

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 26, 2021
Rough Draft

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WILLIAMS: Good morning, everyone, and welcome to the Banking, Commerce and Insurance Committee hearing. My name is Matt Williams. I'm from Gothenburg and represent Legislative District 36. I'm honored to serve as Chairman of this committee. The committee will take up the bills in the order posted. Our hearing today is your part of the public legislative process. This is your opportunity to express your position on proposed legislation before us today. Committee members may come and go during the hearing. We have to introduce bills in other committees and are sometimes called away. This is not an indication that we are not interested in the bill being heard, it's just simply part of the process. To better facilitate today's proceeding we ask that you abide by the following procedures. Please silence or turn off your cell phones. Seating is limited. Therefore, we ask that you only maintain a seat in the hearing room when you have an interest in the bill that is being heard. We will pause between bullet-- bills, excuse me, to allow people to come and go. While exiting the hearing room we ask that you please use the east doors. We request that you wear a face mask while in the hearing room. Testifiers may remove their face mask while testifying in order that the transcribers and the committee members can clearly hear and understand your testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity will be monitored by our Sergeant at Arms, who will allow people to enter and exit as seating is available. The order of testimony will be the introducer first, followed by proponents, opponents, and then neutral testimony, then a closing by the senator. Testifiers, please sign in with the pink sheet and turn it in at the box at the testifiers table when you come up to testify. As you begin your testimony, we ask that you spell your first and last names for the record. It is our request that you limit your testimony to five minutes. We use a light system. The light will be green for four minutes and will turn yellow with one minute remaining and turn red at the conclusion of the five-minute period. 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 the entrance where you may leave your name and other pertinent information. The sign-in sheets will become exhibits in the permanent record at the end of today's hearing. We ask that you please limit or eliminate handouts. Written materials will be handed to the committee clerk only while testimony is being offered. To my immediate right is committee counsel, Bill Marienau. To my left at the end of the table

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is our committee clerk, Natalie Schunk. Committee members that are with us today will introduce themselves starting with Senator Pahls.

PAHLS: Rich Pahls, representing southwestern Omaha.

McCOLLISTER: John McCollister, District 20, central Omaha.

SLAMA: Julie Slama, District 1, extreme southeast Nebraska.

LINDSTROM: Brett Lindström, District 18, northwest Omaha.

BOSTAR: Elliott Bostar, District 29, south central Lincoln.

WILLIAMS: Thank you, and our page today is Jordan Monk, and he's a student at UNL, so if you need anything special, Jordan will take care of that. Our first bill this morning is LB297, which will be introduced by Senator Lindström. Welcome, Senator Lindström.

LINDSTROM: Well, it's good to be here this morning. I made it through the weather, so happy to be here. Good morning, Chairman Williams and members of the committee. My name is Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18 in northwest Omaha. Before you today I introduce LB297, a bill to adopt the Nebraska Protection and Vulnerable Adults from Financial Exploitation Act. LB297 was brought to me by the Department of Banking and Finance to amend the Act to include securities industry participants such as investment advisors and broker dealers. The bill expands on LB853 that Chairman Williams introduced last session and I was pleased and, excuse me, and was passed as amended into LB909 in 2020. LB297 enacts six new sections to be known as the Nebraska Protection of Vulnerable Adults from Financial Exploitation Act and provides definitions and context to the bill. Director Lammers will testify from the department to further elaborate on each section. There are some subtle changes from last year's legislation, but I believe they strengthen the Act to provide protections for the exploitation of vulnerable adults and senior citizens living in the state of Nebraska. Also there's an amendment, AM30, that will be-- that has been posted to the-- to your committee drive. Director Lammers will speak to that amendment during his testimony. Thank you, and I'd be happy to answer any questions you may have.

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WILLIAMS: Thank you, Senator Lindström. Questions for the Senator? Seeing none, thank you. We'd invite our first proponent. Welcome, Director Lammers.

KELLY LAMMERS: Good morning. Chairman Williams, members of the Banking, Commerce and Insurance Committee. My name is Kelly Lammers, K-e-l-l-y L-a-m-m-e-r-s. I'm director of the Nebraska Department of Banking and Finance. I'm appearing here today on behalf of the department in support of LB297, which was introduced at the department's request. A key priority for the department is the protection of consumers and prevention of financial exploitation of seniors and vulnerable adults. The department has received and continues to receive reports from financial professionals and institutions who are concerned that their clients may be the victim of financial exploitation and fraud. Department investigators work with these customers to limit harm and make referrals to appropriate agencies, but our experience has shown that once the money has left the account, we cannot get it back. Many times we are trying to get people to stop throwing good money after bad. Last year LB853 was introduced to provide tools to depository financial institutions. LB853 was amended into LB909 and ultimately approved by the Governor. At that time the former department director, Mark Quandahl, testified in support of LB853 and noted it was a good first step, but that additional action would be necessary to address the securities industry. LB297 is that next step. LB297 is based on the North American Securities Administrators Association, or NASSA Model Act, to protect vulnerable adults. Today there are 28 states that have enacted legislation or regulations based on the Model Act. We've also learned that it's been introduced this year in Iowa. To the greatest extent possible, LB297 preserves the ability of persons to make their own financial decisions, while also giving financial professionals and firms the tools to limit customer harm. LB297 creates a voluntary reporting structure for broker dealers, investment advisors and other qualified persons to notify the department or Adult Protective Services when they reasonably-- reasonably believe that a senior adult or vulnerable adult is the victim of financial exploitation. It also permits these qualified persons to contact certain designated third parties. Importantly, it also prohibits notification to a third party that is suspected of committing the financial exploitation. Unfortunately, persons close to the senior or vulnerable adult, like children or caregivers, may be the very people who are

