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Banking, Commerce and Insurance Committee
January 24, 2017

[LB17 LB35 LB138 LB142]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 24, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB17, LB35, LB138, and LB142. Senators present: Brett Lindstrom, Chairperson; Matt Williams, Vice Chairperson; Tom Brewer; Joni Craighead; Mark Kolterman; John McCollister; and Paul Schumacher. Senators absent: Roy Baker.

SENATOR LINDSTROM: All right. We'll begin here. Welcome to the Banking, Commerce and Insurance Committee hearing. My name is Brett Lindstrom, I'm from Omaha and represent Legislative District 18. I serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members will come and go during the hearing. We have to introduce bills in other committees and are called away. It is not any indication that we are not interested in the bill being heard in this committee, just part of the process. To better facilitate today's proceeding I ask that you abide by the following procedures. The information is posted on the chart to your left. Please silence or turn off your cell phones. Move to the front row when you're ready to testify. Order of testimony will go...proceed as introducer, proponents, opponents, neutral, and closing. Testifiers, please sign in. Hand your pink sign-in sheet to the committee clerk when you come up to testify. Spell your name for the record before you testify. Please be concise. It is my request that you limit your testimony to five minutes. We will use the light system, which means four minutes is the green light. You will get a one minute warning to end your testimony with a yellow light. And the red light means your five minutes are up. If you will not be testifying at the microphone but want to go on record as having a position on a bill being heard today, there are white tablets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We need ten copies. If you have written testimony but do not have ten copies, please raise your hand now so the page can make copies for you. To my immediate right is committee counsel, Bill Marienau. To my far left is committee clerk, Jan Foster. And we'll begin with the introduction of senators. To my far right, Senator Schumacher will most likely be introducing a bill and we'll work our way around. Senator Kolterman.

SENATOR KOLTERMAN: Senator Kolterman from the 24th District, Seward, York, and Polk Counties.

SENATOR BREWER: Tom Brewer, 43rd District, 13 counties of the Sandhills.

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SENATOR WILLIAMS: Matt Williams, Legislative District 36, Dawson, Custer, and the north part of Buffalo Counties.

SENATOR CRAIGHEAD: Joni Craighead, District 6, Omaha.

SENATOR McCOLLISTER: John McCollister, District 20, central Omaha.

SENATOR LINDSTROM: Thank you. And Senator Baker has a...he's introducing a bill in Education, but will join us later. And our page today is Phillip Levos from Columbus. Thank you, Phillip. We will now take up the bills in the order on the agenda, LB17, LB35, LB138, and LB142. Senator Craighead, LB17; we will start with that bill. [LB17]

SENATOR CRAIGHEAD: Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d. I represent Legislative District 6 of Omaha and Douglas County. The purpose of LB17 is to update the Nebraska Appraisal Management Company Registration Act or the AMC (Registration) Act for compliance with Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989, Title XI. The AMC final rule adopted by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, the National Credit Union Administration, the Consumer Financial Protection Bureau, and the Federal Housing Finance Agency, and the requirements of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, the AFC. The final rule was adopted on June 9, 2015, with an effective date of August 10, 2015, to implement the minimum requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act, which added a new section 1124 to Title XI to be applied by participating states in the registration and supervision of appraisal management companies. The final rule also implements the minimum requirements in the Dodd-Frank Act for AMCs that are subsidiaries owned and controlled by an insured depository institution and regulated by a federal financial institution regulatory agency and implements the requirement for states to report to the ASC the information required by the ASC to administer the new national registry of AMCs. Participating states have until August 10, 2018, to implement these changes. The bill also includes minor changes to address administration of the AMC (Registration) Act and to harmonize the AMC (Registration) Act with the Nebraska Real Property Appraisers Act. Finally, this bill includes one change to the Appraiser Act to maintain compliance with Title XI and the real property appraiser qualifications criteria effective on July 1, 2016, as promulgated by the Appraiser Foundation, the source of appraisal standards and qualifications as authorized by the U.S. Congress. If the state of Nebraska is found to not be in compliance with Title XI by the Appraisal Subcommittee, the Appraisal Subcommittee may remove all Nebraska credentialed appraisers from the federal registry, resulting in no appraisers qualified to appraise real property in connection with federally

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related transactions, which is approximately 80 percent of all mortgage loan activity or remove all Nebraska registered AMCs from the federal registry, which would halt all mortgage loan activity within the state in which AMCs are utilized. Nebraska currently has 695 certified or licensed real property appraisers and 101 AMCs conducting business in the state. I'm going to let the agency representative share the details of each change of the statute with you. I appreciate your consideration of this bill and welcome any questions. [LB17]

SENATOR LINDSTROM: Thank you, Senator Craighead. Any questions from the committee? Seeing none, thank you very much. We will now have proponents. Afternoon. [LB17]

TYLER KOHTZ: Good afternoon. Are you ready? [LB17]

SENATOR LINDSTROM: Yes. [LB17]

TYLER KOHTZ: (Exhibit 1) Okay. My name is Tyler Kohtz, T-y-l-e-r K-o-h-t-z, and I'm the director for the Real Property Appraiser Board. I'd like to begin by thanking Senator Craighead for introducing LB17 and also Senator Lindstrom and the committee members for this opportunity to represent the Real Property Appraiser Board pertaining to LB17. I will not reiterate what Senator Craighead has already stated, but I would like to mention that my statement that's being handed out has significantly more detail than what I'm going to cover in my testimony, so. LB17 is a clean-up bill that updates the AMC Registration Act and the Nebraska Real Property Appraiser Act for compliance with Title XI. The Real Property Appraiser Board was established in 1991 to carry out the requirements of Title XI and the Appraisal Subcommittee. The board's primary functions are: to issue and renew appraiser credentials; appraisal management company registrations; develop and implement standards for credentialing and appraisal management company registration; approve qualifying and continuing education activities; investigate and adjudicate grievances; and disseminate relevant information to the public, appraisers, and also appraisal management companies. The board's programs are funded by credentialing fees and registration fees. There are no taxpayer money used to support its program. The AMC Registration Act was established in 2012 to carry out the requirements mandated by Dodd-Frank, giving the board authority to oversee appraisal management companies in Nebraska. And the first purpose of LB17 is to update this act for compliance with Title XI and the AMC final rule. Section 3 includes definitions that are added or changed to mirror those found in the AMC final rule, establishes consistency with the Real Property Appraiser Act, or to clarify terms used throughout LB17. In addition, many of the current definitions were removed as they are no longer referenced in LB17. Your copy, once again, provides more details on section 3. Section 4 provides authority to the board to request information necessary in an application to administer and enforce the AMC Registration Act. Additional requirements are placed on the AMCs to safeguard the interests of the public and

