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Banking, Commerce and Insurance Committee  
February 02, 2015

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[LB226 LB252 LB286 LB352]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 2, 2015, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB286, LB352, LB252, and LB226. Senators present: Jim Scheer, Chairperson; Matt Williams, Vice Chairperson; Kathy Campbell; Joni Craighead; Mike Gloor; Sara Howard; Brett Lindstrom; and Paul Schumacher. Senators absent: None.

SENATOR SCHEER: Welcome to the Banking, Commerce and Insurance Committee. My name is Jim Scheer. I represent District 19. I'm from Norfolk and I will chair the committee for the next two years. The committee will take up bills in the posted order that are on the wall...on the outside wall, that is. Our hearing today is your public part of the legislative process. It's your opportunity to express your position on the proposed legislation before us today. The committee members will be coming and going during the hearing. We have to introduce bills in other committees and are called away. It is not an indication that we're not interested in the bill being discussed or heard at that time, just part of our political process. To better facilitate today's proceedings, I would ask you to abide by a few items of protocol. Please silence or turn your phone off so that we don't have distractions from that please. The front chairs are...I will call the queue, so if you're going to be testifying either as a proponent or an opponent or even in the neutral position, if you could move up in that area so we wouldn't have as long in-between testifiers, it will help us move the hearings along. As I stated, the order will be, the senator will introduce the bill. We will then ask for proponents followed by opponents and the last would be a neutral position. If you're going to be testifying, I would ask that you fill out a pink sheet in its entirety and when you come up, please hand it to the clerk so that she has the spelling of your name correctly to start with. When you sit down, the first thing that I would ask you to do is please introduce yourself, spelling your first and last name so that the transcribers can indeed get the correct information in the records. I'd ask you to be concise in your testimony. Please be...if you're going to be testifying in the microphones, we want to make sure it's in a recording position, so if you have to adjust it to your height, you know, feel free to do so. If there is written material, we will need ten copies, so the page will be glad to make those copies preferably before you testify so that we have it in front of us during your testimony rather than later. If you are wanting to not testify, but still have your name show up on the record as being present and supportive or opposing a bill, there is a white sheet in the back by both doors that you can sign your name and put the bill and your support or opposition to that as well. The committee is...has two brilliant minds that make sure that we stay on track. The first would be our committee counsel, Bill Marienau to my right, and to the far...my far left or your right, is our committee clerk, Jan Foster. And I will ask the rest of the committee to introduce themselves starting with Senator Gloor.

SENATOR GLOOR: Thank you, Mr. Chairman. Mike Gloor, District 35, Grand Island.

SENATOR CAMPBELL: Kathy Campbell, District 25, Lincoln.

SENATOR CRAIGHEAD: Joni Craighead, District 6, Omaha.

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SENATOR WILLIAMS: Matt Williams, District 36, Gothenburg.

SENATOR LINDSTROM: Brett Lindstrom, District 18, Omaha.

SENATOR HOWARD: Sara Howard, District 9, midtown Omaha.

SENATOR SCHUMACHER: Paul Schumacher, District 22, Columbus.

SENATOR SCHEER: Thank you. And our page...we have one page today, Jake Kawamoto, over to my left, your right, and with that we are ready to start the hearings and the first bill is Senator Craighead.

SENATOR CRAIGHEAD: Good afternoon, Chairman Scheer and fellow committee members. My name is Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d. I represent Legislative District 6 of Omaha in Douglas County. I am here today to introduce LB286 at the request of the Department of Banking and Finance which would amend various sections relating to financial institutions. The bill would provide section by section as follows: Section 1 would amend section 8-1,140 of the Nebraska Banking Act which is the wild-card statute for state-chartered banks. This section would be amended to provide that state-chartered banks have the same rights, powers, privileges, and immunities as a federally chartered bank doing business in Nebraska as of January 1, 2015. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually. Section 2 would amend section 8-335 which is the wild-card statute for state-chartered savings associations. This section would be amended to provide that state-chartered savings associations have the same rights, powers, privileges, and immunities as a federally chartered savings association doing business in Nebraska as of January 1, 2015. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually. Section 3 would amend section 21-17,115 of the Nebraska Credit Union Act, which is the wild-card statute for state-chartered credit unions. This section would be amended to provide that state-chartered credit unions have the same rights, powers, privileges, and immunities as a federally chartered credit union doing business in Nebraska as of January 1, 2015. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually. Section 4 would provide for repealers of amendatory sections. Section 5 would provide for the emergency clause. I thank you for considering this bill and I would ask you for your support of it, and would welcome any questions that you may have. [LB286]

SENATOR SCHEER: Thank you, Senator. Any questions? Oh, sorry, Senator Williams. [LB286]

SENATOR WILLIAMS: Thank you, Chairman Scheer. And this is just a comment if I'm reading this correctly, in the introducer's statement, we have the wrong bill number listed in here. This is (LB)286 and this lists Senator Schumacher's bill, (LB)252, on the statement of intent. I don't know if that makes any difference to anybody, but. [LB286]

SENATOR SCHEER: By golly it does. It does say LB252, but it is LB286, so. [LB286]

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SENATOR WILLIAMS: Correct. [LB286]

SENATOR SCHEER: The testimony is correct, so we'll go for there, so. [LB286]

SENATOR WILLIAMS: Yeah, no questions. [LB286]

SENATOR SCHEER: Okay. Thank you, Senator. We will now open it to proponents of the bill. [LB286]

MARK QUANDAHL: (Exhibit 1) Chairman Scheer and members of the committee, my name is Mark Quandahl. It's Q-u-a-n-d-a-h-l, director of the Nebraska Department of Banking and Finance. I'm here today in support of LB286, LB286 which was introduced at the request of the department. LB286 contains the annual equal rights updates for Nebraska's state-chartered depository financial institutions, all of which are under the jurisdiction of the department. Traditionally known as the wild-card laws, this legislation provides the same rights, powers, and privileges to state-chartered financial institutions as those enjoyed by like federally chartered financial institutions doing business in Nebraska. Due to state constitutional restrictions on delegation of legislative authority, the statutes need to be amended annually to provide a current reference date. The reference date provided in LB286 is January 1, 2015. Within the bill, section 1 provides equal rights between our 171 state-chartered banks and the national banks chartered by the Office of the Comptroller of the Currency; section 2 provides for equality between the one state-chartered savings and loan association, and those chartered by the Office of the Comptroller of the Currency and formerly by the Office of Thrift Supervision; and section 3 provides the same rights for Nebraska's 14 state-chartered credit unions as those held by federal credit unions chartered by the NCUA. LB286 carries the emergency clause. The savings and loan wild-card has been in effect since 1971, while the credit union statute was first enacted in 1977. The bank wild-card was adopted in 1999. The annual enactment forestalls any constitutional challenges. Under each of these sections, there is no exemption from the payment of any taxes imposed by the state. The legislative history for these three statutes shows that the department directors, including me and prior to me, have consistently testified that wild-card legislation is sensible legislation in that it provides parity for our state-chartered financial institutions with their federal counterparts without the need to enact state legislation for each specific power or privilege. I echo that philosophy. I want to thank Senator Craighead for introducing this legislation and be happy to answer any question. [LB286]

SENATOR SCHEER: Thank you, Mr. Director. Any questions? Senator Schumacher. [LB286]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for your testimony today. [LB286]

MARK QUANDAHL: Certainly. [LB286]

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SENATOR SCHUMACHER: A couple of questions, it's more informational than anything else. The difference between 2014 to 2015, was there any changes? I mean, what...what are we really doing here? [LB286]

MARK QUANDAHL: As a matter of fact, there have been some changes. And I could kind of zip through them, but I do have a handout that I could probably get to everybody to kind of show. Fairly minor changes, but just to kind of give you a flavor or something like that, for instance with credit unions, there was a definition of IOLTA, Interest On Lawyer Trust Accounts, that wasn't previously in the law that now is at the federal...at the federal. As far as banks and savings and loans, there was some OCC rules that because of some changes in the Dodd-Frank law have also...kind of trickles down to us also, but I can get you a copy of this kind of handout that summarizes what the changes are. [LB286]

SENATOR SCHUMACHER: I'd appreciate that. And then the second question, this talks in terms of the locals having the same rights, powers, privileges, benefits and immunities as the feds. Does that language imply that they have the same liabilities, restrictions, regulations or, in other words, does this just half the equation what we're doing here? [LB286]

MARK QUANDAHL: I think, and I stand to be corrected on this, too, but I think we're just getting all the benefits and none of the burdens. How's that? [LB286]

SENATOR SCHUMACHER: But sometimes the burdens are for...I mean, if you say you can do this, but... [LB286]

MARK QUANDAHL: Sometimes there is a responsibility to go along with that. [LB286]

SENATOR SCHUMACHER: Right. With a benefit comes a responsibility and are we...is that implied in here that what the feds have got to do to be able to exercise these powers, the state banks have got to do, too? [LB286]

MARK QUANDAHL: Not necessarily. What you're asking is, does it create any sort of additional regulatory burden on our state-chartered institutions? No, we don't intend to do that. [LB286]

SENATOR SCHUMACHER: Or...okay, so the feds could say, you know, we're going to give a federal institution this power or this right, but they got to file proof, you know, proof of financial ability or something, we are only saying that you can have...you have the power to do this, but you don't have to meet the federal requirement to do it. [LB286]

MARK QUANDAHL: I think I understand what you're saying, but there's going to be some folks that testify after me from the actual industry, I believe, so...Jerry? And so I'll throw it back on someone like Jerry to answer a specific question. [LB286]

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SENATOR SCHUMACHER: Okay. Thank you. [LB286]

MARK QUANDAHL: Certainly. [LB286]

SENATOR SCHEER: Other questions? Seeing none, thank you, Director. [LB286]

MARK QUANDAHL: Thank you. [LB286]

JERRY STILMOCK: Chairman Scheer, members of the committee, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying in support of LB286. As we have in the past when it's time to renew and update the parity provisions, the wild-card provisions, we're here in support of that item. Senator Schumacher, I wish I could answer that question but...that you posed to Director Quandahl, but I don't think I can either. I know then chair or then Director Munn gave an example, I believe last year, that spoke in terms of lending limits and lending authority that then Director Munn clarified that the benefit of the two laws, both federal and state, would go to provide the benefit of the higher lending limits between the two laws as long as there was no federal preemption that Nebraska law would have the governing authority over Nebraska state-chartered banks. But to otherwise answer your question, I'm not able to do that, Senator Schumacher. [LB286]

SENATOR SCHUMACHER: Thank you. [LB286]

JERRY STILMOCK: Yes, sir. [LB286]

SENATOR SCHEER: Any other questions for Mr. Stilmock? Thank you for your testimony. [LB286]

JERRY STILMOCK: Thank you, Senators. [LB286]

SENATOR SCHEER: Other proponents? [LB286]