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committing the financial exploitation. We also know that victims of financial exploitation may be the victim of physical or mental abuse or neglect. This prohibition serves to protect the consumer's physical safety. LB297 authorized broker dealers and investment advisors to hold transactions and disbursements when the firm reasonably believes that the senior adult, or vulnerable adult, is the victim of financial exploitation. The process for the hold includes an internal review by the firm of the suspected financial exploitation, notification of the customer of the hold, notification to the Department and Adult Protective Services to provide an opportunity for agencies to investigate and for sharing information with the agencies. The hold can last up to 30 business days. Additionally, the broker dealer or investment advisor, either of the agencies, or any other interested party can petition a court to further extend the delay and seek other protective relief. LB297 provides for maintaining and insuring records of the suspected financial exploitation with adult protective services and law enforcement. It also clarifies that such records are not public records subject to disclosure. Under the Nebraska public records law, LB297 provides broker dealers, investment advisors and other qualified persons who act in good faith and with reasonable care from civil or administrative liability for actions taken under this act. LB297 does not amend Nebraska's Adult Protective Services laws or make any amendments to the protections for depository financial institutions holding transactions and disbursements that were adopted in LB909. Senator Lindström referenced an amendment to the bill brought at the department's request. AM30, adds the words, transaction or, to page 4, line 6, in order to conform with other provisions in LB297. This was an inadvertent omission on the department's part. AM30 also corrects one misspelling on page 3, line 1, of the word, advisor. The department remains committed to providing tools to the financial industries and financial professionals to fight financial exploitation of this vulnerable population. I want to thank Senator Lindström for introducing this bill. Happy to answer any questions from the committee at this time.

WILLIAMS: Thank you, Director Lammers. Questions for the Director? Senator Bostar.

BOSTAR: Thank you, Chair Williams. Thank you, Director Lammers. It may be too soon to know an answer to this, but you mentioned how other states had adopted similar provisions either in legislation and regulations. How long typically do these holds last in practice?

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KELLY LAMMERS: The hold is structured in a two-step phase of which the primary holding occurs at 15 days with an extension to 30. I referenced 30 days in my testimony. Relative to the experience within the department, I cannot say what the average time will be. In working with this industry in the past, the entity is often simply you're asking for the ability for the adult to understand what the impact of the financial event is about to take place. So while I can get back to you relative to the actual average time frame of the hold, it is my understanding that is not a more than 15 days.

BOSTAR: Follow-up question. And related to that, I would be interested in knowing what percent of these holds end up reversing a decision made by a vulnerable individual and what percent don't. And if you have any anecdotal evidence to speak to that now that would be great, if not, I understand.

KELLY LAMMERS: I will certainly see that the team responds to your question directly, indirectly. The conversations within this type of vulnerable adult community is often sweetheart scams. It is often scams in which the-- the party believes that they're working with someone that simply more clarity would offer a communicative story in terms of what will be the outcome. Relative to what presenting-- what percent of those holds end up in a reversal, I will need to get back to you on that.

BOSTAR: Thank you, sir.

KELLY LAMMERS: Thank you, Senator.

WILLIAMS: Additional questions. Director Lammers, when we-- when we had the legislation last year that the body passed that direct-- was directed at the financial institutions more so than the security side, we heard a lot of testimony about the kind of scams that were out there that were hitting some of our adult population, people that were being led to believe that they had won the Publisher's Clearinghouse drawing, that they had won a lottery from Jamaica. These kind of things that we recognized that the banking industry and the people in the banking industry would recognize instantly, the red flags would go up. Yet these people were coming in wanting to withdraw large sums of cash to send it in the mail to wherever. Are those the same types of issues that we are looking at trying to protect the vulnerable adults on the security side that we passed last year on the banking side?

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KELLY LAMMERS: Yes, Senator, this-- this very specifically addresses that scenario in which a vulnerable adult may not be hearing the entire truth and the skilled professional on the other side of the transaction believes are red flags that deserve review. This opens that opportunity for that financial professional to simply ask questions and potentially place a hold.

WILLIAMS: And basically call a time-out on the transaction at this point in time. Slow it down so you can get other people involved with helping with the decision.

KELLY LAMMERS: Yes, Senator.

WILLIAMS: Thank you. Any additional questions? Seeing none, thank you, Director, for your testimony. We'd invite the next proponent to come and testify. Welcome, Senator Mines.

MICK MINES: Good morning, Mr. Chairman, members of the committee. My name is Mick Mines, M-i-c-k M-i-n-e-s. I am a registered lobbyist for the National Association of Insurance and Financial Advisors, or NAIFA, and particularly the Nebraska chapter of NAIFA. NAIFA has over 22,000 financial professionals in our membership working in diverse insurance and security markets across the country. They offer a wide range of products and services, primarily to middle-income and low-income individuals and households. They subscribe to a code of ethics that require they put their clients first. Our broker dealers and investment advisors believe that financial exploitation of our seniors and other vulnerable adults is a heinous act, and it must be stopped. Our members fully intend to take action when these adults are compromised by working with the Department of Banking and Finance, as well as the-- any law enforcement agencies that require our help. NAIFA wholeheartedly supports this bill. We appreciate the Department of Banking taking the-- and Director Lammers taking a leadership role in this. And certainly we appreciate Senator Lindström in bringing the bill. I thank you and am willing to answer any questions you might have.

WILLIAMS: Thank you, Mr. Mines. Question for the witness. Seeing none, thank you for your testimony.

MICK MINES: Thank you.

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WILLIAMS: We'd invite our next supporter. Welcome.

