WILLIAMS: Good afternoon, everyone. Welcome to the Banking, Commerce and Insurance Committee hearing. My name is Matt Williams. I'm from Gothenburg and represent Legislative District 36. And I have the privilege of serving as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members will come and go during the hearing. We have to introduce bills in other committees and are sometimes called away. It is not an indication that we are not interested in the bill being heard in the committee, just part of the process. To better facilitate today's proceeding, I ask that you abide by the following procedures: please silence or turn off your cell phones; please move to the front row when you are getting ready to testify. The order of testimony will be the introducer, followed by proponents, opponents, neutral testimony, and then the introducer will have an opportunity to close. Testifiers, please sign in, hand your pink sign-in sheet to the committee clerk when you come up to testify. And when you do testify, if you would please state your name and spell your name for the record. Please be concise. It is my request that you limit your testimony to five minutes, and we will be using the five-minute clock. It will be on green for four minutes, yellow for one minute, and then the red signal is your sign to stop. And if you don't, we will help you. If you will not be testifying at the microphone but want to go on record as having a position on a bill to be heard today, there are white tablets at each entrance that you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members as exhibits only while testimony is being offered, hand them to the page for distribution to the committee and this-- and the staff when you come up to testify. We need ten copies. If you are needing more copies, please raise your hand now, and one of our pages can make additional copies for you if necessary. To my immediate right is committee counsel, Bill Marienau, and to my left at the end of the table is committee clerk, Natalie Schunk. The committee members with us today will introduce themselves beginning at my far right with Senator McCollister.

McCOLLISTER: Thank you, Senator Williams. My name is John McCollister from District 20, which is central Omaha.

KOLTERMAN: My name is Mark Kolterman from District 24: Seward, York, and Polk Counties.

QUICK: I'm Dan Quick, District 35, Grand Island.

La GRONE: Andrew La Grone, District 49, Gretna and northwest Sarpy County.

HOWARD: Sara Howard, District 9, midtown Omaha.

GRAGERT: Tim Gragert, District 40: Cedar, Dixon, Knox, Holt, Boyd, and Rock County.

WILLIAMS: And our pages that are with us today are Tsehaynesh and Kylie. And the first bill up is mine so I'm going to turn the chairmanship over to Senator Kolterman today.

KOLTERMAN: Thank you, Senator Williams. You're welcome to open on your bill.

WILLIAMS: Thank you, Acting Chairman Kolterman, and members of the Banking, Commerce and Insurance Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s. I'm from Gothenburg and represent Legislative District 36, and I'm here today to present LB622. For many of you, you're probably unaware of the process that happens behind the scenes when a public company like a city, a hospital, a school district has deposits in a federally insured financial institution. The rules are that when those kind of public companies have deposits in excess of the FDIC-insured limit, which is $250,000, the financial institution much-- must pledge securities to secure that, so that there is no chance of loss. This is currently done under what we call the dedicated men-- method which means each financial institution deals with as many public entities as do business with it separately and put those things together. And what we are introducing today is what is called the single bank pool method, which gives another arrow in the quiver, so to speak, to banks and public entities for handling this process in a-- in a new and updated way. LB622 would authorize the use of a single bank pooled collateral method for the protection of public funds in excess of the FDIC-insured amount. Under current law, banks holding public funds in exci-- in excess of the amount insured by the FDIC are required to furnish collateral, typically in the form of securities, for each political subdivision and state agency placing deposits in the bank. Currently, banks are required to keep the funds separate, and thus are pledging collateral to each account held by