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authority is also included to allow the board to collect and transmit information as needed to the Appraisal Subcommittee and AMC renewal requirements are also updated. Section 5 defines appraiser panel requirements for both the appraisal management companies and the appraiser. Section 6 establishes reporting requirements for federally regulated AMCs and grants authority to the board to collect and transmit information and fees required by the subcommittee. Section 7 establishes the exemptions to the AMC Registration Act. Section 9 grants the board authority to collect and transmit to the subcommittee any fees required for inclusion on the AMC National Registry. Section 10 clarifies ownership requirements that mirror the AMC final rule. Section 11 ensures that AMCs only conduct business in the state under a legal or a trade name included on the application and also prevents an AMC from requiring an appraiser to indemnify an AMC or hold an AMC harmless for any liability, damage, losses, or claims arising from the appraisal management services provided by that appraisal management company. Section 12 clarifies to whom the uniform standards of professional appraisal practice apply to. Section 13 includes language found in the AMC final rule regarding examination, books and records and the reporting requirements for AMCs. Section 17 clarifies the board's authority to issue cease and desist orders. And this section also provides authority to the board to report any disciplinary action taken against an AMC to the Appraisal Subcommittee. Section 18 adds language to ensure the costs incurred for administrative hearings shall be taxed as costs in such action as the board may direct. And this is the same language found in the Real Property Appraiser Act. Section 19 clarifies the Attorney General's authority within the act. And also, minor language changes are also made throughout the act to harmonize and clean up the language and to also harmonize the AMC Registration Act with the Real Property Appraiser Act. Finally, Section 1 includes a change to the Real Property Appraiser Act to maintain compliance with Title XI. Effective on July 1, 2016, the Appraiser Qualifications Board changed the three-year supervisory appraiser jurisdictional requirements. And LB17 ensures that a person credentialed as a certified real property appraiser in Nebraska or licensed real property appraiser that holds a credential or equivalent in another jurisdiction for a period of three years is eligible for approval as a supervisory appraiser. LB17 is a clean-up bill that updates the AMC Registration Act and Real Property Appraiser Act for compliance with Title XI. The Appraisal Subcommittee reviews each state's compliance with the requirements of Title XI and is authorized to take action against a noncomplying state (appraiser) regulatory program. If the state of Nebraska is found to be noncompliant with Title XI, the Appraisal Subcommittee may remove Nebraska credentialed appraisers from the federal registry, resulting in no appraisers qualified to appraise real property in connection with federally regulated transactions or remove all Nebraska registered AMCs from the federal registry, which would halt mortgage loan activity within the state. The Nebraska Real Property Appraiser Board supports LB17. [LB17]

SENATOR LINDSTROM: Thank you very much. [LB17]

TYLER KOHTZ: Thank you. Any questions? [LB17]

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SENATOR LINDSTROM: Any questions from the committee? Seeing none...oh, I'm sorry. Excuse me. Senator Williams. [LB17]

SENATOR WILLIAMS: Thank you, Chairman. Thank you, Mr. Kohtz, for being here. As a banker that uses these kind of things, will there be any...when you adopt this, any change in these numbers of qualified appraisers or licensed appraisers? I'm assuming that all stays the same. [LB17]

TYLER KOHTZ: No, this really wouldn't affect the number of credentialed appraisers. The truth is, most of it is already in effect already and we're just basically cleaning up to mirror our language with what the final rule says. Dodd-Frank kind of created a framework and that's what the original act was written on. And then when these federal agencies came together and wrote their final administrative rules, there were just some minor tweaks. So the biggest change that we're going to see on our side is there's now a requirement for states to collect information from federally regulated AMCs and report that to the Appraisal Subcommittee. Previously, we didn't have to do anything along those lines, and that's the only thing that's significantly different from what we're already doing. [LB17]

SENATOR WILLIAMS: One of the things that we continue to run into in this state is a lack of enough appraisers that are available and, therefore, competitively can get things done quick enough and... [LB17]

TYLER KOHTZ: Yes, I agree with that. And the nice thing is, is the Appraisal Foundation, the Appraisal Subcommittee is well aware of that and they're working on changes as we speak. [LB17]

SENATOR WILLIAMS: Thank you. [LB17]

TYLER KOHTZ: Yes. [LB17]

SENATOR LINDSTROM: Thank you. Senator Schumacher. [LB17]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Thank you for your testimony today. From a real world perspective of somebody in the appraiser business using an appraiser or perhaps conducting an appraisal function, like a real estate agent, will this change their lives any? Will they have more fees, more forms to fill out, more regulations? Or is it just clean up, as you say? [LB17]

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TYLER KOHTZ: There's a lot of different angles on that questions. In terms of the bulk of what's already in existence in the AMC (Registration) Act, really nothing will change. There's no less or no more protection provided to appraisers. The only...there's additional requirements on appraisal management companies, but that's more related to just their business aspect. It wouldn't affect appraisers or having appraisals completed. [LB17]

SENATOR SCHUMACHER: Does this mean more or less regulation? [LB17]

TYLER KOHTZ: There are no more additional regulations placed on appraisers through this bill. [LB17]

SENATOR SCHUMACHER: Would people who compete with licensed appraisers agree with your statements that you just made? [LB17]

TYLER KOHTZ: I believe so, yes. [LB17]

SENATOR SCHUMACHER: Okay. Thank you. [LB17]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much. [LB17]

TYLER KOHTZ: Thank you. [LB17]

BOB HALLSTROM: Chairman Lindstrom, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB17. As Mr. Kohtz indicated, most of the heavy lifting in this particular area regarding the regulation of appraisal management companies occurred when the original legislation was adopted a number of years ago. We were able to have a hand in crafting and drafting that particular legislation and felt that the Appraiser Board and the Legislature did a nice job of putting together what was necessary to be in compliance with the Dodd-Frank Act. As a result, we had kind of put things together as best we could, subject to the fact that we knew that the regulations to implement these provisions of the Dodd-Frank Act would be coming down the pike later. That's what this bill is designed to do, is to ensure that we fill in any gaps or take care of any technical corrections, as Mr. Kohtz indicated. With respect to those final regulations we were able because the Appraiser Board shared a draft of the legislation to share that with our members who are involved in this particular area of the law with a few minor exceptions, which we conveyed to the Appraiser Board, which were incorporated into the bill at our request. Everything seemed to be in conformity to ensure that Nebraska stays in

