATOR PIRSCH: Okay. Very good. And then...so the way it would act...with the bill as it was originally proposed, it would be essentially to the extent that there is no bank or capital stock financial institution there. Then a credit union, for instance, could be utilized in that instance with the amendment. It would be essentially grandfathering in the credit unions because...inserting the language on the effective date of this act. Correct. So at the point in time when this was passed,... [LB428]

BRANDON LUETKENHAUS: That's our understanding is that it would be grandfather language. [LB428]

SENATOR PIRSCH: Yeah, just wanted to make sure that I understood that... [LB428]

BRANDON LUETKENHAUS: What we want to avoid, Senator, is a credit union has an account with the political subdivision and five years down the road a bank comes in, this political subdivision should be able to choose whether they want to deposit into the bank or continue their relationship with the credit union. Frankly, in these communities, I don't

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see a credit union...or a bank coming into these communities. They're very small communities and actually, one in Palisade...I believe it was a bank, and they couldn't survive there, and so the credit union took over. [LB428]

SENATOR PAHLS: Seeing no more questions, thank you. [LB428]

BRANDON LUETKENHAUS: Thank you. [LB428]

SENATOR PAHLS: I think that's the end of our proponents. Do we have another proponent? Okay. Opponents? [LB428]

ROBERT HALLSTROM: (Exhibit 7) 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 to express our opposition to LB428. LB428 purports to authorize state and federally chartered credit unions to accept deposits of public funds by local political subdivisions which are located in communities in which there are no other financial institution up to the amount of the deposit insured by the National Credit Union Administration which currently is \$250,000 at least through the end of this year, based on recent federal changes to FDIC insurance coverage. To kind of take a step back on this issue, this certainly is not a new issue to this committee or those who have been on this committee in the past. It is a little bit different twist. In the past, we've had an all out onslaught by the credit unions to gain access to all state and local political subdivision public deposits which we have opposed. Today is at least purported to be narrower in scope, although as my testimony will reflect, I think there's more than meets the eye with regard to some of the way that the bill is drafted, perhaps inadvertently or unintentionally, but nonetheless, seemingly more broad than the avowed intent that the witnesses have suggested so far. To take a step back in time, the issue of a mutual financial institution of any nature, whether it be a former mutual savings and loan, or today the mutual-owned credit union, has been restricted from having access to public funds because of constitutional issue. That constitutional issue is reflected by the fact that mutually owned institutions may not have situations where a state entity can have an ownership interest in a private corporation. The very basics of a mutual-owned institution, and particularly with reference to the credit unions, is the fact that you have an ownership, membership, voting right in that institution, and you are entitled to share in the profits thereof as an owner voting member. It's kind of ironic that we have the credit unions before us who have kind of had as their core principles for quite some time the fact that you need to be a voting member, and that's what they pride themselves on in terms of their advertisements and competing with other traditional financial institutions, but yet for the purpose of obtaining access to public funds, even in this limited context, they are willing to forego those principles and to wave the right of ownership voting rights and sharing in the profits as would be required, we believe, based on the constitutional provisions. We also think there are distinctions between traditional financial institutions and credit unions with regard to the investment back into

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the community. Banks are subject to Community Reinvestment Act; credit unions are not. We believe that's something that should be equal across the board. We have federally chartered credit unions that do not pay certain federal and state income taxes, and we believe that that is an unfair competitive advantage in that if they are not paying those types of taxes, that they should not feed from the public trough in seeking to have access to public deposits. Another issue with regard to the limitation to \$250,000 or whatever the appropriate or applicable Federal Deposit Insurance Corporation amount consists of, is that those are the cheapest funds. You don't have to pledge securities for those, so they are going after the low-hanging fruit, if you will, by being able to only have access to the funds that have the FDIC insurance coverage associated therewith. As far as the technicalities of the bill, I would note, and Senator Langemeier and Senator Pirsch both raised two issues that I've jotted down. One is that when Senator Christensen mentioned the tenor of the amendment, while it may not be the intent, it certainly sounded to me from where it was located in the bill, that it would create an unconstitutional closed class by not allowing that membership or criteria to grow by limiting it to those financial...those communities in which there is no financial institution as of the effective date of the act. The other issue has to do with the definition of the term "communities." To my knowledge, there is not a specific definition either in this bill or one that's related under applicable state law. I can advise and inform the committee that there is a concept of a well-defined community upon which the credit union's common bond is dictated, and the Nebraska Bankers Association was involved in a determination by the state banking department a number of years ago that allowed 13 counties in the Panhandle region of the state of Nebraska to constitute a well-defined community. I'm not exactly sure how that cuts against the grain with regard to this particular legislation, but nonetheless, it is an undefined term. I think with regard to the issue of being concerned about the camel's nose under the tent, if you look at the basic provisions of the bill, it is 46 pages in length as Senator Pirsch pointed out, and there are all kinds of indications that there can be investments by political subdivisions, all villages, particular classes of cities, county courts, and the State Treasurer in some sections of the bill. And it also indicates that they can invest them in amounts beyond the insured by NCUA in which case securities would have to be pledged. That certainly has not been the indication of the breadth of the bill, but it certainly has those provisions on the face of the bill contained within the 46 pages that you have before you and the green copy of LB428. With that, I would be happy to address any questions, and we would request that the committee indefinitely postpone LB428. [LB428]

SENATOR PAHLS: Senator Christensen. [LB428]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Thank you, Bob, for coming in. You know, you've hit a variety of different objections in here, but why doesn't the banks have...or why don't banks service these communities now? [LB428]

ROBERT HALLSTROM: Well, Senator, I don't know whether they will have a physical

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presence in terms of a facility, whether it be a main office or a branch. Some of that may be economically dictated with regard to the size of the community or how close their next office may be. What I don't know, and I haven't had any feedback either from the banks or communications with the credit unions as to discussions about what could be done to help out some of these folks who have suggested that they have decided that their only alternative is to drive the distance that it takes to get from point A to point B. We certainly have all kinds of access through internet banking, on-line banking alternatives; there are mobile branch alternatives that banks may consider. I don't want to suggest that those have not been considered, but I'm not aware that they have. Whether or not the closest bank has been approached to determine if they would be willing to do something along the lines of a periodic visit to the community through a mobile branch, if there are other customers there that they could service. Again, I don't know whether the answer is yes or no on whether or not those alternatives have been explored. [LB428]

SENATOR CHRISTENSEN: Is there...have you been to any small-town celebrations and the pride that they take in...on their communities? [LB428]

ROBERT HALLSTROM: Senator, I grew up in a town of less than 200 people, so I've been to quite a few, not only in my original hometown, but since that time. [LB428]

SENATOR CHRISTENSEN: Have you...did the bank leave your community? [LB428]

ROBERT HALLSTROM: Actually, we ran the bank in my community a number of years ago, and there's still a bank there. [LB428]

SENATOR CHRISTENSEN: Okay. The reason I ask, because there is so much pride in small communities, and they stand together, and they stand and support one another, and they love to stay in and be involved. And that's why I ask populations--322, 332, 386. These small communities, they do everything they can to keep these communities alive. Most towns or if you take a city, you don't have the pride and the support locally in a large city that you do a small one. That's why it's so important to them to be able to do business at home. And I'll ask one more question. I see that, like Palisade, for example, I know the bank that left, I know the owner of the bank, and he claims he helped the credit union get started because it was so important for that community to have a banking institution. And if he's seen that, yet wasn't able to stay there, don't you think it's important that that small town building on that pride that I'm talking about, be able to support their community? [LB428]

ROBERT HALLSTROM: Well, Senator, there's a difference between supporting your community and whether or not you want to get into the bigger issue involved between banks and credit unions as to whether or not credit unions, based on all the factors that they pride themselves, ought to continue to have or be allowed to have access to public

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funds. [LB428]

SENATOR CHRISTENSEN: Part of your objections, I guess you brought up here was federal, state taxes, but isn't it more federal taxes, that's an exemption? I think that's been the...what I've learned in three years on this committee, seems to be the objections to credit unions is a federal tax break, but it's really not a state issue. [LB428]

ROBERT HALLSTROM: It is and it isn't, Senator. The federally chartered credit unions, I believe, are exempt from both federal and state income taxation, and from the bank deposit tax as well. The state-chartered credit unions, many years ago, in a grand compromise, agreed to pay those particular taxes. So I don't believe I suggest, and didn't mean to suggest, that the state-chartered credit unions are not paying the bank deposit tax, but federal-chartered credit unions don't pay federal or state income taxes or sales tax, to my understanding. [LB428]

SENATOR CHRISTENSEN: Thank you. [LB428]

SENATOR PAHLS: Senator Langemeier. [LB428]

SENATOR LANGEMEIER: I'll be brief (laughter). Thank you, Mr. Hallstrom. Have a quick question. We have, for example, in the community I live in, we have a small business that they deposit their money in the local bank, and then it gets swept at midnight every night to some big bank that the corporation wants it to do. Can you sweep out of a credit union account? [LB428]

ROBERT HALLSTROM: I don't know their business. I assume they probably have sweep capability. [LB428]

SENATOR LANGEMEIER: Okay, thank you. [LB428]

SENATOR PAHLS: Senator Pirsch. [LB428]

SENATOR PIRSCH: Just kind of following up on...you had mentioned the term "community" was not, in your...to your knowledge, statutorily defined, utilized in case law, though, you said. Was that what you were...? [LB428]

ROBERT HALLSTROM: No, I don't think it's utilized for purposes of this bill in this context. There may be other definitions of community under other statutes. I remember years ago, we had the low-level waste, and there were definitions of community which went far afield. And, again, the definition of community, you know, may be an issue that doesn't necessarily have any particular bearing on this issue as drafted, but again, the breadth of the provisions that I referenced with regard to cities, counties, courts, State Treasurer, and so forth, would not appear to have any place in the bill given the

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indicated intent of the bill. [LB428]

SENATOR PIRSCH: Okay. Thank you. [LB428]

SENATOR PAHLS: Seeing no more, thank you. [LB428]

ROBERT HALLSTROM: Thank you. [LB428]

SENATOR PAHLS: Next opponent? [LB428]

DOUG NODGAARD: Hi, my name is Doug Nodgaard or Douglas Nodgaard, and I just decided to speak about 15 minutes ago, so I don't have a big speech prepared. I'm senior vice president, First Westroads Bank in Omaha. I'm a member of the Nebraska...I'm not a paid lobbyist. [LB428]

SENATOR PAHLS: No, no, I just want you...I still need you to spell your name for the transcribers. [LB428]

DOUG NODGAARD: Oh, I'm sorry. N-o-d-g-a-a-r-d. So I appreciate the opportunity to speak. I wasn't sure I could until I polled a few people. So I...Bob made a lot of nice points, and he represents the NBA very well, but at the essence of this for me, I think this is a bigger issue with credit unions and banks here. And I heard some of the testimony as far as driving places. I'm also our chief marketing officer, and there are things as remote capture that there's scanners that you can scan checks in. I'm quite certain that most...I know some...there is an Internet or a high-speed Internet in a lot of these areas, but there is cell phone service, I think. And so I know you can plug in a card in the side of a laptop, and that's a very efficient way to make deposits. Our bank itself has a remote mobile branch that we utilize in Douglas and Sarpy County, so I know a lot of them are speaking to the difficulties in getting deposits from here to there as being one of their main reasons. The other thing I'd like to address is, you know, where are the credit unions going to stop? They really don't pay income taxes like the banks do which contribute to the state coffers which provide for a lot of state services. And I think if they paid taxes like the banks do, we might not have as big of an issue. But they enjoy a tremendous competitive advantage, and, quite frankly,...and I survey rates...deposit rates and loan rates all the time, their rates really are no better than commercial banks. So I have a real difficulty with them expanding past their original intent which I believe was when teachers couldn't get loans back then. And in regards to loans, I think the banks, the community banks, the national banks, the regional banks, are still willing to lend money in these communities if it's for a car purchase or something else if we feel like the loan can be repaid. So I don't think by having more deposits in these communities, I don't think that their customers are coming in for a loan, and they're saying, I'm sorry, because we can't get any public money. We don't have any more money to loan out. I don't think that's the case, so my testimony, and