each public depositor. Under LB622, the bank would be allowed to furnish collateral based upon the aggregate amount of public funds deposited and the political subdivisions and state agencies with deposits in the bank. Under the bill, the director of banking would be responsible for oversight of the single bank collateral pool. They would designate an administrator to handle the day-to-day operations, including receiving reports from participating banks and remitting reports to custodial officials. The department would adopt rules and regulations and establish policies and procedures as necessary to accomplish the purpose of the Public Funds Depository Security Act. Banks indicate that they tend to overcollateralize public deposits. What I mean by that is current law requires that the market value of the securities that are collateralizing be equal to or slightly greater than the amount of the deposits. But what is traditionally happening, because banks are dealing with so many different public fund depositories, that they pledge more securities than would be necessary to do that. An example would be if you are to collateralize a $750,000 account, oftentimes banks buy their securities in even blocks, million-dollar blocks, so you would pledge a million-dollar fund to secure $750,000, thus overcollateralizing. And that becomes inefficient for the banks and costly for the banks because when you overcollateralize, those funds can't be used for other banking activities, which primarily are making loans to support the communities that we're doing business in. There is an amendment which you will see-- Tsehaynesh, if I could have you pass that out. Thank you. The amendment is introduced to make it very clear that the director of banking is not only authorized to delegate, they shall delegate the-- to designated financial institution or other entity to serve as the administrator with respect to the single bank pool method. The director would no longer have to do this themselves. Instead, the director would only designate the administrator to carry out the act. And this, by the way, removes the fiscal note, so there will be no fiscal note on-- on LB622 when we are finished. The amendments also clarify that the single bank pooled method shall not be utilized by a depository financial institution unless an administrator has been designated by the director and is acting as the administrator to carry out the purpose. I'd like to really thank the Department of Banking, Patty Herstein and Kelly Lammers, in particular, for their assistance in working through this process that started this summer and fall to be sure that we had things done correctly. Also, the Nebraska Bankers staff, Bob Hallstrom and Jerry Stilmock, and most importantly, the staff of the Banking Committee, Bill Marienau, and Dexter Schrodt who all participated in being sure

that we were dotting the i's and crossing the t's. There will be testimony following me: one from a large bank that would plan to take advantage of this, and then one for a smaller bank much like many of the community banks that we have in our state, that this will serve as being something that will be very advantageous to them. And then I will be back to-- to close and answer any questions. But at this time, if I can answer any questions, I would be happy to.

KOLTERMAN: Are there any questions for the senator? Well, I guess you get to sit down for a few more minutes. First proponent, please. Welcome.

CATHY DIEZ: Thank you. Hello, my name is Cathy Diez, spelled C-a-t-h-y, last name, D-i-e-z. I'm representing First National Bank in support of LB622. I've been with the organization for 30 years. I have worked with the bank's investment portfolio for over 20, which is the area of the bank that handles the pledging of securities to the public entities. Over the years, we have found the dedicated pledging process utilized by the state of Nebraska to be operationally inefficient. With the current method, a separate account is established for each public entity to hold book-entry securities. Each account has authorized signers that must be maintained and kept up to date. I would like to walk you through a public entity deposit account opening. I am originally from Wynot, Nebraska. So let's say Wynot Public School walks into our bank to make a deposit. Today, since we do not have an account with them, we would need to set up, not only the deposit account, but also a joint custody pledgee account for securities to be held in book-entry form with the Federal Reserve. We provide the forms to Wynot Public Schools. These forms identify the authorized signers on the joint custody pledgee account, required signatures from the authorized signers, and must be notarized. Once the forms are complete, these are sent to the Fed to set up the account. The account setup can take five to-- three to five business days. Once a deposit account is funded and collateral is in place, daily activity will occur on the deposit balance. Daily, we monitor the deposit balance against the value of securities less the FDIC insurance to insure the account remains covered. If collateral needs to be added to the account, a simple movement of securities into the account is done. If collateral values need to be reduced, it is not as simple as the movement of securities back into the bank's account. This requires a signature from the authorized signer on the joint custody pledgee account, and the authorization needs to be communicated with the Federal Reserve. Unfortunately, authorized

