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Banking, Commerce and Insurance Committee  
January 25, 2010

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[LB738 LB762 LB814]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, January 25, 2010, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB738, LB762, and LB814. 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: Good afternoon. I want to welcome you to Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls, and I have the pleasure of being the chair of this committee. I'm from Omaha, Nebraska. The committee will take up the bills as they are posted: LB738, LB762, and LB814. And what I'm going to do is help make these meetings move along and keep the crowd out there calm. I like to have you take a look at some of our procedures that we have on the side. Most of these you've heard before, but what I'm going to ask you to do is make sure when you do come forth, you do spell your name and, again, be to the point. And if you have material that needs to be handed out, we need at least ten copies. And if you do not have that, I'll have one of the pages running some copies off for you. The man to my right is Bill Marienau. He is the counsel and all the way over there, as many of you know, is Jan Foster who is the committee clerk. What I'm going to do now is I will have the committee members introduce themselves, starting with Senator... []

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

SENATOR PANKONIN: Dave Pankonin, District 2; I live in Louisville. []

SENATOR LANGEMEIER: Chris Langemeier, Schuyler. []

SENATOR PIRSCH: Pete Pirsch, District 4 in Omaha. []

SENATOR McCOY: Beau McCoy, District 39, Omaha. []

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

SENATOR PAHLS: Okay, and I think Senator Christensen was here, wasn't he? []

SENATOR GLOOR: He got pulled out for just a second. []

SENATOR PAHLS: Okay. And our pages, we have at least one back here is Abbie Greene, and she's from Omaha. And Alex, the man coming right in is...Alex DeBrie is all the way from Scottsbluff. As you can see, we are statewide when we come to our pages, from one end of the state to the other. I think we are ready to begin with our

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hearing, and the first one will be LB738. Senator McCoy, the floor is yours. []

SENATOR McCOY: Thank you, Chairman Pahls and good afternoon, members. I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District in the Legislature, and I'm here to introduce LB738. LB738 would clarify existing law under the Nebraska Trust Deeds Act relating to the issue of substitution of trustee. The legislation would expressly provide that there is no requirement for a beneficiary under a trust deed in connection with recording of a substitution of trustee to provide notice of the substitution by mail, personal service, publication, or in any other manner to the trustee being replaced. The bill would further establish that any recorded substitution of trustee filed for record prior to the effective date of the legislation without having provided such notice will not be deemed incomplete or defective because such notice was not provided. And I believe we have Bob Hallstrom from the Nebraska Bankers Association here with us this afternoon, and he can certainly go into more detail that is required. With that, I will entertain any questions if there are any. [LB738]

SENATOR PAHLS: Seeing none. Senator, first proponent. [LB738]

ROBERT J. HALLSTROM: (Exhibit 1) 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 testify in support of LB738. Senator McCoy has appropriately described what the bill is designed to do. What I'd like to do is give you a little bit of historical background to give you an idea of why we're here. When the Trust Deeds Act was initially enacted, the provision of law that we're amending under LB738 never has provided a specific directive on the face of the statute that notice must be given when a trustee is to be substituted. When we look at a deed of trust, we've got a number of parties involved; we've got the lender who becomes the beneficiary. We have a trustee that's appointed, and we have the trustor who is the borrower. From time to time, the lender may decide as beneficiary that there is a need to replace or substitute the original trustee. That might happen over something as simple as the attorney who was designated as the trustee, retires and goes out of practice or moves out of the area or if a foreclosure is required perhaps that original trustee is not well versed in the foreclosure proceedings, the nonjudicial foreclosure proceedings associated with a trust deed, and so a replacement trustee or substitute trustee will be designated. When the statute was initially enacted, as I indicated earlier, there was not an express requirement to provide notice when you did substitute for the original trustee. However, there was a provision that said the substitution of trustee which must be recorded with the Register of Deeds had to be accompanied by an affidavit acknowledging that you had given notice or that you had published notice that had been provided to the trustee. Back in, I believe 1997 if I'm correct, back in 1997 we removed the affidavit requirement. What's transpired since that time is kind of a mixed bag of treatment by practicing attorneys. Some read the statute and say maybe I still have to give a notice to the trustee when I record that substitution; others have not. The NBA was approached this