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compliance with the federal requirements. We did have one other item. It was mentioned that there was an item that applies to the Real Property Appraiser Act. Coincidentally, we had a banker that called and was suggesting some concern over the ability of an out-of-state appraiser to be recognized through reciprocity to practice appraisal in Nebraska after having served as an appraiser for 20-some years in another state. When we touched base with Mr. Kohtz we found out that the issue was not about a reciprocity for purposes of practicing, but there was a provision regarding that same appraiser who could be approved to practice in Nebraska on a reciprocal basis, but because of the provisions of state law that same appraiser was not able to supervise an appraiser trainee to help them become certified or credentialed in a particular area of appraisals until they had practiced in Nebraska for a period of three years. Upon visiting with Mr. Kohtz, we found out that the feds had already made that change to recognize that three years of prior experience either in the state in which you're located or in another jurisdiction would be acceptable. We were advised that the Appraiser Board, since they were working on the AMC Registration Act conformity, would probably wait till next year. With a little gentle nudging they were gracious enough to put this particular provision in, because it's already adopted at the federal level. And so we will jump the gun a little bit to get into conformity with that provision and we'll also have the law in Nebraska allow an appraiser under those conditions to train or supervise an appraiser trainee. So with that, I'd be happy to answer any questions regarding the legislation. [LB17]

SENATOR LINDSTROM: Thank you, Mr. Hallstrom. Any questions? Senator Schumacher. [LB17]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Am I right in interpreting what's been said, that the instigation behind this is Dodd-Frank Act? [LB17]

BOB HALLSTROM: Yes, initially. And now the implementing regulations to come back in and clean up, if you will, or make sure that we're in full conformity with the regulations. [LB17]

SENATOR SCHUMACHER: Any projections on the fate of the stability of Dodd-Frank, considering the election? Are we...is...are we doing something to lock ourselves into provisions that might not be there in a few years? [LB17]

BOB HALLSTROM: Publicly, Senator, I'd like to see Dodd-Frank repealed. Realistically, whether or not that's going to happen, I would doubt it. But certainly with the change of administration and landscape in Washington, D.C., we're hopeful with respect to particularly regulatory burden that things that affect community banks adversely are perhaps going to get turned around. I don't know that I've seen or heard any evidence that the appraisal management

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company piece of that is particularly problematic. So I would probably be surprised if there's any effort to overturn this particular aspect of Dodd-Frank. [LB17]

SENATOR SCHUMACHER: Let's assume for a second that it is. Is it hard to back out of what we're doing here? [LB17]

BOB HALLSTROM: I would assume, I can't predict what would happen, but I would assume that if that doesn't occur you certainly could try to unwind or repeal the state law. Part of the AMC industry and the need for regulation has come about from other federal regulations. And I think they may have actually come about because of Dodd-Frank, so maybe it's incorporated within the same issue or question. But you have certain requirements that banks have to make sure that there are independent appraisals, that you have a way of not selecting the same appraiser every time to do all of your appraisals within the bank. And all of those are kind of combined to have created the web of regulations that we have not only for appraisals, but for appraisal management companies that are utilized by financial institutions to ensure that they're in compliance with the appraisal regulations. [LB17]

SENATOR SCHUMACHER: Thank you. [LB17]

BOB HALLSTROM: Thank you. [LB17]

SENATOR LINDSTROM: Thank you. Any last questions? Seeing none, thank you very much. [LB17]

BOB HALLSTROM: Thank you. [LB17]

SENATOR LINDSTROM: Other proponents. Seeing none, any opponents? Seeing none, any neutral testimony? Seeing none, Senator Craighead waives closing. And that will end the hearing on LB17. We will now move to LB35. Senator Harr, welcome to the BCI Committee. [LB17]

SENATOR HARR: Thank you. Chairman Lindstrom, members of the Banking, Commerce and Insurance Committee, my name is Burke Harr, H-a-r-r, and I am the state senator from Legislative District 8. Let me begin by saying, I would be remiss if I did not thank your legal counsel, Mr. Marienau, for his hard work on this bill. I would love to take credit for it, because I think it's a good piece of legislation, however, Mr. Marienau did the majority of the work. This legislation came out of an LR that we did last summer, LR508, which was an interim study called upon this committee to look at the Nebraska Model Business Corporation Act. For those of you who have been on here for a while, this bill we brought originally three years ago. We

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made some Nebraska changes that were brought to our attention, and then the American Bar Association made some additional changes to the Business Corporation Act. I think it's important that when we do business...transact business, we want to make sure that we are as close to similar as we can be while retaining the Nebraska way. That's what this bill is intended to do. I believe it does. I have a long introduction, but given the impending bad weather I'm going to keep it a little bit shorter and just state that this does amend the Nebraska Business Act. It amends to provide for judicial review of corporate election, shareholder votes, and other corporate governance disputes. It amends to update definitions of shareholder, record shareholder, beneficial shareholder, and amendments to revised usage of those terms throughout the act. It has amendments relating to business opportunities; amendments relating to proxies; amendments relating to inspection of election in the shareholder voting process; amendments relating to qualifications for directors and nominee for directors. Finally, it has amendments related to election to purchase in lieu of dissolution. I'd be more than willing to go into each one of these details if you want. It's rather arcane. The question...well, it's detail oriented and fact specific in a lot of cases. I will tell you that there are those coming up after me from the Nebraska Bar Association who can also provide further guidance on this. I'd be more than willing to talk with any of you. And again I want to thank Mr. Marienau for his assistance on this. [LB35]

SENATOR LINDSTROM: Thank you, Senator Harr. Any questions? Senator Schumacher. [LB35]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Thank you, Senator Harr. I have to compliment you. The one three years ago was "yay" thick, the one last year was "yay" thick, and now we're down to this. So we're really pretty close, aren't we? [LB35]

SENATOR HARR: I think so. I hope so, yeah. [LB35]

SENATOR SCHUMACHER: And then the lawyers in the state can read it and figure out what we did? [LB35]

SENATOR HARR: Yes. I actually...I gave it...in addition to we vetted it to the bar association to look at, I gave it to some lawyers who work in that area, specifically, and asked for a little extra attention. And we had really no comments, and those comments we did have were incorporated into this. [LB35]

SENATOR SCHUMACHER: Thank you. [LB35]

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SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, will you stick around to close? [LB35]

SENATOR HARR: I will. Thank you. [LB35]

SENATOR LINDSTROM: Thank you, Senator Harr. We'll now move to proponents. [LB35]