signers are not always available when collateral needs to be reduced, or for instance, the bank may decide to sell the security that it has being held as collateral in the joint custody pledgee account. We have in it-- we have had an instance where an authorized signer was the president of a school board. We sold the security that was pledged to the school and had to locate the president of the school board to release-- to sign a release form. He was eventually located in his field combining, so a bank employee drove out to him for his signature. One of our many public entities-- on many of our public entities, we identify a high balance account-- high balance of the account and pledge collateral to the high balance amount. As a deposit balance fluctuates in the account, we do not work to reduce the collateral for the short time to only have to pledge the collateral back to the public entity when deposit balances increase. This overcollateralization could create an inflated investment portfolio. The deposits a bank has, they can either buy securities or lend money to the community. When a bank inflates the investment portfolio due to the overcollateralization, they have fewer funds to lend to the community. Currently, we operate in states that offer pooled pledging methods: Colorado, South Dakota, and Iowa. We work with the Division of Banking or a similar governmental unit in each state to cover public entities' deposit balances. This allows one point of contact to add or remove securities held as collateral, making the process much more efficient. If a new public entity opens a deposit account, working with the Division of Banking, we are able to simply add securities to the single pool account without opening a new joint custody pledgee account. Similarly, when balances decline, we're able to work with the Department to release the securities back to the bank's portfolio. When hearing of the Governor's push for operational efficiency, we feel the pooled pledging method meets these goals. This method is beneficial to both the banks and the public entities. The complexity of securities and bank investments portfolio today is much greater than the securities purchased 20 years ago. Also, if a public entity has multiple banking relationships, they need to be familiar with each bank's pledging process in order to ensure the collateral is being added as required and released as requested. This makes the task of the custodian of the deposits at the public entities complicated as well. Thank you, and do you have any questions?

KOLTERMAN: Thank you, Miss Diez. Do we have any questions? Seeing none, I have one question for you.

CATHY DIEZ: Sure.

KOLTERMAN: In the event that you're overcollateralized, which sounds like you are, approximately-- do you know how much you might be overcollateralized at any one time in total for all the different accounts that you work with?

CATHY DIEZ: In total at First National, we-- during the low season, we are probably overcollateralized to the tune of about $200 million, and during high season, you know, we would minimize that.

KOLTERMAN: Right.

CATHY DIEZ: But--

KOLTERMAN: OK. Thank you. Any other questions? Thank you very much for testifying today.

CATHY DIEZ: Thank you.

KOLTERMAN: Next proponent?

ALEX LOWELL: Good afternoon, Acting Chairman Kolterman and members of the Banking, Commerce and Insurance Committee. My name is Alex Lowell, A-l-e-x, last name is L-o-w-e-l-l. And I'm testifying in support of LB622 on behalf of the Nebraska Independent Community Bankers. I'm currently president of Ceresco Bank and have been at this employment for right at 20 years. We'd like to thank, Senator Williams, for introducing LB622. We appreciate that the bill would allow for the use of a single bank pooled collateral method for the protection of public funds in excess of FDIC-insured amounts. We presently must provide collateral for the funds of each public entity that deposits into our-- that deposits funds into our bank. Under this method, we often have more collateral than necessary for the public deposits based on the amount of bonds or other instruments used for collateral. LB622 would allow us to provide collateral based on aggregate amounts of public deposits on all public entities with deposits at our bank. Under this method, we can more accurately meet the pledged collateral targets for public funds, thus freeing up assets for more productive uses. The Nebraska Independent Community Bankers respectfully urges the committee to advance LB622. When I looked at Ceresco Bank situation, we're a-- we're a very small community bank, under $50 million in assets, and looking at the numbers briefly this morning, we think it's-- we're overfunding by, you know, anywhere from 15 to 20

percent. And for a smaller community bank like us, it's a much smaller number. It's maybe $250,000 to $500,000, but it's still a big deal for us. So once again, I urge the committee to advance LB622, and thank you for your time.

KOLTERMAN: Thank you. Any questions? Appreciate your testimony today. Thank you. Next proponent?