ANDREA LOWE: Thank you. Good morning, Chairperson Williams, and members of the Banking, Commerce and Insurance Committee. My name is Andrea Lowe, A-n-d-r-e-a L-o-w-e. I am the director of the Office of Legislative Services within the Department of Health and Human Services. I'm here today on behalf of Stephanie Beasley, our director of the Division of Children and Family Services, who was supposed to give testimony today but was unable to come last minute, weather challenges. But we are here to testify in support of LB297 which would help protect vulnerable adults from financial exploitation. The Adult Protective Services Act tasks DHHS with investigating abuse, neglect and exploitation of vulnerable adults in our state. Our investigations begin with reports made to the abuse and neglect hotline. In 2019, Adult Protective Services investigated 2,565 reports, 21 percent of which were reports involving financial exploitation. This trend continued in 2020 when 23 percent of our reports received included an allegation of financial exploitation of enough-- particularly for a vulnerable adult. Often financial professionals are the first to recognize the signs that a vulnerable or senior adult is being financially exploited. Elder financial abuse is exceedingly common. According to the Investor Protection Trust Elder Fraud and Financial Exploitation Survey of 2010, one of every five Americans over the age of 65 has been victimized by financial fraud. In 2017 the National Council on Aging reported that \$37 billion has been lost every year due to this. Unfortunately, fewer than one-fourth of these incidents are ever reported to any agency at all. Therefore, it is vital that we work together to improve the statistic. Adult Protective Services requires the partnership of community members and especially our financial professionals to identify the victims of exploitation and to protect vulnerable adults from the fallout of exploitation. The costs of financial exploitation are great. Vulnerable and senior adults who fall victim to exploitation may not be able to recoup those losses or rebuild their wealth. Further, due to federal regulations, elders who lose their savings or financial resources, they run the risk of becoming ineligible for Medicaid, which can further jeopardize their health, welfare or safety. By reporting concerns, financial professionals improve protections for vulnerable adults, and they aid Adult Protective Services professionals. LB297 would permit these professionals to delay transactions and share account records. This would afford our Adult Protective Services team valuable time during

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investigations and help collect evidence to assess alleged exploitation. In summary, LB297 encourages financial professionals, the Department of Banking and Finance, and Adult Protective Services to cooperate in protecting the wealth, safety and well-being of vulnerable adults in Nebraska. We support LB297 to further-- for further protection for vulnerable adults. Thank you so much for the opportunity to testify today. I'd be happy to take any questions that I can share with our department to bring back to you as well.

WILLIAMS: Thank you, Ms. Lowe. Are there any questions? Seeing none, thank you for your testimony.

ANDREA LOWE: Great, thank you so much.

WILLIAMS: Invite our next testifier in support. Welcome, Ms. Ragland.

JINA RAGLAND: Thank you, Chair. Chair Williams, and members of the Banking, Commerce and Insurance Committee, my name is Jina Ragland. That's J-i-n-a R-a-g-l-a-n-d. I'm here today testifying in support of LB297 on behalf of AARP Nebraska. AARP is a nonprofit, nonpartisan organization that works across Nebraska to strengthen communities and advocates for the issues that matter most to families, and those 50-plus, such as caregiving, health care, employment and income security, retirement planning, affordable utilities and protection from abuse and exploitation. Everyone has the right to live free from abuse and to be cared for respectfully. AARP has a long history of fighting for protections against fraud and abuse of older adults. Elder abuse is often an often hidden phenomenon that affects hundreds of thousands of older Americans and is a relevant issue in Nebraska. Elder abuse can be physical, financial or psychological, and it may take place at home or in an institutional setting. Financial exploitation is the most prevalent form of elder abuse. AARP's BankSafe Initiative found that one out of five older adults experience financial exploitation and the average victim loses \$120,000. Elder financial exploitation is a significant problem now and is expected to become worse with the aging of our population. Dramatic increases in the population sparked steep rises in the potential for exploitation. Elder financial exploitation wipes out incomes both great and small, but also cause injuries far beyond the pocketbook. It can engender health care inequities, fracture families, reduce available health care options and increase rates of depression. Elder financial exploitation is an intolerable-- intolerable crime, resulting in

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losses of independence, human rights and dignity. In 2020 AARP Nebraska testified in support of LB853. Thank you, Senator Williams. This year we echo our support and believe this bill is a good next step in the necessary work to combat elder financial exploitation in our state. Is our hope that these bills will lead to continued discussions and collaborations across all branches of government, various professions and advocates to identify additional policy solutions. These solutions should include other safeguards like consumer education, professional training and public outreach and awareness to fight this unfortunate phenomenon. We thank Senator Lindström for introducing the legislation and for the opportunity to comment, and I would be happy to answer any questions.

WILLIAMS: Thank you, Ms. Ragland. Questions? Seeing none, thank you for your testimony. Any additional supporters of LB297? Seeing none, is there anyone here to testify in opposition to LB297? Seeing none, is there anyone here to testify in neutral capacity? Seeing none, Senator Lindström.

LINDSTROM: Thank you, Chairman. I'll make it brief. Just for the new members on the committee with dealing with LB853, we sat and listened to a lot of testimony with how does somebody get into the situation? How does a vulnerable adult get had or taken advantage of financially? I can tell you, being in this industry, I am an adviser and most of the bad actors, unfortunately, are kids of the elderly population. You know, if you have somebody that's at home, a caregiver or a-- one of the sons and daughters comes over, sees a statement that might have a dollar amount that's on there, it's very easy then to get on the Internet from the home, from an email and say, I would like \$10,000 out of this account. One of the things that in my industry and what we pride ourselves on is know your client. We do a lot of training on know your customer and know your client. And we will make calls to verify if that individual-- and we're supposed to, everybody is supposed to verify with that individual whether or not they approve that transaction. You know, somebody has a power attorney, it's a different story, but that-- those are the circumstances that happen where you have a kid or a child that sees a vulnerable adult and will use that opportunity to gain financially. So it's one of the things that came-- came about in our testimony with LB853. And again, this is just another add-on to protect those vulnerable individuals. And so, appreciate it and would encourage your support of the bill.

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WILLIAMS: Any questions for Senator Lindström? Seeing none. Natalie, do we have any letters? Yes, we have a letter of support from Kelly Kelleher from the National Association of Social Workers, and that's the only letter that we have on that one. So with that, that will close the public hearing on LB297. Please use the east door, now that you're almost out. [LAUGHTER]

LINDSTROM: We will now open the hearing on LB363, introduced by Chairman Williams.

