

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

Banking, Commerce and Insurance Committee
February 04, 2008

[LB848 LB907 LB1011 LB1028]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 4, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1028, LB848, LB907, and LB1011. Senators present: Rich Pahls, Chairperson; Chris Langemeier; Vice Chairperson; Tom Carlson; Mark Christensen; Tim Gay; Tom Hansen; Dave Pankonin; and Pete Pirsch. Senators absent: None. []

SENATOR PAHLS: Good afternoon, this is February 4, approximately 1:30 p.m., beginning our Banking, Commerce and Insurance Committee meeting. I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls, I'm from Omaha and represent the 31st District. I serve as the Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the process. This is your opportunity to express your position on the proposed legislation before us today. To better facilitate today's proceedings, I ask you to abide by the following procedures. If you take a look to my right you can see on the chart over here. Simply we're asking you to turn off your cell phone, move to the front two rows if you plan to testify, we're asking you to move to the on-deck chair when you're ready to testify. The order of testimony is as follows: the introducer, the proponents, opponents, neutral, and closing. We're asking you testifiers to sign in and put your sheet up here in this little box on this table, and we're requesting that you spell your name for the record. I know a number of you do this on a regular basis, but we do apparently have some new people here today, so we're asking you to be sure you spell your name for us. I like the wording be concise. If you have written materials, we need at least 10 copies. I'd like a show of hands if you do need copies made for you. We like to have at least 10 copies. Okay, I see none, thank you, I appreciate that. To my immediate right is our committee counsel, Bill Marienau; to my immediate left is committee clerk, Jan Foster, and I'm going to ask the senators to introduce themselves, starting with you, Senator. []

SENATOR CARLSON: Tom Carlson, District 38, Holdrege--the heart of the nation, 1,715 miles from the west coast, 1,751 miles from the east coast. []

SENATOR PIRSCH: I'm state senator Pete Pirsch, represent the Legislative 4th District in Omaha, home of Millard North High School, which I believe were the state soccer champs this year. []

SENATOR LANGEMEIER: Chris Langemeier, District 23. []

SENATOR PANKONIN: Dave Pankonin, District 2. []

SENATOR GAY: Tim Gay, District 14, Papillion-La Vista. []

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

Banking, Commerce and Insurance Committee
February 04, 2008

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

SENATOR HANSEN: Tom Hansen, District 42, the district that 6 million serviceman went through and stopped in North Platte during the canteen during World War II. []

SENATOR PAHLS: Appreciate that, thank you, Tom. Thank you for all the parts of Omaha, or I should say parts of Nebraska, that we did not know about. Appreciate that information, because we are always for economic development. Our page is Ryan Behrns from Louisville, Nebraska, we can see that he's working right now. The bills will be taken up in this order: LB1028, LB848, LB907, LB1011. First one is by Senator Pankonin, and when you're ready, Senator, we are ready for you. [LB1028]

SENATOR PANKONIN: (Exhibits 1 and 2) Good afternoon, Chairman Pahls and members of the Banking, Commerce and Insurance Committee. I am Dave Pankonin and I represent the 2nd Legislative District. I'm here to introduce LB1028. The bill amends the Securities Act of Nebraska. The proposed changes resulted from a situation in my district in which many Nebraska City residents lost millions of dollars as victims of misleading investment advice and probably outright fraud. As the legislative representative for constituents in the Nebraska City area, I contacted the Nebraska Department of Banking and Finance late last summer to discuss the investigation of the Nebraska City incident and hopefully the recovery of some of the lost funds. My legislative office worked with the department and with committee counsel, Bill Marienau, to identify some changes to the Securities Act (of Nebraska) that may help the department to better respond to similar problems in the future. LB1028 proposes three key changes to the Nebraska Securities Act. It would allow the department to sue for restitution or disgorgement, make it unlawful to tamper with evidence or to impede in an investigation, and require that branch offices for investment advisers be registered. Generally, I am not an advocate of more government regulation and expanded powers, but when Nebraska citizens suffer significant or total loss of their invested money, I think we need to allow the department to sue for restitution or disgorgement. As you can see from the handout I provided, 33 states, including 5 that border Nebraska, already provide for this action. Regarding the issue of tampering with evidence, rumors that records were missing or had been destroyed were rampant in Nebraska City. LB1028 would help the department to maintain documents and evidence that are needed to investigate a problem and could actually protect financial advisers from frivolous claims. For additional accountability, branch offices would be registered and each broker/dealer or investment adviser would designate in writing a manager for each branch office. The larger public policy issue we need to consider was highlighted in my second handout, from a recent USA Today series. The article points out that many of us will probably be required to invest relatively large lump sums of money to support our retirement, long-term care, and health care needs. Government will have to try to help individuals have financial advisers who are responsible and subject to consequences, especially

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

Banking, Commerce and Insurance Committee
February 04, 2008

when fraud is involved. The changes proposed in LB1028 are intended to serve as a starting point from which to produce immediate improvement in the Securities Act of Nebraska and lay the groundwork for possible, additional changes in the future. I would be happy to answer any questions and there are further people to testify behind me about this. [LB1028]

SENATOR PAHLS: Senator Carlson. [LB1028]

SENATOR CARLSON: Senator Pahls. Senator Pankonin, I'm not too good with words. Help me understand what disgorgement means. [LB1028]

SENATOR PANKONIN: You know, I don't have an exact definition, but I think, you know, if I just use common sense, if you gorge on something, you've got too much of it, we're going to take some away, disgorgement. Probably a fair definition in some way. Bill, what do you think? [LB1028]

BILL MARIENAU: That works for me. [LB1028]

SENATOR PANKONIN: All right. [LB1028]

SENATOR CARLSON: Thank you. [LB1028]

SENATOR PAHLS: Seeing no more questions, thank you, Senator. The next group will be the proponents. I'm just curious, how many proponents do we have? Two, three, four, five, six. [LB1028]

JIM WIRTH: Good afternoon, my name is Jim Wirth, W-i-r-t-h, and I am from Nebraska City and I'm here to say a few words this afternoon and give you a little background. Two levels of involvement in this situation; one I had some direct involvement as a member of Knights of Columbus Council 3152 in Nebraska City, and second indirectly, when I became a trustee for my father's financial affairs after he suffered a stroke. He suffered this stroke in November of 2006 and he was not able to handle affairs like that anymore. Partially, because of his recovery process, he wasn't able to. Now, he made a really good recovery, he'll be 92 in a about one month, but he regained his ability to walk and talk and he really didn't suffer any long-term memory. Almost a miraculous that recovery he made, but he is in a nursing home and can't get around, so I do the paperwork and legwork on things for him. So first I'm going to start with just a little background on my dad. He has lived in Otoe County all of his life, except for his war service. He was in the Army, first armored division when World War II broke out and then he transferred to volunteer for the Air Corps. Was a decorated veteran, he flew as a bombardier on B-17 missions. He was a prisoner of war for a year and a half. And he's a decorated veteran, he came home, farmed in the Nebraska City area all his life. The day he suffered his stroke, he was putting fuel in a combine for me, and he was 91

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

Banking, Commerce and Insurance Committee
February 04, 2008

years of age at the time. So he's been a very involved and active man, farming was kind of the key point of his life, his family. I don't think he would say he was a sophisticated investor. When he got to a stage in his life where he had money to invest, he was dealing with a local brokerage firm, Engle & Schuster (Financial, Inc.). They changed the name they operated under many times, so I'm just going to refer to them as Engle & Schuster, because it was hard to keep track of what brokerage house they were with. But basically in a nutshell, he trusted these people. And if they would call him and say, you know, we've got a good investment for you, this is something you should do, he was raised in a generation where your word was your bond. And if he said he'd do something for you, he would do it. If he said it was true, you could bank on it, and he trusted these people. And they were defrauding him and lying to him. And when I went through these papers, when I became a trustee of his financial affairs, I would just shake my head at some of the things that they had done to his account. Partly was, he didn't buy a huge amount of this Royal Palm ACC, but he bought some of that. He was being turned on some investments that, you would have to know my dad, but he was a Depression era, WWII veteran farmer Nebraskan, you know that kind of, I think, sums it up. I think you all have a feel for the type of individual he probably is and what his investment objectives would be. And just for example, one time I saw she sold him a Trump casino bond that he held for about three months and then she sold it. Now that's not the sort of thing that he would purchase if he knew what he was doing. And over the years, it's kind of tough as a son to pry into what your dad's doing investment-wise, but I'd say to him: Are you sure you're being served the way you want by this investment company? And he said yeah, I'm just investing in Nebraska tax-free municipal bonds. So that's what he thought he was investing in. Some way or other, they were doing some things though...that he was doing other risk investments that he never, ever would have considered doing if he really understood. And he certainly didn't qualify to be an investor in the ACC investments. You had to have \$1 million of liquid capital and some other rules and regulations that he didn't qualify for. So I'm not going to go into a whole lot more detail, but I was finding this when I went through his financial affairs, and I was just kind of horrified. And, so if you have any questions on him I'll take them now before I move into what I had a direct involvement with. [LB1028]