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summer and suggested that the notice to the trustee being substituted does not really provide any meaningful purpose, and, therefore, we ought to clarify the law by removing that particular provision of law and clearly stating so in the statute. So what LB738 does, as Senator McCoy indicated in his opening, is to clearly remove any notion, implication, or otherwise that notice must be given in any manner to the trustee being replaced and then to grandfather or protect any prior transactions. It also clearly provides that any failure to give notice on substitutions that are recorded prior to the effective date of LB738 should it be enacted into law will not be deemed to be incomplete or defective in any fashion. So with that truly a technical bill, be happy to address any questions that you might have. [LB738]

SENATOR PAHLS: Do I see any questions? Senator Langemeier. [LB738]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. Thank you, Bob. When we talk about the notice, you're talking about just the notice that you're sending to the trustee. You would still file of record that the substitute trustee at the courthouse... [LB738]

ROBERT J. HALLSTROM: Correct. [LB738]

SENATOR LANGEMEIER: ...so the chain of title could be... [LB738]

ROBERT J. HALLSTROM: Nothing is being changed in connection with having to record that document. [LB738]

SENATOR LANGEMEIER: Okay. You're just talking about notice given to the previous trustee. [LB738]

ROBERT J. HALLSTROM: Exactly. [LB738]

SENATOR LANGEMEIER: Okay. Thank you. [LB738]

SENATOR PAHLS: Senator Pirsch. [LB738]

SENATOR PIRSCH: Is there any helpful role that such a following does play with original trustees...not the successor trustees. In other words, with respect to, I don't know, billing or understanding that they're off...they're no longer providing services. Is that...? [LB738]

ROBERT J. HALLSTROM: I haven't found that to be the case in the transactions that I'm involved with. Generally, there is a request or some communication that goes forward. It's just that you avoid the necessity of having to provide that notice and actually, Senator, since we removed the affidavit requirement, it even raises the specter that somebody might question, did you or did you not actually provide the notice? And

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so this just clears the water and puts it in play that the notice is not required conclusively. It cleans up any potential technical defects or challenges to prior substitutions that didn't have the notice accompany it and establishes the law in that fashion going forward. [LB738]

SENATOR PIRSCH: Great, thank you. [LB738]

SENATOR PAHLS: Seeing no more questions, thank you, Bob. [LB738]

ROBERT J. HALLSTROM: Thank you. [LB738]

SENATOR PAHLS: Any more proponents? Opponents? Neutral? Closing? Senator McCoy waives closing, so that concludes LB738. The next bill up on the agenda is LB762. [LB738]

SENATOR PIRSCH: Chairman, whenever you're ready. []

SENATOR PAHLS: Thank you, Senator Pirsch, members of the committee. My name is Rich Pahls, P-a-h-l-s, and I represent District 31. LB762 would create a more flexible rule in our statutes to be applied by the Department of Banking in determining whether a business or other organization can use the word "bank" or a derivative of that word "bank" in its title or description of its business activity. LB762 would amend section 8-113 which currently provides that no individual firm, company, or association other than a bank, building and loan association, savings and loan association, or savings bank shall use the word "bank" or any derivative of the word "bank" in its title or description of its activity. Section 8-113 also currently contains an exclusive list of exceptions to which this blanket provision does not apply. If a business or other organization cannot fit into one of these exceptions, it is subject to the blanket provision even if there's no reasonable likelihood that the public would be confused by the word "bank". The current list of exceptions have been amended in 2004, 2005, 2007, and 2009. LB762 would add a new general rule that the blanket provision on the use of the word "bank" does not apply if such use is unlikely to mislead or confuse the public or to give the impression that the business or association is lawfully organized and operating as a bank or other financial organization. Enactment of this new standard should reduce need for legislation to keep reopening this section in order to create yet another exception. Last year, for example, LB32 enacted a new exception for businesses which sponsored incentive-based solid waste recycling programs which issued reward points or credits to persons for their participation in that program. A New York company called Recycle Rewards wanted to do business in Nebraska under the tradename Recycle Bank. That name violated the blanket provision and none of the specific exceptions was applicable. That necessitated the enactment of LB32 even though it was unlikely that anyone would confuse a recycling business with a bank. The new general rule in LB762 would allow a little wiggle room in this blanket provision. If you wanted to start up a