WILLIAMS: Thank you, Vice Chairman Lindström, and members of the Banking Committee. My name is Matt Williams. That's M-a-t-t W-i-l-l-i-a-m-s, and I appear today to present LB363, a bill I'm introducing at the request of the Department of Banking. LB363 is this year's clean-up bill from our Department of Banking and Finance. A number of topics are addressed. The bill provides for the annual reenactment of the depository financial institution's wild card statutes to provide equal rights, powers, privileges, benefits and immunities for state chartered banks, savings and loan associations and credit unions with their respective counterparts. Due to state constitutional restrictions on delegation of legislative authority, these statutes have to be amended annually. The bill would provide provisions in the following statutes to update cross-referenced federal statutes and regulations to refer to those statutes and regulations as they existed on January 1, 2021. The Nebraska Banking Act, Savings and Loan Association statutes, the Securities Act of Nebraska, the Nebraska Commodity Code, Financial Exploitation Statutes, the Seller-Assisted Marketing Plan Act, the Consumer Rental Purchase Agreement Act, and the Uniform Commercial Code, Article 4A. The bill would provide provisions in the Securities Act of Nebraska, the Nebraska Trust Company Act, the Nebraska Money Transmitters Act, the Nebraska Sales Installment Act and the Nebraska Installment Loan Act. Director Lammers will follow me and he will provide a thorough explanation of all of the details of these changes. We worked very hard with the department in the off-season to put all of these clean-up provisions in one bill making it rather extensive this year. So there are a lot of little touches to clean up this year's Act. So with that, I would try to answer any of your questions, but those are best for senator-- or for Director Lammers as he comes up. Thank you.

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LINDSTROM: Thank you, Chairman Williams. Any questions from the committee? Seeing none, thank you. We'll now have our first proponent. Good morning.

KELLY LAMMERS: Good morning once again. Vice Chairman Lindström, members of Banking, Commerce and Insurance Committee, my name is Kelly Lammers, K-e-l-l-y L-a-m-m-e-r-s. I am director of the Nebraska Department of Banking and Finance. I'm appearing today in support of LB363, which was introduced at the request of the Department. LB363 proposals updates to a number of laws governing many of the industries regulated by the department through its Financial Institutions Division and the Nebraska Securities Bureau. The focus of LB363 is to update 10 separate acts that the Nebraska administrators, including revisions that the Legislature has been adopting on an annual basis. LB363 contains the annual equal rights updates for Nebraska state chartered banks, credit unions and savings and loans associations. Under these laws, Nebraska state chartered financial institution may invoke a federal law or a regulation applicable to its federal counterpart that gives it a right, power or privilege that is greater than or different from what Nebraska law or regulation permits. Due to state constitutional restrictions on delegation of legislative authority, the statute needs to be amended annually to provide a current reference date. LB363 sets that date at January 1, 2021. LB363 proposes to update all cross-referenced federal statutes and regulations affecting the industry under the department's juristic--jurisdiction. By providing a new reference date of January 1, 2021, 16 Nebraska statutes are amended, including the Nebraska Bankers Act, Savings and Loan Statutes, Securities Act of Nebraska, Nebraska Commodity Code, Depository Institutions, Financial Exploitation Statute, Seller-Assisted Marketing Plan Act and the Consumer Rental Purchase Agreement Act, as well as Uniform Commercial Code. Fifteen of the 16 statutes were most recently updated in the 2020 legislation by LB909 and the 16th was first adopted in that bill. LB363 proposes one additional amendment to Nebraska Banking Act to update Section 8-163, which governs the payments of dividends by a bank. The law currently uses the word, undivided profits on hand, and net profits on hand, as part of the calculation of dividends that a bank may pay. LB363 replaces those references with the term defined retained net earnings. Department examiners have reported violations of this statute that occurred because the existing definitions were misinterpreted. LB363 includes updates to the Nebraska Trust Company Act relating to boards

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of directors to require information on proposed-- proposed board members as part of the charter application process and to act as a statutory cross-reference created relating to the selection of officers. Amendments also clarify that the president of the trust company must be a member of the board of directors and that a person appointed to fill a vacancy on the board must be approved by the department prior to acting as director. These amendments mirror previously made additions to the Nebraska Banking Act. Section 14 of the bill amends the Securities Act of Nebraska to provide authority to the department to correlate filings of notices for the sale of federal cover securities under Section 18(b)(4) of the Federal Securities Act of 1933, known as federal Rule 506 filings. Rule 506 allows for the sale of securities to an unlimited number of accredited investors and up to 35 non-accredited investors in Nebraska. Under state law and rule, issuers are required to submit a copy of the form filed with the Federal Securities Exchange Commission and a fee of \$200 to the department within 15 days of the first sale in Nebraska. Failure to meet the deadline results in a late filing that cannot be accepted. The issuer must withdraw the filing and attempt to qualify under another exemption, rescind the offering or register the security. Issuers averaged 63 withdrawals per year over the last three fiscal years. Department staff and issuers deal with this on a weekly basis, resulting in additional costs to both. LB363 authorizes the director of the department to issue an order curing the late filing and sets a \$200 late fee in addition to the initial fee. The Securities Act currently provides a cure process for late notice filings for other exemptions. Permitting issuers to continue to use an exemption originally relied on provides a more efficient and more effective means to do business in Nebraska. Other states, including Iowa, Kansas, Missouri and South Dakota, have adopted cure processes for late Rule 506 filings. LB363 also updates the Nebraska Money Transmitters Act. The act has been in place since 2014, replacing Nebraska Sale of Checks and Funds Transmission Act. Money transmission includes all business of selling or issuing payment instruments or stored value, or receiving money or monetary value for transmission by any means, including wire, facsimile or other electronic transfer. The updates proposed by LB363 reflect the evolution of this industry since 2014 and provides the department with additional tools to administer the act. LB363 will exempt collection agencies, credit service organizations and debt management businesses licensed by Nebraska Secretary of State acting within the scope of those licenses from