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again, I'm not a paid lobbyist, but it's a passionate thing for me is they enjoy a tremendous competitive advantage, and it's a bigger issue, and you're letting them expand, you know, and I just...I don't think it's right. [LB428]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB428]

DOUG NODGAARD: Thank you. [LB428]

KURT YOST: Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Kurt Yost, K-u-r-t Y-o-s-t, and I am the paid lobbyist for the Nebraska Independent Community Bankers, and we, too, appear here today in opposition to LB428. I might...there's not much to add, but this issue has been before this committee. I've been appearing before this committee for 25 years, and we've had conversation on this subject for the 25 years in one form or another. It's taken a different twist this year, however, we have heard from the communities of Meadow Grove and others on the subject. Bottom line, gentlemen, the argument between the commercial banking industry and credit unions is not going to go away. But we do appear here today in opposition. Thank you. [LB428]

SENATOR PAHLS: Any questions? Mr. Pirsch. Senator Pirsch. [LB428]

SENATOR PIRSCH: Well, and perhaps I should have asked this of the proponents, but it says, because in part, I think it plays upon the definition in the term "community", so maybe you don't know the answers. But do you know how many communities exist now that would qualify or are being asked to be grandfathered in under the amendment? [LB428]

KURT YOST: Senator Pirsch, I do not know the exact number. I'm not sure, but Senator Christensen, in his opening comments, made reference...correct me if I'm wrong, was the number nine...? [LB428]

SENATOR CHRISTENSEN: Yeah. [LB428]

KURT YOST: ...nine communities is what we're talking about. [LB428]

SENATOR PIRSCH: I see. Thank you. [LB428]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB428]

KURT YOST: Thank you. [LB428]

SENATOR PAHLS: Any more opponents? Anybody in the neutral? Senators, here's the close. [LB428]

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SENATOR CHRISTENSEN: Thank you, Chairman Pahls and fellow senators. I think the grasp of this bill, and you can blame me if you think it's drafted narrowly for some reason or not, because that's what I asked for. You know, I worked the bill, I got it drafted very narrowly, because I was looking after the small towns that have pride in their communities, that deserve to have that service right there. I know there's been the ongoing conflict sitting on this committee for a number of years between credit unions and banks. I support both of them, and I think you guys got to think about the overriding factor; that's why it's narrow is the fact that I believe in small town. I grew up in a town of 200 that's 60 right now, still has a bank. If it wasn't for that bank, there would have been several other towns without. And if that bank wasn't still in that little town, that town probably would be gone. It keeps a cafe alive; keeps a station alive because people come in to use that bank. You got the same situation with credit unions in these little towns. There's a lot of pride in these little towns. I've lived and grew up in a little town; I know how important it is. If there's any language technicalities we need to take care of, I'll gladly work with the committee to do it, but I would ask that you move this forward to General File. [LB428]

SENATOR PAHLS: Any questions? Senator Pirsch. [LB428]

SENATOR PIRSCH: Just briefly. When you used the term "community," did you have...was there...since you're the sponsor of it, a statutory type of reference in mind with that, or is this just in its ordinary, every day meaning of the sense, community as interpreted by (inaudible)... [LB428]

SENATOR CHRISTENSEN: Ordinary meaning town, village, you know, I was just trying to hit the small towns that have pride that don't have the other service. So if we need to get to a little different language, that's fine with me. I was just trying to take care of them small towns like I grew up in, so I used community meaning village, town, these situations this way. [LB428]

SENATOR PIRSCH: Thank you. [LB428]

SENATOR PAHLS: Thank you, Senator. [LB428]

SENATOR CHRISTENSEN: Thank you. [LB428]

SENATOR PAHLS: That closes the hearing on (LB)428. All of the individuals in the audience with the little tag on, were you over at the Governor's today for lunch? Okay. I missed that lunch because I was in a committee, so I thought I was going to welcome you, but you were elsewhere working hard. [LB428]

SENATOR LANGEMEIER: I think it's a leadership group for the Nebraska bankers.

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[LB428]

SENATOR PAHLS: Oh, okay, okay. Senator Pankonin, we are ready for LB113. Just a show of hands, proponents? One, two, three, four, five...one, two, three, four, five, six, seven, eight. Opponents? Neutral? So just give you a feel of the bill. We have an awful lot of proponents and we're going to ask you not to repeat testimony, if possible. Senator. [LB113]

SENATOR PANKONIN: (Exhibit 1) Good afternoon, Chairman Pahls and members of the Banking, Commerce and Insurance Committee. I am Dave, D-a-v-e, Pankonin, P-a-n-k-o-n-i-n, and I represent the 2nd Legislative District. I'm here to introduce LB113. The bill amends the Securities Act of Nebraska. The proposed changes resulted from a situation in my district in which many Nebraska City and local residents lost millions of dollars as victims of misleading investment advice and probably outright fraud. As the legislative representative for the constituents in the Nebraska City area, I contacted the Nebraska Department of Banking and Finance in 2007 to discuss the investigation of the Nebraska City incident and hopefully the recovery of some of the lost funds. My legislative office worked with the department and with committee counsel Bill Marienau to identify some changes to the act that may help the department to better respond to similar problems in the future. LB113 reflects a cooperative effort with the department. LB113 proposes two key changes to the Nebraska Securities Act. The changes are intended to strengthen the department's enforcement authority under the act. LB113 would make it unlawful to tamper with evidence or to obstruct an investigation or other proceedings under the act. The bill would also authorize the department to petition the court for an equitable action against a person who violates the act. Such action could include, but not be limited to: restitution, disgorgement, and a freezing of assets. Generally, I am not an advocate of more government regulation expanded powers, but when Nebraska citizens suffer significant or total loss of their invested money I think the Department of Banking and Finance needs to have and use the authority proposed by LB113. As you can see from the attached handout I provided, 33 states including five that border Nebraska, already provide for similar authority. Regarding the issue of tampering with evidence, rumors that records were missing or had been destroyed were rampant in Nebraska City. LB113 would help the department to maintain documents and evidence that are needed to investigate a problem and could actually protect financial advisors from frivolous claims. The department's ability to freeze assets that were acquired unlawfully would better protect Nebraskans who put their money and their trust in the hands of investment advisors. The larger public policy issue we need to consider still applies. Many of us will probably be required to invest relatively large sums of money to support our retirement, long-term care, and healthcare needs. Government will have to try to help individuals have financial advisors who are responsible and subject to consequences when fraud is involved. I would be happy to answer questions. [LB113]

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SENATOR PAHLS: Senator Pirsch. [LB113]

SENATOR PIRSCH: A couple of questions. I appreciate your coming forward with this bill. With respect to...this bill would allow for the...or to allow for the state to invoke equitable hours, right, in petitioning the court? Is that part of it? [LB113]

SENATOR PANKONIN: Well, the changes are on page 7 and 8, Senator Pirsch. [LB113]

SENATOR PIRSCH: Yeah. And the state didn't have that equitable power before to go forward or is this just specifically expressly listing that which the state may be not as explicitly did have before. [LB113]

SENATOR PANKONIN: Well, as mentioned in my testimony...and I might also go into the fact that I had a similar piece of legislation last year that...but I think this is one that we worked with the department closely to get. I think they're going to speak in favor of it, and these were activities and actions that they thought would help them. And in some of these we did not have this authority in our state that others had, as you can see from the handout, on the...to get restitution and disgorgement. So I think that's an important point, and then also the records issue of being able to secure all types of records in an investigation. [LB113]

SENATOR PIRSCH: And I'll ask perhaps some of those who follow you a little bit. [LB113]

SENATOR PANKONIN: That follow that may have...and a local attorney from Nebraska City also, J.L. Spray is here who's worked on this action, and he can probably help. And then the department is going to be here. [LB113]

SENATOR PIRSCH: Okay. Very good. Thank you. [LB113]

SENATOR PAHLS: Go ahead, Senator Langemeier. [LB113]

SENATOR LANGEMEIER: Thank you, Chairman. Senator Pirsch...Senator Pankonin, excuse me. As you stated before, you brought legislation last year similar to this, and this committee is starting to...it's like Groundhog Day and we're on day 47 of the repetitiveness. But my understanding is in recollection as I sat here, last year the department was neutral to wishy-washy, whether we even needed anything and thought maybe we were embarking on something we didn't need to go on. Would that be a fair assessment? [LB113]

SENATOR PANKONIN: Well, they took a neutral position and there was maybe some things in that particular bill that they weren't as enthused about, but I think they

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continued to work on it, we continued to ask them to consider it. I think, you know, some thinking about working with the Governor's policy office as well, we were able to come up with this piece of legislation. [LB113]

SENATOR LANGEMEIER: So there's some thought that these tools might be helpful into the future. [LB113]

SENATOR PANKONIN: I think so. I think not only the incident in Nebraska City, but there's an ongoing investigation in the Grand Island area that may be even more substantial and that they're talking about \$100 million potential loss. Obviously the huge Ponzi scheme that originated out of New York City that is reaching the \$50 plus billion loss. You know, these things...if someone's out to really commit a fraud, maybe these type of measures don't help totally, but I think it helps our regulators to be able to follow up in these sort of cases, but hopefully it also has some deterrence to folks that are getting in the industry or may have to make these choices. I think the industry itself is well served by people that are legitimate and want to do the best for their clients, and these folks put a bad name on the financial investing...for the financial investing public and also the legitimate advisors that do a great job for their clients and are very sincere and have their clients' best interests at heart. So I think this a good step that moves us further along in protecting the public, and hopefully reminds those getting into the business that they need to do the best job possible. [LB113]

SENATOR LANGEMEIER: Okay. Thank you. [LB113]

SENATOR PAHLS: I have a question. Just for point of clarification and future question, you're telling me the Department of Banking worked with you on this, the Governor's policy office, and the staff out of our office? [LB113]

SENATOR PANKONIN: I think they're fine. [LB113]

SENATOR PAHLS: Okay. Okay, so right now you've had some powerful people behind you saying this bill has merit. Is that what you're telling me? [LB113]

SENATOR PANKONIN: That's what we're hoping. [LB113]

SENATOR PAHLS: Okay. And I don't see too many opponents, so you should feel pretty comfortable in the direction of the bill. (Laughter) [LB113]

SENATOR PANKONIN: Well, thank you, Chairman Pahls. And I explained to some of the folks that are going to testify that...and this is a good example of the legislative process at work in that we had an idea last year, but maybe it was a little overreaching and we hadn't done all those things that you just talked about. And so we're coming back this year with...and I appreciate the folks coming back, and we did counsel them

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to, you know, to be brief and to the point about the public policy issues. But I think this is a good example of how this system does work and hopefully work to get broad consensus. [LB113]

SENATOR PAHLS: Yeah. I think it's classical. Thank you. Seeing no questions, proponents. [LB113]