BOB HALLSTROM: Acting Chairman Kolterman, members of the committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB622. I think you've gotten a good idea of what the pledging requirements are under Nebraska law. We've got a large bank and small banks, and our members have indicated to us that they support the objectives of LB622 in providing an alternative method or mechanism for pledging and securing public funds. In putting together LB622, we looked at many other states who have already moved to a single bank pooled collateral method. So we have tried to pick and choose what we could to be the best for the state of Nebraska with two major objectives. One is to maintain maximum protection for public funds, as-- as has historically been the case in the state of Nebraska. And the second is to enhance transparency. I think you've heard the other witnesses have testified with regard, and Senator Williams with regard, to the reporting requirements that are set forth in the bill. I think those are beneficial for the public officials in terms of knowing where the collateral is, that they are sufficiently collateralized to the 102 percent threshold that's required under state law currently under the dedicated method and similarly under the single bank pooled method. With regard to the department, I, too, would echo Senator Williams' thanks to the department in terms of their willingness to work with us. One of the things that we determined in our research, I think the department has always been concerned about the costs that would be associated with administering or supervising the program. And we had found from a couple of states, Georgia and Alabama in particular, where they had determined that the director could delegate or designate a third-party administrator through a process that will allow those costs and administrative burdens to be on the private sector rather than the public sector. I've had meetings with many of the public depositor representatives, NACO, League of Municipalities, school administrators. One of the questions that they had asked was is there any additional cost to the public depositors through this system? And the answer is, no. Any fees that are associated with the third-party administrators specifically

provided in the legislation had to be paid by the banks that are participating in the single bank pool. So with that, we would encourage the committee to move the bill forward. We think it's a win-win type of situation and that it creates a better alternative for both banks and the public depositors that they serve. And just as importantly, it will free up some additional funds to be used in the community for the betterment of the communities that our member banks serve. Be happy to address any questions that you may have.

KOLTERMAN: Thank you, Mr. Hallstrom. Any questions? Appreciate your testimony.

BOB HALLSTROM: Thank you, Senator.

LYNN REX: Senator Kolterman, members of the committee, my name's Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. First of all, I would like to thank Senator Williams for introducing this bill. We were very excited when the Nebraska Bankers Association brought this forward to us because we think that this is going to create efficiencies not just for the banks, but also for the public sector. And as they already noted in prior testimony, just not having to track somebody down to get signatures, to do the kinds of things that have to be done when you're trying to reduce collateral is very important. The second thing that we think is extremely important is that this would free up funds that are now being overcollateralized so that there could be additional loans to the community because our cities across the state and certainly the villages do go to their local bankers all the time for assistance. And so this would be helpful to them. With that, I'd be happy to respond to any questions that you might have.

KOLTERMAN: Thank you, Miss Rex. Any questions? Appreciate your testimony.

LYNN REX: Thank you very much.

KOLTERMAN: Thank you. Next proponent? Seeing none, are there any opponents? Seeing none, are there any to testify in the neutral position?

MARK QUANDAHL: Senator Kolterman and members of the Banking, Commerce and Insurance Committee, my name is Mark Quandahl, Q-u-a-n-d-a-h-l. I'm director of the Department of Banking and Finance. I'm appearing here today in a neutral position with respect to LB622. LB622 would

authorize banks, capital stock financial institutions, or qualifying mutual financial institutions to secure the deposit of public money or public funds using either the dedicated method or the single bank pooled method. As the bill requires a bond or pledged securities in an amount not less than 102 percent of the amount in excess of FDIC insurance coverage, utilization of a properly administered pooled plan should not adversely affect an institution's safety and soundness nor result in insufficient pledging to cover public funds. The bill assigns significant duties to the Ban-- Department of Banking and Finance with respect to the single bank pooled method and further provides that the director of the department may delegate those duties and responsibilities to a qualified third party. As shown in the fiscal note, the bill in its current form will require the department to expend resources to implement the single bank pooled method, which include up-front costs and the addition of two staff. Department staff will be required to monitor numerous aspects of the pool on an ongoing basis. If the duties were delegated to a third-party administrator, the department would still incur costs, including staff at a minimum, as the department would expect to create rules, regulatory guidance, orders, requests for information, requests for proposals, to identify, qualify, and select an administrator. With its current appropriation and resources, the department cannot absorb the additional responsibilities required under the green copy of the bill, which necessitated the fiscal note and an A bill. However, that being said, we have seen the AM149 that addresses most of this fiscal impact. And the department is willing to further work with Senator Williams and this committee on further amendments. So with that, I'd stand for any questions that you might have.