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having to license under the Money Transmitter Act. Companies holding one of these three licenses also fall under the Money Transmitters Act if they transmit client funds. Although few of those companies are now licensed under the Money Transmitters Act, a clear exemption would eliminate a dual regulatory burden. The act is also being updated to clarify that a license is required for a person providing money transmitting-- money transmission services to a Nebraska resident, even if the resident is not physically present in Nebraska at the time of the transmission. This amendment is primarily intended to protect Nebraskans serving in the military, but will also protect residents who are outside the state. Additional protection for Nebraskans is included by adding the requirement that licensees place customer funds in banks that carry FDIC insurance. The risk of holding client funds in an uninsured institution is eliminated. LB363 provides additional investigative and enforcement authority to the department under the Money Transmitters Act. The same authority is currently included in other laws, including the Installment Sales and Residential Mortgage Licensing Act. LB363 also updates a licensing requirement under the act to provide that a license must be organized in the United States or its territories, have a physical location in the United States and submit financial statements for key shareholders. Final updates in LB363 are to the Nebraska Installment Sales Act and the Nebraska Installment Loan Act. Installment Sales Act revisions include a change in the definition of sales finance company to include other parties involved in installment sales transaction or that have contact with customers on behalf of the sales finance company. The industry has changed from that of a purchaser solely handling all aspects of the transaction and on once a contract is purchased to one that assigns parts of the transmission to unrelated entities, all such parties should be licensed because they are an integral part of the activity as licensed under the act. LB363 would similarly update the Nebraska Installment Loan Act to require a license for all parties who acquire any rights of ownership or whose service, manage, participate in or hold an installment loan, or engage in business with the borrower. This entity is also involved-- evolved from a single business handling the entire transaction to a number of entities. I want to thank Chairman Williams for introducing this legislation to update and clarify the laws affecting our financial industries. Happy to answer any questions.

LINDSTROM: Thank you, Director. Any questions? Senator Flood.

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FLOOD: Thank you, Senator Lindstrom. Mr. Lammers, thank you for your testimony this morning. As it relates to money transmitters, specifically the requirement that a money transmitter have a relationship with the FDIC, do you think that this is necessary if-- if the transmitter is simply moving money from one place to the other in a payment scheme or-- scheme is not the right word, but in a payment system when they're not actually holding the assets, or can you clarify that?

KELLY LAMMERS: And thank you, Senator Flood. Yes, it has to do with the fact that we're labeling this as cleanup in terms of the prior legislation indicated that the funds must be held with a bank. What we're finding is relative to the industry there, the term bank has a number of different definitions. So we're simply adding the clarification relative to the clearing account being within FDIC insured institutions. When I reference a clearing account, I'm mentioning that money that is not in flight, if you will, it is the money that is parked pending clearing. So it represents a detail in which it is that moment in time in which a depositor-- excuse me, in which a transmitter funds would potentially be at risk. It eliminates the moment in time conversation, if you will.

FLOOD: How-- I'm thinking about a bill that I'm bringing later this session as it relates to a cryptocurrency bank. And so I'm trying to understand if-- if we are unduly tying our hands by requiring that clearing account to be an account, an FDIC insured bank, so I don't have an answer. I just want to raise it for the benefit of the Chair and the committee and our committee counsel just to keep this in mind as we move forward. Thank you.

KELLY LAMMERS: Thank you.

LINDSTROM: Any other questions from the committee? Seeing none, thank you.

KELLY LAMMERS: Thank you.

LINDSTROM: Next proponent. Good morning, Mr. Hallstrom.

BOB HALLSTROM: Vice Chairman Lindström, members of the committee, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in

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support of LB363. Since the director has gone into great detail regarding the legislation I'll just note a couple of the provisions that we support the bill as a whole, but also the annual update to the wild card for banks and state chartered savings and loans, as well as the clarification on the issue of distribution of dividends through the use of the term retained net income will provide greater clarity in this area of the law. The department also included the federal update that he referenced that's required for state constitutional purposes as it relates to the elder abuse transaction hold legislation that we had last session. We appreciate inclusion of that in this bill as opposed to having to introduce a separate bill for that purpose. Be happy to address any questions that the committee might have.

LINDSTROM: Thank you, Mr. Halstrom. Any questions from the committee? Senator Flood.

BOB HALLSTROM: Yes, sir.

FLOOD: What is a wild card?

BOB HALLSTROM: A wild card is the terminology that we use in the industry to say that the state chartered institutions that are affected, and you'll note there's both banks and S&Ls as well as credit unions that have a wild card, and with the exception of having to pay the state deposit tax that applies to all of those institutions, it essentially allows them to piggyback on to the federal laws and regulations and have the same powers and authorities and rights that the national bank, savings and loan, or credit union would have. So it automatically gives them those updated powers. We-- we update that because of the constitutional restriction as of January 1 of each year to incorporate anything that may have occurred at the federal level since last year to allow the state chartered institutions to have those same privileges.

FLOOD: Thank you.

BOB HALLSTROM: Thank you.

LINDSTROM: Are there any other questions? Seeing none, thank you, Mr. Hallstrom.

BOB HALLSTROM: Thank you, Senator.

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LINDSTROM: Any other proponents? I do have written testimony from Julia Plucker representing Nebraska Credit Union League in support of the advancement of LB363. We'll now move to opponents of the bill. Seeing none, any neutral testifiers? Seeing none, Senator Williams, you're welcome to close.

WILLIAMS: Simply thank the committee for indulging us with these annual cleanup kind of things that we have to do, and I appreciate Senator Flood's question about the wild card. We generally answer that each year also. With that, I'll close.

LINDSTROM: Thank you, Chairman Williams. Any final questions? Seeing none, that will close the hearing on LB363, and we will now open the hearing on LB66.