JOHN MUNN: (Exhibit 2) Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is John Munn, spelled 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 support of LB113. LB113 is an update to the enforcement provisions of the Securities Act of Nebraska, which is administered by the department. The Securities Act is a comprehensive framework for the regulation of the offer and sale of securities and includes administrative, civil, and criminal provisions. Section 2 of LB113 makes it a violation of the act for any person to alter, destroy, mutilate, conceal, make a false entry in, or by any means falsify, remove, or withhold any records, documents, or electronic or physical evidence with the intent to impede, obstruct, avoid, evade, or influence an investigation or other proceeding under the securities act. This change is patterned after a 2004 amendment to the Missouri Securities Act. Under current Nebraska law, the department can take action against a licensed entity for failing to maintain required records. This change would allow a similar type of charge against an individual who tampers with, hides, or destroys records pertinent to an investigation or inquiry under the act. The proposal would apply to persons who are not subject to existing recordkeeping rules and to anyone, licensed or not, when the records and documents are not required to be kept pursuant to the department or Securities and Exchange Commission rules, but are in control of the person under investigation and are relevant to the investigation. It is intended to maintain any evidence which exists at the time an investigation is initiated, and would be an effective tool for department enforcement activities. Section 3 of LB113 will enhance the enforcement act authority of the department by amending section 8-1116 of the securities act to give the department the authority to bring actions in district court against a person who has violated, or is in the process of violating, the act. These remedies include restitution or disgorgement of profits, freezing of assets, and required accounting of funds. Over half of the states currently have this authority, which is based on section 402(b) of the Uniform Securities Act. I want to express my thanks to Senator Pankonin for the opportunity to provide input into this bill. I'll be happy to answer any questions. Thank you. [LB113]

SENATOR PAHLS: Senator Utter. [LB113]

SENATOR UTTER: Thank you, Senator Pahls. Mr. Munn, it appears to me that the things that you're doing in LB113 will definitely help in the enforcement of a wrongdoing-type thing. Are there things that should be done in the act, that should be done with regard to irresponsibilities and licensing these individuals that would help to

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prevent these things from happening in the first place, such as the Nebraska City or the alleged Grand Island situation? [LB113]

JOHN MUNN: Um-hum. The licensing process for both broker-dealer agents and investment advisor representatives is very consistent from state to state. It provides us a good record of an individual's prior activity, and will for on the basis itself for investigations from time to time just what we're seeing happening in other states. So I feel pretty good about our licensing process. [LB113]

SENATOR UTTER: Thank you. [LB113]

SENATOR PAHLS: Senator Gloor. [LB113]

SENATOR GLOOR: Thank you, Mr. Chairman. Director Munn, Senator Pankonin and Senator Utter just made reference to what is currently going on in Grand Island or alleged to be going on in Grand Island, and I read over the weekend that the FBI has now been brought in and is gathering up records. Can you explain to me what would be different if this were to be made a statute in Nebraska as relates to what appears to be the FBI's interest for criminal reasons, I'm guessing, gathering evidence and records? [LB113]

JOHN MUNN: Okay. You know, the size of an investigation may oftentimes either have state authorities avail FBI of their facilities. But in a situation where if it was just the Department of Banking, you know, this bill would provide for preservation of records. Whereas currently our licensed entities, the broker-dealer firms and then the investment advisor firms, have to preserve records, this takes it the next step to saying the people that work for them have to preserve those records also, and it's a violation if they don't. [LB113]

SENATOR GLOOR: Okay. [LB113]

JOHN MUNN: And then secondly, to have the ability while we can pursue someone to the point of identifying the violation, we currently don't have the authority to authorize disgorgement of whatever monies that individual might have obtained from people that were treated unfairly. This bill would allow that. [LB113]

SENATOR GLOOR: That helps. Thank you. [LB113]

SENATOR PAHLS: Senator Pirsch. [LB113]

SENATOR PIRSCH: Thank you very much for your testimony. So this would add, in your estimation, the powers that the department have currently in terms of filing equitable actions against individuals and entities. [LB113]

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JOHN MUNN: Yes. [LB113]

SENATOR PIRSCH: Okay. With respect to those cases that have been mentioned, Nebraska City and Grand Island, is there a theory currently on the criminal books or obstructing government operations, that would allow...that would make it illegal for individuals? I mean, is it the matter of fact right now that whatever tools we have on the book are too dull and not able to get at that or do we have some tools currently in place that are just not adequate, such as a criminal law of obstructing government operations? Is that too dull of a tool to use to get at individuals who may destroy and mutilate as you're trying to get at here? [LB113]

JOHN MUNN: I think I'd respond the same way I did to Senator Gloor. You know, the two very valuable things we would have at our disposal would be (1) to go beyond a firm not keeping track or happening to lose records that are vital to an investigation, but also to that individual that we are investigating. That's important. And then secondly, the ability to go beyond just finding the perpetrator, but to be able to lead people toward restitution of some of the funds that were obtained under false pretenses. [LB113]

SENATOR PIRSCH: Very good. I appreciate your testimony. Oh, looks like Senator Pahls has stepped out, and so I'll act as chair. Are there any other questions for this witness? Seeing none, we'll move on to the next proponent. Thank you very much. Thank you for coming down here today. [LB113]

CAROLYN GIGSTAD: Members of the committee, my name is Carolyn Gigstad, C-a-r-o-l-y-n G-i-g-s-t-a-d. I am from Syracuse, Nebraska, and today I'm testifying on behalf of myself. I'm here to support LB113. In July of '06, my 57-year-old brother dropped dead from a heart attack, leaving my husband's sister a widow. It hit me hard because if my husband, Orval Gigstad, were to die the next day I would have been totally helpless not knowing where our investments were. He had always received quarterly statements from our brokerage firms at his office, and one of those brokers was Rebecca Engle who was also partnered with Brian Schuster of Nebraska City. I never saw any of them and my husband saved very few, but that's because we totally put our trust in our investment advisors. I started looking at the investment statements from VSR in August 2006, which is who Rebecca Engle was with, and noticed that we had investments that were showing no value at all. My husband and I had shares in Royal Palm, 17,000 for him, 6,000 for me. They had been worth \$2 a unit and now they were showing no value at all. We have since been told that they were first invested in American Capital Corporation, ACC, and then those funds were rolled into Royal Palm. My husband also had \$3,300 and another \$3,100 in a fund called Capital Growth Fund. He had never heard of any of these committees, much less given Becky or Brian the permission to invest in them. These were high risk investments. We had specifically instructed Brian and Becky that we wanted to invest either conservative income or

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moderate growth income. I started asking questions of Becky, Paula Turner, and Peter Lahti, all from VSR. Brian had already taken off to Florida to be the new president of Royal Palm. I did happen to find in our file documentation showing my teachers retirement fund from 11 years that had all gone into ACC, which was now showing a zero in an earlier statement. In 2006, I have a letter from Paula Turner telling me the trail those funds took. It went from \$18,000 to zero when it landed in ACC, which then turned into Royal Palm. I requested a meeting with Becky to discuss ACC and Royal Palm, and the following are the notes that I took from the meeting. I sent this letter to Tom Sindelar of the Nebraska Department of Banking. I will read it quickly. I also had attachments that I sent along with this letter which I will refer to, but you are not going to receive any of those today. This is the letter: I met with Rebecca Engle on Tuesday, November 21, 2006, around 2:15 in her office in Nebraska City. I first asked her about the letter dated October 20 from Paula Turner in regard to my teachers retirement IRA account. This letter did not say that my ACC equity was bought out by Royal Palm, but she told me it has. But it just stopped and it didn't go on to say it was in Royal Palm. The letter was sent to me in regard to the documentation of the activities of my Nebraska retirement account which I attached with this letter. She then went on to reassure me that Royal Palm is okay and that not to worry about it. She explained right now PrimEdge had bought them out. It was basically a shell and seven companies would come...soon be part of PrimEdge. She said that my equity of \$12,000 for 6,000 shares is still there. She drew a diagram on a form, which is also attached to this document. Increasing...she said that on December 15, 2006, that PrimEdge will go public and perform a reverse split which will start increasing the value of our investment. She said, right now it is worth 2 cents and 10 cents will be break even point. She even expects this to go to 20 cents after it goes public, and we will make money on our investment. Then if we want to sell we can or we can choose to keep it, but she neglected to tell me that these shares once had been \$2 a share. She said our statement should show the change of going public on our January 15, 2007 statement. She also showed me a form for Orval Gigstad, my husband, showing 17,000 shares in which they were all now in PrimEdge, and she said, the same thing would account for his investments also. Then she told me that Brian Schuster, CEO of the new PrimEdge in Florida, did exactly what he needed to do. She said he went in to be a hatchet man and is now getting things all straightened out with PrimEdge in Florida, which used to be Royal Palm. Then she started talking about other investment companies and mentioned that ACC went bankrupt. I asked her if that was American Capital Corporation. She said it was, but I did not get a chance to ask her if that was what I had previously had in my bank account for retirement account because she blew right over it and went to a different subject. I also attached a statement from VSR Financial Services for Orval Gigstad simple IRA that said 17,000 shares in ACC had no financial data shown. I also attached a report from them that said my 6,000 shares was there with no dollar amount shown. As a side note, I've been in discussion with brother-in-law, Dr. Jim Gigstad, about Royal Palm. He has also had \$25,000 shares of this company and was told the same as I was about Royal Palm by Becky's partner Peter Lahti. Of the approximate 30 minutes of our meeting, she

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spent 20 minutes trying to discuss my personal life and where I can find a job. She also told me she needs an assistant and asked if I might be interested, and I said I was not. This is the end of my notes. A few months earlier I found out the Department of Banking had held her license for two to three months because...and that was about the same time she wrote all of us and said that she had a letter to us that said that she was going on medical leave, not that her license was being held. Brian Schuster lives two houses away from me. Becky Engle and the Gigstad family were very, very good friends. My father-in-law was a surrogate to her teenage son. We all went to National Junior Angus shows together in Kentucky and Wichita to have our kids show their Angus cattle together. The whole Gigstad family went to her house for a holiday dinner. She even gave me a pair of \$100 boots for my 40th birthday party. This is to show that we trusted her completely with our investments, even when we didn't understand them very well, even when we started hearing rumors about her. I was consumed with a job here in Lincoln and I let her and my husband do all of the communications and paperwork. I never signed anything that I agreed to transfer my funds into ACC or Royal Palm; my husband didn't either. She said that she would make us money and we believed her. She didn't touch the funds of my mother and my father-in-law who was a surrogate dad to her son, go figure. We did receive my files from VSR after they closed the office in Nebraska City, after Becky escaped to Arizona to live. There is not one document in that file that says I transferred funds to ACC or Royal Palm. It has been stripped clean. The only thing that mentions my ACC and Royal Palm investments are in a couple of account workbook sheets that they must have accidentally left in there. Brian and Becky will probably never have to pay a dime back to what they owe people in Otoe County, which is close to...and western Iowa, which is close to or over \$18 million. She and Brian Schuster have both conveniently declared bankruptcy. I total...my end total...my husband lost \$34,000. I lost \$12,000, which didn't include the extra in my IRA above and beyond that, and he lost \$6,400 in Capital Growth Fund. So we have lost over \$52,000. But we know there are many, many more people in Otoe County and western Iowa who have lost a far greater amount than we have. I urge you to pass LB113 and do it promptly before more citizens in Nebraska lose everything they have or what's left of it in the current economic crisis that we are in. Thank you. [LB113]

SENATOR PAHLS: Any questions? Seeing none, thank you for your testimony. Next proponent. [LB113]