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business called the Left Bank Bistro or the Bank Shot Pool Hall, the current law could possibly trip you up. However, the new general rule would mean that the Department of Banking would not have to take action against you because it is unlikely the public would be misled or confused and think that a bistro or pool hall is a bank. Finally, section 8-113 currently provides an exception from the blanket provision on use of the word "bank" for section's 502(c)(3) organization. LB762 would not disturb that section exceptions except to provide that it would not apply if the organization provides or arranges for financial services. Section 501(c)(3) organizations should engage in charitable and similar activities and should not act as fronts for financial operations. This addresses a matter that gave rise to the introduction of LB88 which is currently on Select File. Under the bill, the section 501(c)(3) exceptions would still apply to the intended organizations such as food banks, blood banks, eye banks, etcetera. Of course, organizations such as these would be benefitted by the new flexible general rule in the bill as well. LB762 would provide for some reasonable flexibility in the administration of the law governing the use of the word "bank" without allowing for confusion of the public. It would also eliminate the need for legislation to keep reopening this section to add yet another exception. I urge you to advance this bill, and I do think we have some people speaking behind me who would probably give some more clarity to it. [LB762]

SENATOR PIRSCH: Thank you, Chairman Pahls. You've just heard the opening of LB762. Are there any questions from committee members for Chairman Pahls? Senator Langemeier. [LB762]

SENATOR LANGEMEIER: Vice Chairman Pirsch, thank you. Chairman Pahls, thank you. In my tenure of my legislative career, I've had the opportunity to sit on Banking, Commerce and Insurance Committee my entire life in the Legislature, and the use of the word "banking" has probably been the most lobbied issue I've been lobbied on since I've been here within this committee. If we advance LB762, we put that lobbying pressure on the Department of Banking... [LB762]

SENATOR PAHLS: Right. [LB762]

SENATOR LANGEMEIER: ...and their director. [LB762]

SENATOR PAHLS: Right. [LB762]

SENATOR LANGEMEIER: Is there a feeling that the protection of the word "bank" is much more easy to lobby one individual as a director than it is to lobby this committee into the future for the use of the word "bank"? [LB762]

SENATOR PAHLS: Well, I do think it may put some additional pressure on the banking department, but I do believe we have a strong enough department who could handle

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that pressure. And I think with the general guidelines that we are giving them, I think they can find out, this is pretty obvious this is not going to be a bank or interfere with banking. But I think they're going to speak to this issue following me, so they could probably give you more information. [LB762]

SENATOR LANGEMEIER: Very good. Thank you. [LB762]

SENATOR PIRSCH: Very good. Any other questions for Chairman Pahls? Seeing none, we will move on to proponents of LB762. [LB762]

ROBERT J. HALLSTROM: (Vice) Chairman Pirsch, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you again as a registered lobbyist for the Nebraska Bankers Association to testify in support of LB762. As Senator Pahls suggested, the Bankers Association had another bill introduced last session by Senator Pahls, LB88, which got caught in the crossfire of the legislative angst over having these issues arise time and time again and year after year. We believe and worked with the counsel for the committee over the summer along with the banking department that we have now established standards that will continue to protect against entities that come into our state or operate in our state and attempt to conduct banking business when they should not and are not authorized by their charter either federally or state chartered to engage in that type of business. So we think the traditional protections over which some of that lobbying in the past, Senator Langemeier, would have occurred are still on the face of the statute. What LB762, however, should do to take this out of the venue of the Legislature and perhaps not even result in that much extra business for the department is establish a standard where we don't have to require businesses like the recycle bank or the Lincoln Food Bank or the Lincoln Blood Bank to worry about having to come in to get a specific exemption because they're clearly not operating as a banking business nor are they seriously misleading or deceiving the public to think that they are operating as a banking business. So with that, we'd encourage the committee to advance the bill and put an end to all of this madness. [LB762]