BRANDON LUETKENHAUS: (Exhibit 2) Good afternoon, Chairman Scheer and members of the Banking, Commerce and Insurance Committee. My name is Brandon Luetkenhaus, B-r-a-n-d-o-n L-u-e-t-k-e-n-h-a-u-s, and I'm here on behalf of the Nebraska Credit Union League. Our trade association represents our state's credit unions and their 465,000 members here in support of LB286. I want to thank Senator Craighead and Director Quandahl for their work on this bill. This is an important bill for credit unions. We strongly believe in the dual-chartering system whereby state and federal charters can switch between federal and state charter. Director Quandahl talked about one instance most recently where this bill impacted credit unions and he's correct. With the interest on lawyer trust accounts, Congress passed a bill that would allow the National Credit Union Insurance Fund to extend to IOLTAs and real estate trust accounts. The president signed that into law and so this bill would allow our state-charters to also offer IOLTA accounts to their members. Another provision in recent past was the federal

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regulator allowed for short-term loans to our members to help compete with payday lenders across the country. And so this bill, too, allowed our state-charters to offer short-term loans at an interest rate that we believe is far superior to what a Nebraska consumer might find at a payday lending shop. With that, I would answer any questions you might have. [LB286]

SENATOR SCHEER: Are there any questions? Seeing none, thank you, Mr. Luetkenhaus. [LB286]

BRANDON LUETKENHAUS: Thank you. [LB286]

SENATOR SCHEER: Are there any other proponents? Are there any opponents? Is there anyone that would like to speak in a neutral capacity? Seeing none, Senator Craighead waives the closing, so that will end the hearing on LB286. I will turn the gavel over to Senator Williams. [LB286]

SENATOR WILLIAMS: Thank you, Chairman Scheer. We will now open the hearing on LB352 and invite Senator Scheer to make his opening statement. [LB352]

SENATOR SCHEER: Thank you, Senator Williams. My name is Jim Scheer, S-c-h-e-e-r, and I represent the 19th District in northeast Nebraska, Madison and part of Stanton County. I'm here to introduce LB352 on behalf of the Department of Banking and Finance. My opening is very, very short. In fact, this is it. I would be expecting the Director of the Banking and Finance to come forward to explain exactly what it is that my bill is going to do because I don't have the technical knowledge to do so. And I did see...and you've seen the director earlier and he has his entourage here, so I'm sure with that type of a brain trust that they would be able to answer any and all questions that would be coming forward. And I would be happy to answer any of the questions that you find simplistic enough for me to try to attempt. [LB352]

SENATOR WILLIAMS: Any questions at this point for Senator Scheer? If not, invite the next proponent up. [LB352]

MARK QUANDAHL: (Exhibit 1) Vice Chair Williams, members of the committee, again my name is Mark Quandahl, Q-u-a-n-d-a-h-l. I just hope that I could live up to that great introduction that Chairman Scheer just gave me. I'm Director of the Nebraska Department of Banking and Finance appearing here today in support of LB352, which was introduced at the request of the department. LB352 proposes amendments to the Residential Mortgage Licensing Act. This act is under the jurisdiction of the department and provides for the regulation of the residential mortgage banking industry in Nebraska. The act requires the licensing of firms and individuals, wherever located, that are involved with the arranging, making, or servicing of loans secured by residential real estate in Nebraska. As of January 15, 2015, 318 firms hold Nebraska mortgage banker licenses and employ 1,803 licensed mortgage loan originators. In addition to their main offices, licensees operate from 389 licensed branch locations. Three amendments to the Residential Mortgage Licensing Act are contained in LB352. First, section 45-706 of the act, which contains the application and licensing process for mortgage banker firms would be amended to provide that the department could classify mortgage banker license applications,

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which are incomplete and have failed to respond to one or more deficiency notices from the department for 120 days or more, as abandoned. Once an application is deemed abandoned, the department would have the authority to issue a notice of abandonment on the application in lieu of formal, administrative proceedings to deny the application. Although we anticipate using this authority infrequently, it will result in a more efficient use of department resources on those occasions. This amendment mirrors the procedures adopted by the Legislature in 2012 in section 45-729 of the act for mortgage loan originator applications. Second, LB352 would amend section 45-737(6) by changing the time required for licensees to deliver payoff statements on residential mortgage loans from ten business days to seven business days after receipt of a written request. This amendment reflects a revision to the federal Truth in Lending Act found at 15 U.S.C. 1639g. Mortgage banker licenses are subject to the Truth in Lending Act, so we believe it is appropriate to echo the federal requirements in state law. Third, LB352 would amend subsection 8 of section 45-737 to change the two-year records retention requirement for mortgage banker licenses to a three-year standard. The amendment reflects changes adopted by the CFPB to its regulations under the Truth in Lending Act and the Real Estate Settlement Procedures Act with regard to the disclosure documents required under those laws. These federal acts are specifically referenced in our state law, thus prompting this amendment. Section 45-737(8) also prescribes a two-year retention requirement for all records relating to residential mortgage loans and applications. The proposed three-year standard would apply to those records as well. I want to thank Chairman Scheer for introducing LB352, and I'd be happy to answer any questions that you might have. [LB352]

SENATOR WILLIAMS: Thank you, Director Quandahl. Questions for the director? Senator Schumacher. [LB352]

SENATOR SCHUMACHER: Thank you, Senator Williams. You made mention of several things that the bill does, and yet when I look through the bill the only underlined area that I see--unless I'm missing it--is on page 3. And I don't see any of the other things that you talked about. Okay, I see now the seven to ten business days. Okay, I see that now. In regard to that then, on page 6 when we talk about shortening the time down from ten to seven days after receipt of a written request, would that be a mailed request that they receive? Is that by certified mail? Page 6, line 22. [LB352]

MARK QUANDAHL: I'm not sure that it specifies that and I'm not sure that it's specified in federal law either, but I can get you an answer on that. [LB352]

SENATOR SCHUMACHER: What's worrisome there a little bit is in the last year in rural Nebraska, the postal service has gotten extraordinarily bad. What it used to take a day or two to get mail from is unpredictable and can easily take as long as a week. So, I would assume that this is after the person receives it, but the ten days in the context of a poor postal service to respond to somebody and for them to get the letter back, because I think the creditor writes a letter saying, tell me what the payoff amount is and then the bank writes a letter back saying, well, as of such and such day, it's going to be so much money plus so much a day thereafter. And in a context of the deteriorating situation of the postal service, shortening that time may not work very well. [LB352]

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MARK QUANDAHL: I understand what you're saying. It does say, answer in writing within seven business days after receipt. That was...and so it's after the actual receipt of the written request. But I understand what you're saying, but I can't... [LB352]

SENATOR SCHUMACHER: So is that the answer? Does the bank send the notice as long as he does it within seven days, that's okay, or the recipient has got to get the notice within seven days? Answer in writing within seven days after receipt any written request for payoff information. So is that...does the... [LB352]

MARK QUANDAHL: That's where the creditor actually...it's within seven days after the creditor receives the request for the written payoff. I believe that's the way it's written. [LB352]

SENATOR SCHUMACHER: So is the answer, I guess, with the answer in writing has the banker, is he able to say, yes, I did answer in writing if he just sent the mail, or does the borrower get to get the answer in writing within seven days after receipt of the notice? [LB352]

MARK QUANDAHL: I see what you're asking now. I don't know that I could answer that just off the top of my head. [LB352]

SENATOR SCHUMACHER: Okay, because that ambiguity, it strikes me as being an issue in the day of terrible postal service. [LB352]

MARK QUANDAHL: Can't speak to the terribleness of the service of the postal service, but I understand what you're saying. [LB352]

SENATOR SCHUMACHER: Okay. Thank you. [LB352]

SENATOR WILLIAMS: Other questions? I have one question, Director. If I'm understanding this correctly, this just brings us into compliance with the current federal Truth in Lending (Act) as adopted. [LB352]

MARK QUANDAHL: Correct. Correct. They shortened down that time period. [LB352]

SENATOR WILLIAMS: Other questions? If not, thank you, Director. Other proponents to (LB)352. Any opponents to (LB)352? Anyone who would like to speak in neutral? Seeing none, Senator Scheer, would you like to close? Oh, I'm sorry, Senator Campbell. [LB352]

SENATOR CAMPBELL: Thank you, Senator Williams. I thought I saw Senator Schumacher raise his hand before the last testifier had left and I didn't know whether you wanted the question on the record, Senator? [LB352]



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SENATOR SCHUMACHER: No, that won't be necessary. He had already sat down and it wasn't that big a deal to begin with. [LB352]

SENATOR CAMPBELL: Thank you, Senator Williams. [LB352]

SENATOR SCHUMACHER: Thank you. [LB352]

SENATOR WILLIAMS: Senator Scheer waives closing. We'll close the hearing on LB352. [LB352]

SENATOR SCHEER: Now to divert from the posted schedule because we're moving right along, we will not take our five-minute break. We will move forward and we will move to LB252, which is Senator Schumacher's bill. [LB252]

SENATOR SCHUMACHER: Thank you, Chairman Scheer and members of the Banking, Commerce and Insurance Committee. I'm Paul Schumacher, S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature and here today to introduce LB252. This bill was introduced at the request of the Department of Banking and Finance. It would amend section 8-1106 of the Securities Act of Nebraska to permit issuers registering by coordination to file only one copy of the prospectus with the department rather than the current three copies. When a business wants to issue stock under certain circumstances, it has to comply with not only the federal law, but the state law and this permits the federal filing to be dittoed in and only one copy required to go to the state. In 2003 we amended (sections) 1108-1108.02 of the Securities Act to reflect changes in some of the federal securities laws and bring them into harmony. We required filings of the federal act to be dittoed into Nebraska, but no mention was made of what if you amended those filings, whether the amendments had to be dittoed into Nebraska, too. And this particular bill addresses that and said, yes, the amendments have got to be dittoed into Nebraska, too. As far as the administrative procedures, there are representatives here from the Department of Banking to explain any wrinkles in how actually this takes place. I'd be happy to take any questions. [LB252]

SENATOR SCHEER: Any questions for Senator Schumacher? Seeing none, thank you. [LB252]

SENATOR SCHUMACHER: Thank you. [LB252]

SENATOR SCHEER: Now, entertain those proponents for LB252. Welcome back, Director. [LB252]

MARK QUANDAHL: (Exhibit 1) Yes, thank you. Chairman Scheer, members of the committee, my name is Mark Quandahl. It's Q-u-a-n-d-a-h-l, Director of the Nebraska Department of Banking and Finance. I am appearing here today in support of LB252, which was introduced at the request of the department. LB252 proposes two amendments to the Securities Act of Nebraska. The Securities Act governs the offer and sale of securities in Nebraska by providing