SENATOR PAHLS: We'll let you continue. [LB1028]

JIM WIRTH: Oh, okay. The second area that I had a direct involvement with is I'm a member of the local Knights of Columbus Council 3152, and Engle & Schuster...we had an account with them that we would raise money from various activities, and we invested and we have a scholarship fund. We give out about \$12,000 in scholarships every year to local high school graduates, and we fund baseball teams--Jaycee baseball teams and soccer programs, and we donate to the local parochial school. All the money stays locally and we're using it for community betterment; usually the youth and schools in the community. And they came to us with this investment of Royal Palm ACC. And there's a group of probably eight of us--the officers and trustees of the council

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

Banking, Commerce and Insurance Committee
February 04, 2008

were listening to this. And I remember at the time, probably the current interest rates on CDs were probably about five percent and this thing was offering a ten percent investment. So you know, naturally we're skeptical and say: How can this be? You don't usually get that ten percent without the risk. And they'd go round and round and say, you know, make us...like it was a stupid question if you raised the risk. You know, this is a sure thing, it's like a mini-Berkshire Hathaway, I remember they used that term...said we guarantee, I guarantee you're not going to lose any money on this investment. I was in her presence twice when she said that, and so finally, I think, if it had been any one of us individually I don't know if we would've done it, but collectively we looked around and said okay. You know, again, we trusted them, and we invested money with them. So basically both directly and indirectly I've been exposed to the way that these people operate their investment company and they were not serving the public. And I think maybe there needs to be some safeguards in place, because none of us dealing with them are investment professionals. We all have our own businesses and things that we do for a living, and we need to depend on these investment advisers to tell us the truth and give us straight advice, and not manipulate us. So I think in a nutshell that's the two instances that I had experience with and if there are any questions, I'd be happy to try and answer them. [LB1028]

SENATOR PAHLS: Do we have any questions for Jim? Senator Gay. [LB1028]

SENATOR GAY: Thank you for sharing that story with us, Jim. The question I had when they are talking to your father and leading him to...how old was he when he was making these decisions? [LB1028]

JIM WIRTH: He probably started investing with Becky Engle in, whenever, shortly after she arrived in Nebraska City. She was with the first brokerage company she was with, then she started to switch. So, I would guess maybe that was in maybe the mid-1980s. So that would be, he was probably 75, maybe. In his seventies when he first started dealing with her, and then as she switched companies, he always switched to where ever she went to the next company. So he had somewhat of a long-term relationship with her before this ACC Royal Palm thing came up, I guess you'd say. [LB1028]

SENATOR GAY: So was he still making decisions in his late eighties and clear up to when he had the stroke? [LB1028]

JIM WIRTH: Up until the time he had the stroke. [LB1028]

SENATOR GAY: So a 90-year-old person making these decisions, which... [LB1028]

JIM WIRTH: A 90-year-old man, yeah. He was just three months shy of 91 when he had the stroke in November, 2006. [LB1028]

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

Banking, Commerce and Insurance Committee
February 04, 2008

SENATOR GAY: Okay, did the next... [LB1028]

JIM WIRTH: And he was still handling all of that up until then. [LB1028]

SENATOR GAY: Okay, did the Knights of Columbus invest in that and end up doing that? [LB1028]

JIM WIRTH: Yes, yes they did. [LB1028]

SENATOR GAY: On the suitability issues, and I know you're no expert on this, but I assume there's certain suitability issues that people ask when they're selling a product, and you have to get those updated. What I'm looking for, they're probably unsuitable investments, but now the fact is done and we have a problem and now we're trying to go fix that problem. I think a little bit of this problem goes back to Engle's broker/dealer, which said hey if you're my agent I should be watching what you're doing a little more closely. [LB1028]

JIM WIRTH: Exactly, the lack of oversight. [LB1028]

SENATOR GAY: Definitely, and you're right. It gets very confusing and even sometimes we deal with confusing issues as the products get more complex. And I guess that's what I wanted to know, so clear up to the nineties, he has had...would that send up a red flag? [LB1028]

JIM WIRTH: Yeah, he's 90 years old. And yeah, he told me, again after stroke recovery you never know what they're going to remember or not, but he remembered pretty much everything else. I found this piece of paper, and I said: Do you remember anything about this? He told me I didn't even know I owned it until I got the first dividend check. So I'm guessing that meant it was done with a phone call. And probably, Brian...I think he dealt with Brian more than Becky...probably said this is something you should have, we think it's good, and he trusted them. But one thing, you did bring up a good point, Senator Gay. At this Knights of Columbus meeting, when she was talking about the suitability, and there are lists of criteria you need to meet before you can own something like this, and one of them was that you need to have this net worth of \$1 million. And you know we said: Becky, this is the Knights of Columbus Council. We're so far away from that it's not even funny. And she says: Don't worry about it, you know, I can handle that. [LB1028]

SENATOR GAY: At that point, I mean, the responsibility is not yours. That's her broker/dealer's responsibility to ensure: How can this be? [LB1028]

JIM WIRTH: Exactly, the oversight. Especially, at some point a broker/dealer knows how much of this is being sold in this one little area and they should have said: What's

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

Banking, Commerce and Insurance Committee
February 04, 2008

going on? [LB1028]

SENATOR GAY: Yeah, concentration. [LB1028]

JIM WIRTH: But that didn't happen, obviously. [LB1028]

SENATOR GAY: Thank you. [LB1028]

SENATOR PAHLS: Senator Pirsch. [LB1028]

SENATOR PIRSCH: In this particular case, was this an example of a rogue, kind of a loan...kind of bad agent with...working for a company with lax oversight, or was it more pervasive company-wide type of M.O.? [LB1028]

JIM WIRTH: No, I just have to guess that it was probably more of a rogue agent, but I'm not in a position to answer that question. She changed companies so often that there was something going on that didn't inspire confidence in me that she was changing for the right reason. It just seems too frequently that she would all of a sudden pull up roots. And you get a letter if you're a client saying: Oh I've got a new opportunity, it's going to be really good for the clients. But, little bit of both probably. [LB1028]

SENATOR PIRSCH: Does this...well, I'll ask at a later time. It's really, I think, not appropriately addressed to this witness. [LB1028]

SENATOR PAHLS: Senator Christensen. [LB1028]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. And Jim, did anybody turn her in, file the paperwork? Because I'm a commodity broker...I know if somebody turned me in it would be filed, investigated from the top to the bottom. I mean... [LB1028]

JIM WIRTH: You know, I think we're going to have further testimony from Mr. Spray that can answer that can answer that better. But there was...I think, he found some efforts made to hide her employment history by some of these brokerage houses that she worked for. But I don't think any individuals that you're going to hear from today locally turned her in, because again, they didn't know what was going on. They trusted her until things kind of blew up at that point. Everybody was turning her in. But as things unfolded, none of us were in a position to know enough to do that, I don't believe. [LB1028]

SENATOR CHRISTENSEN: Okay, thank you. [LB1028]

SENATOR PAHLS: Seeing no more questions. Thank you, Jim. [LB1028]

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

Banking, Commerce and Insurance Committee
February 04, 2008

JIM WIRTH: Thank you. [LB1028]

SENATOR PAHLS: The next proponent. [LB1028]

LLOYD GERDES: Good afternoon, senators. My name is Lloyd Gerdes. I'm from Auburn, Nebraska. [LB1028]

SENATOR PAHLS: Can I have you spell your name just for the record, please? [LB1028]