SENATOR PIRSCH: (Laugh) Thank you. Senator Christensen, you had a question. [LB762]

SENATOR CHRISTENSEN: Thank you, Senator Pirsch. Thank you, Bob. Will this affect the...oh, how do I want to put this? Will this affect the guys in the pool hall that do the money exchanging on the bets and servicing of the pool games? [LB762]

ROBERT J. HALLSTROM: I don't believe so. [LB762]

SENATOR CHRISTENSEN: That won't make any difference on them? [LB762]

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ROBERT J. HALLSTROM: Obviously, it might depend on what type of name they're using, but that would then be up to the department if they're misleading or deceiving the public in any fashion. [LB762]

SENATOR CHRISTENSEN: (Laugh) Thank you. [LB762]

SENATOR PIRSCH: Any other questions? Seeing none, thank you very much, Mr. Hallstrom. [LB762]

ROBERT J. HALLSTROM: Thank you. [LB762]

SENATOR PIRSCH: Are there other proponents of LB762? Seeing none, we'll move on then to opponents. Anyone here to testify against the bill? Seeing none, anyone here to testify in a neutral capacity for LB762? Good afternoon, Director, and whenever you're ready to start, just begin. [LB762]

JOHN MUNN: (Exhibit 1) Acting Chairperson Pirsch, members of the Banking, Commerce and Insurance Committee, my name is John Munn. Last name is spelled M-u-n-n. I'm Director of the Nebraska Department of Banking and Finance. I'm appearing today on behalf of the department in a neutral informational capacity regarding LB762. The department enforces section 8-113. Over the years, a wide variety of companies have used or attempted to use the word "bank" or a derivative of the word either as part of their name or to describe their business. We contact companies that appear to be in violation of the statute, require the submission of proof that they are eligible to use the word "bank" and if they are not eligible, have the authority to order corrective action under section 8-1,134 of the Nebraska Banking Act. The long-standing position of the department has been that section 8-113 provides a bright line test that contributes to clear and effective enforcement of the statute. As such, the department has not been in favor of broadening the statute unless an amendment was in the form of a very narrowly drawn exception such as that granted for food banks and blood banks. At the same time, however, we are cognizant of the Legislature's concern that, in recent years, the statute has been the subject of a number of legislative bills and recognize that those bills may be the signal that this is the appropriate time to adopt a standard that is less than black and white. The department expects that time spent on enforcement will increase because there will be more challenges under a "not misleading or confusing standard" than under current law. These challenges are expected both from non-banks that will believe they can fit under the standard and from banks who will think the opposite. At this time, we believe our current resources can absorb the additional enforcement. I hope this information is helpful to the committee. I'll be happy to answer any questions. Thank you. [LB762]

SENATOR PIRSCH: Are there any questions for the Director? Yes, Senator Utter. [LB762]

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SENATOR UTTER: Thank you, Senator Pirsch. Director Munn, somebody that would disagree with your ruling in the department...is there recourse or and if there is, what is it? [LB762]

JOHN MUNN: They would have the ability, if we felt that they were violating the statute, and they did not agree to anything that we thought was an acceptable compromise, we could issue a show-cause order which would provide them the opportunity for a hearing in front of me. If they were dissatisfied with the results of the hearing, they could then go to district court. [LB762]

SENATOR UTTER: Thank you. [LB762]

SENATOR PIRSCH: Any other...Senator Gloor, do you want to...? [LB762]

SENATOR GLOOR: Thank you, Vice Chairman Pirsch. Director Munn, a reference was made to a pool hall. Would you think that someone who called themselves "The Bank Shot Billiards Parlor" would be within the purview of what you should be...who you should be contacting for enforcement or is there, in fact, some black and white on this? [LB762]

JOHN MUNN: This would be my first opportunity to be a gauger of public opinion (laugh). [LB762]

SENATOR GLOOR: Hmm, interesting. Thank you. [LB762]