BILL MUELLER: Chairman Lindstrom, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB35. As Senator Harr explained to you, what you have before you today are eight changes to the Model Business Corporation Act. The Model Business Corporation Act is not by title a uniform act. It is a model act, but it is promulgated very similar to a uniform act. It is a process that includes lawyers, it includes law professors, judges, the general counsel of the Securities and Exchange Commission I believe is a member of this, and there is a good deal of work done promulgating this act. It is then published so that lawyers and law professors and judges and businesses can look at it. It then has a second and third reading before it's actually promulgated. What you have before you today are eight changes that were made to the act since it was promulgated in 2014...no, 2010. And we are coming to you today saying that we would like you to adopt those changes. The bar association has looked at those. We've had lawyers who practice in this area actually go through every one of these. Your legal counsel, Mr. Marienau, has done yeoman's work in this, and it is our recommendation that we adopt these. In a nutshell, the reason to do this is this: If there is a dispute as to how something is interpreted in a business entity situation, if a state has the Model Business Corporation Act with identical language you can go to court decisions from other states that interpret that. That has real value. It also has value in corporations being able to do work, transact business across state lines and know what the law is in all the states that they're operating. According to Mr. Marienau, 30 states have adopted this. I'm sure that there are others that are looking at it this session. I'd be happy to answer any questions that you may have about the bill. [LB35]

SENATOR LINDSTROM: Thank you, Mr. Mueller. Any questions? Senator Schumacher. [LB35]

SENATOR SCHUMACHER: Again, thank you, Senator Lindstrom. What states have it? I mean, I understand the argument you made about being able to look at other states for decisions, but Delaware, Nevada? [LB35]

BILL MUELLER: I was surprised that more had not adopted it. I did not go back and look who has not adopted it. Oftentimes what happens--and this has happened in Nebraska--time goes by and a state does not adopt the most recent version of the Model Business Corporation Act. So,

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again, this ABA committee drafts this bill, but then it's up to each individual legislature to actually introduce the bill as a bill and adopt it. We in large part, thanks to Mr. Marienau, have stayed on top of this and have adopted the changes. So I don't know that 20 other states have not adopted any part of the Model Business Corporation Act or whether they are just not current. And I'll bet that Mr. Marienau may know that. I will find it out if he does not know it. [LB35]

SENATOR SCHUMACHER: Well, I mean, like Delaware, for one... [LB35]

BILL MUELLER: I would assume that Delaware has adopted it, given that they are a hotbed for corporate activity. [LB35]

SENATOR SCHUMACHER: Has adopted or hasn't? [LB35]

BILL MUELLER: I would bet that they have adopted it. I do not know that. I have not looked at that. [LB35]

SENATOR SCHUMACHER: They make a killing off of their unique corporate laws. [LB35]

BILL MUELLER: Yes, they do. They do. I'll look at that. That's a good question. I should have looked at that. [LB35]

SENATOR SCHUMACHER: Thank you. [LB35]

SENATOR LINDSTROM: Thank you. Any other questions? Senator Brewer. [LB35]

SENATOR BREWER: Thank you, Mr. Chairman. I hate the fact I didn't get a chance to see a larger version of this, because it's pretty interesting stuff. What about this, much along the same lines as the good senator here asked on our earlier one, what changes day to day by this? [LB35]

BILL MUELLER: I don't know that it changes what happens day to day. I think that there are issues that are addressed in the act that a corporation currently likely addresses in its articles of incorporation and bylaws. [LB35]

SENATOR BREWER: That's perfectly clear. [LB35]

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BILL MUELLER: Well, I know it. This is really, really technical stuff. And I don't hold myself out as a business lawyer. I'll come and follow up with you and talk about the details of this. I'd be happy to do that. [LB35]

SENATOR BREWER: All right. Thank you. [LB35]

BILL MUELLER: Thank you. [LB35]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much. [LB35]

BILL MUELLER: Thank you. [LB35]

SENATOR LINDSTROM: Other proponents. Seeing none, any opponents? Seeing none, any neutral testifiers? Seeing none, Senator Harr, would you like to close? [LB35]

SENATOR HARR: I was Googling. [LB35]

SENATOR LINDSTROM: Walk slowly up here. [LB35]

SENATOR HARR: Sorry, I was Googling to see if Delaware had. I see Nevada has, which is the Delaware of the west on the model business. And I don't have an answer but I will get it for you, Senator Schumacher, about whether in fact it has been adopted by Delaware because it is important because the case law...the ability to look at other states' case law is important. My assumption is Delaware wouldn't because that's what makes them unique, but other states have. With that, I would entertain any questions. And thank you for your time. [LB35]

SENATOR LINDSTROM: Thank you, Senator Harr. Any final questions? Thank you very much. [LB35]

SENATOR HARR: Thank you. [LB35]

SENATOR LINDSTROM: I will now turn the committee over to Vice Chairman Williams. [LB138]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. We will now open the hearing on LB138, which is Chairman Lindstrom's legislation, if you'd like to begin. [LB138]

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SENATOR LINDSTROM: Thank you, Vice Chairman Williams. My name is Senator Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, I represent District 18 in Omaha. LB138 comes to us from the Nebraska State Bar Association. The bill would add a definition to a part of our probate code which contains the provisions of the Uniform Transfer on Death Securities Registration Act. These provisions allow the owner of securities who follows a prescribed process of registration to transfer the securities directly to a designated transferee of the owner upon the owner's death. These provisions current define a security as, among other things: a share, participation, or other interest in a business. However, as the bar association tells us, there is no definition of business. This bill would supply one. Business would be defined as: a corporation, partnership, limited liability company, limited partnership, limited liability partnership, or other legal or commercial entity. Representatives of the bar association will follow me to provide more information and to answer your questions. Thank you very much. [LB138]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. Questions for the senator? Seeing none, we'll invite the first proponent. [LB138]