LLOYD GERDES: G-e-r-d-e-s. I worked for the state of Nebraska, Department of Roads, for 35 years. And upon my retirement, we decided--my wife and I-- that maybe we'd look into investing some of our monies with somebody, and we were referred to Becky Engle. Well, at that time the CDs was probably, I don't know, three percent, somewhere in that area. This was in 2004. So, we invested some of the money there and got ourselves into a situation that was not the best. Seemed like everything was...the maintenance fees were pretty high, and she told us that we were guaranteed to have the money back in 12 months at 10 percent interest. When the 12 months was up, I started questioning the fact, well, it's being done, it's being done. But it never did get done, until I assume they filed bankruptcy, I don't know just what happened, but anyway our monies was gone. The companies changed from Royal Palm to whatever, and there was no money left. So we lost that money up so far, so I think that we were misinformed. She kept telling us it was completely safe. Fortunately, I didn't have everything of my retirement money in that fund. So I did have something left that I did transfer to another broker. But it just seems to me like somebody wasn't watching close enough to see what she was doing because she promised me the same thing that Jim just testified to, that it was safe, that it was a mini-Berkshire Hathaway, and there just was no way that we could lose money. But it happened. So as far as I know, in about October of '06, I received a letter from the state Department of Banking and I filled that out and sent it back, and gave them the best knowledge that I had of what I was concerned about, my investment and what I thought I was going to receive of it because at that time, I didn't think I was going to get anything anyway, and that's the way it's happened. But I don't see that they did anything about it until...well I'm not sure they've done anything about it yet. But I would hope that they could be a little bit more swift in getting something done with some of these people that just out and out lie to you. So, with that in mind I thank you for letting me come up here and testify, and I just hope that we can get something accomplished with this bill to make it a little bit easier the next time. [LB1028]

SENATOR PAHLS: Okay, any questions for Mr. Gerdes? Senator Carlson. [LB1028]

SENATOR CARLSON: Senator Pahls. Is it Gerdes did you say? Oh, Gerdes, okay like it's spelled. Okay. [LB1028]

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

Banking, Commerce and Insurance Committee
February 04, 2008

LLOYD GERDES: Just like the Senator George Gerdes used to be. [LB1028]

SENATOR CARLSON: Okay, listening to you, it sounds like you did have some investments in more than one bucket, so it's the one bucket that you lost all together. [LB1028]

LLOYD GERDES: Well, there's actually two. There's another bucket that we're still hoping to get part of that bucket back, but the Royal Palm, I can't see that we're going to get anything of that back unless there's some kind of litigation we can get into. [LB1028]

SENATOR CARLSON: And then you apparently had some other investments that you transferred out, so at least--it doesn't make it right at all, but you didn't have it all in this one area. [LB1028]

LLOYD GERDES: No, at least...in my particular case, I didn't lose everything like some of the people that I've heard of have lost all of their savings. I didn't lose quite all of my savings, but I lost enough that it would've made it a little bit different because after I retired a few years, I also have 80 acres that I always took care of since 1967 while I was working. After I retired about three or four years, I put that in CRP, so then we thought we could do a little traveling and enjoy ourselves, but that hasn't been the case due to this mostly. [LB1028]

SENATOR CARLSON: Thank you. [LB1028]

SENATOR PAHLS: Senator Gay. [LB1028]

SENATOR GAY: How long were you with the investment firm before you decided to invest in these investments? How long were you working with this person? [LB1028]

LLOYD GERDES: This investment...Becky got me to transfer...as a matter of fact, I didn't transfer any of the investments I had with her when she come up with this Royal Palm deal. I had a CD that was only making, I can't remember for sure, but it seems to me like it was in the 2.5 to 3 percent range and she told me I could get 10 percent on this Royal Palm deal, so I transferred that one CD over into that Royal Palm deal. [LB1028]

SENATOR GAY: But you had other accounts. Did you have other accounts with her, though? [LB1028]

LLOYD GERDES: Oh yes. [LB1028]

SENATOR GAY: You had worked with a long time? How long? [LB1028]

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

Banking, Commerce and Insurance Committee
February 04, 2008

LLOYD GERDES: Well, not a long time. I just started with her in 2004, and this Royal Palm, if I remember right, probably in 2005, I believe when I gave that money to the Royal Palm. And in 2006 we found out it was in trouble, in 2007 I got away from the company. [LB1028]

SENATOR PAHLS: Senator Christensen. [LB1028]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Were you given any risk disclosures? Anything about the what you were getting into? Was there any physical handouts that you were given? [LB1028]

LLOYD GERDES: No, it was just one of these forms that says that in order to invest in something like this, you have to have a total of \$1 million worth of assets, which I didn't have, and I questioned the fact that day, and she says it's just a formality, don't pay no attention to it. She would take care of it. Evidently, she didn't. It showed that I had \$1 million worth of assets, which I told her that's a far cry from what I have...but she just kept saying that that was okay. [LB1028]

SENATOR CHRISTENSEN: Now the reason I ask this, just within my own business I know what I have to handout, so that's why I was wondering. Thank you. [LB1028]

SENATOR PAHLS: Senator Pirsch. [LB1028]

SENATOR PIRSCH: So she had you sign a disclosure, is that correct? Is that what you're referring to, the document you signed? [LB1028]

LLOYD GERDES: Well, I signed this disclosure, but she put the figures in it. [LB1028]

SENATOR PIRSCH: Yeah, very good. I didn't know if you were talking about disclosure. Very good, thank you. [LB1028]

SENATOR PAHLS: Thank you for your testimony today, Mr. Gerdes. Thank you. [LB1028]

LLOYD GERDES: Thank you. [LB1028]

SENATOR PAHLS: Next proponent. [LB1028]

BILL DAVIS: Good afternoon, Senator Pahls, my name is Bill Davis, I'm an attorney in Nebraska City. Rebecca Engle was a client of mine. I don't know which way it worked, we worked back and forth. When she came to Nebraska City, she first was an agent for Edward Jones and Associates. Wasn't too long after that she switched to Kirkpatrick

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

Banking, Commerce and Insurance Committee
February 04, 2008

Pettis, and then Wachovia, and then First Clearing, and more recently VSR. So every time she made one of these changes, she would have to call you up and say I've changed my broker/dealer, would you come in and sign the forms to transfer your accounts. So I'm just trying to give you some background on what the other two fellows have been already told you. Those are the five companies that I recall being involved with over the period of time. I'm here particularly to talk about the portion of this bill that relates to the possibility of the Department of Banking going to bat for people like myself and the other fellows to get restitution from the offending parties. Apparently, they don't have that authority today, and I think that's important. If we've got five states surrounding us where they have that authority, why are we standing out here alone with their not having that authority. Seems to me that that's important. To give you a little further information on what occurred here in 1905 and 1906 (sic: 2005 and 2006), about \$30 million was invested through this agency with ACC. That's Royal Palm and they had both stock interests and equity interests. About \$15 million was put through a company called CGF, which was primarily notes and mortgages. CGF...and that's the one that Mr. Gerdes was talking about. I think that they haven't totally resolved that yet because that was something that they're supposed to be selling the underlying assets out and then making distribution within a year. I talked to somebody from there about five months ago, I think, and they said well we're still in the process of trying to liquidate that stock, so you may be hearing from us, but to date we've heard nothing. There was a disclosure form that anybody who bought the Royal Palm stock through ACC did have to sign, and it says that you're a qualified investor, you've got either \$1 million in assets or you've got an income of excess of \$200,000 a year, that you can support this investment. So everybody had to sign that. There are people who didn't qualify and many people who are clients of mine didn't qualify, but it's my understanding that that requirement can be waived to a certain number of people. I don't know the rules in that department, but J.L. may or somebody else may be able to tell you about that. But I know that a lot of people that were sold on this product didn't qualify. I know of one client whose store is immediately adjacent to my office who lost a lot of money through her parents and herself. Her father sold oil company stock to buy this asset in Royal Palm, totally wasted, I mean...they convinced her that it was a better deal than the investment they already had and I guess they call that churning or something, where they take you out of one thing and put you in another. I'm not a qualified investor myself, and I'm not really here speaking on the fact that I lost some money--I did, but I read it and I understood what it was. They did represent it to be a mini-Berkshire Hathaway. They did represent it that it was safe and it just seems to me that it's important that our state be in a position where if the Department of Banking investigates these matters and finds fault that they can take some action to get restitution for the people that have been injured, and that's the extent of my testimony. [LB1028]

SENATOR PAHLS: Any questions for Mr. Davis? [LB1028]

SENATOR PIRSCH: Just a statement. Thanks very much for coming forward. [LB1028]