HAROLD ZAHN: My name is Harold Zahn, H-a-r-o-l-d Z-a-h-n. I'm a retired farmer from Syracuse, Nebraska, population about 1,600, just west of Nebraska City. My experiences was with Engle and Schuster. In 1974, I had a farm sale and decided to have a little money to invest and I knew very little about investors and the options. So my wife worked for Dr. Thomson in Nebraska City, and she had an IRA there with Becky Engle. And so we decided we'd trust her with our money, which didn't turn out too good (laugh). It was bad. Then in 2002, Brian Schuster was with Ms. Engle, and I decided to invest again. And I thought I trusted him because my youngest son had

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played football with him at UNL, and football players, you usually trust them (laughter) like you do an army buddy. So I decided to trust my money with him. And both deals turned out bad, as you can see what Carolyn had said. And that's all I have. But I'm here to support Senator Pankonin's bill, (LB)113. So if there's any... [LB113]

SENATOR PAHLS: Thank you. Appreciate your testimony and your support. Any questions? Thank you. Next proponent. [LB113]

GERARD TIMOTHY: Good afternoon, Mr. Chairman, members of the committee. My name is Gerard, G-e-r-a-r-d, Timothy, T-i-m-o-t-h-y. I was born and raised in Falls City, Nebraska; graduated from high school there; served in the U.S. Navy in World War II; went to work on the Missouri Pacific Railroad as a telegrapher and freight agent. Worked there 40 years. And we started investing with Engle and Schuster...well, originally Rebecca Engle from a conversation I had heard at St. Mary's Catholic Church. Some individual, I can't recall the name, recommended her, he'd invested there. And then a former mayor that I was friends with, he had invested with Rebecca Engle, he thought highly of her. And this gave me faith and trust that she was a person you could do business with, and I did. Rebecca Engle put me in Franklin Templeton Fund for a number of years, and a number of funds. I'd imagine six or eight different funds at different times. We always had...wife and I had an IRA and a joint account. We each had an IRA. And when the Franklin Templeton started to play out on us, I suggested that there ought to be something better than that, and oh, yes, they knew of things that would work out better. So they transferred the two IRAs and the joint account to a firm called SEI. And the first thing that happened with SEI was that account started going down in value right away and it never recovered. So after a year in SEI I once again went back to Engle and Schuster and said, this isn't for me, we've got to do something different. Well, we can do that. Well, we can do the such and such. So by that time I was dealing with Brian Schuster. And on his recommendation we put the joint account and the two IRAs in Pacific Life Variable Annuities, which I knew nothing about then and not too much more now. But at that time I was 74 and my wife was 72. These annuities, as I now understand it, tie up your money for a number of years before you can withdraw it without a penalty. My wife passed away in 2002 and I inherited her IRA. And when the check came to me, I went in to Brian Schuster and says, I need to put this to work somewhere, and on his advice I invested in CGF, which was a fund in Florida that he says is guaranteed to pay you 8 percent. Well, that sounded good to me, but I did ask him at the time as I always had, is this a risky fund, is this safe? Well, he said, I've been down there, they've got a lot of money, they're very well capitalized. So that IRA money went there. Every month VSR reported the initial capital was still there and I was getting the 8 percent up until the first quarter of '07. And at that time I went out to Engle and Schuster place of business and Engle and Schuster weren't there, a party named Peter Lahti was there who I'd only met once. And I said I want my money out of that. And he said, well, I can't talk to them. They don't answer the phone when I call them. Here, I'll give you their phone number. Well, they didn't answer me either. Now, since

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that time a month ago, the monthly statement I got shows zero value on that account, so I've lost that. The annuities have gone down constantly, and I would talk to these people about it and they'd say, well, you're taking the short term, you're looking at short term. You've got to look at the long term area, it'll come back. Well, it never came back for me. And I assure you gentlemen, I'm really innocent of finance and investing, but I have learned that regulations that do govern this stuff present a number of opportunities for unscrupulous brokers and their financial institutions to lie, cheat, mislead, and conceal. And there are those brokers and those institutions when it's to their advantage, they will do every one of those things and they have done it to a large number of us. So I'm here to support this LB113 and I hope you gentlemen will, too. [LB113]

SENATOR PAHLS: Any questions? Seeing none, thank you for your testimony in support of the bill. [LB113]

GERALD TIMOTHY: Thank you. [LB113]

SENATOR PAHLS: I just want a feel of how many more proponents we have. One, two, three, four, five. Okay. [LB113]

LLOYD GERDES: Thank you, Mr. Chairman and members of the committee. My name is Lloyd Gerdes, L-l-o-y-d G-e-r-d-e-s. My situation is similar to the previous testifier's with the exception that I'm from Nemaha County and there are several of us in Nemaha County that had this same thing happen. I was going to invest some money with Engle and Schuster in 2004, and I indicated to them that I wanted to make sure it was a short term, no risk, and it was a fairly good interest rate, but it wasn't anything aggressive. Well, after a year, we couldn't get anything back, after two years we couldn't get anything out, and after about two and a half years we knew that it was just not going to happen anymore. Later I learned that they were...or that Becky was released from one of her firms because of some of the things she'd done that wasn't appropriate. So I would think that those people should have recognized that and reported that to some committee of some sort so that shouldn't happen again, but nothing evidently was done. Also, the dealer should be held accountable, I think, for some of this stuff that they've done to a very big number of people in southeast Nebraska and southwest Iowa, and probably some other places. Also, I kind of feel that Department of Banking could have maybe done something a little bit earlier. But we're all hurting from this and I would sure hope that (LB)113 would be a starting point to keep this from happening again somewhere around here or somewhere else. Thank you. [LB113]

SENATOR PAHLS: Any questions? Seeing none, thank you for your testimony and support of the bill. [LB113]

HARRY BAKER: Harry Baker, H-a-r-r-y B-a-k-e-r. I'll change a little bit. I lost it all. Senator Pahls, you could take this group now and say that we will move across the hall,

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and we'll all get up and follow you because we trust you. This is what we did in Nebraska City. On the way across the hall, some of the other senators down the hall say, something is going wrong because when we got across there, well, we was probably handcuffed or something. That would be comparable to the fox in the chicken house, and then somebody could raise an issue. Permissive legislation to write regulations for impoundment of records is essential. I understand this new law has got that in it. We are our brother's keepers. We're asking for help. And in this particular file is a sack of stuff from Enron, and it says that if I will join this class action suit, well, the possibility of getting this amount of funds. Because we have no records, somehow or other I keep getting this mailing from Enron or the class action suit, but I can't find that I ever owned it. So we need the power that's in (LB)113 for the banking department. [LB113]

SENATOR PAHLS: I see no questions. I thank you for your testimony and support of the bill. [LB113]

BILL DAVIS: Senator Pahls and members of the Banking, Commerce and Insurance Committee, my name is Bill Davis. I'm an attorney in Nebraska City. I was an investor with Rebecca Engle and I have a number of clients who are likewise investors. And I'm going to be very brief and to the point. You've heard what's happened to a number of people. I can expand on some. But some of these investments were made on behalf of clients without their permission or consent, and we've been unable to develop that because we couldn't get at their records to prove it. And it puts a burden on the individual investor to protect themselves in these situations without the banking department having the authority to go in and do this type of thing for the people that have been injured. You heard a figure of \$18 million come out of our community, that's Nebraska and Iowa, and about 65 to 70 percent of that probably came out of the Nebraska City area alone. So it's a tremendous economic impact on the people of our community. And I can't tell you exactly how many are involved, but Mr. Spray, I think, can address that. It's just a situation that needs to be corrected and I think this legislation is a first step in getting that accomplished. I also think in addition to what's in this bill that these people ought to have some kind of requirement for bonding because there's nothing there. They don't have to provide a bond that the state requires, and it seems to me that's another step that ought to occur in the process of protecting the investors of the state of Nebraska. I don't have anything further. I want to shorten up what I had to say earlier, but I'll address any questions anyone has. [LB113]

SENATOR PAHLS: Seeing none, we're hearing what you're saying. Thank you. [LB113]

BILL DAVIS: Thank you. [LB113]

J.L. SPRAY: Good afternoon, Senator Pahls, members of the committee. My name is J.L. Spray, S-p-r-a-y. I'm a Lincoln attorney and I'm here on behalf of myself. I don't

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want to belabor these points by any means. In fact, I'm probably sitting here more as a commitment to Senator Pankonin. And I think these folks have explained the problem pretty darn well. In general, I represent investors' cases against broker-dealers and brokers. I think this is a good bill. I support it. I was surprised to learn that there were a couple of tools missing in the tool bag at the Nebraska Department of Banking and Finance, tools that are available in other states. This isn't some extremely progressive, out-on-a-far-off-limb kind of approach. These are just basic tools that should be available to them. There are a couple of things, though, specifically in this matter. And I represent a couple hundred folks from Otoe County, western Iowa, points around there in various matters. It's a very, very difficult system to recover money for investors. It's made difficult because a lot of the regulatory agencies are controlled or protected or manned in part by the industry. So when we talk about FINRA, it's an industry organization. Senator Utter, I think, asked a great question about licensing. Yes, there's all kinds of requirements for licensing. There's very little effort to check out the voracity of that licensing. And in this case, this broker-dealer was allowed to go from Kirkpatrick Pettis--heard of them?--to Wachovia--heard of them?--to a little dump in Florida that's out of business now, to a company called VSR. Each one of those moves she was getting away from problems that were not reported to anyone. And that's a systemic failure because those companies allowed her, in fact, were glad to see her go with all her problems, allowed this to happen. Now, this bill is just this bill. And Mr. Marienau and I had a conversation. I think he'd be pleased to hear me say this out loud. I only want to talk about this bill, which is a great bill. I support it. It does two things, as you've heard. One is this broker and her husband went to the building that she owned and carted off two horse trailers full of files, records, computers, computer's equipment, assets, bank records that are gone. They are not available to me to litigate this case. They're gone. This bill would give the banking department authority to go in and put a rock on that and stop it. And then, of course, the second thing is, for all this regulatory action it's about investigation and discipline. That's what you have today. This takes it just a little step further and it allows the banking department to investigate, to discipline, and maybe to go to bat for the investor. The whole system is designed for only one person--the investor. Let them go to bat for the investor and try to recoup something while you still can. So thank you for your time, appreciate your patience. It's a very complicated issue, so. [LB113]

SENATOR PAHLS: Senator Pirsch. [LB113]

SENATOR PIRSCH: Thank you, Mr. Spray. I'm just trying to get at the substantive changes and the difference in power of what exists now the department has and what's proposed under this bill. And you said currently you believe that the department would not have the power to come in and put a rock on it, I guess is your terms, in getting at these files. Should they have become commence that there's no violations that are occurring, couldn't they use their equitable powers and petition the court for that type of...? [LB113]

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J.L. SPRAY: I don't see it in existing law, so I think this really is a change. And you have to remember, it's not the power to go against the broker-dealer. I think this change goes to the broker, the person on the ground that has control of it, so maybe they could always go against the broker-dealer, the company, the "Wachovias" of the world. But this is the one person office in Nebraska City or, you know, out west in a small town that's isolated from everybody. I don't think they had that power before until we enact something like this. [LB113]

SENATOR PIRSCH: Okay. So you don't think the department currently, if this were to go on, could petition a court for that type of ability to put a rock on it. If it did it would be a lengthier process than would probably... [LB113]

J.L. SPRAY: Yeah. I mean I think, Senator, you probably know this as well as I do. It's one thing to go to court and ask them to do something, and it's another thing for a judge to say, oh, okay, I have clear authority to go do this. And sometimes what I think a judge ought to do and what they end up doing is different, at least that's my experience. [LB113]

SENATOR PIRSCH: Okay. Well, it's...you bring up a... [LB113]

J.L. SPRAY: (Laugh) This clarifies it, let's put it that way at least. [LB113]

SENATOR PIRSCH: Very good. And I tell you, I think you are...you know, I appreciate this issue being raised this year. I think it is very...I've been, you know, aware of other incidents, not just in Grand Island, Nebraska City, and incidents where people have essentially gone through every penny that they've raised. And so, unfortunately, when these type of bad apples act, people...I mean, it affects people's lives in the greatest way. And so I do appreciate your bringing forward this and I actually would be...well, you know, Mr. Davis had mentioned something to the effect of bonding. I don't know if you have an opinion about that, but I would be interested in talking to you as...about other...kind of the other issues you alluded to after the hearing (inaudible). [LB113]

J.L. SPRAY: Okay. If I can just answer one thing. I'm not in the habit of encouraging people to act fast, you know, we just saw that in the stimulus package. But, you know, as the recession or whatever we're in the middle of recedes and those waters pull back, there are a lot of rocks in the shore for investors, there are a lot of things being discovered right now. This legislation is most timely because it won't necessarily help these nice folks, but it'll sure help the next guy down the street. [LB113]

SENATOR PAHLS: Senator Gloor. [LB113]

SENATOR GLOOR: Thank you, Chairman Pahls. And thank you for your testimony, Mr.