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for the registration of securities, broker-dealers, agents, investment advisers and their representatives. The act contains exemptions from registration, antifraud provisions, as well as administrative and criminal penalties for violations of the act. The Department of Banking and Finance is charged with enforcing the act and carrying out the act's mandate of investor protection. The first amendment proposed is to section 8-1106 of the Securities Act and is very simple. The law currently requires an issuer of securities registering by coordination to file three copies of its prospectus with the department. Section 1 of the bill would change that requirement to one copy. The department has determined that one copy is sufficient for review and recordkeeping purposes. There were approximately 3,000 registrations by coordination filed in the last fiscal year, so we would expect some recycling cost savings for the agency. Security issuers should also have a savings in printing and shipping costs. This is kind of our version of going green in 2015, so. The second proposed amendment is to section 8-1108.02 of the Securities Act and relates to federal covered securities. Federal covered securities are securities exempted from state registration requirements by the federal Securities Act of 1933. Although exempted from registration, states retain the rights to require filing of notices of these sales made in their respective state and the right to charge a fee. Nebraska currently requires this type of filing and assesses a \$200 filing fee. LB252 would amend sections 2 and 3 of section 8-1108.02. The primary purpose of the amendment is to make clear that the department has the authority to require an issuer of federally covered securities to submit to the department any amendments which the issuer subsequently files with the SEC. There is some question as to whether the 2013 amendments to section 8-1108.02, which incorporated the renumbering of section 18 of the federal Securities Act of 1933 by the enactment of the federal JOBS Act, had the unintended effect of removing such authority. LB252 clearly provides this authority, which the department may exercise by rule, regulation, or order. There is no fee for filing an amendment. LB252 also proposes to combine existing subsections 2 and 3 into a new subsection 2. We believe this makes the statute much clearer. It does not add any additional requirements for the issuers or authority to the department. This change would also remove a reference to SEC Form D, which is a federal form currently adopted by the SEC for issuers claiming an exemption under Rule 506 of Regulation D. This is a limited offering exemption provided under section 4(a)(2) of the federal Securities Act of 1933. The department will still be able to require the filing of this form as a part of the notice and expects to do so for as long as it's used by the SEC. Should the SEC continue or rename the form, a statutory change would be needed. This proposal simply removes that future possibility, and will have no other impact on the operation of the law. I want to thank Senator Schumacher for introducing this bill and I'd be happy to answer any questions that you might have. [LB252]

SENATOR SCHEER: Any questions that you would know the answer to, would that be more accurate? [LB252]

MARK QUANDAHL: That's...that's better. Thank you. [LB252]

SENATOR SCHEER: Okay. Any questions for the director? Senator Gloor. [LB252]

SENATOR GLOOR: Thank you, Chairman Scheer and thank you, Director Quandahl. Would going from three to one be sort of...in consideration of the fact that we do so much electronically now that having three copies that can't broke apart and handed off to different people for

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different components. I mean, I guess it would appear to me that that's probably what's going on, but just curious. [LB252]

MARK QUANDAHL: Yes, I mean, that's a good way. Just one is sufficient and you're right, I mean, there's always electronic copies that could be accessed also, so. [LB252]

SENATOR GLOOR: Okay. Thank you. [LB252]

SENATOR SCHEER: Other questions? Seeing none, thank you, Director. [LB252]

MARK QUANDAHL: Thanks. [LB252]

SENATOR SCHEER: Any other proponents to LB252? Seeing none, are there any opponents to LB252? Seeing none, are there any that would like to speak in a neutral position? Seeing none, Senator Schumacher waives closing, and that would end the hearing for LB252. The next bill is LB226. Senator Coash, welcome. [LB252]

SENATOR COASH: You guys move fast in here.

SENATOR SCHEER: Only one way to run a committee.

SENATOR COASH: We're still on the first bill across the hall. (Laughter)

SENATOR SCHEER: Well, we're just a very efficient and effective committee.

SENATOR COASH: Well, this should only take three hours and we should be done by then.

SENATOR SCHEER: Well, we won't be here, but you go ahead and carry on. (Laughter)

SENATOR COASH: (Exhibits 1, 2, and 3) Well, thank you very much. Senator Scheer, members of the Banking, Commerce and Insurance Committee, I am Colby Coash, C-o-a-s-h, representing the 27th District right here in Lincoln, here today to introduce LB226, which is a bill that authorizes crowdfunding and exempts crowdfunding under the Securities Act of Nebraska. Crowdfunding allows an individual or business the opportunity to raise money through smaller contributions from a large number of investors. You may have heard or even contributed to a crowdfunding web site like Kickstarter. Kickstarter is a national web site where if you have an idea for a project like a movie or building a playground in your neighborhood, you would then create a campaign web site on Kickstarter to raise the funds for your project. Depending on the size of the donation that an investor donates, you then will give them a gift for their donation, maybe a T-shirt, a poster, maybe it's an end product, a first-run of the product you might be manufacturing. The marketing, the donation sizes, the time frame and the responsibility would all be in your hands, but Kickstarter provides the portal or the avenue for you to raise awareness

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and funds for your project. LB226 is different, however, than a Kickstarter campaign in this way. LB226, when you contribute to a project like Kickstarter, typically receive a promotional gift depending on the size of the contribution, but you have no monetary stake in that project. LB226 gives the investor a monetary stake in the project, not a donation. Crowdfunding legislation creates incredible opportunities for start-up companies that otherwise do not have easy access to capital. In one of the handouts I've given you, as you know, Nebraska is...well, we like to look at where we rank all the time in our state, right? And as you look at one of the handouts here, you'll see that we rank pretty low in the area of access to capital. So LB226 is an attempt to rectify that. It allows an individual who may be working out of his garage, looking for a way to expand, to actually move forward to raise funds and meet investors. In Nebraska this bill allows projects to have access to a market of over one million new potential investors. Thirteen states have passed crowdfunding legislation and at least 15 more states have or are considering similar legislation as of last November. After consulting with the Nebraska Department of Banking, LB226 was modeled after Indiana's crowdfunding legislation. Most of the states that have crowdfunding statutes have similar requirements, but Indiana's has less regulation in their department. There are several safeguards in place to protect both the investor and the business seeking funding. One safeguard is the Nebraska residents and businesses can raise up to, but no more than two million from accredited or unaccredited investors within 12 months. An accredited investor is a person whose individual net worth, or joint net worth with that person's spouse at the time of his or her purchase, exceeds one million dollars, excluding the value of primary residence of such person, or any natural person who has had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand in each of those years and has a reasonable expectation of reaching the same income level in the current year. Additional safeguards include projects that would require approval from the Nebraska Department...projects would require approval from the Department of Banking and Finance. Investors must sign certification acknowledging that they could lose all of their investment, and the unaccredited investor...investments are limited to a percentage of that investor's income or a cap of five thousand dollars. This bill is much more than providing a way for small investors to raise capital...small businesses to raise capital. According to the 2014 CNBC, America's top states for business that I've handed out to you, Nebraska ranks fourth overall in the best states for business, but fortieth in technology and innovation and thirty-fifth in access to capital. While researching this bill I met with owners of several start-up companies and web site developers and there was an alarming trend that each one kept referring to and that was the lack of talent or brain-drain that exists in Nebraska. Nebraska must increase our investment in our work force to stay competitive years down the road. Crowdfunding capabilities will no longer give anyone working out of their garage with the next big idea an excuse about the ability to access capital. Here's the ability to get out of your basement and build the next thing. Does that mean that everyone has the next Facebook or Twitter on their hands? Most likely not, but this does provide the avenue to share ideas on a much larger scale. I've also passed out a list of some of the companies in Indiana that have raised their target funding or are currently seeking funds. As you can see, restaurants, ideas like Scotty's Brewhouse has over \$243,000 committed in just a few weeks, and an additional \$1.8 million of interest from 815 investors once it hits the target of a quarter million dollars. I think any business start-up would drool over the opportunity to sit in a room with over 800 potential investors indicating that they're interested in investing with their company. There's a vacuum of talent in Nebraska and we need to be looking 20 years down the road, not just quick fixes for the next couple of years. Crowdfunding will not be a silver bullet, but it can be a cornerstone in the bricklaying process along with increasing the Angel Investment Tax Credit and offering more technology-centric classes at our schools. There are a few people here who can speak why we

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need start-up technology companies and can address the problems they encounter when they try to grow their businesses with recent graduates. So I thank you for your time and I'll answer any questions. [LB226]

SENATOR SCHEER: Senator Craighead. [LB226]

SENATOR CRAIGHEAD: Thank you, Chairman Scheer. Senator Coash, so if I'm understanding this correctly with crowdfunding that the investors are issued stock? [LB226]

SENATOR COASH: They're issued...yeah, stock in that company, which means that that start-up company is going to have to be selective about how they set it up and how they work with the Department of Banking to do that because you might end up with, you know, several hundred investors. But it's similar in Kickstarter, which a lot of people are familiar with and this bill is being confused with, in that you use the web as a portal to get potential investors to put your ideas out there. But in Kickstarter, in Nebraska you're prohibited from issuing any kind of ownership in the company, right, because you have to go through the SEC to do that. But in...should this bill be enacted, you cannot only invest in the company and you might get a T-shirt or something like that, but you actually become an owner in the company. And so, yeah, that's the intent here. [LB226]

SENATOR CRAIGHEAD: Will there be a certain amount of time before people are 100 percent vested with their stock? [LB226]

SENATOR COASH: No, they...I believe that that will be set up by, you know, how the company seeks to get investors, puts in their rules and regs. And also, we've given a lot of deference to the Department of Banking to set up rules and regs around these things. We don't want it to be overly burdensome, but I didn't want to spell out the nuts and bolts of that kind of thing in the legislation. [LB226]

SENATOR CRAIGHEAD: The reason I ask is, let's say, that maybe they say you have to be there for ten years and then you're 100 percent vested. And then if at nine years they fold or something, okay, everybody's stock is useless here, you just lose all your money. I think those would be good. I think protection from scams is going to be very...I mean, I could start the Charlie Craighead First Cat of District 6 Bobblehead Company. You know what I'm saying? And it's like saying, how are we going to justify that these are valid companies that is a good use of people's investment money? Do we have all of those constraints and protections in the bill? [LB226]

SENATOR COASH: There's some protections that we built...yeah, there's a couple of protections that I highlighted here. I'll repeat them briefly. One is, the start-up company has got to get approval, right? And so, the Department of Banking, they're going to be looking at things and saying...and making sure that the company that you say you're going to start, you're actually going to start. It's not just a front to milk money through the Internet, right? And so, we'll have to trust our Department of Banking, which this committee is very familiar with, is able to set that up to protect the investor like that. And then we followed, you know, I've worked with the Angel