KOLTERMAN: Thank you, Director Quandahl. Senator McCollister.

McCOLLISTER: Thank you, Senator Kolterman. Director, who would be an example-- or what operation or company would be an example of a third-party administrator?

MARK QUANDAHL: Well, I think the way that they-- as I understand it, in Georgia and I do believe in Alabama, the third-party administrator in those particular states is the local banking association. So it's a recordkeeping or an administrative function. And so I believe in Georgia's case, it's the Georgia Bankers Association.

McCOLLISTER: That's interesting. Have there been any problems associated with that method of-- of reviewing those banks under audit?

MARK QUANDAHL: Not-- not that I'm aware. I mean, I have had just a brief conversation with the person that's in the same position as me in Georgia, and he indicated that actually the arrangement works very well, not only for the Georgia Department of Banking, but also for the financial institutions of the state. So not that I'm aware.

McCOLLISTER: Does that-- does that organization have fiduciary responsibility of any kind?

MARK QUANDAHL: Well, I'm sure they would because-- I'm sure they would. I'm not-- I'm not exactly sure how they set forth on a bonding or the financial responsibility requirements of that, but I have seen a pretty thick stack of rules and regulatory guidance, that I haven't had a chance to go through, from Georgia that-- before it was outsourced in that manner.

McCOLLISTER: Is that unusual for an association to have some kind of review audit function like that in the state?

MARK QUANDAHL: I guess I'm not sure-- I guess I'm not sure. Obviously it-- it does happen, and-- and obviously it's happened in at least one state if not more than that, too. But I don't know as far as on a 50-state basis.

McCOLLISTER: OK. Thank you.

MARK QUANDAHL: Sure.

KOLTERMAN: Any additional questions? I have-- I have a couple of questions. Director Quandahl, how is your-- how is your Department of Banking funded at the present time?

MARK QUANDAHL: It's-- it's 100 percent cash-funded. It's funded by the fees and assessments that are paid by the regular-- the industries that we regulate.

KOLTERMAN: So the banks in essence.

MARK QUANDAHL: Correct.

KOLTERMAN: Banks and credit unions are financing your--

MARK QUANDAHL: That is correct.

KOLTERMAN: --operation?

MARK QUANDAHL: On the financial institution side.

KOLTERMAN: OK. Securities, I assume, the same way?

MARK QUANDAHL: That is correct.

KOLTERMAN: So for them to want to manage this, if they're funding you to begin with, wouldn't be out of the question really, would it?

MARK QUANDAHL: No.

KOLTERMAN: All right. Thank you. Any more questions? Thank you for testifying.

MARK QUANDAHL: Thanks.

KOLTERMAN: Any-- any additional neutral testifiers?

CANDACE MEREDITH: Good afternoon, my name is Candace Meredith, C-a-n-d-a-c-e M-e-r-e-d-i-t-h. I am here today on behalf of NACO to testify in a neutral position on LB622. County treasurers are currently using options such as NPAIT as well as insured cash sweeps and CDARS to seek the best possible interest rates while minimizing the need to be on a constant collateral watch. Like these services, the single bank pool of aggerated-- aggregated public funds has the potential to be another effective option for secured public funds at the county level. Once the director does delegate those responsibilities and outlines those rules and regs and policies and procedures along with receiving a clear understanding of what the ease of the access of this reporting and oversight will be, the counties can make that determination if the single bank pool will be an option to add to their portfolio. Thank you for your time, and I'll be happy to answer any questions that you might have.

KOLTERMAN: Thank you, Miss Meredith. Any questions? Appreciate your testimony.

CANDACE MEREDITH: Thank you.

KOLTERMAN: Any additional neutral testifiers? Seeing none, Senator Williams, you're welcome to close.