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Spray. I think you and I would agree on this and I hope most of the people who gave testimony here today understand it, but what we're talking about here is legislation that by the time we went looking for those records, people went looking for those records, not only were the records gone, but so was the money. I mean, I think we understand that whatever went on there, there wasn't much money, if any, to be gathered back in. Obviously, having those records would make it a little bit easier to sort that all out. But this isn't an answer to people who are crooks who take advantage of trusting relationships and rip people off. There were statements there were long-standing relationships here. There may be some components of this law that will be helpful, allows somebody who's heads up. But, unfortunately, as long as there are people who trust other people, they're going to be taken advantage of and we can't legislate that aspect of it, obviously, so. [LB113]

J.L. SPRAY: Absolutely. And I don't know if that's a question pending or not, but in reaction... [LB113]

SENATOR GLOOR: It begs an answer, I think. [LB113]

J.L. SPRAY: In reaction to that, I would simply say this: Time is of the essence in these things, and the money doesn't get buried, spent, hidden, secreted away like that, and the sooner we can get at it, the better chance the investor has to recover some, if not all, of their money. [LB113]

SENATOR GLOOR: And your feeling is this legislation is our best shot at speeding the process up of being able to get to that information. [LB113]

J.L. SPRAY: It's a very credible start. [LB113]

SENATOR GLOOR: Thank you. [LB113]

SENATOR PAHLS: Seeing no more questions, thank you for you testimony. [LB113]

J.L. SPRAY: Thank you, Senator. [LB113]

TERRY HEADLEY: (Exhibit 3) Chairman Pahls and members of the committee, my name is Terry Headley, that's T-e-r-r-y, last name Headley, H-e-a-d-l-e-y. I'm the president of Headley/Scott & Associates, an insurance and investment firm in Omaha. I also serve as a national officer for the National Association of Insurance and Financial Advisors, which is the largest professional insurance and financial advisors association in the world. And I'm here today on behalf of NAIFA-Nebraska, which represents over 1,200 professional insurance agents and financial advisors across our state, in order to provide support for the amendments to the Nebraska Securities Act offered under LB113. I think it is important that 80 percent...to note that 80 percent of our

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NAIFA-Nebraska members hold a minimum of a series 6 securities registration in their role as financial advisors. Our financial advisory members are constantly assisting their clients with investment decisions, including appropriate asset allocation, risk tolerance, and render ongoing advice and service to their clients. We have had as an organization a very healthy and viable working relationship with the Nebraska Department of Banking and Finance and the securities division in promoting consumer protections and safeguards. Most recently we were instrumental in helping on the designation issue to make sure that insurance agents and financial advisors are properly credentialized and have appropriate qualifications, and do not want any type of misleading designations or certifications to overreach or overstate the qualifications and credentials of those offering investment advice and services to the investing public here in Nebraska. Our members are very committed to a stringent code of ethics and a code of market conduct standards. We feel that our support of LB113, which provides expanded enforcement authority and sanctions, is an additional step in the right direction to safeguard Nebraska consumers when dealing with unscrupulous and unethical insurance agents and financial advisors. We are very concerned about the testimony that has preceded mine today with these renegade and rogue agents and advisors that are out there doing great harm to the public. So we are supportive, the amendments to LB113 or the Nebraska Securities Act, and at this time we would...I'd be happy to entertain any questions. [LB113]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. Are there any more testifiers as proponents, opponents? Neutral? Senator. [LB113]

SENATOR PANKONIN: Thank you, Chairman Pahls. I just want to briefly close by thanking the folks that came forward today, and obviously out of their bitter experience one of the things they're hoping for is that not only in this legislation, but in future rules and regs, and possible legislation that the system works, that there are protections and that the department has the resources and the tools has been stated to help people in these type of situations. So that's the good that can maybe come out of this. And even though these folks have lost a portion of their funds or all of their funds, they're just hoping that we can do something in the future so that maybe it makes it better, it makes the system better. Thank you. [LB113]

SENATOR PAHLS: Thank you, Senator. Yes. [LB113]

SENATOR UTTER: I do have one question for Senator Pankonin. Thank you, Chairman Pahls. Senator Pankonin, is this something that may deserve...is this a critical enough issue do you feel at this stage of the game considering the status of the economy that this maybe should have the emergency clause attached? [LB113]

SENATOR PANKONIN: I think it's a possibility with the testimony we've heard today and from Attorney Spray that, yeah, there could be more of this out there, and that in

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the situation that's unfolding in Grand Island, this sort of thing, it could be. [LB113]

SENATOR PAHLS: Thank you, Senator. That closes the hearing on LB113. Again, thank you, Senator Pankonin. The next bill will be LB328. LB328 was introduced by me at the request of the director of the Department of Banking and Finance. The bill would change banking, mortgage bankers, and installment loan providers as they pertain to loan originators. I think we have two individuals here to speak to the bill. Patti. []

PATRICIA HERSTEIN: (Exhibits 1 and 2) Chairman Pahls, you notice that the testimony that I'm handing out actually says that I'm John Munn. (Laugh) [LB328]

SENATOR PAHLS: I notice, I had a little question there (laugh). [LB328]

PATRICIA HERSTEIN: Yeah, the director had intended to be here. He had a dental emergency, and the only time he could get in was at 3:45 today in Syracuse, and so he stayed as long as he could, so I'm going to go ahead and give his testimony if that's okay. [LB328]

SENATOR PAHLS: So we should chew him out (laughter). [LB328]

PATRICIA HERSTEIN: Well, go ahead. [LB328]

SENATOR PAHLS: Okay, I'm sorry, continue. [LB328]

PATRICIA HERSTEIN: Members of the committee, my name is Patricia Herstein, H-e-r-s-t-e-i-n. I'm general counsel for the Department of Banking and Finance, and appearing today for the department in support of LB328 which was introduced on behalf of the department. The purpose of LB328 is to implement the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, commonly referred to as "S.A.F.E.," which was incorporated into Title V of the Housing and Economic Recovery Act of 2008, which was adopted by Congress and signed into law on July 30, 2008. S.A.F.E. mandates that the states adopt a system of licensure for loan originators and do so by July 31, 2009. This system of licensure applies to all loan originators except those who work at depository institutions and certain of their subsidiaries, who instead must register through procedures adopted by the Federal Financial Institutions Examination Council, which does include state regulators. If a state does not adopt a system that meets the S.A.F.E. mandates, the United States Department of Housing and Urban Development, also known as HUD, is required to create a system for licensing loan originators in that state. Please note that throughout my testimony, the term "loan originator" will be used when referring only to residential mortgage loan originators. The state regulators have worked through the Conference of State Bank Supervisors known as CSBS, and the American Association of Residential Mortgage Regulators, AARMR, to draft a model state code to incorporate the mandates contained in S.A.F.E. I have

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provided you a copy of HUD's interpretative posting dated December 24, 2008, labeled as Attachment A, which addresses the model state law. The department has been advised that LB328 complies with S.A.F.E. S.A.F.E. will have a wide-ranging impact on all mortgage lenders, including industries previously exempted from mortgage regulation. As such, this bill contains amendments to the Nebraska Mortgage Bankers Registration and Licensing Act, the Nebraska Installment Loan Act, and the State-Federal Cooperation Acts, along with cross-referencing updates to the Nebraska Banking Act and the Nebraska Foreclosure Protection Act. The framework of this legislation is our current Nebraska Mortgage Bankers Registration and Licensing Act, which was adopted in 1989. Under the existing act, mortgage banking firms and persons not associated with any company that are in the business of making loans on one-to-four family homes on Nebraska real estate must be licensed by the department on an annual basis, carry a surety bond, and meet financial and conduct standards. In 2007, substantive changes were made to the act to authorize the department to join the Nationwide Mortgage Licensing System or NMLS which is an electronic system of licensing that allows a company to complete one application and submit it to any state that is a member of the system. The system became operational January 2, 2008, with Nebraska being one of the original eight states on the system on that day. LB328 will first change the name of the Mortgage Bankers Registration and Licensing Act to the Residential Mortgage Licensing Act because both individuals and firms will be covered under the legislation. The bill authorizes the licensing of loan originators through the national electronic system which itself will be renamed and known as the Nationwide Mortgage Licensing System and Registry to reflect the additional requirements of S.A.F.E. Employees and agents of mortgage bankers and installment loan companies will be required to be licensed through the NMLSR as loan originators unless the individual's duties are limited to clerical activities as are defined in LB328 and also in S.A.F.E. This system will assign a unique identifier to each individual which can be used to track the loan originator across state lines and from company to company. In addition, the unique identifier will allow lenders, regulators, and law enforcement to identify the individual who originated each mortgage loan, enhancing the ability to detect patterns of mortgage fraud. LB328 requires that all loan originators must complete 20 hours of prelicensure education, must take and pass a prelicensure test, and must either maintain a surety bond or net worth requirement, pay into a recovery fund, or work for a company which maintains a surety bond or net worth requirement. The amount of the surety bond or net worth must be based upon the dollar amount of the loans that the loan originator or the company originates in a particular state in a calendar year. The bill further provides that any loan originator who has had his or her license revoked in any jurisdiction cannot obtain a license in Nebraska. These requirements are specifically mandated by S.A.F.E. As part of the licensing process, the department must conduct a background check on each applicant, including a background check through the FBI's fingerprint database. Applicants with certain criminal convictions are ineligible to hold a loan originator license. They are subject to credit checks and civil background checks. These procedures would be handled