WILLIAMS: Thank you again, Vice Chairman Lindstrom, and 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 the 36th Legislative District. I'm here today to introduce LB66, which makes a series of technical and substantive changes to the Public Funds Depository Security Act. The changes which primarily address the single bank pool collateral program will be covered in great detail by Mr. Hallstrom, with the Nebraska Bankers Association, who will follow me. But to set the stage, I would like to take just a few moments to background the committee with regards to the pledging for public funds requirement in Nebraska. Under Nebraska law, a financial institution that is eligible to accept public deposits and think that those are deposits from your community, the school, a-- for tax hospital, all those kind of things, they are required to pledge statutorily authorized securities for the protection of the deposits in excess of that amount which is insured by the Federal Deposit Insurance Company. That's what the single bank deposit account requires. There are two methods currently of satisfying these pledging requirements. First one is commonly referred to as the dedicated method. The second is the Single Bank Pooled Collateral method, which we just passed last year in the Legislature. Under the dedicated method of pledging for public funds, a security interest in the securities is granted in favor of each public depositor placing deposits with the financial institution. The Legislature passed legislation, which I introduced in 2019, which created the single bank pool method of pledging. Under the single bank pool collateral method of pledging for public funds, the financial institution is allowed to pledge a pool of securities for the

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aggregate amount of deposits placed with the institution by all public depositors. You can imagine, many banks hold a lot of securities and they also do business with many public entities. And rather than pledging individually for each separate school district, each separate municipality, they can pledge a pool that is managed that way. This method-- method simplified the pledging transactions for both the political subdivision and the financial institution, while maintaining the same level of protection offered by the dedicated method. The Single Bank Pooled Collateral Program requires financial institutions to submit monthly reports reflecting the end of month amount of public deposits, FDIC insurance coverage, and the amount of pledged securities by the 10th day of the next month. The administrator of the program is required to make these reports accessible to public depositors with public deposits covered by the Single Bank Pooled Collateral Program within 20 days after the report is submitted by the participating financial institution. Since going into effect in July of 2020, the program has been well-received and financial institution and public depositors appear to be deriving the benefit that we were anticipated with the creation of this program. Again, Mr. Hallstrom will be providing testimony to the technical changes that are needed to continue LB-- with LB66. In closing, I would encourage the committee to advance LB66 to the floor for their consideration. Thank you.

LINDSTROM: Thank you, Chairman Williams. Any questions? Seeing none, thank you. We will now have proponents on LB66.

BOB HALLSTROM: I happened to notice that the page spent more time sanitizing the chair after I sat in it than [INAUDIBLE]. Maybe it had something to do with lobbyists. [LAUGHTER]. Again, Vice Chairman Lindström, my name is Bob Hallstrom, B-o-b 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 LB66. LB66 makes a series of technical and substantive changes to the Public Funds Deposit Security Act, relating primarily to the Single Bank Pooled Collateral method of pledging for public funds. Senator Williams has given you the pledging for Public Funds 101 tutorials, so I hope that's helpful in your understanding of how this system works for the protection of public deposits that are placed with Nebraska financial institutions. But I will concentrate on the substantive provisions of the bill. First are technical amendments. Because of the distinctions between the so-called dedicated method of pledging and the Single Bank Pooled Collateral

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method, there was a need to go in after we had changed the law and update it with some technical amendments, principally to change the references to the term governmental unit for the term custodial official, as applicable to the respective programs. And that is part of what LB66 does. Second issue is when a political subdivision or state agency places deposits with a bank, whether it's under the dedicated method or the Single Bank Pooled Collateral method, the bank, as Senator Williams indicated, pledges securities for the protection of all those amounts of the deposit that are in excess of the \$250,000 FDIC insured amounts, or the collective amounts of the depos-- insured amount of deposits under the Single Bank Pooled Collateral Program. Those securities are held by a third party qualified trustee, and there is an automatic perfection of that security interest to ultimately protect the public depositors in terms of accessing those securities in the event that there would happen to be an insolvency. So when you look at the current law, the current law provides for that perfected security interest and we are simply bifurcating, if you will, so that the perfected security interest provisions are identical for both the dedicated method and for the Single Bank Pooled Collateral method. The only distinction being that under the perfection of the security interest in the dedicated method, the securities are pledged to the individual custodial official for the public depositor, and under the Single Bank Pooled Collateral method, they are pledged to the administrator of the Single Bank Pooled Collateral Program. The final issue has to do with qualified trustees. I mentioned that the qualified trustees are a third party holding those securities that are pledged for the protection of public deposits. When we first adopted the Public Funds Deposit Security Act, the definition of bank was significant for purposes of determining who was eligible to hold public deposits. And we wanted to limit that essentially to Nebraska banks, capital stock, financial institutions and qualifying mutual financial institutions. So the definition of those terms relates to an institution that is either headquartered in Nebraska or that was once headquartered in Nebraska and now maintains branches or continues to maintain branches in Nebraska. Unfortunately, including that definition of-- of those institutions together, it applied equally to who could serve as a qualified trustee. And by limiting the, the holders of public depositors to Nebraska-based institutions, we also eliminated the ability of out-of-state qualified trustees to serve in that capacity. It's not at all unusual in other states for out-of-state qualified their banks to serve as qualified

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trustees, so LB66, will make that change keeping intact the limitation on who can hold public deposits, but expanding the ability of Nebraska banks to utilize out-of-state qualified trustees to hold those securities. And that's the testimony. We would encourage you to advance LB66 to the floor. And I'd be happy to address any questions that the committee might have.

LINDSTROM: Thank you, Mr. Hallstrom. Senator McCollister.

McCOLLISTER: Yeah, thank you, Senator Lindstrom. Mr. Halstrom, thanks for being here.

BOB HALLSTROM: You bet.

McCOLLISTER: In the last 20 years, and I know you go back with the bankers that far, have there been any insolvencies or bankruptcies where these pools, pool funds were utilized?