WILLIAMS: Thank you again, committee members. And to address in a-- in a-- in a slightly more depth, Senator McCollister, your question, if you would direct your attention to page 10 of the green copy, on line

17: The director is authorized to delegate to this administrator to any bank, savings association, trust company, or other qualified firm, corporation, or association which is authorized to transact business in the state. I think the-- the concept that we are looking at is it would be the responsibility of the Department of Banking to find that person or that-- that entity that's willing to take on the administration. And yes, I would agree with the director, there would be some fiduciary responsibility on the-- their part, although the administrator themselves does not hold the securities. That's done at a safe-keeping facility for that separately. LB622 creates an additional method for this kind of security. As-- as you have heard today, we currently are dealing with the dedicated method, which requires then every financial institution to deal with multiple public entities. And also, as you've heard today, it requires the public entities to deal oftentimes with multiple banks. In our bank's case, and again much like my-- my banker friend from Ceresco, we're a small bank, but we happen to have three locations. And each one of those locations is in a different county. So our bank deals with three counties, four school systems, four communities, one hospital, and, I believe, three different public power companies. So we are currently pledging securities to 15 different entities, which requires us on a regular basis to monitor the amount of dollars in each one of those public accounts and pledge specifically to them. This-- the pooled-- single bank pooled collateral method would allow us to provide information to the administrator, which would say we have these 15 accounts and the total dollars in these accounts is X and then pledge to that amount versus the way we're doing it now. Also, the treasurer, as-- as you heard from-- from NACO, in Dawson County-- we have ten banks in Dawson County. So the county treasurer in Dawson County right now on a regular basis is dealing with all ten of those financial institutions. And the treasurer is reaching out constantly doing the same thing, rather than having the single bank pool where they could deal with one administrator doing that-- that whole thing. It makes sense. As you heard, a number of states are doing this successfully already. I've had the opportunity to spend a fair amount of time dealing and talking with Georgia-- with the Georgia Bankers Association and how they are handling this now. And to further answer your questions, they have had no problems and certainly no losses that would-- would amount to anything there. So with that, I would be happy to take any final questions.

KOLTERMAN: Senator McCollister.

McCOLLISTER: Yeah. Senator Williams, will you keep track of those obligations by bank, location, or will they aggregate all four of your locations?

WILLIAMS: All four of our locations are operated under one bank. And you have the same issue with our-- our first testifier today, First National Omaha. You know, even though they have multiple branches all around the state, it's one bank.

McCOLLISTER: I see.

KOLTERMAN: Any additional questions? So before we close the hearing, do we have any testimony in written form to report? With that, I will close the hearing and turn the chairmanship back to you, Senator Williams.

WILLIAMS: Thank you, Senator Kolterman. We are now moving to the public hearing on LB442 to require insurance coverage for synchronization of prescription medications. And Senator McCollister, you're welcome to open on your legislation.

McCOLLISTER: Good afternoon, Chairman Williams and members of the committee. I am John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. Today, I'm introducing LB442. This bill would further enable individuals to synchronize their medications so they can order and receive them on the same day each month instead of having to make multiple trips to the pharmacy. The ability to synchronize-- this synchronize approach streamlines pharmacy procedures, will reduce medication waste, and will improve poorer health-- healthcare outcomes that can result from decreased-- decreased medication adherence. The provisions of LB442 would enable that a pharmacy would receive a full dispensing fee as determined by the contract that it has with their customer's individual or group health plan. At first glance, one would think that this concept would be opposed by the insurance industry. I was pleased to learn that patients, pharmacies, and the insurance industry all support this concept. In fact, Blue Cross Blue Shield of Nebraska is a leader in the implementation of the concept-- concepts proposed in LB442. Testifiers who will follow me will provide more information on why LB442 would be an overall benefit to the health of all Nebraskans. Thank you.

WILLIAMS: Thank you, Senator McCollister. Are there any questions for the senator? Seeing none, we would invite the first proponent.