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through the NMLSR. Once they are licensed as a loan originator, the license will have to be renewed on an annual basis. And all loan originators must annually then complete eight hours of continuing education. The bill contains additional standards for the firms that conduct mortgage banking. These include a requirement that all mortgage companies must submit reports of condition to the department, and adjust their bond amounts based on these reports. S.A.F.E. mandates that a state regulator must report violations of law and enforcement actions to NMLSR and provide a procedure for loan originators to challenge the information placed upon the NMLSR. A regulator may use the system as a channeling agent for requesting information from and distributing information to the Department of Justice or any government agency, and as a channeling agent for requesting information to any source relating to applicants and licensees. LB328 contains the authority for the department to meet those requirements. We believe the NMLSR will provide for efficient and uniform licensing process among the states, and will facilitate a smooth transition when loan originators move between companies and between licensees and registrants which will be financial institutions. As part of this, LB328 authorizes the department to adopt interim procedures for licensing and to use expedited procedures for previously licensed or registered individuals. Since it first became clear that Congress would be enacting legislation to regulate mortgage loan originators, the department has worked to keep the industries that would be affected informed of the status of the federal legislation. Our focus has been on developing a proposal that would allow Nebraska to simultaneously meet the mandates of S.A.F.E. and to provide an efficient and not overly burdensome licensing process. I believe LB328 meets those goals. It's my understanding there will be two amendments offered this afternoon. One would propose the addition of language to section 21 which would specify the documents on which the unique identifier would have to be placed. The department does not believe it is necessary to include this list in the law, because the section already provides the department the authority to provide a list by rule, regulation, or order. However, the amendment would not impact compliance with S.A.F.E., and as a result, we are neutral on that proposal. The director's testimony and my testimony goes on to talk about what we have been told was AM84, which would be introduced by a representative of HSBC here today. We were advised just before the hearing that that amendment is actually not being offered; it's being included in another document which will be offered. The department, which contains five pages worth of amendments. The amendment...that's on page 2 which was AM84. I do want to speak to you specifically because of great concern. It would add language to section 14 to provide provisional licenses for individuals with pending license applications, and would require the department to issue a provisional license if the applicant's employer submits an affidavit attesting the applicant has no revocations or felony convictions on his record. The department opposes that amendment, and as it is incorporated in the amendments we were handed earlier, because it is not consistent with requirements of S.A.F.E., and would cause HUD to find Nebraska out of compliance with S.A.F.E. I have provided a copy of a letter from John Gorman, General Counsel for the Conference of State Bank Supervisors, labeled as Attachment 2, which supports our conclusion

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regarding provisional licenses. With respect to the rest of the ideas that are contained in the amendment that's going to be proposed as we understand it from HSBC this afternoon, we haven't had time to fully analyze the remainder of those amendments, sitting here listening to the other bills' testimony. However, we believe from looking at them, that they are of the same substance that other state regulators have discussed with us and with the 50 states, that would also cause the bill to fail compliance with S.A.F.E. We would ask that the department, if possible, be given the opportunity to provide the committee with an analysis of this proposal and whether or not it would fail S.A.F.E. I want to thank Senator Pahls for introducing LB328. We believe it is important legislation, and I would be happy to try and answer any questions. Thank you. [LB328]

SENATOR PAHLS: We basically don't have a choice, do we? [LB328]

PATRICIA HERSTEIN: That's correct; it's a mandate. [LB328]

SENATOR PAHLS: Senator Langemeier. [LB328]

SENATOR LANGEMEIER: Thank you for your testimony. Thank you, Chairman Pahls. Let me see if I got this right. So you're telling us that we need to adopt the S.A.F.E. Mortgage Licensing Act or HUD is authorized to set up their own procedures which is the S.A.F.E. Mortgage Licensing Act. [LB328]

PATRICIA HERSTEIN: That's correct. I think, we certainly don't have any idea what S.A.F.E. will be. I mean, certainly there will be a lot of the requirements that we have incorporated into LB328. If they felt there were other requirements that the state did not believe were necessary, HUD could impose those on us. [LB328]

SENATOR LANGEMEIER: So if we don't adopt their model at...back to my question, if we don't adopt their model legislation, they're going to mandate their model legislation on us. [LB328]

PATRICIA HERSTEIN: Well, it's not S.A.F.E.'s model legislation, excuse me, HUD's model legislation. The states have gotten together following the mandates of S.A.F.E., and then the states have put this model code together, and then each one is going to their legislator, of course. If a state doesn't adopt that or if it adopts something that is out of compliance with S.A.F.E., then HUD will step in and tell the state, this is what you're going to do. [LB328]

SENATOR LANGEMEIER: So HUD had said that this is in compliance... [LB328]

PATRICIA HERSTEIN: Yes. [LB328]

SENATOR LANGEMEIER: ...if you take it like it is, without any amendments. [LB328]

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PATRICIA HERSTEIN: HUD has said that the model code, which LB328 is based, is in compliance, and then we have had LB328 reviewed by the committee that's been drafting the model code, and they said it does meet those tests. And HUD has gone further and said, any state that meets the model code will meet their test. [LB328]

SENATOR LANGEMEIER: Okay, thank you. [LB328]

PATRICIA HERSTEIN: Um-hum. [LB328]

SENATOR PAHLS: So just a clarification. You have not invented anything new. You...a number of states have gotten together? Is that what I'm...? [LB328]

PATRICIA HERSTEIN: Right. There have been...since...when it was clear Congress was going to act, the states started having a lot of conference calls, trading information, doing drafting among themselves, and so that's how it has developed. [LB328]

SENATOR PAHLS: Okay. So...and without amendments, this...you're telling me we seem to be meeting the needs. [LB328]

PATRICIA HERSTEIN: That's correct. Certainly, there can be amendments to it. You know, for example, and there are certain things the states can decide on their own. For example, the fees. Those aren't set by anyone else except for us or by the state. But yeah, if there are amendments to this, we should have them looked at to make sure that they do before the bill would be finally passed. [LB328]

SENATOR PAHLS: Okay, yeah, thank you. Senator Gloor. [LB328]

SENATOR GLOOR: Thank you, Mr. Chairman. Just a question. A little disconcerted as I read language given our previous hearing. It escalates to the licensing process; this is on page 2 of your testimony. "Applicants with certain criminal convictions are ineligible to hold a loan originator license." The converse must also be true then which is some applicants with certain criminal convictions are eligible to hold a loan originator's license. Help me get comfortable with what that's trying to tell us. [LB328]

PATRICIA HERSTEIN: Okay. What LB328 provides is that anyone who has had a felony conviction, unless that conviction was pardoned, is ineligible to hold a mortgage loan originator license. Nebraska has...what we have also put in the bill because...currently in our law, is that certain misdemeanor convictions will also disqualify you from a license. And that would include convictions with respect to theft or convictions under the banking laws, securities laws, and installment loan laws or...and so, you know, there could be some misdemeanor that would also disqualify you from holding a license under Nebraska law. [LB328]

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SENATOR GLOOR: Okay. [LB328]

PATRICIA HERSTEIN: Under S.A.F.E., it's just the felony convictions. We chose to go ahead and incorporate what we currently have in our act for the firms. [LB328]

SENATOR GLOOR: Good. Thank you. [LB328]

SENATOR PAHLS: Okay. Senator Pirsch. [LB328]

SENATOR PIRSCH: Just a follow-up with that. So now the old mechanism was both felony and then misdemeanors essentially of moral turpitude, that, but we're switching just to a strict felony then, if you've been convicted of a felony of any sort, then you're disqualified? [LB328]

PATRICIA HERSTEIN: You would certainly be disqualified for the felony conviction, but we would continue what's currently in the Mortgage Bankers Act for... [LB328]

SENATOR PIRSCH: Oh, okay. You... [LB328]

PATRICIA HERSTEIN: ...for officers. It's going to extend to their loan originators now. [LB328]

SENATOR PIRSCH: ...you're continuing that. To misdemeanors as well, involving say, moral turpitude type of... [LB328]

PATRICIA HERSTEIN: Yeah, crimes in financial institutions, those types of things. [LB328]

SENATOR PIRSCH: Okay, appreciate that. [LB328]

SENATOR PAHLS: Senator Christensen. [LB328]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Thank you. Do you expect all 50 states to just adopt this as is? Did all 50 states work on this or it...? [LB328]

PATRICIA HERSTEIN: A great number of them did and are because legislation...I mean in most states, the legislatures are just beginning to meet also. And so legislation is continuing to be written in other states, but I believe most of the states have indicated a very strong interest in having something adopted on their own without having HUD come in and force it on them, a system that they might not like. [LB328]

SENATOR CHRISTENSEN: I guess, you know, to follow up Senator Langemeier's

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question, so most likely you're saying, we take this or it's forced on us. That don't seem quite right, but... [LB328]

PATRICIA HERSTEIN: No, certainly it's a mandate. I think that the Congress, quite honestly, my personal opinion, is they got fed up with what was going on in the mortgage industry, and the industry did not police itself. And so they put this together and said, this is how we're going to take care of it. The states will do this or we don't know what else. [LB328]

SENATOR CHRISTENSEN: Well, no one in the mortgage industry should be surprised at the crisis we're in, because that was stupidity and they'd loan more than a hundred percent on a home or even a hundred percent, that (inaudible). [LB328]

SENATOR PAHLS: Thank you. Appreciate it. Just...how many proponents do we have? One, two. Opponents? In the neutral? I see one in the neutral. I guess we're ready. [LB328]

DAVID OLSON: (Exhibit 3) Senator Pahls and members of the committee, my name is David Olson, O-l-s-o-n, and I represent the Nebraska Mortgage Association, and we do support LB328. The Nebraska Mortgage Association has spent the last couple decades coming up with, as a core value--education, and that education is delivered to our members which is a mixture of banks and mortgage companies through quarterly conferences...educational conferences and an annual conference typically in the fall. We felt as an organization that the things throughout LB328 have followed what we have been looking for. One thing that we would like to see changed in LB328 is on page 46, section 21, line 3, strike out "all" and after "forms" insert the following new language "to include the good faith, the truth in lending statement, the preapplication ARM disclosure, the commitment letter, and the program disclosure and loan application." Our concern is that we would like to see these unique...every...if you are a mortgage loan officer, whether you're licensed or registered, having the FDIC establishment behind you, you will get a unique qualifier number. We feel these particular forms should have this unique qualifier number on there for easier tracking, and we feel that these forms carry a unique common denominator that they have. They are disclosing fees; they are disclosing interest rates; they are disclosing terms; they are disclosing employment. And we would like to track, if there is any sort of miscommunication, how we find that person specifically that has been involved in that transaction. In section 21, the way it reads now, is it says the unique identifier of any individual originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms. That's a little broad, so I mean, if you've ever had a mortgage, there are several pages, so we're trying to say, you know, we need to get a little bit more specific on these. So that's. [LB328]

SENATOR PAHLS: Okay,... [LB328]

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BILL MARIENAU: Can I ask him about this? [LB328]

SENATOR PAHLS: Yes, go ahead. [LB328]

BILL MARIENAU: Just so we understand, in the language where it suggests then that residential mortgage loan application forms, and then this is including the good faith estimate? [LB328]

DAVID OLSON: We would like to strike out all forms and put the specific forms, good faith, truth in lending. [LB328]

BILL MARIENAU: Is this part of the application form or in conjunction with the application form? [LB328]

DAVID OLSON: In conjunction. These would be... [LB328]

BILL MARIENAU: Well, you tack it onto forms there. If this...if you have the identifier shall be clearly shown on, and then strike out all your adjectives. [LB328]

DAVID OLSON: Um-hum. [LB328]

BILL MARIENAU: You get down to forms to include these things. Those go back to forms. Are these part of the forms then? [LB328]

DAVID OLSON: Um-hum, yes. [LB328]

BILL MARIENAU: Okay. But there could be more to it than that, right? [LB328]

DAVID OLSON: Absolutely. [LB328]

BILL MARIENAU: Yeah. [LB328]

DAVID OLSON: But we feel like these specific forms should carry that, at a minimum, have that unique qualifier. [LB328]

BILL MARIENAU: I'm sorry, because the intent is to make sure these things do have it on them, right? Is that the intent? [LB328]

DAVID OLSON: That's correct. That is correct. [LB328]

BILL MARIENAU: Okay. Thank you, Mr. Chairman. [LB328]

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DAVID OLSON: Yes. Thank you. [LB328]

SENATOR PAHLS: Yeah, thank you. Seeing no...questions? Appreciate your testimony...oops, oh, yeah. Senator Pankonin. [LB328]