CHRISTOPHER CASSIDAY: Good afternoon. My name is Christopher Cassiday, C-h-r-i-s-t-o-p-h-e-r C-a-s-s-i-d-a-y. I'm an attorney, I practice at the Remboldt Ludtke law firm here in Lincoln and I am appearing on behalf of the Nebraska State Bar Association. LB138 is an important thing to the hearts of many entrepreneurs, because it affects what happens to the business that they have poured their blood, sweat, and tears into building over the years when they pass away. The Transfer on Death Security Registration Act essentially allows an owner of a security to designate a beneficiary who will receive ownership of that security upon their death. The definition of a security under the Transfer on Death Security Registration Act is: a share participation or other interest in property in a business or in an obligation of an enterprise or other issuer. This definition comes straight from the model act upon which the Nebraska Uniform Security Registration Act is based, but it does not include a definition of the word business. So looking at just the plain language of the act, it appears that a strong argument can be made that this Transfer on Death Security Registration Act applies to any type of business entity organized under Nebraska law. The attorneys who practice in this area of estate planning or business planning regularly take this position and have these processes for transfer on death for unincorporated and incorporated business associations. So that would include: corporations, limited liability companies, partnerships, limited partnerships, limited liability partnerships, and any other entity that could be formed to do business in the state of Nebraska. The problem that we've identified is that further research into the definition of security for the Transfer on Death Security Registration Act raises doubts as to whether the act applies to unincorporated business associations. The best legal interpretative guidance that we can find comes from the comments to the model act which indicate that the definition of security is derived from the definition of security which is used in Article 8 of the Uniform Commercial Code. Looking to Article 8 definition of security, it includes a broad definition of security which certainly encompasses

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corporate stock, but it specifically excludes interests in partnerships and in limited liability companies, except for certain circumstances. And those circumstances are if the ownership interest in the partnership for a limited liability company is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by Article 8 or it is an investment company security. So there's a substantial possibility that a partnership interest or a limited liability partnership...excuse me, limited liability company interest would not fall under the definition of an Article 8 security, which raises doubts as to whether the Transfer on Death Security Registration Act would apply. LB138 seeks to eliminate any sort of ambiguity about whether this would apply to unincorporated business associations. It eliminates the risk of challenging the validity of a transfer on death designation, which could result in a ownership interest in one of these unincorporated business associations being transferred to someone other than the person whom the entrepreneur intended. And it has the affect for the surviving business partner of a deceased entrepreneur who may find him or herself in business with someone they never intended to go into business with because of a defect in the validity of the transfer on death designation. So our hope is to pass this bill to provide security and clarity that this is intended to apply to all business associations, both incorporated business associations and unincorporated business associations. So with that, if you have questions I would be happy to answer them at this time. [LB138]

SENATOR WILLIAMS: Questions from the panel? Senator Schumacher. [LB138]

SENATOR SCHUMACHER: Thank you, Senator Williams. And thank you for your testimony today. So it's your intent to cover all those situations in which somebody might have a business interest in something that is debatable whether it's a business under the payable on death rules? [LB138]

CHRISTOPHER CASSIDAY: Whether it is debatable whether the ownership interest in the business qualifies as a security under the Transfer on Death Security Registration Act. [LB138]

SENATOR SCHUMACHER: Well, let's take the situation of a operation which sells an interest in orange trees. And you give them some money, you don't have to manage the orange farm, and you get to collect a certain amount of revenue off of the oranges. That's a security. Right? [LB138]

CHRISTOPHER CASSIDAY: Could be, yes. [LB138]

SENATOR SCHUMACHER: Well, under Howey, it probably is. So it's a security. How is that covered by this language? [LB138]

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CHRISTOPHER CASSIDAY: This language lays out the names of the business entities that are authorized under Nebraska state law that would be considered securities. Now you're looking at an investment contract type situation which could or could not be a security. In your instance, it probably would be a security for the purposes of federal securities regulation laws. Could be a security for purposes of Article 8, but then the question is, is it a security for purposes of this act? Our goal is to have any of those state authorized entities, such as partnerships, limited partnerships, limited liability partnerships, limited liability companies all be able to use this Transfer on Death Designation Security Act and have confidence that it is something that's going to be respected. [LB138]

SENATOR SCHUMACHER: So this isn't intended to extend to all securities? [LB138]

CHRISTOPHER CASSIDAY: The definition of securities under federal securities laws is potentially different. And that's part of the confusion here is providing a clarity that this is a broad definition of security intended to encompass those other things. [LB138]

SENATOR SCHUMACHER: But this is narrower than what you say is a federal or what is under the Nebraska Securities Act, which for the most part parrots the federal in the definition of a security. [LB138]

CHRISTOPHER CASSIDAY: The flush language at the end of LB138 could possibly encompass those...any other business association or entity. [LB138]

SENATOR SCHUMACHER: I guess I'm trying, for clarity, is to whether we want to include those things. Club memberships are another thing that kind of falls into that extremely gray area. And it'd be nice to know if we're intending to include those things as things transferable under this act or intending to exclude them. [LB138]

CHRISTOPHER CASSIDAY: Okay. I don't have a great answer. I'd be happy to follow up in terms of whether this would reach some of those grayer systems. The specific intent is to include those unincorporated business associations, such as the limited liability company, which was not commonly used at the time that this Uniform Transfer on Death Security Registration Act was adopted. [LB138]

SENATOR SCHUMACHER: Investment contracts, included or not included? [LB138]

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CHRISTOPHER CASSIDAY: I don't believe that it's included in the definition of business that we seek to add, but it could be included in the definition of security, which is already a part of the Registry Act. [LB138]

SENATOR SCHUMACHER: Do we need a little work in that area before we think about advancing this bill then? [LB138]

CHRISTOPHER CASSIDAY: We can certainly look into it. My belief right now is that an investment contract is probably included in the preexisting definition of a security under the Transfer on Death Registration Security Act, but would not be caught in this language that we are seeking to add as the definition of a business. Does that make sense? [LB138]

SENATOR SCHUMACHER: Yes. So do we need to be specific or don't we? [LB138]

CHRISTOPHER CASSIDAY: Are you asking whether this bill is necessary? [LB138]

SENATOR SCHUMACHER: Do we need to say anything under here to cover those businesses which may have their interest held under investment contracts or some other scheme? [LB138]

CHRISTOPHER CASSIDAY: I don't think so. I believe the preexisting language of the definition of the security under the Transfer on Death Security Registration Act is sufficient to include investment contracts or bonds or other types of securities that are not ownerships in business entities. [LB138]

SENATOR SCHUMACHER: Or club memberships. [LB138]

CHRISTOPHER CASSIDAY: I don't know whether club memberships would be encompassed in the original definition or not. [LB138]

SENATOR SCHUMACHER: If one has a club membership in an exclusive golf club, for example, and that membership, there's some type of a business enterprise going on underneath that membership even though there is no stock or anything, included or not included? [LB138]

CHRISTOPHER CASSIDAY: I think it would depend on whether that is an ownership interest in the sense that stock is. If it were a membership interest in, for example, a nonprofit organization, I don't think it would be included because you don't have the...there's no inurement of the benefits of (inaudible). [LB138]