JIM OTTO: Senator Williams, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o. I'm president of the Nebraska Retail Federation. I'm here to testify in favor of LB442 on behalf of the Nebraska Retail Federation and also have authority to do that on behalf of the Nebraska Grocery Industry Association. First of all, I would like to thank Senator McCollister for introducing it and also thank Senator Lindstrom and Senator Kolterman for cosponsoring it. You just received a letter of support from the National Association of Chain Drug Stores. I don't think they got it to the committee in time to be included in the committee records, so I thought I'd pass it out to you. As Senator McCollister stated, we have agreement between pharmacies and insurance companies. And I think that's unique. And also, I wanted to mention that this bill was introduced last session by Senator Baker, but the main obstacle of that bill was a fiscal note that we really didn't understand and thought wasn't quite accurate. And if you will note that there is no fiscal note this year, we worked with the various insurance companies that were involved, that and the state of Nebraska, so there-- it is a zero fiscal note. Following me are several proponents for the bill that will demonstrate the broad support, and I would be glad to answer any questions.

WILLIAMS: Thank you, Mr. Otto. Are there any questions? Seeing none, thank you for your testimony. I would invite the next proponent. Welcome.

ERIC DUNNING: Good afternoon, Mr. Chairman and members of the Banking, Commerce and Insurance Committee. My name is Eric Dunning. That's spelled E-r-i-c D-u-n-n-i-n-g. I appear today as a registered lobbyist for Blue Cross and Blue Shield of Nebraska. Since 1939, Blue Cross and Blue Shield of Nebraska has worked hard to encourage the health and wellness for all Nebraskans of all ages. Our mission is to lead the way in supporting patient-focused care to achieve a healthcare world without confusion that adds more good years to people's lives. Now we believe that LB442 will help accomplish that goal. And so we're here in support. Blue Cross and Blue Shield agrees with the basic concept underlying the bill. We think that it makes sense to avoid having our members make continual trips to the pharmacist to fill prescriptions. We think cutting down on those trips will-- can only improve medication adherence, which helps our members lead healthier lives and incidentally will reduce claims costs. As Senator McCollister

mentioned, the bill requires us to apply a prorated cost-sharing amount for our members instead of the-- instead of a full cost-sharing amount for a partial fill. It also requires insurers to pay pharmacists the full dispensing fees. But the bill is also balanced to make sure that we're not syncing medication where it doesn't make sense. Unlike the version of the bill that was introduced two years ago, which we had significant concerns about, the bill before you today includes a series of safeguards modeled on those adopted in other states. We appreciate the opportunity to sit down and work with the Nebraska Retail Federation and their solid work on this issue. We think that the results provide safeguards that will allow our members to receive the best care possible. In particular, the bill will specify that those provisions do not apply to Schedule II Controlled Substances, so we can avoid loopholes that may allow drug seekers an additional avenue. It will also make certain that the provisions continue to allow us to apply all of the other rules that apply to payment for our members' prescriptions, such as rules applicable to formulary and specialty pharmacy. With that, I'd be happy to answer questions.

WILLIAMS: Thank you, Mr. Dunning. Any questions? Seeing none, thank you for your testimony.

ERIC DUNNING: Thank you.

WILLIAMS: I would invite the next proponent. Welcome, Mr. Hallstrom.

BOB HALLSTROM: Chairman Williams, members of the committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m, appearing before you today as a registered lobbyist on behalf of Nebraska Pharmacists Association in support of LB442. Medication synchronization, or med sync, allows patients to pick up all of their ongoing prescription refills at the pharmacy on a single convenient day each month and work closely with their pharmacist in sticking to their medication regimen. In addition, the once-a-month appointment day facilitates increased pharmacist-patient dialog and allows time for additional patient care services. LB442 would require insurance companies to allow pharmacists and physicians to determine if medication synchronization is appropriate for their patients, allow a small or partial fill of a prescription, and then cover the extra co-payment for the short fill of the medication. The goal of med sync is to improve medication adherence, provide quality care, and reduce waste. As we move to a value-based health care environment, there is a need to demonstrate pharmacists' value to patients and the healthcare system, and LB442

represents a step in this direction. I would note for the committee, while we are supportive of the bill, we would draw your attention to Section 1(3)(d) which provides that medications "Must be a formulation that can be safely split into short-fill periods to achieve medication synchronization." We would prefer that those provisions be removed from the bill. We believe that the pharmacists and the prescribers working in concert to determine what is in the best interest of the patients with regard to med sync is appropriate, and those provisions could possibly provide a backdoor way for the payors to avoid making payment to the pharmacists. The bill currently provides that they are entitled to their full dispensing fee. If they were to decide that this was not something that was a formulation that could be safely split into short-filled periods, that could allow the payor an opportunity not to have to pay. With that, we'd be happy to address any questions of the committee.