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Investment Tax Credit and similar to that where you have to be a qualified investor so that...you get pre-qualified as an investor so that there's some comfort that you know what you're doing, and you're doing due diligence to make sure that you are putting your money in a place that you feel safe. But at the end of the day, these are risky investments. These are start-up companies which are not always successful. But, you know, I'm fond of saying about this bill, you know, this is where the Bill Gates start, right? This is for the entrepreneur who is in his garage working on the next best thing, whether it's in technology or something else, and they're saying, you know what, if I just had \$100,000 to build a prototype to test my ideas, to make sure I know what I'm doing, and then I take that prototype and I go out to the venture capital firms, right? Through the research on this bill we talked to a lot of VC firms because I wanted to make sure we weren't kind of stepping on their toes, so to speak. And we've got some that might testify today, but if I could paraphrase what they said, they said, look, we need mechanisms like this so that they have enough to come to us with. You know, this is the first level and then we'll take them to the next level if it's a good idea. Now, at the end of the day, these businesses, they have to sell their idea. They have to sell their product. They have to go out and drum up their investors. Just because they have the portal doesn't mean anybody is going to think it's a good idea, so there's still work on their end to make sure that this can fly. [LB226]

SENATOR CRAIGHEAD: One more question. What types of businesses do you anticipate would use crowdfunding? Obviously, technological companies, high tech, but what other types of companies do you anticipate? [LB226]

SENATOR COASH: Well, technology is one of them. You'll see the examples of where Indiana went. They had everything from restaurants to even service industries. I...this is designed...I mean, you can start a lot of businesses without a lot of capital, right? But if you need a lot of capital to get your business going, this is the type of business that the crowdfunding it is, is for. And so, if it's capital intensive and you can't get the bankers to say yes, then you might have to go out and start crowdfunding for your initial outlay. [LB226]

SENATOR CRAIGHEAD: Thank you, Senator. [LB226]

SENATOR SCHEER: Other questions? Senator Schumacher. [LB226]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you, Senator Colby, for introducing this. This crowdfunding has been one of those intriguing issues that have been flowing around for some time. Got a few questions with regard to it. It indicates there's no limit on accredited investors, how much they can invest. [LB226]

SENATOR COASH: We did put a limit. Let me go back to my opening statements. We have a limit on one and not on the other. Do you have another question while he's looking that up? [LB226]

SENATOR SCHUMACHER: Okay. Now are these securities only available to residents of Nebraska? [LB226]

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SENATOR COASH: Yes. [LB226]

SENATOR SCHUMACHER: So even though you have a very...a web site, say hosted in California, and lots of people may be going there, you cannot sell this stock to anybody but a resident of Nebraska. [LB226]

SENATOR COASH: Let me correct that. The business has to be a Nebraska business. [LB226]

SENATOR SCHUMACHER: But the shareholders do not? [LB226]

SENATOR COASH: But the shareholders can be from anywhere. [LB226]

SENATOR SCHUMACHER: But this says that this is in conjunction with intrastate...intrastate offerings and Rule 147, which I think is the intrastate offering, which would mean that the federal law applies to anything where an offeree is not a resident of the state. So how do we...I'm a little confused there as to whether or not this is an offering that is not confined to the state of Nebraska, so how does it...how would it fall in the exemption to the federal act? [LB226]

SENATOR COASH: Let me get back to you on that, Senator. I don't want to try to answer that for you right now. [LB226]

SENATOR SCHUMACHER: I think there may be an issue there because we cannot exempt stuff from the federal act that isn't exempted from it. [LB226]

SENATOR COASH: Correct. [LB226]

SENATOR SCHUMACHER: Talks in terms of financial audit of its most recently completed fiscal year. What if it's a new company? It has no previous fiscal year. [LB226]

SENATOR COASH: Well, you'd have to...from a practical standpoint, you'd have to be in business for a year to do an audit. [LB226]

SENATOR SCHUMACHER: Not if you're just starting up and you need your money. It's a brand new idea, the garage is open, and we're cooking it out and we need some cash quick. [LB226]

SENATOR COASH: Well, you complete your crowdfunding initiative, start your business, and a year later you've got to report, not only through the audit, but to your shareholders how you're doing. And if we need to clarify that, we can work through that. [LB226]

SENATOR SCHUMACHER: Okay. The next thing talks in terms of the...somebody who assist in the offering, an Internet company. So let's say...I think this is on page 22, line 15, the identity

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of any person who will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including the Internet web site operator. So if they do this over a web site in California, GoDaddy or Google, or whatever, then how does that...is Google have to consent to being under our laws? Are they a broker, a...? [LB226]

SENATOR COASH: Yes, Senator, there's a handful of companies out there and they're not all in Nebraska. They serve as a portal, basically a Kickstarter, for example, that can offer these things. And they don't have to be in the state, but they have to comply. And so they would, if they want to be a portal, they have to be identified as such and I believe that's what that language is about. [LB226]

SENATOR SCHUMACHER: Are there requirements set out in here as to what it takes to be a portal? [LB226]

SENATOR COASH: There's some, Senator, but a lot of that will fall on the Department of Banking when we get that. Let me answer a previous question for you real quick because I think I misspoke earlier and I think legal counsel was hearing what he said. I think you do have to be a Nebraska resident in order to invest in these. So I want to correct the record there that it is a Nebraska resident requirement to be an investor. [LB226]

SENATOR SCHEER: Senator, to clarify, I think if you would look at page 26, line 18, it specifies the sale to Nebraska residents only. [LB226]

SENATOR SCHUMACHER: But finally, it's not the intent of this bill to exempt these offerings from the antifraud provisions of the Nebraska Securities Act is it? [LB226]

SENATOR COASH: No. [LB226]

SENATOR SCHUMACHER: Okay. Thank you. [LB226]

SENATOR COASH: Thank you. [LB226]

SENATOR SCHEER: Other questions? Yes, Senator Lindstrom. [LB226]

SENATOR LINDSTROM: Thank you, Chairman. I love the idea of crowdfunding. Do you feel, or do you have any fear that this could be used for money laundering purposes? [LB226]

SENATOR COASH: Not given the protections of the audits that are put in place, the oversight of the Department of Banking. I think that...I think if we have that kind of oversight and that deliverable by the company, I think it's going to be pretty tough to launder some money through this. [LB226]



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SENATOR SCHEER: Senator Campbell. [LB226]

SENATOR CAMPBELL: Yes, I just want to clarify, Senator Coash--thank you, Mr. Chairman, by the way--that they have to provide...make a notice of filing with the Nebraska Department of Banking at least ten days prior to. In...have you had any discussions with the banking department? Is that enough time for them to thoroughly look at this before it goes live? [LB226]

SENATOR COASH: What I would say to that, Senator Campbell, is two things. We've been working with the Department of Banking on this and so they've certainly had that review. If they indicate that's not enough time, I think we can work with them on that. [LB226]

SENATOR CAMPBELL: Okay. Could I... [LB226]

SENATOR COASH: Oh, excuse me. Go ahead. [LB226]

SENATOR CAMPBELL: Just one follow-up question. And then they have to...the business has to put into an escrow account or have an agreement, how is that determined how much money they have to set aside? Oh, they have to escrow the proceeds until the aggregate amount raised exceeds the minimum amount specified. So they have to put in an agreement. [LB226]

SENATOR COASH: Right. Yeah, basically, you know, you might have a target of what you want to raise and if you're unable to hit that target, you might have to return that money and so you have to have a place to put it until you hit your...until you hit your target. That's what that escrow is about. [LB226]

SENATOR CAMPBELL: Okay. Thank you. That helps. Thanks. [LB226]

SENATOR SCHEER: Senator Craighead. [LB226]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Senator, I just want to say I'm intrigued with this too and I think it's great. I've been in business consulting for years. I have a lot of red flags and maybe it's women's intuition. I think it's a great idea. I just hope we can get everything tied down in this so that we've got all the constraints that we need so that scamming is not a possibility. [LB226]

SENATOR COASH: Sure, and that's a...those are reasonable red flags and as we went down this road in looking at this bill over the past summer, we, frankly, there's nothing new under the sun here. We, frankly, we lifted a lot of this from what Indiana is doing. And they've had a pretty successful run at it. Hasn't been any...at least identified or prosecuted frauds since they put theirs in place, and so, I felt comfortable in that as well. At the end of the day, I...what I would continue to say, though, is, start-up businesses have risk, investing in a start-up has risk, and both people got to be comfortable with that. But I don't want anybody setting these up just to milk the public, or whatever. But in a practical sense, people who would crowdfund are doing it with their

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friends and their family and people that know them, you know, and then their friends and family. And so, hopefully, we can hedge against that. But any protections the committee feels aren't there, need to be there, I think, are worthy of taking a look at. [LB226]

SENATOR SCHEER: One question, Senator, and then Senator Schumacher. Do you see this as sort of an extension of the University's Innovation Campus? You have a lot of start-ups there as a way for them to, perhaps, fund themselves as they're moving forward through the process, or what are your thoughts? [LB226]

SENATOR COASH: I mean, you know, it's something I hadn't considered, but it's certainly a good fit. It's hard to...you know, I can't bring up a testifier today to say, this is the kind of guy who need this, right? Because the kind of guy who needs this is out in his garage trying to build the next thing that goes in the back of your toilet that saves you on your water bill. Whatever it is, right? And this is for entrepreneurs and for inventors who have everything in place but the capital. [LB226]

SENATOR SCHEER: Okay. Senator Schumacher. [LB226]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Is Internet web site operator defined anywhere in here? [LB226]

SENATOR COASH: Well, we've got it defined on page 20...I don't think it's...it's referred to several times, page 26 and on. I don't believe it is... [LB226]

SENATOR SCHUMACHER: I mean, I see... [LB226]

SENATOR COASH: ...specifically defined, though. [LB226]

SENATOR SCHUMACHER: Internet web site operator, I mean, the operator of a web site, the hosting service, that may be one way to interpret that which would be something like a Google or a Yahoo, or something like that. You certainly couldn't expect them to comply with this. The web site operator otherwise must be something like a business who has a web site operated on somebody else's servers. And then, I would think that that person would want to be able to possess the investor funds because they've got to collect them off of a credit card or something, which is page 26 issues. And then, I'm not sure how an Internet web site operator can limit access to a web site unless you're China or someplace. Pretty much anything on the Internet can be accessed. And so, how to rely the... [LB226]

SENATOR COASH: I think the in ten years not to limit that you could go on the site, but limit that you're a qualified investor before they take your money. [LB226]

SENATOR SCHUMACHER: Okay. So there's some language things that we have to deal with in the middle of that then. The practicality, if you had \$2 million at \$5,000 a pop, it would be 400

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investors. Managing that type of shareholders' meetings, and wouldn't you just be better off to stay within the confines of the existing Securities Act and do a federal registration than try to do this? [LB226]

SENATOR COASH: You might. But some of these newer, you know...I don't...this is the way that I think some of the up-and-coming entrepreneurs might do that. And frankly, if they could go get a loan for this capital they would, but for what they want to do, banks aren't going to loan the money. So, this is a way to get around that. I've started companies and I don't want 400 shareholders in a company that I started either. [LB226]

SENATOR SCHUMACHER: Hard enough with four. [LB226]

SENATOR COASH: It's hard...it's hard enough to have a partnership, right? But that's got to be taken into consideration by somebody that wants to use crowdfunding to start their capital. Can I live with a bunch of investors, some of whom I may not even know, and how can I structure my business so that I can operate with that many shareholders. And depending on how many shares you're issuing and the value of those shares, you may have a 20 percent owner down to a .5 percent owner, but you have to make those decisions at the front. [LB226]