SENATOR PANKONIN: So...excuse me, sir. Just real quick. If we put this amendment in, are we out of compliance? [LB328]

DAVID OLSON: From...my understanding is no. From what I've just listened to previously, I think we're fine. [LB328]

SENATOR PANKONIN: Thank you. [LB328]

DAVID OLSON: Thanks. [LB328]

SENATOR PAHLS: We have one more proponent. I think the neutral? Okay,... [LB328]

ROBERT HALLSTROM: Chairman Pahls, I'll be brief. My name is Robert J. Hallstrom. I appear before you as registered lobbyist for the Nebraska Bankers Association in support of LB328. I would just note for the record our support to have the state law implemented so that we do not have any prospect of having HUD handing down or forcing anything upon us or enforcing the aftermath of what they might put together. So we would prefer to have clear state regulation and enforcement of the requirements. [LB328]

SENATOR PAHLS: Any questions? Seeing none, thank you. [LB328]

ROBERT HALLSTROM: Thank you. [LB328]

SENATOR PAHLS: That should be the last of our proponents. No opponents? Now we are ready for neutral. Good afternoon. [LB328]

PATRICIA LIGHTNER: (Exhibits 4 and 5) Good afternoon, Chairman Pahls, members of the committee. My name is Patricia Lightner, spelled L-i-g-h-t-n-e-r. I appear today on behalf of HSBC as well as the Nebraska Financial Services Coalition, which besides HSBC is a member of, is also AIG and Wells Financial. It's been a long time since I've testified in front of a committee so if I'm a little nervous, I apologize in advance. While we actually wholeheartedly support the theory of licensing mortgage loan originators with the CSBS S.A.F.E act as drafted, the industry does have some concerns. Because companies like mine...by the way, for those of you that don't know, HSBC is a parent company. We own all of the HFCs and Beneficials in the United States, so we are a consumer lending company and we follow under the S.A.F.E act in that regard. We are not exempt out of it as to be registered. We will be licensed. Our folks will be licensed.

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One of the things that is probably the biggest concern for us in this S.A.F.E. act is the individual mortgage loan servicers that we have operating in our company around the United States. We have five call centers. None of them are based in Nebraska, but they're in different areas around the United States. And they employ, roughly, about 100 folks in each one of them and their job is not only to process and service loans, take payments, things like that, but they also work with homeowners to keep them from going into default. If they are in default to help them work out, redo their loans. They modify the loans. They're not taking applications as you see on page...I had that written down, didn't want to go looking all over for it. Well, I did have it written down. What did I do with it? Here we go. If you look on page 13, line 16, it talks about a mortgage loan originator means an individual who for compensation takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan. Our mortgage loan servicers, they don't take applications. They're renegotiating existing obligation loans. They're readjusting the term, they're trying to lower the payments, they talk to the homeowner, find out what they need in order to stay in the home and be able to make their mortgage loan payments. If this bill is enacted as law, those efforts will be curtailed tremendously. And if this were to be enacted the way it is in all 50 states, it would not exactly shut down but it would be even more curtailed. Because stop and think about it. How are we going to license 500 or more, just my company alone, 500 or more loan servicers in 50 states. It's not going to happen. It's prohibitively costwise. It just can't, can't work, let alone the regulatory burden that that would impose. What's going to happen is, for those mortgage loan servicers, if we can't have the exemption that, by the way, though you do have the five page one, there is also the one page which has been...the language has been remodified somewhat in the bottom paragraph, Individual Mortgage Loan Servicer. It's been a little bit more narrowly construed. It says in the middle of it, it talks about on an existing obligation. So it's clear that we're not making new loans. We are working loans that are already there. Anyhow, if this exemption is left out of the bill, then what will happen is for the state of Nebraska, my company will look overall at the mortgages that we are currently servicing, figure out what percentage Nebraska constitutes. Let's say, it's maybe 1 or 2 percent, maybe 3 percent. They will designate one to three people that will be Nebraska licensed and it will just be those three people that will handle the state of Nebraska. And this will go for all states who do not accept our exemption language. And I don't mean to say that as a threat or anything, by the way, but this is just a fact that this is the way this will have to go for a company like mine, for a company like AIG and Wells. So this will slow down the help that we're trying to give homeowners during this mortgage crisis, the help that they need so desperately now. This is going to slow that down. And, you know, this will be the only way we know to approach something like this. Right now, like I said, we have over 500 servicers that can address any need in any state with any homeowner. They're trained on all our programs. We have a program that literally, we start calling people two, three months out before their rate adjusts on their adjustable rate mortgages and start working with them then. We call them, we say, hey, how you doing, can you make this rate adjustment when it happens? If you can't, we'll work with you. What do you need?

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We'll set you at...we're putting them in a fixed-rate loan so that they know that they're going to be safe and they'll be able to make that mortgage payment. So that is one of our main concerns. And by the way, when you talked about, Senator Christensen, you had the question about are all 50 states going to pass this as is? I can tell you right now. I represent six states. I go around to six states, Missouri, Kansas, Iowa, Nebraska, New Mexico and here. The hearing was held in Colorado just two weeks ago in their House Committee. They had almost every one of these exemptions in their bill. And the only one that they didn't have was the mortgage loan servicers, but they're going to include it. They're either going to do it by rule or they're going to include it as an amendment here when it gets heard on the house floor because they recognize the need and the necessity for mortgage loan servicer exemption. The state of Missouri has the exemption in their law. I visited last week with the Financial Consumer Lending, Finance Bureau Chief, Rodney Reed, in regards to our amendments. They have now included the mortgage loan servicer exemption in their language. He e-mailed me the next day and told me that it would be done. Kansas, did I say Kansas has it, Colorado. What's my other state, Missouri. I guess that's everybody. New Mexico is the only one that we're still working on. So that's the first one that's really the most important to my company at this time. Moving on, if you look at the four or five page handout that was handed to you, the next one down is Character and Fitness. And on the second page you see the bold language which talks about that an applicant's credit score shall not be used as the sole basis for license denial. We included something like this simply to protect individuals who will be trying to become mortgage loan originators. Say these young people that are just out of college, they don't have a credit score. Now whether or not a department will ever use that as a sole basis, you don't know. It's not said so in the language that's currently in the LB382 (SK: LB328) or any of the other CSBS models, acts that are going on. But we feel that if you have that in there, it's a protection for that individual. As we all know, everything is going by a way of the credit score. You know, you want to get an auto loan, you want to get a this loan or that loan, or...and it could be working into,...in fact, I think it is working into some job applications, that they were looking at your credit score when they go to hire you. So we just want to ensure that it doesn't lock somebody out of being in this type of work in certain situations. And then, down to the Provisional Mortgage Loan Originator License, I know that Ms. Herstein expressed some concerns about this. This language is needed for a company like mine. And actually, for any company. How long will it take? We don't know to get someone licensed. But let's say you bring on a new employee when you do, or you bring in an employee that's transferred from another state. Let's start with a new employee. He's hired, he's trained within a week or two. It's probably mostly on the job training. And then he has to go home and sit and wait until he's finished doing all the licensing requirements of the background check. How long is that going to take? Of course, they have to be...you know, they have to go through the educational requirements and that's wonderful. We're all for that. My company...we do a lot of training as employees all the time, all year long. But no one should be denied being able to have a livelihood while they're waiting to be licensed. And so, and of course, the company will need them as

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well. How are we going to be able to run certain branch offices if we don't have anyone that's all the way...has gone all the way through the licensing procedure. And if you look at the language in here, there are safeguards in here. First of all, they have to file the application. They have to pay the fee. They have to have at least somewhat of turning all the documents and requirements for licensure. And then the main protection is, of course, that the company will be solely responsible if that individual does anything wrong or any problems arise during their work while they're on the job while they're waiting to finish that total licensure. And besides new employee, when it comes to transferring employees, we have someone who wants to come home to Nebraska, they've already been licensed in another state, they've already gone through everything. They have that unique identifier and what is the purpose of that unique identifier? It's all about having a national system, licensing system so that we have everybody in the database. Well, we know about that person. If he's being transferred over and he's already gone through all that, maybe he hasn't gone through all the Nebraska requirements, and understandably he still needs to do that. He still needs to do that. But in the meantime, why shouldn't they be provisionally licensed so they can continue to work and provide for themselves and the family? It just kind of makes common sense. Because again, we don't know how long it's going to take to license someone. I know right now, as a matter of fact though, in the state of Indiana they enacted a licensure their last legislative session. And it became effective January 1. Well, evidently they're having problems with the background checks on licensing individuals. And a lot of companies are not operating now at this date, here we are into February, because they haven't been able to get people licensed because the system is so behind with the FBI with doing background checks. So how do you think it's going to get when all these states start putting in all these mortgage loan originators with the FBI? It's going to slow things down tremendously, I'm sure. The only other one that I think that I will address at this point is the Reporting and Oversight which is on the very last page. I did note that in your LB328 towards the back, you do have somewhat of what I call...well, the reporting and oversight, I call it the transparency paragraph. And in that paragraph, or in the one that's in your bill, you somewhat address it. If you look at the language that I have presented, it actually makes things a little more stringent. It provides for a report to be given to the legislative committee that would have oversight, which would be you all. Which I think is important because if you know anything about this act, one of the things that the CSBS has done is they have basically handed you an unfunded mandate. All states are to pay in a certain amount into this system to get it up and operating. I would think you might want to know where those dollars are being spent, how they're being spent, and if they're being spent, if you're overpaying. So it's just a thought, proposal out there, for your, you know, your own edification, I guess. I can bring you up to date a little bit about what's happening around some of the states that are already working on this legislation, if you care to hear. [LB328]

SENATOR PAHLS: Yes. [LB328]

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PATRICIA LIGHTNER: So far the legislation has been filed in 23 states. I can tell you that the state of Kansas, Colorado, doesn't look anything like the CSBS model act. And I know that in the state of Virginia that they have passed out of both their House and Senate Committee the version of the CSBS model act with the mortgage loan servicer exemption included. And I think I've pretty much brought you up all the data on my states where they are with this. And I think that concludes my testimony. [LB328]

SENATOR PAHLS: Yeah, let me ask you a couple of questions. So right now, of your six states, you have Kansas, Missouri, and Colorado. You do not have New Mexico, Iowa, or Nebraska at the moment. [LB328]

PATRICIA LIGHTNER: I do have all those states. [LB328]

SENATOR PAHLS: No, no, I mean that you've already got looking in your direction. [LB328]

PATRICIA LIGHTNER: Okay. At this point the only one that isn't, really is New Mexico. Iowa has included some of our language. And that is the mortgage loan servicer and the character and fitness that was involved that I pointed out to you on the second page. That they're going to go with as well. And then Colorado has the provisional licensing and they have most of everything. Missouri has most of everything. Kansas has everything, the provisional licensing and everything. It's New Mexico and here. [LB328]

SENATOR PAHLS: Okay. How many states would...or how many companies such as yours are there out there that this, if we don't it the way that you're proposing, that would affect other than your company. [LB328]

PATRICIA LIGHTNER: AIG, Citigroup, and actually Wells is actually, even though they are a member of the coalition here and in a number of states, they're now nationally chartered and your laws do not affect them. [LB328]

SENATOR PAHLS: Right. Okay. Well, I'll let other people ask and I'll come back. Senator Langemeier. [LB328]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. Welcome back. I believe last night you were here it snowed and this time you're here it's raining, so I hope you can come back in July about the third. (Laughter) You're a big group and were you part of the discussion when this safe mortgage licensing act was...were you brought to the table to put input in when they were coming up with this model legislation? [LB328]