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SENATOR SCHUMACHER: Thank you. [LB138]

SENATOR WILLIAMS: As I would understand it the provisions of these changes, if it were determined it was an ownership interest the difference would be you could use a, in essence what we use in banking, a payable on death but here a transfer on death versus transferring it in some other form. [LB138]

CHRISTOPHER CASSIDAY: Correct. [LB138]

SENATOR WILLIAMS: So that's the only difference at the end of the day, looking at it. [LB138]

CHRISTOPHER CASSIDAY: Right. [LB138]

SENATOR WILLIAMS: Am I understanding that correctly? [LB138]

CHRISTOPHER CASSIDAY: Correct, correct. If it were included, it would transfer outside of probate. If it were not, then it would transfer in probate. [LB138]

SENATOR WILLIAMS: Right. Other questions? Senator Kolterman. [LB138]

SENATOR KOLTERMAN: So going back to that, I understand what the intent of your bill is trying to do here. When you use a transfer on death like this, is that included in the probate? [LB138]

CHRISTOPHER CASSIDAY: No. It is a nonprobate transfer. [LB138]

SENATOR KOLTERMAN: But the dollar amounts, are those included in the total amount that you...for tax purposes? [LB138]

CHRISTOPHER CASSIDAY: For tax purposes? Yes, the dollar amounts are included and there are still... [LB138]

SENATOR KOLTERMAN: So this is just a way to bypass probate in an efficient manner. [LB138]

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CHRISTOPHER CASSIDAY: Correct. Correct. [LB138]

SENATOR KOLTERMAN: Okay. [LB138]

CHRISTOPHER CASSIDAY: And creditors can also still seek the dollar amount of the value of those ownership interests. [LB138]

SENATOR WILLIAMS: Senator Schumacher. [LB138]

SENATOR SCHUMACHER: Thank you, Senator Williams. Just a little bit of a follow up on Senator Kolterman's question. If the object is to not have to file a probate then...and the vehicle being used is these payable on death, transfer on death kind of things, then shouldn't we try to be all encompassing so that they don't have to open a probate for some miscellaneous investment, if that's been the estate plan to avoid having to open a probate? [LB138]

CHRISTOPHER CASSIDAY: I think it would be beneficial to be able to avoid that probate proceeding, if possible. And I think the definition of security is potentially broad enough to include those investment contract type securities. [LB138]

SENATOR SCHUMACHER: Potentially though, that sounds like lawyers don't know for sure. The other thing is, when somebody transfers a big bundle of stock to the kids using one of these mechanisms, how are we sure that they file an inheritance tax determination? [LB138]

CHRISTOPHER CASSIDAY: If there's any sort of other post-death proceedings, such as trust administration proceedings or so forth, the inheritance tax obligation will become...will be dealt with in that process. [LB138]

SENATOR SCHUMACHER: If not? [LB138]

CHRISTOPHER CASSIDAY: If not, it's incumbent upon the professional advisers who assist to ensure that it is filed and taken care of. [LB138]

SENATOR SCHUMACHER: What do you mean by incumbent upon? I mean, the kid's got to know that there's a stock account at XYZ brokerage firm. They go in, hand over the death certificate, says, I understand my name is on that payable on death. Please give me the dough. Does this type of transfer on death mechanism facilitate beating the inheritance tax system, maybe beating the welfare reimbursement system? [LB138]

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CHRISTOPHER CASSIDAY: I don't believe that it facilitates it. I believe that people could not live up to their obligation to pay the inheritance tax, but I don't believe that it facilitates it. [LB138]

SENATOR SCHUMACHER: Is it your experience that a lot of them do? [LB138]

CHRISTOPHER CASSIDAY: My personal experience, no. [LB138]

SENATOR SCHUMACHER: Thank you. [LB138]

SENATOR WILLIAMS: Senator McCollister. [LB138]

SENATOR McCOLLISTER: Yeah, thank you, Senator Williams. Thank you for your testimony. Sorry I wasn't able to hear all of it. You operate in other states as well as Nebraska? [LB138]

CHRISTOPHER CASSIDAY: Our firm does, I do not, personally. [LB138]

SENATOR McCOLLISTER: Nebraska has an inheritance tax, does it not? [LB138]

CHRISTOPHER CASSIDAY: Yes. [LB138]

SENATOR McCOLLISTER: And you've been talking to Senator Schumacher about when that tax is due? [LB138]

CHRISTOPHER CASSIDAY: Yes. [LB138]

SENATOR McCOLLISTER: And it's due at the time of probate? [LB138]

CHRISTOPHER CASSIDAY: Yes, after the death. I believe it's one year after death. [LB138]

SENATOR McCOLLISTER: Can you recall for us what the rates of that...the tax rates are for that particular tax? [LB138]

CHRISTOPHER CASSIDAY: I practice more in the business area, so I don't have that on the tip of my tongue. My understanding is that there's no tax due if the property goes to a surviving spouse. If the property goes to an immediate family member, I believe it's 1 percent. Then there's

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a second degree of relation where there's a higher...slightly higher percentage. And then the third degree of tax is an 18 percent tax and that's to folks who are unrelated to the decedent. [LB138]

SENATOR McCOLLISTER: You indicated you don't have any experience outside Nebraska. Don't you view that as a confiscatory tax? [LB138]

CHRISTOPHER CASSIDAY: I'm sorry? [LB138]

SENATOR McCOLLISTER: The 18 percent rate which you spoke of, that's a fairly hefty tax, is it not? [LB138]

CHRISTOPHER CASSIDAY: It can be a significant tax. [LB138]

SENATOR McCOLLISTER: Have you ever been a party to anybody having to pay that tax? [LB138]

CHRISTOPHER CASSIDAY: Yes, I have. [LB138]

SENATOR McCOLLISTER: Fairly painful, wasn't it? [LB138]

CHRISTOPHER CASSIDAY: Yes. It was a significant bill in the case that I'm thinking of. [LB138]

SENATOR McCOLLISTER: Thank you. You're aware all that money stays within the county, doesn't go back to the state? [LB138]

CHRISTOPHER CASSIDAY: Yes. [LB138]

SENATOR McCOLLISTER: Okay. Thank you very much. [LB138]

SENATOR WILLIAMS: Other questions for the witness? Seeing none, thank you for your testimony. [LB138]

CHRISTOPHER CASSIDAY: Thank you. [LB138]

SENATOR WILLIAMS: Next proponent. [LB138]