BOB HALLSTROM: There have not been any losses in the last 20 years, and by the way, you only got about half the time that I've been with the Bankers, [LAUGHTER] despite my boyish looks, but none that I'm aware of that-- that have involved insolvencies where there were any losses. There have been historically a few instances way back when. I think Patty Herstein could probably tell you more about from the department than myself, but very limited and certainly nothing in modern times.

McCOLLISTER: So it's a system that's working.

BOB HALLSTROM: Yes.

McCOLLISTER: Thank you.

LINDSTROM: Thank you. Any other questions? Seeing none, thank you, Mr. Hallstrom.

BOB HALLSTROM: Thank you.

LINDSTROM: Next proponent. Seeing none, any opponents? Seeing none, any neutral testifiers? Also seeing none, Chairman Williams, if you'd like to close.

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WILLIAMS: Thanks again for the-- the time of the committee, and thank you for asking that question, Senator McCollister, that this program has worked. The upgrade to the single bank pool, which is what we're primarily adding some tweaks to was LB66 is the more convenient way of doing this for not only the financial institutions, but also for the municipalities and other political subdivisions that are involved. So I would encourage your advancement. Thank you, Mr. Vice Chairman.

LINDSTROM: Thank you, Senator Williams. Any final questions? Seeing none, thank you, Chairman Williams, and that will end the hearing on the LB66.

McCOLLISTER: Any letters?

LINDSTROM: No letters in front of me.

WILLIAMS: No, there weren't any letters on that. That's it.

[BREAK]

WILLIAMS: Welcome to the afternoon edition of the Banking, Commerce and Insurance Committee. My name is Matt Williams, I represent Legislative District 36, and I'm honored to serve as Chairman. We usually read this entire thing, but since Senator Pansing Brooks, you've heard this before and Director Kohtz, you've heard this before. We do ask you to silence your cell phones and you're, you're very welcome to remove your face covering if you feel you'd like to, while you're testifying here. And we look forward to the testimony this afternoon. And I think everybody around this table knows everybody, so we're not going to introduce anybody even this afternoon. So with that, Senator Pansing Brooks, you're welcome to open on LB248.

PANSING BROOKS: Thank you, Chair Williams. And thank you, members of the Banking, Commerce and Insurance Committee. That was a-- this will be a quick, quick in and out on this bill. My name is Senator Patty Pansing Brooks, Patty Pansing Brooks, and I represent Legislative District 28 right here in the heart of Lincoln. I offer you for your consideration today LB248, a bill I introduced at the request of members of the Nebraska State Bar Association. The bill offers a straightforward amendment to Nebraska's Uniform Directed Trust Act, which this committee approved and the Legislature implemented with the passage of LB536 in 2019. LB248 simply amends the act to allow for the

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correction of a scrivener's error when made, when made-- which was made when drafting a directive trust, so long as the correction does not reform the trust in any material respect. The court-- the correction of a simple scrivener's error may seem like a small thing, but making this change can save a great deal of hassle and time by avoiding the need to involve a court proceeding to correct an important technical error. LB248 would simplify the process for correcting these types of errors and would ensure that the intent of the settler-- settlor remains paramount. Someone representing the Nebraska State Bar Association will be testifying on this bill and will be able to explain the circumstances in which this issue has arisen and why this bill is needed. So with that very slow-- or quick intro, I'm happy to answer any questions you might have or direct them to those behind me as appropriate.

WILLIAMS: Thank you, Senator Pansing Brooks.

PANSING BROOKS: Thank you.

WILLIAMS: Are there questions for the senator? Senator Pahls.

PAHLS: Just, just for curiosity, is a scrivener like a scribe? That's another word, is there--

PANSING BROOKS: Good question. Yeah, scrivener just really means like a technical error. It's a, it's a legal term that means a quick, very elementary error that happens. That's what it comes from originally, and it's used legally as an error, a technical error. That doesn't mean-- that means something that is not of substance.

PAHLS: OK, thank you.

PANSING BROOKS: Thank you, Senator Pahls.

WILLIAMS: Additional questions? Seeing none, thank you, Senator. And I'm assuming you will stay to close.

PANSING BROOKS: I think I'll probably just waive closing.

WILLIAMS: OK.

PANSING BROOKS: But I'll stay here in case there's some great--

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WILLIAMS: That will be fine.

PANSING BROOKS: -- burning issue that you need me to respond to.

WILLIAMS: We'll invite the first proponent.

PANSING BROOKS: Thank you.

WILLIAMS: Welcome, Mr. Schaefer.

MATT SCHAEFER: Good afternoon, Chairman Williams, members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, appearing today on behalf of the Nebraska State Bar Association. As you heard Senator Pansing Brooks describe, LB248 amends the Nebraska Uniform Directed Trust Act to permit amendments of irrevocable trust to correct scrivener's errors as long as the correction is clearly in accord with the settlor's stated intent and correction does not materially alter the trust. We intended to have an experienced estate planning attorney testify on this today, but he is stuck in Omaha. So I'm distributing his letter, which hopefully provides a little bit more background as to the need for this small change. Thank you for your time.

WILLIAMS: Thank you. Mr. Schaefer. Are there questions? Seeing none, thank you.

MATT SCHAEFER: Thank you.

WILLIAMS: Any additional proponent's? Anyone here to testify in opposition? Seeing none, anyone here to testify in neutral capacity? Matt, we ask you to use the-- thank you.

MATT SCHAEFER: First time.

WILLIAMS: Senator Pansing Brooks. Senator Pansing Brooks waives closing. That will close the hearing on LB248. You said quick, McCollister?

LINDSTROM: All right, we will open the hearing on LB23, introduced by Chairman Williams.