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

Banking, Commerce and Insurance Committee
February 04, 2008

WILLIAM DAVIS: You bet. Thank you. [LB1028]

SENATOR PAHLS: Appreciate, oops, Senator Hansen. [LB1028]

SENATOR HANSEN: Thank you, Senator Pahls. I just had one quick question. Did you at any time...did it cross your mind to have a small class action suit against a company or a person in this? Because it looks like it affected quite a few of you. [LB1028]

BILL DAVIS: Oh, it did, hundreds. [LB1028]

SENATOR HANSEN: Hundreds? [LB1028]

BILL DAVIS: I think J.L. can probably tell you that, but when I give you those figures about \$30 million and \$15 million, that's not all invested within the Nebraska City area, that's the whole county, that's some people in Iowa, some people in South Dakota, California, Arizona. These people had been longtime clients of hers, had moved from the area, she was still making contact with them and soliciting their business. So it's a very devastating thing for the community. [LB1028]

SENATOR HANSEN: But at any time did that ever cross your mind to take action? [LB1028]

BILL DAVIS: The problem with that is that when you sign this disclosure statement, you agree that arbitration is the only means of clearing up the matter. And so class action, J.L. is trying to do that for some of the folks right now, but with that disclosure statement kind of precludes that. [LB1028]

SENATOR HANSEN: Thank you. [LB1028]

BILL DAVIS: Um-hum. [LB1028]

SENATOR PAHLS: Thank you Mr....thank you for your testimony. Next proponent. [LB1028]

GERARD TIMOTHY: Good afternoon, Senators. My name is Gerard Timothy, T-i-m-o-t-h-y, like Timothy first and second. I was a railroader all my life. I started out as a telegraph operator and ended up as freight agent, and over the course of our married life, we tried to always put away a little something for our retirement years. So I had an IRA with Engle & Schuster, and my wife had one also. She passed away in 2002, and I inherited her IRA. And I had to do something with it, so I asked Mr. Schuster in his office what I could do with that. And he asked me what I wanted to accomplish with it, and I said I'd like to have something that is safe and something that would produce an

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

Banking, Commerce and Insurance Committee
February 04, 2008

income. So he proposed putting that IRA amount into a capital growth investment, which I knew less about than I know about flying a jet airplane. And he said, are you familiar with bridge loans? No. Well, he says people are into this and I said, but I am familiar with stories of selling property that's been underwater for years in Florida. And he says, these people have millions of dollars behind them, this is safe, and it will pay eight percent per year. I said well that sounds good. I had no reason to doubt the man. I had never doubted his partner, Rebecca Engle, and I believe you call that naive. And that IRA with capital growth did pay eight percent through 2003 and 2004 and 2005, then it stopped. And the only one I have ever been able to talk to is their reporting agent, VSR, and I kind of get shuffled from one party to another there. And back to my experience when I was a railroader, when I started out I worked a lot of little country stations where you maybe shipped out a car of grain during grain harvest. But even there, I was bonded by the railroad for a certain amount and I was totally surprised when this came to a head that the state didn't have a requirement that these people be bonded to protect their customers. Now I'm hoping that you gentlemen and the state Legislature will see fit to pass this proposal that will enable us to, if not recoup all our losses, recoup some of them. [LB1028]

SENATOR PAHLS: Any questions? Senator Pirsch. [LB1028]

SENATOR PIRSCH: No, I was just going to say thank you. [LB1028]

SENATOR PAHLS: Thank you for your testimony today, Mr. Timothy. [LB1028]

J.L. SPRAY: Good afternoon, Senator Pahls, members of the committee. My name is J.L. Spray, S-p-r-a-y. I'm an attorney here in Lincoln, Nebraska. I'm appearing personally this afternoon, I'm not billing anyone for this appearance or appearing on behalf of anyone in particular. I happen to represent a couple hundred folks from the Otoe County area, and Iowa, and South Dakota, and a few other places, who purchased private placement securities and other investments through Engle & Schuster, an office in Nebraska City. I think based on the questions and just sort of the sense of what the committee's interest is, I'd like to highlight a few points. I assume everyone understands the difference between a broker and a broker/dealer. This particular broker went through a succession of broker/dealers. What we have uncovered during the course of litigation is that she was terminated by these broker/dealers and in no instance was that ever reported through the NASD, the CRD system, which is what in fact the Nebraska Department of Banking and Finance relies on for all of their information about brokers in this state. So the system completely broke down every time she was terminated starting with Kirkpatrick Pettis, where she was fired. They lied on the CRD and indicated that there was a reduction in sales force, there was an economic reason for her leaving that office. And then through these successions of broker/dealers, right up to the last one that she was fired at and they reported that she voluntarily quit her in job in February of 2007. That has nothing to do with LB1028, but

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

Banking, Commerce and Insurance Committee
February 04, 2008

it's something that our Department of Banking and Finance is struggling with and could benefit from, I think, a better statutory framework and maybe a more aggressive approach. And I've said this out loud to Senator Pankonin before, and I don't know if it makes sense or not, but the Department of Banking has this dichotomous approach to things that it ought to be taking. In the banking world the issue is confidence, as I understand it. We want to instill confidence in our banks and we don't want to leave the impression with any of the public that there's trouble. In the finance world, we are really talking about sniffing out the charlatans, finding the fraud, and it's a whole different regulatory scheme. And here these two worlds come together in the Department of Banking and Finance and I think for whatever reason, it's my impression, that there's a certain amount of oh, we don't want to delve into this too fast and we've got to take our time. Well, the reality is this broker was a frequent flyer with the Department of Banking for the last seven or eight years. She never was found to be guilty of anything, but there are lots of investigations going on. In April of 2006, the NASD, which now is FINRA and the Department of Banking both started investigations. They run on parallel tracks, sometimes bump into each other, sometimes don't, but the reality is we're coming up on two years and there's absolutely no sign of that investigation ending. Banking officials were in my office where I tried to cooperate with them as much as I can as recently as last week. More specifically with regard to what actually happened here, you have a flawed product. Now we've talked about ACC Royal Palm, it's very confusing because the product that was actually sold was a private placement out of Boca Raton, Florida. It was a holding company that was called a mini-Berkshire Hathaway. It owned four or five little dot-com companies that were all start-ups, and it was touted as being this holding company where you had multiple shots at making money, etcetera. Now in this company they went to a broker/dealer in Florida, said help us find somebody to sell this stuff for us, and they were introduced to the brokers in Nebraska City. Registration was made of the security with the Department of Banking, you can go see the registration. The problem...the inherent flaw in the security is that 96 percent of the value of the stock, or 96 percent of the stock had already been assigned to the "founders" as founder shares for coming up with all these great ideas. Four percent of the equity was allocated over the investors in Nebraska City. So the minute these people bought that security, the value of it went to four cents, on the dollar. Eight cents for every two dollars worth share they bought. Now granted, you'd have to read these documents until you're almost blind, but again, that's why you have a Department of Banking is to look at these products and determine whether they should be sold in this state or not. That's not the analysis that always goes on there, and that's unfortunate. Secondly, there were sales practices going on in this office that should have been obvious to anyone. Everything from the customers being told to sign documents in blank, taking them back to the office and filling them out, against every rule in the world, NASD, banking department, etcetera, goes on everyday routinely in this office. Suitability, no one is suitable for the securities that were sold out of that office. Again, you can be the most sophisticated investor in the world and when your broker is misrepresenting the facts to you, is lying to you about the quality of the investment and what it is, there's no way you can figure it