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BOB HALLSTROM: Vice Chairman Williams, members of the committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m, I represent the Nebraska Bankers Association as a registered lobbyist in support of LB138. Senator Lindstrom in his opening remarks indicated that the representative from the bar association would provide this committee with more information and answer all questions. And so I will simply provide my support for the bill. And I would answer any questions if there are any. [LB138]

SENATOR WILLIAMS: Questions for Mr. Hallstrom? Seeing none, thank you for your testimony. [LB138]

BOB HALLSTROM: Thank you. [LB138]

SENATOR WILLIAMS: Any additional proponents? Any opponents? Anyone here to testify in the neutral capacity? Seeing none, Senator Lindstrom waives closing. We'll close the hearing on LB138. [LB138]

SENATOR LINDSTROM: Okay. We'll now open the hearing on LB142. Senator Williams. [LB142]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom and fellow members of the Banking, Commerce and Insurance Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I represent Legislative District 36. And the bill I'm presenting today is not 143 pages long. The purpose of LB142 is to make some technical changes to the master lien list. By way of background, the master lien list is a central filing system for buyers of ag products to verify whether or not there is a lien against the farm products they are purchasing. If there is a lien on the product, the buyer would include the names of all persons or businesses with a secured interest in the product on the check used to purchase the product. This gives the buyer the assurance and protection that the product they have purchased is cleared of all liens. A buyer who purchased a farm product without checking the master lien list does so at their own risk. The primary users of the master lien list are cooperatives, livestock auctions, and other agricultural businesses such as cattle feeders and ethanol facilities. Historically, the Secretary of State's Office compiled and distributed the master lien list via a CD, microfiche, or paper. Last year the Legislature updated the statute to allow the Secretary of State to make the master lien list available electronically through a secure website. Under current law, all users of the master lien list are presumed to have received the list ten days after it was mailed by the Secretary of State. LB142 would clarify when a user is presumed to have access to the list based on the delivery method. For those who obtain the master lien list electronically, they are presumed to have accessed the list on the day it becomes available. For those who receive the list through the mail, they are presumed to have received it ten days after it was mailed by the Secretary of State.

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A simple, but much needed clarification. LB142 would also clarify that a change in the name or address of the secured party under an effective financing statement does not constitute a material change for which an amendment would otherwise be required. A change in the name or address of the secured party generally occurs when there's a merger or acquisition of a financial institution. A name or address change of the secured party does not change anything for the buyer of the products. Thank you for your attention and I would be happy to answer any questions you may have about LB142. And there are witnesses behind me that can explain some of the details. [LB142]

SENATOR LINDSTROM: Thank you, Senator Williams. Any questions from the committee? Seeing none, thank you. Proponents. [LB142]

BOB HALLSTROM: (Exhibit 1) Chairman Lindstrom, members of the committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m, I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB142. Senator Williams has provided you with the background regarding the technical and the substantive change that is embodied within LB142. He's told you what the existing law is and where LB142 would take us. For the committee's edification, I think sometimes it's important also to know how we got to this point and why these provisions of law are required and necessary. Historically, back before 1985 we had a situation in which under the Uniform Commercial Code...about a week ago I came before this committee and Senator Schumacher had asked me to go through the mechanics or 101 for financing statements and UCC security interest. And the reason that that becomes important for purposes of this discussion is I use the term security agreement, I use the term financing statement, and in this context we are using the term effective financing statement. Under the Uniform Commercial Code, historically as I reported to the committee last week, a debtor grants a security interest through a security agreement, granting a security interest in collateral. That interest is perfected to perfect the lender's lien by the filing of a UCC-1 Financing Statement. In this case, we're talking about an effective financing statement that comes about because of the adoption in Nebraska of what we commonly refer to as a central filing system. Prior to 1985, when a buyer of farm products would purchase farm products from a borrower that had a lien against the farm products issued in favor of a lender, there was a thing called the Farm Products Exception under the Uniform Commercial Code. And what that basically meant was different than other types of purchases. When you bought farm products you did not take that purchase free and clear of an existing security interest if for some reason the money didn't make its way back to the bank to be applied towards the loan or at least released by the lender with knowledge and approval. So the Farm Products Exception caused situations where there was a great deal of litigation where a co-op or a local elevator would buy farm products, they wouldn't include the name of the secured party on the check, and then the lender would turn around and file a law suit based on conversion. And we refer to that concept as double jeopardy or at least the co-ops and the elevators did, in that they had paid the farmer one time and then they would be sued and they

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might have to either come up with the value of the collateral or the collateral itself to effectively pay a second time. The federal response to that to address the dilemma faced by buyers of farm products was to adopt the Food Security Act of 1985. That act effectively removed the Farm Products Exception and in its place it basically said that the buyer of farm products could be protected (inaudible) those farm products that they had purchased free and clear of a security interest. But if a state had adopted a central filing system that they would take them free and clear, but there were obligations that accompanied the creation of that central filing system. And what those obligations are that having notice of the existence of the security interest, those buyers of farm products under today's system must make out what I'd refer to as a dual-party check. They can put the farmer's name and any lienholders that appear in that master lien list that Senator Williams referred to would also have to have their name placed on the check. So if all that happens the system works fine. With respect to the part of the bill that Senator Williams noted, which is to remove the requirement to have an amendment if there is a change in the name or address of the secured party, the current law says within three months of a material change in an effective financing statement an amendment must be filed. So, currently, if a financial institution merges--in my testimony I've got an example--the Farmers State Bank has filed an effective financing statement, they should have their name issued on those checks when there's a buyer of farm products involved. If they merge with the First State Bank, under current law within three months they're supposed to amend that effective financing statement and reflect the new name. If they don't, the effective financing statement and the master lien list is still going to reflect Farmers State Bank as the party to whom payment needs to be made. And so there's no risk at all for the buyers of farm products who check the master lien list and follow the law the way it's supposed to be. The reason this legislation was brought to us is that some practicing attorneys are finding that they are having defenses raised by individuals who flaunt the system, disregard the system completely, never look at the system to see who they ought to be adding to the check in terms of secured parties and then when they find out that they had not listed anybody's name on the check, come back and try to proclaim that Farmers State Bank--in my example--did not amend the effective financing statement to reflect their new name. And, therefore, even though they blatantly disregarded the system, they have a defense to avoid payment or having to pay a second time. And this bill would simply say the name of the secured party is not relevant, doesn't need to be changed or reflected by way of amendment. It is a concept that is similar to the rationale employed under the UCC, which is the name of the secured party does not have to be shown by an amendment in the case of the change of a name. So we would appreciate your support and advancement of the bill. [LB142]