JOHN MUNN: (Laugh) With the passage of LB762, you know, it would seem, you know, signage has been something that is most often drawn, maybe not our attention, but the attention of a financial institution to the sign. We had a situation in Fremont not too long ago, and the signage was eventually taken down about offering banking services. So the situation that you describe, probably pretty black and white. [LB762]

SENATOR GLOOR: Thank you. [LB762]

SENATOR PIRSCH: Any other questions? Just one. When it says...this is my question, in terms of misleading or confusing the public, that would apply even if the signage level, I understand, I'm just, off the top of my head, drawing an example. Perhaps a sign that said, you know, Coldwell Banker which is, as we know, a real estate group which may or at least have the potential to make someone think that perhaps they're regulated. I mean, how would that be...how would that standard mislead and confuse the public if maybe they thought that a bank was standing behind, you know, when the entity if they were approached or solicited by Coldwell Banker for real estate services. How would that be applied...I mean, is that clear at this point of time when you're

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applying the new standard which isn't bright line, but mislead or confuse. How would...?  
[LB762]

JOHN MUNN: That it might give the appearance that it was a bank subsidiary? [LB762]

SENATOR PIRSCH: Well, if you're...hey, let us market your real estate or something of that sort and letterhead from Coldwell Banker and the signage or whatnot leads you to...I mean, is there a possibility that that would be believed, you know, as you're being marketed to utilize those services that there's a regulated bank behind that or how would that...how would that...how would that standard...new standard apply to something like that if you have any thoughts? [LB762]

JOHN MUNN: Um-hum, um-hum. In regard to the specific example you put forward, that was addressed prior to my watch as far as Coldwell Banker is allowed, and I forget if it was because it was grandfathered or if a decision was rendered as far as the permissiveness of the use. You know, I think you're talking about the gray area...  
[LB762]

SENATOR PIRSCH: Yeah. [LB762]

JOHN MUNN: ...that we've got. You know, is the...and that's a situation that I think or the situations we supervise would probably alert us to, if they felt that their name was being used to somehow lend support to the activities of an entity that did not provide financial services. [LB762]

SENATOR PIRSCH: I see. Okay. Well, thank you very much for your comments. Any other questions? Seeing none, thank you very much. Is there any other individual here to testify in a neutral capacity with respect to LB762? Okay. Seeing none, Chairman Pahls, would you like to close? [LB762]

SENATOR PAHLS: Just a couple of statements. We have the NBA saying they support it, and we know we have a competent department. And here's an example today. One of the reporters came to me, and he says, Rich, we thought that you talked about the banks, and I think you were there, Senator Langemeier, last year. What's the issue this year? So I think this will give a chance to put this to bed instead of always having to come back. Thank you. [LB762]

SENATOR PIRSCH: Thank you very much. Oh, we do have a question for Senator Pahls. [LB762]

SENATOR CHRISTENSEN: Following up Senator Pirsch's last question, you know, we have exempted Coldwell Banker or yeah, Coldwell Banker's as a realtor before, but that's a very misleading name now with this language and not having them personally

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exempt. Couldn't you literally walk in, think that's a banking institution, and you've misled the public and literally forced that name change now because it is misleading to look at that name when we exempted it before? But if you're just using this current language, now to me, that throws that organization at risk. [LB762]

SENATOR PAHLS: But, again, I think if you would read it, you would find out why the rules of the game here, that wouldn't be misleading. The NBA would say hey, this is misleading. The bank department would go out there and check it out, and I know this is in the past, and I don't have the history there. I think you have to rely on the expertise of the NBA being on the lookout and then also as a department to, you know. [LB762]

SENATOR CHRISTENSEN: So basically, the way this is applied then is even if somebody is confused and walk in and thought it maybe was a bank that just moved to Nebraska, since it isn't, even if they grumbled about it, they would say, well, it's not operating like a bank so it's exempt and it would be done? [LB762]

SENATOR PAHLS: Right, yeah. So that's a...I would say...and the department, you know they would follow up. This is not something...if they found recycle bank, if they found that to deal with, it wouldn't take long for...and I'm...and I'm commending them for their ability to be watchdogs. [LB762]