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

Banking, Commerce and Insurance Committee
February 04, 2008

out. It can't be suitable with misinformation. And so, everybody in that office was engaging in fraudulent sales practices and the sale of unsuitable securities. I know some of the senators on the committee are in the industry, and I'm just here to tell you, this is not how the industry works otherwise. This an aberration, it's a fluke. It was a perfect storm of a rogue broker, Senator Pirsch, hooking up with a broker/dealer that was unscrupulous, that had a product, that it had a side deal with that it was willing to sell through this broker/dealer. And in essence, these folks from Florida were turned loose up here to just have their way with this book of business, and in fact, they did. Going back to just a few things. Jim Wirth just reminded me that he personally saw this broker, Engle, last summer, her husband load up a trailer and cart records out of that Nebraska City office. That's one of the issues that actually is in the bill, that is a positive thing that you're addressing here. If you can't secure the documents, which most of my clients have arbitrations pending, in arbitration land you don't have discovery, you've got lay panels or judges, you don't have the rules of evidence. It is impossible for me to secure these documents when they're carted off like that. If the state of Nebraska can't secure them for me, then I have no way of ever getting this unraveled. I guess the other thing that I want to make sure is as clear as it can be, the scheme that went on down here in Florida ended up being a Ponzi scheme. By 2004, 2005, Engle literally was saying I've raised a new \$500,000, now you can pay the interest on the old notes. I mean that is a classic Ponzi scheme. She knew it, she acknowledged it in documents. They engaged in something called a roll-up then, just to further complicate it. They took the initial company ACC. They merged it with another company called Royal Palm, the president of Royal Palm came down and said now you have both, look how lucky you are. In fact, Royal Palm was a shell, an NASD shell they bought for \$200,000 with no assets. Then they tried to affect in late 2006 a second roll-up into a company called Primege. All designed to do nothing but confuse and frustrate the investors and see to it that they never could possibly have the energy, individually or collectively, to do anything about this. So I present that mess to you. I thank you for what you're trying to do here. I hope you have any questions about it, you'll feel free to ask. I know there are guys who around here every week with this committee, that are probably sick of this, but there it is. [LB1028]

SENATOR PAHLS: Senator Pirsch. [LB1028]

SENATOR PIRSCH: I appreciate this actually since coming on board last year. This is really, I think, the first bill that squarely deals with securities in Nebraska as opposed to more the insurance side. But with respect to you, have you had a chance to look at the bill? [LB1028]

J.L. SPRAY: Yes. [LB1028]

SENATOR PIRSCH: With respect to the three facets I think that Senator Pankonin talked about with respect to can't tamper with the evidence as a facet. How is it...is this

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

Banking, Commerce and Insurance Committee
February 04, 2008

bill criminalizing, adding some sort of criminal penalties? How does that go about these facets? [LB1028]

J.L. SPRAY: You know I'm not sure how it meshes into the criminal aspect of it. I think what it does is it starts by prohibiting it and then there's some penalties that on down the line, some of which are criminal, but probably Mr. Marienau would know. [LB1028]

SENATOR PIRSCH: Okay. Typically as you've mentioned with some of these Ponzi type of schemes, is a practical matter much solace for victims with respect to the facet of restitution or disgorgement. By its very nature, aren't these cases by the time they're typically discovered/disclosed, it's because the money has run out and the Ponzi scheme comes crashing to the ground. Is that substantively a good protection for the people? [LB1028]

J.L. SPRAY: You know, great no, good yeah maybe. The answer is this. A person's broker/dealership, for instance, is Capital Growth Financial in Boca Raton is a broker/dealer, has principles behind it. Those principles are branded in the industry as being the principles for CGS. So if you take their ticket away, you've put a mark on the principles and at least that little operation and those individuals may be prohibited from doing this again. Likewise with a broker, if you take action against a broker, and for instance Schuster voluntarily surrendered his license and got a lifetime bar from the NASD as part of his outcome in this. Engle, to my knowledge, is still to free to re-license again in some other state or here for that matter. But by putting that mark on them, you're getting some assurance that they are not going to return to the industry. And whether it's controlled persons or the actual broker/dealer, yeah it has some impact. It has some impact. We brought a separate class action against, in federal district court, against the individuals that own the ACC, the underlying investment, because we didn't have a arbitration agreement with them. They were that step removed. But for those with the license that submit to all of the rules and regulations, the problem comes when the rules aren't followed or enforced. And so to the extent you can give them rules to enforce and enforce them, I think you are doing something. [LB1028]

SENATOR PAHLS: Senator Carlson. [LB1028]

SENATOR CARLSON: Senator Pahls. Mr. Spray, I think earlier in your testimony you alluded to that you get an unscrupulous company operating in the state, you have to stop it as quickly as you can. Punish the agents that are not conducting business properly, but you made a statement that sounded like trying to prevent them from coming in in the first place. How could we have done that? [LB1028]

J.L. SPRAY: Well, this may be pie in the sky, but when a company comes in and registers they have a duty to disclose to the banking department and the public at large what they are selling, what the product is. And whether that is a full and complete

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

Banking, Commerce and Insurance Committee
February 04, 2008

disclosure, or simple notice, depends on the type of security it is. Obviously, one option would be to make that more difficult to come in and do that and make a more detailed disclosure of what is going on. And then the other thing is for the department to actually have the person power, the man power, to review that and apply some type of analysis to it and decide whether, for instance, in our case the investor is going to take a 96 percent haircut on the first dollar they kick in and whether that's appropriate or not. And I think they might find that that's an inappropriate investment. [LB1028]

SENATOR CARLSON: And that was in their prospectus, just buried so deep that the normal person will never find it. [LB1028]

J.L. SPRAY: In the private placement memorandum, that's right. And, yeah, it depends on how you look at a PPM. I don't know. I take the position that through the regulatory process, it shouldn't be presented at all to a whole lot of people. And then the few people who it is presented to should have the wherewithal to dig through it and figure something like that out. I'm not sure that's always the case, but in this case people who should have never been shown it, vast numbers beyond the red D35 person limitation on accredited investors, and the fraud that went on in accrediting people made that process meaningless. [LB1028]

SENATOR CARLSON: Thank you. [LB1028]

SENATOR PAHLS: Senator Gay. [LB1028]

SENATOR GAY: J.L., I have got a question. You pretty much summed it up. I think it's a breakdown of the whole system here, unfortunately, and unfortunately especially for the people that got defrauded in this case. But you were talking about...they talked about and they signed we're going to go to arbitration, you know, and I agree, definitely they shouldn't have been sold suitability-wise. But arbitration agreements are the basic, most everybody's having you sign an arbitration agreement. Wouldn't you have to change the whole structure of the way the broker/dealers are signing up? Because I see here there are 70, there's a lot more brokers, 1439 broker/dealers registered in Nebraska alone. So I assume all those 1400 probably have an arbitration somewhere in there. Could we fix it? How could we fix it? I mean more people to supervise, but how would fix it? That's a lot of people that go change all their forms, and maybe we should. How do you do that though? Because arbitration agreement is pretty standard. [LB1028]

J.L. SPRAY: Let me start with this. I would guess that 100 percent of the broker/dealers offer account agreements that include a binding arbitration clause and there's probably no exception for people signing up today. That gradually goes back to the 1987 Merrill Lynch case, the Supreme Court said arbitration agreements are absolutely binding. So, your first two questions, is that uniform in the industry? Yes, absolutely. And the second question, is that then binding on the customer? Yes, it is. Now, the problem I have with

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

Banking, Commerce and Insurance Committee
February 04, 2008

arbitration is arbitration is predicated on this entire system working. FINRA now controls the New York Stock Exchange, it has an investigation arm, it has an arbitration arm, it has a registration arm, and FINRA in essence controls everything that goes on in the industry. And my problem is not that...I'll cry a little bit about arbitration, because I don't it's very fair to the customer. It's a flawed process, but those are the rules, I'll live with them. My problem is there's garbage coming in the system that then affects my ability to arbitrate. That garbage is things like people lying when a broker leaves about why they left. If they left because they embezzled money, please tell us that. Don't tell us they quit, or they were asked to resign, or any of the other little goofy acronyms and explanations they have for people leaving. If you fire them because you can't control them, because they are making unsuitable sales to customers, tell us please because then that's what the customer and that is what the investigation arm, and what the arbitration arm all relies on that information. Garbage in, garbage out. So it's the other end of the operation that I'm concerned about, and in Nebraska apparently people routinely misrepresent why brokers leave their broker/dealer. [LB1028]

SENATOR GAY: And then, so it's...you know, in a way you're releasing a predator out to give you more harm. [LB1028]

J.L. SPRAY: Well, it's even worse than that, Senator. Last summer, the United States Supreme Court, or the Second Circuit Court of Appeals which controls New York state, had a case where a broker wanted to sue because they had been defamed on their CRD. The broker/dealer then said oh, they did all these bad things and they sued them for defamation. The Second Circuit said these CRDs are so sacred to the whole industry that we're going to prohibit a broker from suing his broker/dealer for defamation. You just can't bring the action. Now that compared to what went on in this case is night and day. [LB1028]