SENATOR LINDSTROM: Thank you very much. Senator Schumacher. [LB142]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Thank you, Mr. Hallstrom. Just a week or so ago we had a bill in which the debtors were mandated to within three months or so to update their name and information on a financing statement if they were reincorporated with a

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different name or something like that. If somebody wanted to get ahold of a secured party who's changed his name or address, shouldn't there be some requirement the secured party updates their filing or give a notice? [LB142]

BOB HALLSTROM: There hasn't been traditionally, Senator. And the difference is the change in name or the change in corporate structure or entity does have a specific adverse impact on the holders of security interest with respect to LB99 that we brought before this committee. The name of the secured party, either under the Uniform Commercial Code or for purposes of the master lien list and the effective financing statement, does not have any adverse impact on the buyers of farm products. In this particular case and on the UCC side, it has no adverse impact on other secured creditors that are searching the record to see if there are competing security interests on the record. [LB142]

SENATOR SCHUMACHER: The bill refers to: and in all cases in which delivery of the master list involve a buyer, shall be presumed to have received it ten days after it was mailed by the Secretary of State. This must be a huge list. Is there a list mailed? [LB142]

BOB HALLSTROM: There is hard copy. Senator Williams indicated there's also CD and fiche. That was the only way that you could receive it prior to LB1035 being adopted by the Legislature last session. Now we have electronic publication or posting, if you will. And the distinction with regard to that technical change is that, certainly providing for some grace period when the mail is involved with hard copy is one thing. But with regard to the immediate accessibility of something that is posted or published electronically, we're making that distinction so that you don't have a ten-day grace period. When it's up on the Internet it's on the website and you can immediately access it. [LB142]

SENATOR SCHUMACHER: So you're held to the quicker standard, the website standard, if you're... [LB142]

BOB HALLSTROM: Correct. [LB142]

SENATOR SCHUMACHER: And on the website, is there a time stamp as to when that hit the website? [LB142]

BOB HALLSTROM: I have not utilized it, Senator. I would imagine that there's something that the Secretary of State has that indicates when that has been posted or published. [LB142]

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SENATOR SCHUMACHER: So if everybody is held to the Internet instant standard, basically, or instant upon posting, then why do we even talk about if they're mailed out giving an extra ten days? [LB142]

BOB HALLSTROM: Because some people are still accessing the system via the hard copy. [LB142]

SENATOR SCHUMACHER: So you get your choice? The hard copy or the... [LB142]

BOB HALLSTROM: They can register for either hard copy or electronic. [LB142]

SENATOR SCHUMACHER: And so if you register for...you'd be smart, in most cases, to register for hard copy and get the electronic anyway. [LB142]

BOB HALLSTROM: I suppose you could look at it that way. I would assume most people would prefer to do it electronically because it is a relatively large document. [LB142]

SENATOR SCHUMACHER: Thank you. [LB142]

BOB HALLSTROM: Thank you. [LB142]

SENATOR LINDSTROM: Thank you. Any other questions? Senator McCollister. [LB142]

SENATOR McCOLLISTER: Yeah. Thank you, Chairman Lindstrom. Thank you, Mr. Hallstrom. Is it a frequent occurrence that a secured party makes a claim on farm products? [LB142]

BOB HALLSTROM: In terms of a claim, Senator, what happens is the borrower pledges the assets, the collateral--could be all farm products... [LB142]

SENATOR McCOLLISTER: Including the product. [LB142]

BOB HALLSTROM: Yeah, they include all farm products. They have a security interest, they perfect it with a financing statement and if the loan goes into default and there's a collection activity or litigation that ensues, then they would be looking to repossess or realize on that collateral through the ultimate retaking and sale. And the liquidation then would be used to pay down the loan or pay off the loan. [LB142]

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SENATOR McCOLLISTER: And of course the unsecured creditors follow those secured creditors. [LB142]

BOB HALLSTROM: Correct. [LB142]

SENATOR McCOLLISTER: Thank you. [LB142]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much. [LB142]

BOB HALLSTROM: Thank you, Senator. [LB142]

SENATOR LINDSTROM: (Exhibit 2) Other proponents. Seeing none, any opponents? Seeing none, any neutral testifiers? I do have neutral testimony from Secretary of State Gale for LB142, letter. Senator Williams, welcome to close. [LB142]

SENATOR WILLIAMS: A very quick closing and comment to follow up on Senator Schumacher's questions. The system put together by the Secretary of State's Office is trying to find a way to handle all kinds of buyers of ag products. There are buyers of ag products that buy huge amounts, as we heard today. And then there are those that might buy very few. And the ADMs of the world really enjoy having the electronic form of doing this, but the sale barn that has a sale once a month or whatever still wants to get paper copy, because that's how they're used to doing it. Secretary of State's Office was able to come up with a way last year to do this. So this is just clarifying that those that are receiving it electronically, that are obtaining it electronically are deemed to have received it at the time it's posted to the website. [LB142]

SENATOR LINDSTROM: Thank you, Senator Williams. Senator Kolterman. [LB142]

SENATOR KOLTERMAN: Is there any significance around the ten days with the postal system? [LB142]

SENATOR WILLIAMS: My understanding, Senator Kolterman, is when this was initially put together there was just that delay to be sure that through the mailing and the process the people had it. It is also interesting that they only do this currently quarterly. I believe under the law we passed last year, I think they are allowed to do it monthly, but they're still only doing it quarterly, updating the master loan list. So a secured party could be in that gap of time of filing your EFS and so there's...the system isn't perfect; close. You see what I'm saying? [LB142]

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SENATOR KOLTERMAN: Well, and along those same lines, so I sell some grain and they put the check out there and it has the third party on there, the lienholder, a collateral deal. Does that...do they notify you of that then? [LB142]

SENATOR WILLIAMS: Do they notify the secured party? [LB142]

SENATOR KOLTERMAN: Yeah. [LB142]

SENATOR WILLIAMS: No. But that check can only be negotiated if the third party who is on the check endorses it. [LB142]

SENATOR KOLTERMAN: Signs, endorses. So they're going to find out, third party. [LB142]

SENATOR WILLIAMS: Yes. Yes. [LB142]

SENATOR KOLTERMAN: Hopefully going to find out. [LB142]

SENATOR WILLIAMS: If a bank were to pay over that endorsement, without it being there, they would be subject to liability. [LB142]

SENATOR KOLTERMAN: Okay, thank you. [LB142]

SENATOR LINDSTROM: Thank you. Any other final questions? Seeing none, thank you very much. And that ends the hearings for today and we'll see you next week. Thanks. [LB142]