SENATOR CHRISTENSEN: Yeah, I understand that...we understand that. I just didn't know who approves the point to mislead, and it is misleading for an individual to walk in, but it's not misleading from the business side. I guess that's why I was asking which... [LB762]

SENATOR PAHLS: But I think if I...just recalling what the Director said, you know, you have a hearing in front of him and then you could go to court if you're in disagreement with that. [LB762]

SENATOR CHRISTENSEN: Thank you. [LB762]

SENATOR PAHLS: Okay. [LB762]

SENATOR PIRSCH: And thank you for the...and I note that in the bill the...businesses that have been using the term "bank" since 1975, that there is that exception. They can continue to use that, so Coldwell Banker would not be affected, that particular one, by this bill. [LB762]

SENATOR PAHLS: Right. And just to bring back some (laugh)...some of the things in the past. That was a Ralston company that we had to deal with 75...I mean, it's amazing the little hurdles that we've had to jump on this issue. [LB762]

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SENATOR PIRSCH: Sure. Any other questions for the chairman before we conclude? Okay, that wraps up the hearing for LB762, and I will pass back the chair to Chairman Pahls for LB814. [LB762]

SENATOR PAHLS: Thank you, Senator Pirsch. I think we are ready for...the floor is yours, Senator Gloor. [LB814]

SENATOR GLOOR: Thank you, Chairman Pahls, fellow committee members. My name is Mike Gloor, G-I-o-o-r, and I think you'll find this sadly to be something other than a technical bill. Over the last year, I've met with the Department of Insurance and the Department of Banking in an effort to assist constituents who were affected by a certain business within my district that went into bankruptcy. Whether the company's business practices were legal or not is yet to be determined by law enforcement of the courts. This bill was created to protect potential future investors from a repeat situation, and I appreciate the work of the Department of Banking in creating this possible solution. LB814 would amend the small securities exemption section of the Securities Act of Nebraska. The statute is a transactional exemption from registration requirements of the act for small security offerings. With the current exemption, sales of securities may be made to no more than 15 persons during any period of 12 consecutive months. That's the current exemption. However, sales to accredited investors, existing shareholders, and employee benefits plans are not counted in the 15-person total. It was this exemption that was taken advantage of by affiliated companies making repeat filings that resulted in an inappropriate exemption. This led to sales to more than 15 shareholders with large dollar amounts raised, in fact, well over a million dollars. Dishonest business practice ultimately led to eventual business failure and large losses for shareholders. Here is what the bill is proposing. LB814 will provide the department with more effective monitoring tools after thresholds of funds or times reached. Therefore, LB814 provides the threshold point at which additional filings would be required. Essentially, it will be when the offerings begin to look more like public offerings rather than private offerings. That specifically will be a threshold of five consecutive years of offerings or...and it's or one million in securities sold. Meeting this threshold would trigger submitting audited financial statements for the companies involved and a list of sales to investors and shareholders. This reporting requirement should give the department better monitoring tools and will also better protect the investing public. The overall impact on the number of small businesses affected should be very minimal, and I'll give you this as some specific numbers by way of reassurance along these lines. Of the 122 filings for this exemption in 2009, only seven were repeat filers. LB814, therefore, seven were repeat filers. I've got some additional information I want to add. Of the seven refilings, four filed twice, and two are on their third consecutive filing. Only one has been filing consecutively since 1999 and, therefore, would meet the five consecutive years that this proposed exemption would correct to. I'm happy to answer any questions, but Director Munn of the banking department will be following me, and I will defer to his breadth of experience if you have technical questions. But, of course,

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I'm happy to answer any questions you might have. Thank you. [LB814]

SENATOR PAHLS: Senator Pankonin. [LB814]

SENATOR PANKONIN: Thank you, Chairman Pahls. Senator Gloor, if this bill or law change would have been in effect, how do you foresee it would have changed the situation you had in Grand Island? [LB814]

SENATOR GLOOR: Well, it should have caught them. But, of course, a comment was made as we sat down and discussed this just beforehand is there's no way to legislate somebody who's going to be untruthful. But in reality, this organization ultimately had over...I think around a hundred million in losses or losses as a result of investments that supposedly came in. The one million dollars in and of itself should have caught them at some point in time. I do not believe from what I recall that the five consecutive years would have, but certainly the dollar amounts would have. [LB814]