SENATOR GAY: So, and then, I guess on actually following up with some of these, I didn't realize there were this many broker/dealers in Nebraska. That's an awful lot to ask of...but, we should. Now, the argument I have the people that are doing it the right way, which I think is a high number--I don't know exactly, none of us do exactly--but those that are following every rule, every compliance rule and your broker/dealer is doing a good job scrutinizing their brokers, I mean, calling to say why did you sell this, looking at suitability, a lot of things they are supposed to be doing. Is there in your mind, as you've examined this, it sounds like for quite some time, is there a number? Because some of those firms seem like very large, good firms and it kept scaling down to a smaller firm with probably less supervision. But the people that are doing it right, should they be penalized? Is there a number where if you're a certain size broker/dealer should you be...then you can prove you're doing the right thing? Why should they have to be penalized due to what somebody in a tiny, little broker/dealer did? To me, it sounds like if you're doing the right thing, again, compliance is punishing all the people that are doing the right thing to catch the one out of thousands that's doing the wrong thing. How

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

Banking, Commerce and Insurance Committee
February 04, 2008

would you fix it, I guess? [LB1028]

J.L. SPRAY: Senator, you're referring to the \$100 to register per year? [LB1028]

SENATOR GAY: Well, yeah, just in general, I just want your view. I know you... [LB1028]

J.L. SPRAY: I'll share my view. [LB1028]

SENATOR GAY: Does this bill do, does this bill do we want it to do in some of the many ways? [LB1028]

J.L. SPRAY: Actually, Mr. Timothy struck on probably one of the better ideas I've heard, which is requiring the broker/dealer--not the broker--the broker/dealer to have a bond for their office. And if you're a big company and you're doing things right, my guess is that the cost of your bond is pretty nominal. If you're a little company and you don't have good financial backing, I'll bet your bond cost more. If you're a little company or a big company and you have a history of doing things bad, I'll bet it cost more yet. I hope it does, and maybe that's the answer. I don't know, it certainly throws it off to the broker/dealer and not really to the state at that point, you know, the bonding companies and the insurance system. But to do nothing strikes me as wrong, too. [LB1028]

SENATOR GAY: So enforce a bond? [LB1028]

J.L. SPRAY: Yeah. [LB1028]

SENATOR PAHLS: No more questions, thank you, Mr. Spray. [LB1028]

J.L. SPRAY: Thank you, Mr. Chairman, members. [LB1028]

SENATOR PAHLS: Yes. Proponents? [LB1028]

HARRY BAKER: Harry Baker from Nebraska City. You know, I sat at the back of the room for quite a while... [LB1028]

SENATOR PAHLS: Could I have you spell your name just for a second? Spell your name, please. [LB1028]

HARRY BAKER: B-a-k-e-r. [LB1028]

SENATOR PAHLS: Thank you. [LB1028]

HARRY BAKER: We can put a DVM behind that name, too. I find it very embarrassing

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

Banking, Commerce and Insurance Committee
February 04, 2008

to be here. In practice, I had to have malpractice insurance to cover me. My wife sells real estate, she has errors and omission insurance to cover her, and we thought in all faith that we were covered with those type of protections. Apparently we're not. So I would ask that there would be enabling legislation to handle these type of situations. I don't know what they are. You people, Mr. Spray and the like, have been working with it. I would hope that you could develop some sort of legislation, enabling legislation, that would perhaps protect us people. We weren't sharp enough to protect ourselves. And that is just about all I've got to say about it. As far as personally affecting me, I was retired in 1997. I directed the pseudo rabies eradication program here in the state and about six months ago I had to get my license renewed and go back to work. I have no further... [LB1028]

SENATOR PAHLS: Do we have any questions? [LB1028]

SENATOR PIRSCH: Appreciate your coming down here. [LB1028]

SENATOR PAHLS: (Exhibit 3) Thank you, Mr. Baker, thank you. That is sad that the handshake does not suffice anymore. Any more proponents? Any opponents? I have one letter to read in for neutral. It says please accept this letter for inclusion in the record as neutral testimony on LB1028. That's from the Department of Banking and Finance. [LB1028]

SENATOR PANKONIN: Thank you, again, Chairman Pahls. I just want to close by first of all saying thanks to the folks that came down today from the Nebraska City area and as my colleagues can see that's been a very tough experience for those individuals in that community as a whole. I also want to read, as discussion went today, I want to read the last sentence of my opening which was, the changes proposed in LB1028 are intended to serve as a starting point from which to produce immediate improvement in the Securities Act of Nebraska and lay the groundwork for possible additional changes in the future. In our discussions this interim time, and Bill Marienau was in on that as well with the department, we had come up with some other ideas, but we thought these three were the groundwork or the possible ones may get this process started. And as we move forward we would then look at other items that may help to protect the investing public. And I think as you saw again today, we're going to have folks that are going to have the responsibility to invest their funds for their retirement and other needs as people live longer, and we are going to have to be sensitive that we can somehow regulate this. People have basic protection, so they don't lose all their funds. I'm hoping that provisions like the ones we've started with, which other states have done, are the basics that maybe start this process along. And although it probably is too late to help a lot of these folks here today, maybe it will help...it would be good public policy for the state and its citizens as we move forward in the future to help somehow prevent this from happening again. Thank you. [LB1028]

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

Banking, Commerce and Insurance Committee
February 04, 2008

SENATOR PAHLS: Any...we have a couple questions, Senator. Senator Gay. [LB1028]

SENATOR GAY: Thank you. Senator Pankonin, I would just like to say I appreciate you in the process of drafting this bill including members and getting our opinions of this bill, but also just while you're here, I think you brought a good discussion here. And for some of these people, I'd say to you I appreciate you all coming. This goes to everyone. Sometimes these products are very complex, so they do need to trust the person doing it, and that's unfortunate. And I know you've been not big into regulation, but there's a certain trust we need to develop. This is starting to go that way and in the future I know you'll continue to keep working with people to find a workable solution, and this is probably a good start. So I just wanted to get that out there. Thank you. [LB1028]

SENATOR PANKONIN: Well, and just for folks to know, Senator Gay been interested in legislation so that we...for retirement or long-term health care or education, he's been interested in those type of issues that give favorable tax treatment for us to put those funds together. But then, as he knows, he's involved in the business if they're not invested properly and get lost, well then that doesn't serve the public purpose. And I did try to consult with...as you remember last summer a letter went out initially to the banking department, and I CC'd all of you on the committee to let you know that I was involved in this effort and want to stay with it over the future to try to make things better for our citizens and that things are more transparent. As J.L. Spray talked about, as these investments come to us, maybe from a state standpoint, the department of banking that we look into them, if they're just totally not suitable for our citizens, that that's something we look at. There was another question? [LB1028]

SENATOR PAHLS: Senator Hansen. [LB1028]

SENATOR HANSEN: Yes, thank you, Senator Pahls. Senator Pankonin, thank you for bringing this bill. I think it is starting to make more sense now, but I still see a parallel between state agencies, namely the Department of Environmental Quality. They have a director, they do investigations of certain entities, mostly people of the state. They cannot take a case to court either, but they make the case, they do the investigation, then they turn it over to the Attorney General to do the actual litigation. Why can't this be handled in this form? [LB1028]

SENATOR PANKONIN: You know, that's a good question, J.L., you can answer from right there...is that something we need to... [LB1028]

SENATOR PAHLS: No, no, no. [LB1028]

SENATOR PANKONIN: We can't do that? He can come...we can't do that. [LB1028]

SENATOR PAHLS: We'll get that information. [LB1028]

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

Banking, Commerce and Insurance Committee
February 04, 2008

SENATOR PANKONIN: Okay. [LB1028]

SENATOR PAHLS: Thank you. Any...thank you, Senator Pankonin. [LB848]

SENATOR PANKONIN: Thank you. [LB1028]

SENATOR PAHLS: That closes the hearing on LB1028. Thank you, again. This opens, Senator Erdman, LB848. We're at your pleasure, Senator. [LB848]