SENATOR SCHUMACHER: Now on page 27, we talk in terms of an accredited investor being a bank, a savings institution, a trust company, an insurance company, an investment company as defined within the federal act, a pension or profit-sharing trust. Do we want those kind of institutions to be investing in speculative investments? The federal law seems to be going the opposite direction. Is this to imply that they can invest in these type of speculative things? [LB226]

SENATOR COASH: It is, that they can. And I think there's still deference here to the business owner, what I can live with and what I want, who I want. You can have somebody come in with a big check, but they may not want to take it. [LB226]

SENATOR SCHUMACHER: But, so basically, this would mean that a bank could hold shares and count on its books as having some kind of value in extremely speculative businesses? Page 27, line 14. [LB226]

SENATOR COASH: Yep. That's how the definition reads. [LB226]

SENATOR SCHUMACHER: Is that your intent? [LB226]

SENATOR COASH: It's what Indiana did, Senator, so I could defer to them. (Laugh) [LB226]

SENATOR SCHUMACHER: Okay. Thank you, Senator Coash. [LB226]

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SENATOR SCHEER: Any final questions? Seeing none, thank you, Senator. [LB226]

SENATOR COASH: Thank you. [LB226]

SENATOR SCHEER: I'm assuming you'll be around to close? [LB226]

SENATOR COASH: Yep. [LB226]

SENATOR SCHEER: Okay. I would now entertain anyone that would be a proponent of the legislation. [LB226]

STEVE BRADFORD: (Exhibit 4) Mr. Chairman, members of the committee, my name is Steve Bradford, S-t-e-v-e B-r-a-d-f-o-r-d. I'm a professor at the University of Nebraska College of Law. I should say, these are my personal views and I'm not speaking on behalf of the University or the Law College. I'm here to testify in favor of LB226 which would add a crowdfunding exemption to our state securities law. I've submitted a written statement that you have and in the interest of time, I'm not going to repeat everything that's in that written statement. I specialize in securities law and a lot of my research examines the effect of securities regulation on small business capital formation. And that includes a couple of articles I've written on crowdfunding and securities law. I believe that LB226 would be a significant improvement to our state securities law giving entrepreneurs an important new source of capital. LB226 addresses what some people have called the small business capital gap. Very small businesses, especially start-ups, have difficulty raising money. Most entrepreneurs start with their own money and money from friends and family. When they exhaust that, it's very difficult to get additional funds. Many venture capitalists and other wealthy investors really aren't interested in very small start-ups especially if they're not in trendy industries like high tech. There's also a geographical issue with some of those big investors. If you're not in the Northeast or on the West Coast, unless your name is Buffett, you really don't stand much of a chance. Crowdfunding is a way for small businesses to reach smaller nonprofessional investors using the Internet. Businesses post an appeal for funds on a public web site, explains the nature of the business, what the entrepreneur intends to do with the money, and the hope is to aggregate a large number of relatively small contributions from ordinary investors. Crowdfunding has been a very popular way to raise money. The problem is that businesses so far have been unable to promise people any sort of financial return, any sort of interest in the business in return for their contributions because anything like that would be a security and that would require registration under both federal and state securities laws. And, unfortunately, the cost of registration is simply too high in relation to the amount of capital that these small businesses are looking for. So, given the legal restrictions, businesses using crowdfunding have been limiting to offering nonfinancial rewards like T-shirts or coffee mugs in returns for people's money. A surprising amount of money has been raised that way, but there's only so much people will give for a T-shirt, particularly if the business is not something sexy and exciting like entertainment or something like that. Small businesses could raise money much more effectively if they could offer securities. Congress has ordered the SEC to create a federal exemption that will allow small businesses to sell securities through crowdfunding. That exemption would free companies from both federal and state registration requirements. But the SEC has dragged its feet in implementing that exemption. It's now more than two years overdue. In any event, the federal exemption is likely to be too expensive and

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burdensome for most small companies. LB226 would allow Nebraska companies to sell limited amounts of securities only to Nebraska residents without registration under either federal or state law. This would give Nebraska business start-ups an important new source of capital and help alleviate the capital gap. Now some people have opposed crowdfunded securities offerings because the potential risk to investors, but LB226 includes a number of provisions designed to protect investors. Among other things, the bill requires companies to provide disclosure both to investors and to the Director of Banking and Finance. The director is authorized to deny or revoke the exemption if there is a problem. There are escrow provisions. There are also limits on how much money nonaccredited investors can invest so they don't bet the farm on a single risky venture. I believe LB226 strikes a nice balance between protecting investors and giving small businesses a relatively inexpensive way to raise capital. And in evaluating risk, let's not forget the alternatives. People can already put money in a state sponsored lottery where they're almost guaranteed to lose all their money. I'd much rather see those people investing in a small business start-up that might succeed. In my written statement I include some amendments that I think would make LB226 better. I'm not going to repeat those here. I would strongly urge you to support the bill with or without those amendments. Thank you. Have any questions? [LB226]

SENATOR SCHEER: Thank you, Mr. Bradford. Questions? Senator Craighead. [LB226]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Hi. Thanks for being here today. You mentioned the cost of registration was high for companies. What is that cost? [LB226]

STEVE BRADFORD: I don't have a dollar amount. The federal registration's provisions, we're talking hundreds of thousands of dollars. State registration, obviously, much cheaper than that, but the director would have much better numbers on that than I would. [LB226]

SENATOR CRAIGHEAD: Would companies have to file both federal and state? [LB226]

STEVE BRADFORD: They would unless it was purely an interest, state offering exemption, or they had some other type of exemption. [LB226]

SENATOR CRAIGHEAD: Thank you. [LB226]

SENATOR SCHEER: Senator Schumacher. [LB226]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Again, your memo kind of refers to the web site host, or web site operator. What do you envision the function of this...what does the web site host or operator do? Is it just like Google that has a server, or Amazon that you can post your things to? What makes...why do we put so much emphasis on them in here? [LB226]

STEVE BRADFORD: I think it's important to...that the web site operator is going to be independent of the company raising money. They can't have any sort of financial stake under the bill as written. They can't even be operating on a commission basis. And so, basically, they're

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going to get a flat fee and not any sort of participation. And the value of that is, we're talking about an independent entity that has a business incentive to want their portal not be known for fraudulent offerings or anything like that. If they become known for scams, they're out of business. And so, I think that independence is extremely important. And by the way...I'm sorry to interrupt, but to go back to the question you raised earlier, the bill is currently phrased, does require that the operator also be a Nebraska company, I believe. [LB226]

SENATOR SCHUMACHER: Okay. Now, I mean, does this web site operator are they the one that has the responsibility for drafting the disclosures and drafting it, or do they just take a web page designed by the offering party and pop it on the Internet? [LB226]

STEVE BRADFORD: My guess is the Web page would be designed by them, but the actual disclosure that would be linked on that page would be from the...whoever is trying to raise the money. [LB226]

SENATOR SCHUMACHER: So, the content comes from whoever raises. All they are is basically a billboard guy who posts it on a billboard. [LB226]

STEVE BRADFORD: Pretty much, yes. [LB226]

SENATOR SCHUMACHER: So why do we put so much emphasis on them then? [LB226]

STEVE BRADFORD: Because again, it's in their best business interest for those offerings posted on their billboard not to be fraudulent, not to be scams, or nobody will come to their sites anymore. And if nobody comes to their sites, nobody is going to pay them for those listings. [LB226]

SENATOR SCHUMACHER: So, would they have to have a single name like, you know, Nebraskainvestments.com or could they have a name for ABCcoinvestments, when they do ABCcos and XYZcos when they dot.com, when they do XYZco. I mean, I'm just a little confused so... [LB226]

STEVE BRADFORD: I don't...they would have to...they'd be an ongoing...to be independent, they wouldn't have to be set up by ABCco, or whoever. So my guess is, they would have their own independent name. [LB226]

SENATOR SCHUMACHER: And finally, you indicated that the director had...would have the ability to revoke exemptions if there was a problem. But if there's a problem, the horse is already out of the barn and the money has been taken. [LB226]

STEVE BRADFORD: Well, that's true of anything the director handles, unfortunately, whether it's crowdfunding or a registered offering. I mean, the director has ten days advance notice before the site goes live. In addition, before any investor's money gets taken, there's that escrow period

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and that gives the director additional time. Now, whether the director thinks that's enough time or not, it's up to the director to say. [LB226]

SENATOR SCHUMACHER: But for the director to be some kind of imprimatur of securities and say, you know, how...are we going to be spending state money for them investigating the claims that are made to the prospectus? I mean, he's just going to be shooting in the dark. He'd have to look at name, address, and the very fundamentals. Otherwise, he...I mean...how is his opinion worth anything? [LB226]

STEVE BRADFORD: Well, these are unlike, unlike many offerings that the director has to deal with, these are purely Nebraska companies. They're going to be spending money in Nebraska and they're appealing only Nebraska residents. So unlike a lot of offerings that the director has to deal with, this is much more localized, much more accessible in terms of investigation. But the investigation is no different from the investigation that the director has to do with respect to anybody that's selling securities in the state. You never know if what they're saying is truthful or not. [LB226]

SENATOR SCHUMACHER: And yet we're kind of putting a lot of...at least emphasis on the director signing off on this or not pulling the plug on them right up-front. [LB226]

STEVE BRADFORD: Oh, I wouldn't say the director is signing off on this. The director has an antifraud role, the same antifraud role the director has, I think, with respect to any securities offer. [LB226]

SENATOR SCHUMACHER: So as an investor, can I rely on the fact that the investor let this go live as...it's kind of a warm and fuzzy, that it's a good deal? [LB226]

STEVE BRADFORD: Absolutely not. The director is never a guarantor of any securities offering. I think the director would be the first person to tell you that. [LB226]

SENATOR SCHUMACHER: Right, but... [LB226]

STEVE BRADFORD: These offerings or any others. [LB226]

SENATOR SCHUMACHER: So really, the director passing on the filing, I shouldn't attach much to that other than somebody mailed in the forms. [LB226]

STEVE BRADFORD: I would...frankly, the director having somebody on his staff review the filing, I would attach importance to that. Should an investor take that as a guarantee? The investor shouldn't take that as a guarantee. The SEC...the director shouldn't take SEC registration as a guarantee. Just look at the multimillion dollar companies that have gone through registration in every state in the country and SEC registration and approval. You know, people like

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WorldCom, and you know we're talking billion dollar companies that that process hasn't screened out. So I don't think this is any different. [LB226]

SENATOR SCHUMACHER: Are these shares freely negotiable? [LB226]

STEVE BRADFORD: No, I believe...Senator might know better than I do, but I believe there is a resale restriction within the act. But I couldn't find it offhand, so. I don't know the act that well. [LB226]