SENATOR PANKONIN: Amount would have triggered more scrutiny. [LB814]

SENATOR GLOOR: Yeah. And what it would have triggered would have been an audit as well as a listing of who they'd have sold to. The audit, hopefully, would have discovered the dollar amounts and having a list of people who had been sold to, there were some complaints that were called in with that list of people who had been sold to, the department would have had other names they could have contacted to find out how others felt about it or how others had been treated...amounts of investing of others. So it would have been helpful too. [LB814]

SENATOR PANKONIN: Thank you. [LB814]

SENATOR GLOOR: And I know that's an area of interest to you from other legislation you've introduced. [LB814]

SENATOR PAHLS: Seeing no more questions, thank you. Proponents? Floor is yours, Director. [LB814]

JOHN MUNN: (Exhibits 1 and 2) Chairperson Pahls, members of the Banking, Commerce and Insurance Committee, my name is John Munn. Last name is spelled 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 LB814 which was introduced at the request of the department. This proposal would amend section 8-1111(9) of the Securities Act of Nebraska. Section 8-1111(9) is known as the small offering exemption and was designed to allow businesses to generate capital without the filing of expensive securities registrations. The requirements for claiming the exemption include the limitation that Senator Gloor discussed of sales to 15 persons in Nebraska during any

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period of 12 consecutive months. In addition, the securities must be purchased for investment and not for resale. Commissions cannot be paid for solicitations except to a registered agent of a registered broker-dealer. No general or public advertisements or solicitations can be made; and the seller must file a notice with the department within 30 days after the first sale which generally describes the terms of the transaction and representing that the conditions of the exemption will be met. The small offering exemption is, and has been, very useful for small businesses, particularly those in the start-up phase. It has also been useful for communities which faced the loss of a business important to the community. In those instances, residents came together to invest in the business so that it could continue operating. As you know, the loss of one business in many Nebraska towns can have a devastating effect on the community's future. Conversely, the addition of one new business can provide a jump start to the community's economic health. The importance of this exemption for raising capital with minimal expense, therefore, cannot be underscored. Senator Gloor has advised the committee of the 122 filings the department received in 2009 under this exemption. The filings came from across the state, with companies in communities as diverse as Morse Bluff and Scottsbluff seeking investors. I have attached an exhibit to my testimony that provides information about these 2009 filings. While section 8-1111(9) has facilitated the creation and sustained operation of many Nebraska businesses, events over the past year involving affiliated Grand Island companies, which will likely result in substantial investor losses, show that under certain circumstances additional regulation in this area is necessary. The small offering exemption allows for the unlimited raising of capital and it permits repeat filings and new sales once a 12-month period is completed. As Senator Gloor described, two of the provisions of the exemption, if used on a continuous basis, can lead to a fairly rapid growth in the number of investors and the amount of funds raised. If unchecked, the companies may be ripe for unsavory practices and even fraud. LB814 will add the condition that once an issue raises one million dollars or files claims of exemption continuously for five years, the issuer must file a sales report and audited financial statements with the department. The sales report would allow the department to check the veracity of the previous filings because it would include the names and addresses of investors and the amounts of their investments. Audited financial statements prepared by an independent financial professional would provide an accurate review of the company's books and records for investors and the department. LB814 would also require subsequent filings with the department. Submission of a new sales report and current audited financials would need to be repeated after every additional million dollars is raised or after five more years of continuous filings under the exemption. LB814 will provide the department with the means for more effective oversight in this area without disrupting the process of raising capital for small businesses. I want to thank Senator Gloor for being the principal introducer of this needed legislation and also express my appreciation to the bill's cosponsors, including Senator Pahls and Senator Utter. I'll be happy to answer any questions. Thank you. [LB814]

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SENATOR PAHLS: Do I see any questions? Seeing none, thank you. Any more proponents? Opponents? Neutral? Senator. Senator waives closing. That concludes the hearing on (LB)814. Thank you. [LB814]