SENATOR ERDMAN: (Exhibit 1) Senator Pahls, members of the Banking, Commerce, and Insurance Committee, I'm still Phil Erdman. I represent the 47th Legislative District. I'm here to introduce LB848. During the first session of the 100th Legislature, we as a Legislature in the state of Nebraska enacted LB368, which created the Nebraska Limited Cooperative Association Act. Subsequent to that enactment, the National Conference on Commissioners of Uniform State Laws completed the final draft of its Uniform Limited Cooperative Association Act, which was finalized on August 3 of 2007. The purpose of LB848 is to generally harmonize the provisions of the Nebraska Limited Cooperative Association Act with the Uniform Limited Cooperative Association Act in areas where the differences do not reflect specific deviations from earlier versions of that act, which were intended in the drafting and adoption of LB368, 2007. And before I briefly summarize what those issues are, any time that there is a model act, we as a state have certain flexibility and determine what portions of that we enact or we may modify. It is not accurate to say that our intent is to reflect 100 percent the uniform act, and it is not my intent to ensure that the final passage of any legislation reflect that. There were some policy decisions that were made during the debate and discussion of LB368 working with the interested parties in this area of law. And there will be some deviations, but for the most part, we have adopted and with the amendment that will be offered to you, as well as the language in LB848, we will generally have the uniform act as part of our law should it pass. The amendments are summarized as follows. We're harmonizing the definition of distribution. We include the word cooperative in the definition of entity. We harmonized the definition of investor member, clarify the definition of member to include patron members and investor members, and we can go back into that if you would like to be refreshed on what the difference is. We rectify the name of certificate of good standing. I believe the way that the bill was written it said certificate of existence, so reflecting again the practices that we currently use in the state of Nebraska for other business entities, harmonize that a limited cooperative association may have only one member if the member is a limited cooperative association, a cooperative or a nonstock cooperative. We will change the percentage of members required to call a special meeting from 10 to 20 percent to be consistent with laws generally applicable to cooperatives in Nebraska. We will harmonize provisions concerning each investor member having only one vote unless the articles of organization or bylaws provide otherwise and allow for classes of investor members.

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

Banking, Commerce and Insurance Committee
February 04, 2008

We will harmonize provisions concerning marketing contracts between a limited cooperative association as patron members, and we will add language allowing the board of directors to adopt policies and procedures that are not in conflict with the articles, organization, or bylaws, or the act. AM1598 is an amendment that my office working with the Nebraska Cooperative Council and the Secretary of State's office have worked on, regarding the process for consolidation of entities and the legal counsel, or the individual representing the cooperative council who comes after me, will be able to go into more detail about the specifics as to why that language is being offered. I also know the Secretary of State's office is here. I'm not aware of how they may testify, but we have worked closely with them as we did last year in the drafting and passage of LB368 to try to address their concerns to the best of our ability. And I would be happy to try to answer any questions. [LB848]

SENATOR PAHLS: Basically, you're telling me you're just trying to harmonize. [LB848]

SENATOR ERDMAN: You sing the melody, I'll sing the harmony. [LB848]

SENATOR PAHLS: Okay, sounds good. I like that. Any questions for the Senator? Seeing none, thank you. Are you going to be here for closing? [LB848]

SENATOR ERDMAN: We'll see. [LB848]

SENATOR PAHLS: Okay. [LB848]

ROCKY WEBER: Senator Pahls, members of the committee, my name is Rocky Weber, W-e-b-e-r. I'm appearing today on behalf of the Nebraska Cooperative Council, who has asked Senator Erdman to sponsor LB848 and the amendment which he gave to you today. I guess I'm here to answer any questions any of you may have about any of the specific provisions, the changes are to adopt language that ended up being in the uniform act in their final draft on August 3, 2007. Most of the time it's meant to clarify. They did change some of the provisions regarding marketing contracts and language concerning distributions and things of that nature, which LB848 does adopt in their entirety. With regard to AM1598, the uniform act does provide for the ability of a limited cooperative association to convert to another form of business entity. In Nebraska, we have basically two ways of converting into another business entity, and that's by merger or consolidation. The Secretary of State's office pointed out to us that there really was no other type of similar activity amongst business organizations in Nebraska, which meant that we would have to go back and amend the model Business Corporation Act, the Limited Liability Company Act, and other acts to allow for this conversion to take place. We found it easier to just remove conversion as an option, and instead adopt language that is consistent with the Nebraska Limited Liability Company Act for allowing for mergers and consolidations to switch from this form of a business entity to another form or vice versa. And with that, I'd ask if there are any questions? [LB848]

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

Banking, Commerce and Insurance Committee
February 04, 2008

SENATOR PAHLS: Mr. Weber, here's the question I have. I know last year LB368 seemed to be really needed to be passed last session. And I thought through some of the discussion we'd say we'll wait until, like in August, for the final report here. Explain to me, why did it need to be passed last session? It seemed like it almost had to happen. [LB848]

ROCKY WEBER: Well, we anticipated that at some point the national commissioners would come forward with a uniform act and we wanted to start the process last year to educate the Legislature and make sure that we were basically ahead of the curve on doing that. We drafted LB368 last year using the most recent version of the uniform act that was available at that time knowing we may have to do some cleanup this year, depending upon what they did in their final meeting in August. It was unclear, however, when that final approval would take place. I don't know that it was ascertained as a certainty that that would take place in August of last year. [LB848]

SENATOR PAHLS: I'm just curious, because of this act, did anything happen between now and when they passed it? [LB848]

ROCKY WEBER: Have we formed any? [LB848]

SENATOR PAHLS: Yes. [LB848]

ROCKY WEBER: Not that I know of. I've had some inquiries about it. I haven't seen on the Secretary of State's web site that any have been formed, but I have had inquiries about it. It was effective January 1 of this year. [LB848]

SENATOR PAHLS: Oh, okay, well. Any questions? Seeing none, thank you, Mr. Weber. [LB848]

ROCKY WEBER: Thank you. [LB848]

SENATOR PAHLS: Any more proponents? [LB848]

LARRY RUTH: Senator Pahls and members of the committee, my name is Larry Ruth. I'm one of Nebraska's commissioners on the National Conference of Commissions on Uniform State Laws, and we just generally appear today in support of the amendments. It does bring the bill past last year in closer similarity to the one that was eventually selected as the uniform act. [LB848]

SENATOR PAHLS: Any questions? Thank you. [LB848]

LARRY RUTH: Thank you. [LB848]

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

Banking, Commerce and Insurance Committee
February 04, 2008

SENATOR PAHLS: Any more proponents? [LB848]

RON MORAVEC: Senator Pahls and members of the banking committee, my name is Ron Moravec, M-o-r-a-v-e-c, chief deputy Secretary of State. I had not planned on speaking, but since Senator Erdman did mention the office I just wanted to take the opportunity to thank Senator Erdman and others for the cooperation they gave the Secretary of State's office with some of the, certainly not the technical aspects of the bill, but filing it, things of that nature. So, with that, that's my testimony. [LB848]

SENATOR PAHLS: Proponent? [LB848]

RON MORAVEC: Yes. [LB848]

SENATOR PAHLS: Proponent. Seeing no questions, thank you. Any other proponents? Opponents? Neutral. Closing. [LB848]

SENATOR ERDMAN: Quit while I'm ahead. [LB848]

SENATOR PAHLS: Senator Erdman waives closing. Thank you, appreciate that. That closes the hearing on LB848. We are now ready for LB907. Senator Pirsch. [LB848]

SENATOR PIRSCH: Thank you, Chairman Pahls, members of the Banking, Commerce, Insurance Committee. I am State Senator Pete Pirsch, representing the 4th Legislative District in Omaha, I appreciate your attention here today. I am the sponsor of LB907. LB907 is brought forward for the Secretary of State's office with respect to, I think, harmonize, updating, refining the language in the statute. Sections 1 and 2 of LB907 would remove, in my estimation, outdated language from the Nebraska Nonprofit Corporation Act and Business Corporation Act that provides for the application for use of indistinguishable name and a fee for the application. Section 3 of LB907 authorizes a limited liability company to apply to the Secretary of State for authorization to use a name that is deceptively similar to another limited liability company name on file with the Secretary of State. If written consent from the existing company name of record is obtained or upon receipt of a court-order clearing such. Section 4 allows a limited liability company unlimited time to apply for reinstatement after administrative forfeiture of its certificate by the Secretary of State. I anticipate Mr. Moravec from the Secretary of State's office is going to be testifying and provide a little bit more detail as to the reason and the content of the bill. So I appreciate your time. [LB907]

SENATOR PAHLS: Okay, see no questions for the Senator, so I think we are ready for the proponents. [LB907]