SENATOR SCHUMACHER: Thank you. [LB226]

STEVE BRADFORD: You're welcome. [LB226]

SENATOR SCHEER: Senator Craighead. [LB226]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Okay. If a business wants to get funding from a traditional lender, they have to have a business plan, they have to prove validity of the business. It's got to be pretty rock-solid. Compare crowdfunding and the controls that we have to traditional business. [LB226]

STEVE BRADFORD: If I could go back one step before I answer your question, I'm a law professor. I don't answer questions directly, but no. (Laughter) The business also has to have something else to get funding from a bank. And that is, the business has to have collateral. And a lot of these new businesses aren't...don't have collateral, which is why start-ups are in such a bad position when it comes to bank funding. So contrasting it with that. In terms of what you have to have for this, you do...the bill requires disclosure of a business plan. And it requires disclosure of what you intend to do with the money. And so, whether it...I doubt it's as much as a bank might ask for, but then a bank is not going to lend to the start-up like this anyway. Banks like to lend to people that already have money. This gives people who don't already have money an outlet. There's a lot of very poor people out there that have very good ideas that couldn't get into the door to a venture capital firm or most banks, and this gives them an opportunity to go to the people and convince people they've got a good idea. [LB226]

SENATOR CRAIGHEAD: So how do we...how do we differentiate and control an okay idea? I mean, I've been business consulting for 30 years. Everybody thinks they've got a great idea. Okay. It may not really be a great idea. All right. So how do we take an okay idea that's had an incredible campaign run with it, and people buy into it, and compare that and differentiate between a really good idea with maybe just an okay campaign? [LB226]

STEVE BRADFORD: Well, the best thing would be if we could get the person that really knows how to present the idea together with the person that has the technical idea. But that's not anything that's unique to crowdfunding. You see that in venture capital. You see that in registered



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offerings, and I don't think I really have a solution to you. Some people are better at presenting their ideas than others. [LB226]

SENATOR CRAIGHEAD: Like I say, love the idea, red flag is going up in my gut. Can't tell you why, but I think it's just because we don't have all the controls worked out. Thank you. [LB226]

SENATOR SCHEER: Senator Campbell. [LB226]

SENATOR CAMPBELL: Thank you, Mr. Chairman. In the document that you gave us, you made a number of suggested changes. Have you had an opportunity to discuss those changes with Senator Coash? [LB226]

STEVE BRADFORD: I haven't. I sent...I gave them to...I assume you're David. I've been in e-mail contact with one of his staffers and I gave them to them, oh, less than a week ago, I believe. And I'm sure they haven't had time to consider them yet. [LB226]

SENATOR CAMPBELL: Do you think that your suggestion of...that the limit of \$5,000 may be a little steep and go down to \$2,000 is more in line with the fact that not as much information is required to be given to the director of banking? [LB226]

STEVE BRADFORD: I actually suggest \$2,500, not \$2,000, but I also say, it's a judgment call. And the fact that I might make the judgment call of \$2,500, that the Senator might make the judgment call of \$5,000, the basic idea is, can we at least put some limits on people so they're not betting everything on this one risky...well, possibly risky venture. And \$2,500, \$5,000, you know, I can't say for sure that one is right and one is wrong. But \$2,500 seems like, for most people, I think more reasonable. Keeping in mind that eventually it's got to be an individual decision. And individuals have to make the decision about how much they're going to invest. I know people that have invested \$10,000 over time in the state lottery. I think they're fools to do it, but I know people that have bought \$6,000 televisions. I think they're fools to do that, too. So the question is, how much you want to limit people's independent judgments. [LB226]

SENATOR CAMPBELL: So the amount is not tied to the amount of information that should go to the director of banking to provide more...what should I say, more information to the investor before they step into it. [LB226]

STEVE BRADFORD: The amount is really tied to the risk and the idea that since there is more...or since there is less oversight than there would be in a fully registered offering, let's make it a little bit less risky for people by simply limiting how much they can invest. [LB226]

SENATOR CAMPBELL: Thank you. [LB226]

SENATOR SCHEER: Senator Gloor. [LB226]

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SENATOR GLOOR: Thank you, Mr. Chairman. And thank you, Professor Bradford. First of all, I think your suggestion that we not limit the offering or exclude web site operators who are outside the state of Nebraska, kind of made sense to me because I could see that as a specialized area where people who do a lot of this across the country may well do a better job than somebody who may not even exist in Nebraska as far as we know, although it would be easy enough to put together, I'm sure. Here's a question that's probably more regulatory, but maybe it is law. So what happens when, not if, but when the Securities and Exchange Commission finally gets its act together and comes up with those regulations? Do we...are we likely to find ourselves modeling it after Indiana, as an example, with us being not too far afield on this as we've brought it together, especially if we adopt your changes? Are we talking about sizable changes, do you think from the SEC's involvement? [LB226]

STEVE BRADFORD: I think the...what the SEC does on the federal crowdfunding bill shouldn't have any relationship or require any changes at all to LB226 and what it does to the state exemption. The federal crowdfunding bill basically preempts state law. So when they get their exemption in place, there's nothing...well, except for antifraud provisions preempt state registration requirements. And so when they get their bill in place, anybody that qualifies for that would not have to register with the state. But the LB226 piggybacks on the existing intrastate offering exemption at the federal level and requires that it be an intrastate offering, Nebraska companies selling to Nebraska residents, money being used in Nebraska. And so, what goes on at the federal level wouldn't have any effect on this exemption. [LB226]

SENATOR GLOOR: Gotcha. Thank you. [LB226]

SENATOR SCHEER: Any other questions? One last one, Mr. Bradford. When Senator Schumacher was talking about the web site and you having a noninclusive person hosting that, am I assuming that's the similar reason so you don't have the so-called...I used to get them all the time, the stock newsletters that would promote four or five stocks, but when you really looked into it, they were getting three to five hundred thousand shares plus 20,000 to be... [LB226]

STEVE BRADFORD: The so-called tap sheets, yes. [LB226]

SENATOR SCHEER: Yes. To be supportive of that stock offering and by virtue of just simply having it housed there and paying a fee for that you'd take away the bias or the inclination for those entities to try to maybe fluff a little bit of the information that might be put forward. [LB226]

STEVE BRADFORD: Yes, and, in fact, this bill is more protective than the federal bill is with respect to that because under the federal bill, the web site operators could still take a commission based on the sales and how much it sold, whereas, this wouldn't allow that. This requires a flat fee so that the operator is even more independent. [LB226]

SENATOR SCHEER: Okay. Oh, Senator Williams. [LB226]

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SENATOR WILLIAMS: Yes, thank you, Chairman Scheer. Thank you, Dr. Bradford, for being with us. A question on the qualified investors. Under the bill as written whether it's \$5,000 or \$2,500, there are those that are listed as qualified investors, including banks and that. I want to be sure that I understand that correctly from your standpoint that that would open the door to allow them to invest, but they could not invest if it violated any other regulations that that company, including banks, would otherwise be under. [LB226]

STEVE BRADFORD: Yes, and that's exactly the way it works under the federal law currently. Accredited investors for purposes of some of the federal exemptions, can invest in the offering, not subject to some of the limitations that apply to other investors. Same thing would be true under LB226, but for a pension fund, for an investment company, whatever, they're still subject to their organizing documents. They're still subject to any, example, in the case of pension funds, they're still subject to any limitations on what they can invest in and this wouldn't have any effect on that. [LB226]

SENATOR WILLIAMS: Right. Thank you. [LB226]

SENATOR SCHEER: Thank you, Mr. Bradford. You truly have been a wealth of information for the committee and I do appreciate so much coming this afternoon and sharing your knowledge with us. [LB226]

STEVE BRADFORD: Thank you very much. [LB226]

SENATOR SCHEER: Next proponent of LB226. [LB226]

JERRY STILMOCK: (Exhibit 5 and 6) Good afternoon, Senators, Chairman Scheer. My name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying in support of LB226 on behalf of the Nebraska Bankers Association. The page is giving you my handout of my testimony. You've heard a great deal of testimony already. But we believe that we would be able to direct our small businesses to the availability of this provision under the law to assist with raising capital. And also as you've heard, that banks along with others, would be able to serve as an escrow holder on the escrow accounts. And, of course, there are provisions already included in the bill that provide immunity for anybody serving as an escrow agent. In relation to a couple of the questions, I guess coming third into this seat, if I may, and you may have already seen it, but the way I view the language is in some parts of LB226 is that of...it might be a stretch of a comparison, but we have details in terms of what needs to be included in an operating agreement for a limited liability company, as an example. And so I look at the escrow agreement as being something that's going to be crafted on an entity-by-entity basis, and it's going to have certain provisions that that investor is going to need to look at and review. But a couple of the items that stand out to me, in looking at what has to be included in the investor escrow...excuse me, the entity creating, and the escrow agreement, would be two specific provisions as are set forth on page 19. And one of those has to do that the issuer, the creator, has no access to those funds until the minimum amount set forth in the escrow agreement are met, and secondly, that the individual investor knows that if there's a minimum amount stated in the escrow agreement and there's a target date, that if those two items are not met or the funds aren't met by the establishment of the

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minimum amount by that target date, then I, as the investor, according to statute...according to statute, would have the ability to withdraw my commitment. And it made me think to look at those provisions again when Senator Craighead had asked the question, well, how long do I have to wait before I, as an investor, become an investor? And my reading of it, it would be one of the items that would clearly have to be spelled out under the law, would be those funds are committed by the investor until that point in time where the target date is...runs and has that minimum amount of capital been raised. The other item that one of you on the committee raised was the reissuance. And it did strike me that on page 20, in the area of lines 4 through 9, there is a statement there about the securities are subject to limitations on resale. And again it tripped me back to a small corporation or a small limited liability company where we know that oftentimes we do put restrictions in the transferability of closely held investment in a small corporation or a limited liability company. But I looked and there might be one area there that then would need to be spelled out in LB226 as to, okay, so what are those limitations on resale? Does that mean...what does it mean? I guess, simply to say rhetorically we probably should have something and, of course, we would be happy to work with Senator Coash in that regard. In relation to this legislation then, we encourage the committee to work with Senator Coash and we would help in whatever way so we could advance this to General File. Thank you. [LB226]

SENATOR SCHEER: Thank you, Mr. Stilmock. Questions? Senator Schumacher. [LB226]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you, Mr. Stilmock. Your last comments there raised an issue. These securities, if somebody goes buys \$50,000 worth of securities in these businesses and they're restricted on being able to be transferred, would that \$50,000 worth of securities be such that a bank would not be able to make a loan against them? [LB226]

JERRY STILMOCK: No, I don't think so, but I think...I believe a bank would want to know what type of restrictions are in place. [LB226]

SENATOR SCHUMACHER: But, I mean, it specifies restrictions in here as those restrictions under SEC Rule 147 and any state law restrictions. So, if I bought \$50,000 worth of securities in one of these businesses and then wanted to pledge those securities for a personal loan so I could buy a new car or something, I would not be able to pledge those securities as security for my loan? [LB226]