PATRICIA LIGHTNER: Well, you talk...I believe, I don't believe so, no. We attempted to but it was not received. And since you've brought that up, I would like to point something out about the CSBS model legislation regards to the S.A.F.E. act. And I apologize, it's

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out in my car. I have a copy of it. It's a real simple read. It's like eight pages long and the CSBS model act does not follow that S.A.F.E. act that was mandated down by Congress. They are much more stringent than what was written in the S.A.F.E. act. And I'll give you just the one basic example that I know for sure. On the Mortgage Loan Originator definition, in the (B) part where it talks...no, excuse me, (A), (B), it says takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan. In the S.A.F.E. act it's, takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan. Because of that change in that one word from, to an "or" from an "and", it brought in our mortgage loan servicers. Had that stayed an "an" it could arguably been said that that meant our mortgage servicers were exempted out, because they don't take applications. They merely renegotiate the loans that are already existing obligations. And it's really, I mean, Congress, I think they knew what they were doing because if you followed anything of anything that's going on with this mortgage crisis, they have been mandating us to do these foreclosures, these home prevention, home, whatever, keep your home programs, HOPE NOW. That's it. HOPE NOW is one of the programs. They've been mandating the companies like mine to assist homeowners that are in default or going into default. Do whatever you can do, which we've been trying to do. We've run our programs by them. They know what we're doing. And then on the other hand, they pass the S.A.F.E. act and they say, okay, we want you licensed. So I don't think that they were trying to lock us out of being able to do what they've been mandating us to do at the same time. Yet it's been interpreted that way by CSBS, so. [LB328]

SENATOR LANGEMEIER: In your testimony you make me nervous when you say Congress knew what they were doing. (Laughter) [LB328]

PATRICIA LIGHTNER: Well, yeah, that's okay. It makes me nervous too. I go with that. [LB328]

SENATOR PAHLS: Senator Pankonin. [LB328]

SENATOR PANKONIN: Thank you, Chairman Pahls. Was it Likener? [LB328]

PATRICIA LIGHTNER: Lightner. [LB328]

SENATOR PANKONIN: Lightner. When you said it when you first came forward that you represent HSBC and what was the other... [LB328]

PATRICIA LIGHTNER: Well, I said I was also here on behalf of the Nebraska Financial Services Coalition. Walter Radcliffe is our association lobbyist. [LB328]

SENATOR PANKONIN: Okay. And that consists of folks like Beneficial and Household Finance, or... [LB328]

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PATRICIA LIGHTNER: Well, HSBC owns Beneficial and Household Finance, so yes, it's part of it. [LB328]

SENATOR PANKONIN: So it's kind of like the same thing. [LB328]

PATRICIA LIGHTNER: Yes. [LB328]

SENATOR PANKONIN: All right. And Senator Utter asked me a little bit...I mean, HSBC is an international bank that's headquartered... [LB328]

PATRICIA LIGHTNER: In London, actually. [LB328]

SENATOR PANKONIN: In London. [LB328]

PATRICIA LIGHTNER: But our North America headquarters is here in Chicago. [LB328]

SENATOR PANKONIN: Okay. Now, out of those institutions or offices you mentioned, how much business do you do in Nebraska? Do you have any idea in numbers of loans, or volume? [LB328]

PATRICIA LIGHTNER: Oh, yes, I do. As a matter of fact, I can tell you that we have, well, we have six branch offices. We have 35 employees and we service 378,070 customers, we have. [LB328]

SENATOR PANKONIN: In Nebraska? [LB328]

PATRICIA LIGHTNER: In Nebraska, number of customers, yes, sir. Yes, Senator. [LB328]

SENATOR PANKONIN: Okay. That's what I was interested in. Thank you. [LB328]

SENATOR PAHLS: Senator Utter. [LB328]

SENATOR UTTER: Can you describe...I get the feeling from your testimony that you honestly don't feel that this...that there's anything in here that is really necessary. So can you describe for me what the licensing, the training, the background of the people that you hire to not only take applications but to service these applicants? What kind of a training regime do they go through? [LB328]

PATRICIA LIGHTNER: Are you talking about just HSBC and... [LB328]

SENATOR UTTER: Yeah, I'm talking about your company. [LB328]

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PATRICIA LIGHTNER: When we...for HFC and Beneficial? Okay, I'm a little weak on this but I'll do my best. I know that I had a background check, my credit score pulled, and I think that they all have the same thing. They're checked for...well, you have for felonies, and for pretty much what you see in the licensure bill of foreclosures, and you know, have you been a good financial caretaker of your own finances? The training is...it's pretty extensive, anywhere you are in the company, Senator. [LB328]

SENATOR UTTER: So how long does it take to go through a trainee program? [LB328]

PATRICIA LIGHTNER: I think that they train for something like probably close to two or three weeks. And then they're continually training on the...and that's not in the branch yet. Then they're continually being trained in the branch and that is either they go to centers to do training up for the specific...you know for the specific branch detail of probably a couple of times a year. They take numerous Internet courses. So it's an ongoing thing with HSBC. [LB328]

SENATOR UTTER: So do you, you and this process of continued employment with your company run into originators or servicers that are overly aggressive in terms of stretching the company's rules? [LB328]

PATRICIA LIGHTNER: You know, I have known of one instance since I've been with the company. I've been with the company four years and they had a servicer, and I wish I could remember what he was doing, but he was...it was kind of funny, but it was not good. And they caught on to him and he was out the door immediately. But that's the only instance that I have been aware of, quite honestly. I mean...(inaudible) [LB328]

SENATOR UTTER: So do you have a lot of vacancies in the company for...is there a lot of job openings available with your company right now, or...? [LB328]

PATRICIA LIGHTNER: Well, actually, Senator, we've cut back tremendously. When I started with the company four years ago we had almost 1,500 HFC Beneficial offices nationwide. We are down to 700. We've had department cuts across the board. Over the last year, I think they've done that twice now. So our numbers are down. I do not know the exact population number in the company in the United States at this point. But are there vacancies? Not that I'm really hearing, but there will be a concern when there is vacancies as this licensure gets going. Simply from the fact of, from the standpoint of, you know, like I said, how long will it take? And in the meantime, do these people have to sit idle? And do we have to close branch offices? How do we service our customers if they want to come in and make a loan payment? I mean, because a lot of them do. And one of the things that has struck me, because I have visited a number of my branch offices, is I'm in there and when some of these customers come in, they're are on a very first name basis with their customers. I mean, they know who they are and everything

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and they deal with them and take care of them. So...but one of the things that is very important in my company as I'm sure it is in my other competitors' companies, is our name brand. We're very proud of our name brand and protecting that and making sure that we are good corporate citizens and we treat our customers fairly. So it's something we strive to do. [LB328]

SENATOR UTTER: Thank you. [LB328]

SENATOR PAHLS: Senator McCoy has a question for you. [LB328]

SENATOR McCOY: Thank you, Senator Pahls. And Ms. Lightner, I have a question in regards to some earlier testimony. Due to compliance with the S.A.F.E. act, you had mentioned the six states that you are involved in, and I guess my question to you would be, those states that have adopted all or parts of your proposed language and verbiage, can you address for us, please, how that will sit as in compliance with S.A.F.E.? Are all those states going to be now compliant with the S.A.F.E. act, or does the adoption of that language put them out of compliance as has been described in earlier testimony that we would now be, or would be in noncompliance if we were to adopt this language? [LB328]

PATRICIA LIGHTNER: Well, how can I put this? You hear about the fact that, oh, if you don't do this exactly the way it is in this model act, HUD's going to come get you, you know, they're going to take you over. The gentleman I know in my department who has been dealing with HUD and with CSBS trying to do, says, and who...the people he knows at HUD and everything, they don't want to take over any of the states, they don't. And to think that all 50 states are going to adopt the CSBS model act without making any amendments, that's so unrealistic. As a former legislator, I never saw it happen in the couple of these uniform bills that were going across the United States. I never saw it happen that way. But is it out there? Of course, it's always out there. Because supposedly it's been said, but I will tell you that I haven't seen any letter from HUD saying that if you don't do it our way, we're going to, we're going to take over your state. [LB328]

SENATOR McCOY: Well, I guess that doesn't quite specifically answer... [LB328]

PATRICIA LIGHTNER: I'm sorry. Then ask it again if I didn't answer your question. [LB328]

SENATOR McCOY: ...what I asked for. In the four states as I understand it and correct me if I'm wrong, it'd be the state of Kansas, the state of Missouri, the state of Colorado, and the state of Iowa would be the four that are adding in at least partial provisions of your proposed language. It's my understanding that HUD would be having to set up a system for licensing loan originators in those states that don't, that are in

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noncompliance. So my question to you would be, those four states that you've indicated are adopting partial provisions, is HUD in the process of setting up noncompliance programs or will they be? [LB328]

PATRICIA LIGHTNER: No, I have not heard of that. Not at all. Not at all. And I think where HUD says they're going to totally...the one thing I know for sure is where HUD says they're going to totally come in and take you over is if you pass no legislation. If you don't pass a S.A.F.E. act bill, this Legislature. Because that you are mandated to do by law. Okay. So as far as then not being in total compliance with the CSBS model, you put in these other exemptions, you know, then they might want to come in and run your state in that regard, I don't...the licensure system. But again it's down, when you get down to the reality, do you really think a federal government agency is going to want to take over one, two, so many states, and take over their licensing for mortgage loan originators? And by the way, here is something I meant to add. The Iowa, the exemption, the individual mortgage loan servicer exemption that Iowa has agreed to add, I'm sure that Mr. Reed was not able to say that they were going to be able to do that unless he ran it by his banking supervisor, Thomas Gronstal. Mr. Gronstal, I believe, sits on the board for CSBS. [LB328]

SENATOR McCOY: Okay. I guess and to boil what you're saying down, so the state of Kansas, the state of Missouri, the state of Colorado, and the state of Iowa will all be fully compliant with the S.A.F.E. act. [LB328]

PATRICIA LIGHTNER: They're going...you want me to make that determination in sense of saying, well, I'm going to say, well, of course they are, because they're going to pass a bill that's going to license mortgage loan originators, that's going to have the terms set out as it's going to comply with the S.A.F.E. act. If you read the S.A.F.E. act, it is not anywhere near as stringent as the CSBS model bill is. So kind of the question, don't you think, Senator, might be, does it comply with the S.A.F.E. act? I mean, the model act that CSBS has put forth wasn't passed by Congress. The S.A.F.E. act was. [LB328]

SENATOR McCOY: Okay. Thank you. [LB328]

SENATOR PAHLS: It appears that we need to probably talk to the banking department, and you've been in, I'm sure, you've been discussing your issues with them in the past. [LB328]

PATRICIA LIGHTNER: Yes sir, we have. I did not have the amendment language when we met in November at that time. I didn't get it until late December. I believe they filed their bill two days before Christmas so I haven't had...I do know when it comes to the provisional licensing that our lobbyist Walt went and met with the department over that language two weeks ago, something like that, ten days ago, somewhere in there.

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[LB328]

SENATOR PAHLS: Okay. Well, it sounds like we do need to do a little more talking to the department because, I mean, I'm getting mixed signals from, you know... [LB328]

PATRICIA LIGHTNER: I understand. [LB328]

SENATOR PAHLS: Okay. Any other questions? We thank you. [LB328]

PATRICIA LIGHTNER: Thank you. Thank you, committee. [LB328]

SENATOR PAHLS: Any other testifiers? If not, that closes the hearing on LB328. Thank you. [LB328]

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Disposition of Bills:

LB113 - Placed on General File with amendments.

LB328 - Placed on General File.

LB428 - Held in committee.

Chairperson

Committee Clerk