RON MORAVEC: Good afternoon, Senator Pahls, members of the Banking, Commerce

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

Banking, Commerce and Insurance Committee
February 04, 2008

and Insurance Commission (sic: Committee). My name is Ron Moravec, M-o-r-a-v-e-c, chief deputy Secretary of State, and on behalf of Secretary Gale, we would like to thank Senator Pirsch for sponsoring this legislation. This certainly does not go the difficult discussion that you had with Senator Pankonin's bill. It is basically a housekeeping and a slight change. As Senator Pirsch indicated, sections 1 and 2 of the bill, specifically section 1, the bill drafter found that the statute was so old that its format didn't fit what they had today, so that's why it appears in your bill as a complete deletion of section 21-1905, and then the new version is added immediately after that. When the Nonprofit Corporation Act was adopted in 1959 and the Business Corporation Act in 1963, they both used the same standard for an entity trying to get a name from the Secretary of State's office, that being the same as or deceptively similar to. In 1995, the process for both of those acts was changed from that name standard to that of similar, distinguishable upon the records of the Secretary of State's office. And in 1995 when that was adopted, the two sections in question were also amended to allow for an entity to apply to use an indistinguishable name from a name that was already on the records of the Secretary of State's office. There was an application process. If the name that was on file consented to the other yet unnamed entity using that name, it was permissible conditioned upon the fact, again the entity file with Secretary of State's office, in addition to granting consent also agreed in writing to change its name to a different name than the one they were consenting to. Those two standards were again changed back in 2003 to the old standard again of being the same as or deceptively similar upon the record, and the language within those two statutes was changed to reflect the inability now of a new entity to apply to use some other entity's name. But in the process the legislation did not change the application to use an indistinguishable name and the corresponding fee of \$25. So the first two sections of LB907 pertain to that and, just in fact, eliminate that provision of allowing an application and a \$25 fee. That provision since 2003 is no longer available. Section 3 of LB907 is new. Currently the limited liability company statutes do not allow an LLC to apply with the Secretary of State for a name that is similar to one that's already on the records of the Secretary of State. The Nonprofit Corporation Act and the Business Corporation Act both have provisions allowing such an application, and what you see in section 3 is basically a reprint of what you find in a corporation and nonprofit corporation act allowing such application. Again, based upon if it is deceptively similar, the new entity can seek written consent from the corporation that's already on file with a name that it wants. If it is exactly the same name, then no they cannot utilize the exact same name, but a deceptively similar name may be used. Again, if the entity on file consents to it in writing or if by chance there should be a court order directing the new entity be allowed to use that name. Section 4 of the act is a new provision, just eliminating 2 or 3 words out of the statute. Again, the Nonprofit Corporation Act and the Business Corporation Act have allowed for that entity to seek reinstatement when its certificate or when its license has been administratively dissolved by Secretary of State. The way the Secretary of State will administratively dissolve is, generally, when the entity does not pay renewal fees, does not make its biannual report, and pay, maybe, it's occupation tax. Statutory

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

Banking, Commerce and Insurance Committee
February 04, 2008

provisions are that the Secretary of State, when it finds that the entity has not filed the occupation tax report will send notice...well, initially we will send notice in November or December of every year to either the business corporation and former corporation entities, or the limited liability companies. We do the business corporation entities in even-numbered years, and the LLCs in odd-numbered years. Those notices go out by the end of December of the year, specifying that the report and any accompanying fees are due by March 1. They are delinquent if not paid by April 15, and following the delinquency of April 15, the entity will be administratively dissolved. After the initial notice is sent out in November or December, it is followed up with a second reminder, usually in March of the following year that the office has still not received these reports and it's subject to being dissolved. April 15 passes, thereafter the Secretary's office will send a notification to the entity that it is being administratively dissolved for nonpayment, generally for taxes and fees. Again, under the two acts, the (Business) Corporation Act and the Nonprofit Corporation Act, those entities have an unlimited time to reapply for reinstatement with Secretary of State by paying all back fees, assessments, and filing all the prior reports that may have been needed. And if that happens, the entity is in good standing again and continues as such. The LLC Act has a provision that it can apply for reinstatement of its certificate to do business in a state within one year after it is dissolved, and we have found no real justification for that standard of one year. The Nebraska Cooperative Council and the Nebraska Bankers Association have voiced no objection to removing that one year requirement. And that's in substance the nature and the purpose of this bill. If you have any questions of me, I'd be glad to try to answer. [LB907]

SENATOR PAHLS: Seeing no questions, Ron, thank you. [LB907]

RON MORAVEC: Thank you. [LB907]

SENATOR PAHLS: Proponents? [LB907]

LARRY RUTH: My name is Larry Ruth, R-u-t-h, and I represent the Nebraska State Bar Association. This bill had been reviewed by our business section. It's the kind of thing we take an interest in and the Bar supports the bill. Period. [LB907]

SENATOR PAHLS: Thank you, Mr. Ruth, appreciate it. Any more proponents? Any opponents? Anybody in the neutral? I think we're ready to close. [LB907]

SENATOR PIRSCH: I'm going to waive. [LB907]

SENATOR PAHLS: Senator Pirsch waives closing. That ends the hearing on LB907. Thank you, Senator Pirsch. Our next senator is Senator Langemeier, LB1011. Thank you. [LB1011]

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

Banking, Commerce and Insurance Committee
February 04, 2008

SENATOR LANGEMEIER: Thank you, Chairman Pahls, and as Senator Erdman said, he was going to waive closing while he was ahead and maybe I should do that right now. My name is Chris Langemeier, L-a-n-g-e-m-e-i-e-r. I represent District 23. I bring you LB1011 on behalf of the Nebraska Appraiser Board. As we have discussed a couple times in this committee, we did some major changes to adopt some federal standards that were put upon us to keep our appraisers gainfully licensed and credentialed in Nebraska back in 2006, and every year we're going to come back with a cleanup bill. The cleanup bill references what they call the Uniform Standards of Professional Appraisers, and I'm not planning to hand this book out, but it's kind of the Bible and which all appraisers are held accountable to. Every year, we get a new addition, as you can see this is the 2008-2009 version. So this bill takes into account, changes the dates to get us from the 2007 book to the 2008 book. Every year it gets a little thicker and a little more guidelines for us. So that is what (LB)1011 does. It has one other factor in it that's cleaning up past statutes as we made a major change starting January 1, 2008, to the rules that are now placed upon appraisers. With this, we've gone back in the statutes and cleaned up the old rules, and deleted obsolete language that we don't need anymore. I do have two amendments, I'm not going to pass them out, I'm going to give them to committee counsel. If the committee sees so fit to put those in a committee amendment or I could offer them at a later time, depends on who you would like to have explain this to questions. With that, I would open it up for questions. There are going to be members of the board testifying. This is as technical as you can get as a bill. Thank you. [LB1011]

SENATOR PAHLS: Seeing no questions, thank you, Senator. The first proponent? [LB1011]

KITTY POLICKY: (Exhibit 1) I have a handout and I don't see the page. [LB1011]

SENATOR LANGEMEIER: We'll handle it. [LB1011]

KITTY POLICKY: Thank you. My name is Kitty Policky, P-o-l-i-c-k-y, and I am the director of the Real Property Appraiser Board. Senator Langemeier is kind enough to sponsor the bill for us, and as he mentioned (LB)1011 is a cleanup bill. It has no new parts or components in it. It's simply a transition period, and that's why I gave you a handout because there are a lot of technical, a lot of acronyms, so it might help you understand where our rules and regs, and our regulations from the federal come from. So what (LB)1011 does is eliminate the previous criteria, the old criteria that we worked under and that you adopted last year, and now will address only the 2008 criteria. It also takes on the advantage of we are also...during the last audit we written up for some of the clarification, so it addresses the temporary permit and simply clarifies what the amount is, because they have guidelines. But I tried to put it into summary to address this session that it is fully nothing but a cleanup bill. There are no new issues in it. Do you have any questions? [LB1011]

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

Banking, Commerce and Insurance Committee
February 04, 2008

SENATOR PAHLS: Any questions for Kitty? Seeing none, thank you, Kitty. [LB1011]

KITTY POLICKY: Thank you. [LB1011]

SENATOR PAHLS: Appreciate it, appreciate the information you have given us. Anymore proponents? Any opponents? Anybody in neutral? Closing Senator? Senator Langemeier waives closing. That ends this hearing on LB1011. Probably should get ready to go into executive session. [LB1011]

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

Banking, Commerce and Insurance Committee
February 04, 2008

Disposition of Bills:

LB848 - Advanced to General File.
LB907 - Advanced to General File.
LB1011 - Advanced to General File.
LB1028 - Held in committee.

Chairperson

Committee Clerk