JERRY STILMOCK: I don't know, Senator, I'd have to investigate it. [LB226]

SENATOR SCHUMACHER: And then along the same line, so the little company goes out and it collects a million dollars in money from these investors that's sitting in an escrow account that's for the qualified escrow holder. Can a bank take that million dollars as security for a loan and make a two million dollar loan? [LB226]

JERRY STILMOCK: I think I would defer to the escrow agreement and whether or not that would be permissible in the escrow agreement. And I believe if it were not permissible in the escrow agreement, then I don't believe it would be. [LB226]

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SENATOR SCHUMACHER: So that would be up to the escrow agreement between the company and the escrow agent, the bank. [LB226]

JERRY STILMOCK: Yes, as well as the...I think, Senator, the investors as well because they would...I believe they're required to be provided with that escrow agreement as well so they would know the parameters of that escrow agreement. [LB226]

SENATOR SCHUMACHER: Who would represent the investors in the negotiation of the terms of that escrow agreement? [LB226]

JERRY STILMOCK: I don't believe the bill speaks to that, sir. [LB226]

SENATOR SCHUMACHER: But somebody probably would have to be, otherwise be kind of self-dealing. [LB226]

JERRY STILMOCK: Yeah, I...I don't know how the...you know, what the individual investor, you know, would expect in terms of who is representing that investor. I don't know, sir. [LB226]

SENATOR SCHUMACHER: Thank you. [LB226]

JERRY STILMOCK: Yes, sir. [LB226]

SENATOR SCHEER: Senator Williams. [LB226]

SENATOR WILLIAMS: Thank you, Senator Scheer. Mr. Stilmock, wouldn't the escrow agreement be a great deal like a prospectus that it would describe the arrangement and the potential investor would then look at that, not negotiate it on their part, but look at it and make a decision if they're going to invest or not. [LB226]

JERRY STILMOCK: I think so, sir. [LB226]

SENATOR WILLIAMS: Thank you. [LB226]

SENATOR SCHEER: Any other questions? Thank you very much. [LB226]

JERRY STILMOCK: Thank you, Senators. I'd also like to submit a letter on behalf of...in support, on behalf of the National Federation of Independent Business as well that I'll ask the page if he would assist me, please. [LB226]

SENATOR SCHEER: Okay, thank you, Mr. Stilmock. [LB226]

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JERRY STILMOCK: Thank you, Senators. [LB226]

SENATOR SCHEER: The next proponent for LB226. [LB226]

BRUCE BOHRER: Good afternoon, Chairman Scheer, members of the committee. Bruce Bohrer, appearing on behalf of the Lincoln Chamber of Commerce. For the record my last name is spelled B-o-h-r-e-r. We are here in support of LB226, what we call the intrastate crowdfunding exemption bill. And I'll try to follow the recommendations from the chairman to be concise. The previous testifiers already covered most of what I was going to say, especially Senator...or Professor Bradford. We think...I think he had mentioned, this is a good balance, and I think it has been a very good discussion, obviously, it's some of the same issues that we thought of in talking about this is a steering committee, a policy steering committee within the Chamber. Some of the safeguards that need to be in place, but also what we hear so much from the start-up community in Lincoln and I want to back up just a minute and say, the Chamber in Lincoln holds the economic development partnership with the city, so we do economic development and develop the strategy for the city. And as you might imagine, innovation and start-up in an entrepreneurial culture making sure we are favorable to that in Lincoln is a big part of our strategy. But we talked a lot about that having access to capital for start-ups, but also making sure that this exemption has the right safeguards in place. We do think that we may have to work a little bit around some of the issues that have been raised today, but we think the bill, as a whole, strikes a good balance. It's important for Nebraska to be seen as a place that is kind of open and on top of these types of issues. We don't see a lot of start-up companies here. We want to have a culture where we are encouraging our young people and really people of all ages to strike out and go ahead and pursue that. And as we talk about risks of businesses, I just want to remind everybody around the table, even businesses that go and have collateral and have all the great ideas that get the loans from the bank, the safe ventures, they're still companies there that fail. They're still companies there that have investors that lose money. Yes, this is a high-risk offering. I don't know if...I think we get into the mode of talking about some of this and think all of these offerings are going to...and companies are going to come in and want the full amount. A lot of the start-ups that we're talking to, I mean, they want \$200,000...access to \$200,000, \$100,000 just to get, you know, up and started. They're not going to come in and try to get that maximum amount anyway. But I do think this would make a difference and I certainly hope we can find a way to draft a bill that would be, you know, it would satisfy everybody's interest in making sure we have this tool available to start-up companies in Nebraska and investors in Nebraska as well. With that, I would conclude my remarks and answer any questions you might have. [LB226]

SENATOR SCHEER: Thank you. Any questions from the committee? Senator Schumacher. [LB226]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for your testimony. If the focus of this is something in the neighborhood of \$250,000 or less, don't we already have that in force? We passed legislation two years ago that made it reasonably easier, certainly easier and less complex than this to raise \$250,000. [LB226]

BRUCE BOHRER: Well, I'm not saying it's the focus of this. I'm just saying a lot of the start-up companies that I come in contact with are...that's the amounts they're asking for or looking for

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originally. I do think this is...the million dollar, two million dollar limits in here are probably appropriate. There certainly going to be people that we're not going to cover if we just say, it's just for \$200,000...access to \$200,000 in capital that we're talking about and miss people.  
[LB226]

SENATOR SCHUMACHER: Thank you. [LB226]

SENATOR SCHEER: Any other questions? Seeing none, thank you very much. [LB226]

BRUCE BOHRER: All right. Thank you. [LB226]

SENATOR SCHEER: Any other proponents? [LB226]

RON SEDLACEK: Good afternoon, Chairman Scheer and members of the Banking, Commerce and Insurance Committee. For the record, my name is Ron Sedlacek. That's S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce and in support of LB226. Briefly, and much has been said that I do not want to be repetitive, so I'll try to give a little big larger picture, and then a little bit of feedback from our members when we discussed this bill and decided to take a position in favor of the legislation. And we've been talking with Senator Coash throughout the interim as well, so it wasn't a surprise that the bill came up at this time, and in those initial conversations we certainly encouraged the Senator continue his contact and conversation with the Department of Banking and the securities division there to formulate legislation that would be appropriate for Nebraska and Nebraska citizens. The...CNBC ranking of our state in the last three years have been doing pretty good. The areas that they have identified that were deficient in is access to the capital. We could do better if we had additional tools. And I'm pleased to report to the committee, that I think we're getting somewhere, getting some headway there. There are more and more organization being formed. Recently in the Washington Business Journal they had mentioned a ranking or survey of the various states in regard to crowdfunding. And for one thing, we don't have legislation so we didn't rank high, but we ranked at the bottom of the list with Mississippi and Arkansas. A number of coastal states are ranked fairly high in this regard, and I think what they were basing the ranking on is how many businesses applied for...or were interested in obtaining crowdfunding and then how many obtained the funds, and what was done with those funds afterwards. So this is another tool that, you know, certainly we have investors traditionally with registered offerings and then we have Angel Investment now in Nebraska. And we have the Nebraska Angels and there's other parts of the state, I think central Nebraska, they're trying to put something together right now in that regard. Venture capital, we now have a couple of companies that are recognized in Nebraska. That's beginning to fill that gap, that deficit. We have, of course, no crowdfunding at this point waiting for the SEC rules, but at least this is an opportunity for intrastate offerings. We would like to see the bill as drafted with the safeguards. However, we would like to encourage the Senator, as well as the committee, to continue working with the Department of Banking, particularly in the area to be designed to protect investors. A number of our members, of course, would like to see this type of capital formation for small start-ups, but they would like...they desire adequate protections as well, be they sophisticated or unsophisticated investors. One of the areas is...particularly can be at risk is not just the idea or the better idea in the garage, but management itself of the project. It seems that so often we see the failures in a lot of these

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start-ups is due to poor management. Great sales, potentially a great idea, but the management is just deficient, or disorganized, or there's conflicts. And that's something, of course, you can't really put down on paper, but a little bit more background...it's in the bill already, but maybe a little bit more background in that regard would be helpful since Nebraska is kind of a big-small state and we can get information on intrastate offering a little bit easier. With that, I'll conclude the testimony and entertain any questions. [LB226]

SENATOR SCHEER: Thank you. Any questions? Senator Schumacher. [LB226]

SENATOR SCHUMACHER: Thank you, Chairman Scheer. One, these types of businesses that would apply for this, the bright idea that chances are, won't work, but maybe might, probably going to lose your money. And if you do it on an individual case-by-case basis, you're probably not going to end up happy. That's the nature of probability. Wouldn't it be better instead of structuring something like this that we try to structure some type of a mutual fund kind of thing where a small investor could invest and then bet a number of ponies, so to speak, so overall this should be a good economic idea to invest, but on a case-by-case basis, probably a bad idea. Shouldn't we...what would be your reaction to doing something like crowdfunding only with a...invest that what is the entity that is invested in, invest in then a select or a vetted group of prospects? [LB226]

RON SEDLACEK: You know, this wouldn't be like that P-e-t... [LB226]

SENATOR SCHUMACHER: Like Pete, yes. [LB226]

RON SEDLACEK: Pete? Okay. [LB226]

SENATOR SCHUMACHER: Dave, last year. [LB226]

RON SEDLACEK: Uh-huh. Dave, that's correct. We've been taking a look at that concept as well. And certainly, that's an alternative...that is a potential alternative. I think that the crowdfunding exemption bandwagon across the country is such that it would be...I believe that it would be a good additional tool box to have in Nebraska law if it's fashioned correctly. But what you're also suggesting is another way of potentially vetting that, true. [LB226]

SENATOR SCHUMACHER: We're struggling with the problem of having capital available, no way to get it into entrepreneurial things. This takes a stab at it. Some of the other things out there take a stab at it, but at least we recognize what the problem is. [LB226]

RON SEDLACEK: Right. And with the crowdfunding, I guess the bottom line is that the investor has their own independence to select the winners and losers, and with a P program, they would be vetted first so they would have a limited ability to do so. That's a matter of philosophy. [LB226]



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SENATOR SCHUMACHER: Thank you. [LB226]

SENATOR SCHEER: Any other questions? Senator Williams. [LB226]

SENATOR WILLIAMS: Thank you, Senator Scheer. Being a lawyer sitting at the table, I'm going to ask you a legal question. Assuming under current law that we would look at a small investor like this, that they're probably going to be talking to family, friends, some other business acquaintances, if at all, to try to raise this amount of money to do this. Under current Nebraska law if they were to do that, they would have to go through the banking department and go through the issuance of the SEC and meet those requirements. Under this proposal that would do away with the cost of having to run those traps. Am I correct in that? Am I partially correct in that? [LB226]

RON SEDLACEK: Partially...the...I'm not a law professor, so, and I'm a lobbyist so I have to answer directly as best I can. (Laughter) [LB226]