WILLIAMS: Thank you, Vice Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Matt Williams,

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M-a-t-t W-i-l-l-i-a-m-s, and I appear today to present LB22 [SIC], a bill I introduced at the request of the Nebraska Real Property Appraiser Board. LB23 is the board's cleanup bill for 2021-- and it is 20, LB23. I said 22 earlier, a typo here in my own statement. The bill was put together over the summer and fall by staff of the board and staff of the committee. Pursuant to an interim study resolution, LR354, the bill would update the Real Property Appraisers Act for compliance with three things. First, Title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989. Second, the Uniform Standards and Professional Appraisers Practice. And third, the policy statements of the appraisal subcommittee of the Federal Financial Institutions Examination Council. In the State of Nebraska, if we are found to be out of compliance with Title 11 by the appraisal subcommittee, the appraisal subcommittee may remove all Nebraska-credentialed appraisers from the federal registry, resulting in there being no appraisers qualified to appraise real property in connection with federally related transactions. Which, by the way, is approximately 80 percent of the loan activity in the state. That's why this seems like a simple thing, and it is a simple thing, but it's really important. The bill would update definitions, correct provisions regarding who is exempt from the act in various sections, change "bachelor's degree or higher" to simply "degree" to allow an associates degree or higher in real estate from an accredited degree-awarding university or college, among other things, to qualify for an applicant or a credential. It clarifies the eligibility of certified real property appraisers to qualified as supervisory real property appraiser and expand the scope of practice of a licensed residential real property appraiser. Director Tyler Kohtz will, will testify behind me and will give a more thorough explanation and will be able to answer your questions. Thank you for your time. This bill does include the emergency clause when it gets to that point. And thank you.

LINDSTROM: Thank you, Chairman Williams. Any questions from the committee? Seeing non, thank you. First proponent. Good afternoon.

TYLER KOHTZ: Good afternoon. My name is Tyler Kohtz, I'm the director for the Nebraska Real Property Appraiser Board, and I'd like to begin by thanking Senator Williams, Senator Lindstrom and the rest of the committee members for this opportunity to speak on behalf of the board today concerning LB23. Just some quick background. Title 11 requires each state to prescribe appropriate standards for the performance of

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real estate appraisals in connection with federally related transactions. In addition, real estate appraisals are to be performed in accordance with the Uniform Standards of Professional Appraisal Practice and performed by individuals whose competency has been demonstrated and its professional conduct is subject to effective state supervision. As Senator Williams mentioned, the appraisal subcommittee has the authority to remove appraisers from the federal registry if the state is found to not be compliant with Title 11. The purpose of LB23 is to update the Nebraska Real Property Appraiser Act to implement the real property appraiser qualifications criteria adopted by the Appraiser Qualifications Board on January 2020 and May 2020, and to maintain compliance with Title 11. The act consists of qualifications for credentialing as well as standards for appraisal practice and appraisal conduct. And the board's primary functions are-- related to the act are to issue and renew appraiser credentials, develop and implement standards for appraiser credentialing, approve appraiser qualifying courses and appraiser continuing education activities, investigate and adjudicate grievances, and disseminate relevant information to the general public, credentialed appraisers and appraisal management companies. The board's program is primarily funded by appraiser fees and appraisal management company registration fees, and no tax money is used to support this program. Senator Williams covered most of the changes in the act pretty well, so I'll just kind of briefly run through them again real quick. 2020 is updated to 2021 for the definition of Federal Institution Reform, Recovery and Enforcement Act of 1989 and Uniform Standards of Professional Appraisal Practice. Incorrect language in 76-2221 (1) is corrected to clarify that salaried employees of the federal government, any agency of state government or political subdivision which appraises real estate, any insurance company authorized to do business in this state, or any regulated financial institution who renders an estimate or opinion of value of real estate or interest in real estate in connection with their employment is exempt from the act. The credential classification statutes are updated to allow that the associates degree or higher in real estate from an accredited award would-- awarding college or university that has all or part of its curriculum approved by the AQB is approved as a required core curriculum and can be used in place of class hours in real property appraiser qualifying education conducted by education providers. Previously only AQB-approved bachelor degree, degree programs were allowed. Supervisory appraiser language is modified to implement the

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2020 criteria change, clarifying that any action taken by an appraiser regulatory agency involving that jurisdiction's isolated administrative responsibilities that may or may not affect the real property appraisers' legal eligibility to engage in real property appraisal practice is not considered disciplinary action for the purpose of the supervisory real property appraiser eligibility. 76-2230 (6) is modified to implement the 2020 criteria change, raising the maximum transaction value for complex residential properties from \$250,000 to \$400,000 for, for eligibility to engage in real property appraisal practice-- for the scope of practice for the licensed residential real property appraiser. LB23 updates the act for compliance with, with the 2020 criteria, Title 11, the appraisal subcommittee policy statements and USPAP. If the state of Nebraska is found to not be complying with Title 11, the appraisal subcommittee-- by the appraisal subcommittee, all Nebraska credential appraisers may be removed from the federal registry, resulting in no appraisers qualified to appraise real property in connection with federally related transactions. Such action would have a substantial negative impact on the mortgage loan activity in Nebraska and the Nebraska Real Property Appraiser Board supports LB23. With your handouts, I included a more technical explanation of the changes in LB23. Thank you for the opportunity to appear before you today, and please feel free to ask any questions you might have.

LINDSTROM: Thank you, Mr. Kohtz. Any questions from the committee? Seeing none, thank you.

TYLER KOHTZ: Thank you.

LINDSTROM: Since there's nobody else in the crowd, I'm guessing that's the last proponent. I do have a drop-off testimony from Bob Hallstrom with the Nebraska Bankers Association in support of LB23. Any opponents? Any neutral? Senator Williams, you're welcome to close.

WILLIAMS: Just quickly, thank, thanks again to the committee and especially to Director Kohtz. He worked very closely with our legal counsel, Bill Marienau, this past year to get this all put together. And again, as we said and as he repeated, these changes seem minor and they are minor. But if we don't keep our credentialled appraisers up-to-date with the federal standards, they can't make the appraisals that we need to make, have made in the state. So thank you.

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LINDSTROM: Thank you, Senator Williams. Any final questions? Seeing none, that will close the hearing on LB23.