SENATOR WILLIAMS: Law professors don't have to answer. [LB226]

RON SEDLACEK: But I believe by the nod of a head, there is a small exemption, limited exemption under a particular amount, a number of people. And I can't remember that amount right now, but maybe under 20 or something to that effect...under 15, so. [LB226]

SENATOR WILLIAMS: That's my point. Under current law, if you were going to try to raise \$100,000, \$2,000 at a time, you would be above that exemption amount and you would have to go through the qualifying documentation and work to do a public offering. [LB226]

ROD SEDLACEK: Uh-huh. [LB226]

SENATOR WILLIAMS: Right. This legislation would significantly reduce the cost to that potential individual that was looking for the investors. [LB226]

RON SEDLACEK: If we...it would definitely...I believe it would definitely reduce the cost, yes, and the paperwork and the necessity of potentially hiring...although I still think probably it would be a good idea to hire a lawyer to be looking at this. [LB226]

SENATOR WILLIAMS: Sounds like a reasonable position. You represent the bar association also. [LB226]

RON SEDLACEK: No, I don't. (Laughter) [LB226]

SENATOR WILLIAMS: I just wanted to be sure. [LB226]

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RON SEDLACEK: But I am a member voluntarily. [LB226]

SENATOR WILLIAMS: Thank you, Ron. [LB226]

SENATOR SCHEER: Thank you, Senator. Are there any other questions? Seeing none, thank you very much. Are there any more proponents for LB226? Good afternoon. Thanks for being patient and waiting. [LB226]

ANN POST: Good afternoon. I'll be very brief. My name is Ann Post. I'm here on behalf of the Lincoln... [LB226]

SENATOR SCHEER: Could you spell your name, please? [LB226]

ANN POST: A-n-n P-o-s-t. I'm here on behalf of the Lincoln Independent Business Association to support LB226. We support this bill as a creative effort to keep business, innovation, and talent in Nebraska. First, I want to thank Senator Coash for bringing this bill. It is a good idea, it's a creative idea, and obviously it's not an easy idea. There's obviously departments to work with and a lot of regulations to work through to try and get a workable form of this type of bill. But LIBA supports this bill because we see entrepreneurs every day that are working so hard to make their idea into a thriving business. Crowdfunding presents another tool that they can utilize to try and help make their idea into a thriving business, and keep innovation and talent in Nebraska. And so for those reasons, we see crowdfunding as a valuable tool that we want to help Nebraska and help Nebraskans invest in Nebraska to keep our economy strong. So, thank you very much. We ask for your support of this bill. [LB226]

SENATOR WILLIAMS: Thank you, Ms. Post. Any questions? Thank you. Any other proponents? Are there any here to speak in opposition today? Anyone here to speak in the neutral today? Please come forward. [LB226]

MARK QUANDAHL: (Exhibit 7) Vice Chair Williams, members of the committee, I'm Mark Quandahl, Department...the Nebraska Department of Banking and Finance. I'm appearing here today to provide neutral testimony and background information on LB226, which proposes to amend the Securities Act of Nebraska to authorize crowdfunding in Nebraska. As the regulatory agency for the Securities Act, the department would be responsible for administering and enforcing this legislation. And so, I'm not going to claim to know all of the answers that you might have on this, but I do have some folks from the department that would be willing to talk with you about some of the background of the legislation and working with Senator Coash as it's developed over the year. Senator Coash and his staff discussed the crowdfunding concept with the department staff and shared drafts of this bill with our agency. And again, that predates my time with the agency, well over, I believe over a year ago, or more. The department appreciates their willingness to consider and address our comments. In 2012, Congress enacted the Jumpstart Our Business Startups Act or the JOBS Act. As a part of the JOBS Act, Congress amended the Securities Act of 1933 to add provisions relating to crowdfunding. The JOBS Act preempted state authority over crowdfunding offerings conducted in accordance with the JOBS Act. Therefore, if an issuer complies with the JOBS Act requirements, the state has no authority to

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require registration of the securities or any other filing or fee. The department would only have antifraud authority over these offerings. Despite the passage of the JOBS Act, the crowdfunding provisions of law have not become operative because the SEC has not finalized the necessary rules. It will be at least--at least that's the current thought--at least the fall of 2015 before such rules will be issued. Action concerning crowdfunding consequently is shifted to the state level, and approximately 15 states--that's actually growing by the day, too--including Indiana, Texas, Washington, Georgia, most recently Massachusetts and Oregon, have enacted state-level crowdfunding legislation either through legislation or by regulation. These crowdfunding statutes and regulations rely upon the intrastate exemption contained in section (3)(a)(11) of the federal Securities Act of 1933, and detailed in SEC Rule 147. A Nebraska company selling its securities only to Nebraska residents is exempt from federal securities laws. The JOBS Act did not preempt states' authority as it relates to intrastate offerings. LB226 relies upon the federal intrastate exemption, thus issuers must be located in Nebraska and can only sell its securities to Nebraska residents. LB226 is modeled after the crowdfunding law enacted in Indiana. It's also very similar to legislation enacted in Wisconsin and regulations issued in Texas. If crowdfunding is to be authorized in Nebraska, we believe that this Indiana model is good because all parts of the offering transaction are included within the Securities Act of Nebraska, and the conditions of the exemption are clearly specified within the bill rather than being left to the rulemaking process. The purpose of the Securities Act is the protection of investors, and that has been the primary focus of the department's review of LB226. LB226 sets limits on the overall amount of the offering, and ties the limit to whether the issuer has audited financial statements. It provides for reasonable maximum investment amounts from nonaccredited investors, requires filings with the department, an escrow agreement for the proceeds during the offering period, a disclosure document and individual investor acknowledgements as to the risky nature of the investment. Each of these requirements is important to prospective investors and should provide a measure of protection to our citizens. If enacted, LB226 will allow a Nebraska company to conduct crowdfunding offering without waiting for the SEC to finalize its rulemaking. Once the SEC finalizes its rules, issuers who want to conduct crowdfunding offering in Nebraska will have two options to do so. The issuer could elect to rely upon the JOBS Act. Its crowdfunding would be subject to regulation by the SEC and would be exempt from regulation by the department due to the preemption contained in the JOBS Act. In the alternative, the issuer could rely on LB226 and be subject to regulation by the department and exempt from regulation by the SEC pursuant to the intrastate offering exemption. While crowdfunding under the JOBS Act and LB226 are similar, there are differences which could be significant for an issuer. Obviously, the biggest disadvantage of LB226 is that the issuer can only offer its securities to Nebraska residents. However, under the JOBS Act an issuer can only issue up to \$1,000,000, but under LB226 as it's currently written, it could raise up to \$2,000,000 if it has audited financial statements. Issuers seeking to raise more than \$1,000,000 could do so only via LB226. Similarly, under the JOBS Act, no individual can invest more than \$100,000, but LB226 would allow individual accredited investors to contribute an unlimited amount of money up to that \$2,000,000 limit. Thus, an issuer who might have a wealthy benefactor could raise more funds from that large benefactor and rely upon fewer smaller donors for the rest of the offering. The bottom line is that at some point the SEC crowdfunding rules will become effective and it will be available to Nebraskans, both as issuers and potential investors. The state will have no role in those offerings except for the enforcement of its existing antifraud statutes. LB226 provides a regulatory framework for intrastate crowdfunding offering that the department believes is workable. Thank you for the opportunity to present this information. I would stand for any questions at this time. [LB226]

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SENATOR WILLIAMS: Thank you, Director Quandahl. Questions for the director? Seeing no questions, thank you for your testimony. [LB226]

MARK QUANDAHL: Thank you. [LB226]

SENATOR WILLIAMS: Any other people here to testify in a neutral capacity? If not, we would invite Senator Coash to close. [LB226]

SENATOR COASH: Thank you, Senator Williams, and thank you all for your attention to this matter. This is the new thing, right? And Nebraska has the opportunity through LB226 to get on board with what we've heard is a growing opportunity for young entrepreneurs. And we keep saying young. I don't mean to say that young people are the only ones starting businesses or inventing things or things like that, but young in the sense of a young company who hasn't matured yet. And this is the way we're doing it. I would love to see LB226 be the vehicle by which Nebraska set up its framework so that we don't get behind the curve as we tend to once in a while with initiatives like this that tend to be...help businesses start, grow, and become successful. No doubt there is a lot of technical aspects to this bill. It's my intent that there are protections for the investor and would like to work with the committee to make sure those protections are in there to a satisfactory level. I want to be clear for the record, I misspoke earlier on a question for...from Senator Schumacher. And actually this is what I like about this bill. This is a bill for Nebraska business people to raise money from Nebraskans to support Nebraskans and within the framework that we're allowed to under the feds. And so, I look forward to working with the committee on making sure we can meet all those outcomes through this bill. Thank you very much. [LB226]

SENATOR WILLIAMS: Thank you, Senator. Any questions for the Senator? Yes, Senator Schumacher. [LB226]

SENATOR SCHUMACHER: Thank you, Senator Williams. And thank you for offering this, Senator Coash. It takes a stab at a problem that we have and we...but in the process of raising money, equity money rather than debt money for a business, we have two hurdles in Nebraska. One is the up-front paperwork that you either have to do to comply with the SEC or to comply with our own registration requirements. This addresses that. The second hurdle, which many people will say is far greater than the first hurdle, is our antifraud provisions which makes the offer, and anybody in the chain of the offering, virtual guarantors of the success of the stock. I mean, it has language that is very meaningful. If it says that if you omit to say something that you should have said, and the burden is on the issuer to make sure that they've investigated things, and there are no misleading statements or omissions that were made in connection with the offering or sale of securities, that the issuer is liable to...and anybody in the chain of issuance, is liable to the purchaser of the security for the amount paid, plus 6 percent interest, plus attorney fees. And that is a real scary proposition and I get the impression here that this is kind of thought to be a shortcut to the money and as such probably more prone to have negligent omissions made in somewhere along in the process. Shouldn't that be addressed, too, in the...if we're going to try to make it easy? I wouldn't use this, still having the other thing hanging around my neck. [LB226]

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SENATOR COASH: Well, certainly, those provisions that you describe are challenging for investors with or without this in place. But those are there for a reason. They're to protect the investor. I want to go back through the bill with this committee and look at all the protections. I mean, there are...the audit is a protection, the disclosure that the business has to make, the acknowledgement that the investor has to make, all those things. I hope at the end of the day it becomes a balance to negotiate those things. I don't know what we do about those existing regulations that are burdensome and wasn't my intent to erase those regulations. Just find a way to capitalize some of these new start-ups. [LB226]

SENATOR SCHUMACHER: Thank you, Senator. [LB226]

SENATOR WILLIAMS: Any further questions? Seeing none. [LB226]

SENATOR COASH: Thank you. [LB226]

SENATOR WILLIAMS: Thank you, Senator. We'll close the hearing on (LB)226 and that's the last item on our agenda for today. [LB226]