WILLIAMS: Thank you, Mr. Hallstrom. Any questions? Seeing no questions--

BOB HALLSTROM: Thank you.

WILLIAMS: --thank you for your testimony. Invite the next proponent.

APRIL DAVIDSON: Good afternoon, Mr. Chairman and members of the committee. My name is April Davidson, A-p-r-i-l D-a-v-i-d-s-o-n. I am an area healthcare supervisor for Walgreens in Nebraska. I have been a licensed pharmacist for 20 years and have practiced pharmacy in the state of Nebraska for the last 10. I am here today on behalf of Walgreens, its 82 stores, and approximately 2,000 Nebraska employees in support of LB442 related to medication synchronization. I would like to share with you why medication synchronization is important and how a patient can synchronize their medications. Medication synchronization is essentially aligning medications to simplify complex red-- regimens, improving accessibility. Many patients take three or more medications, each with a different refill date throughout the month. Managing multiple prescriptions can be unnecessarily difficult for the patient, risking nonadherence or-- risking adherence to medications and increasing the complex-- complexity of staying healthy. Medication synchronization simply allows patients to pick up all of their prescriptions from the pharmacy on a single convenient day each month, promoting adherence. According to the American Pharmacists Association, 98 percent of consumers think it is more convenient to have prescriptions filled using medication synchronization services. Eighty percent of consumers

said they were more likely to take their medications when enrolled in med sync services, and 100 percent of consumers who have used med sync services would recommend it to family and friends. So how does a patient sign up for medication synchronization? The process is simple invol-- and involves very few steps. So first, there's identification of the patient. Secondly, there is outreach by a pharmacy team member to the patient, explaining meds-- medication synchronization and confirmation-- and receiving confirmation of participation. Then a shared synchronization plan is made. The plan includes an agreed-upon anchor or start date in which medications are to be refilled, a list of medications to be synchronized, including short fills and quantities to be dispensed. Short fills are refills less than 30- or 90-day supply that are required in order to syncor-- synchronize all medications to the anchor or start date. Confirmation call prior the synchronization date is made to the patient to ensure accuracy of the plan and medications to be aligned-- aligned and to confirm the agreed-upon pickup date. In closing, medication synchronization promotes medication andhere-- adherence and is important for controlling chronic conditions, treating temporary conditions, and has positive consequence on overall long-term health and well-being. Thank you for allowing me to testify today. I urge your support of LB442, and I'd be happy to answer any questions that you may have.

WILLIAMS: Thank you, Miss Davidson. Any questions? Seeing none, thank you--

APRIL DAVIDSON: Thank you.

WILLIAMS: --for your testimony. I'd invite the next proponent.

ROBERT LASSEN: Chairman Williams, members of the committee, thank you for-- Senator-- Senator McCollister, for sponsoring this bill. I'm here today representing AARP, speaking in support of LB442, the synchronized medication bill. Prior to my--

WILLIAMS: Sir, would you-- would you mind stating and spelling your name, please?

ROBERT LASSEN: Oh, sure. I'm sorry. Robert, R-o-b-e-r-t, Lassen, L-a-s-s-e-n. OK? Good, thank you. I'm here today representing AARP, speaking in support of LB442, the synchronized medication bill. Prior to my retirement as a pharmacist, I worked in a packaging medications for nursing homes, assisted living facilities, and developmentally disabled. We packaged medications in a 31-day blister package, the

number of days matching the days of the current month. The synchronized packaging provided accountability for the dispensing of a particular medication on a particular day at a particular time. It also served as a cue for the patient that they may have medication that needs to be taken. PBMs have provided for partial fills, overrides for nursing home residents prior to this type of bill. LB442 will provide the same consideration for patients living independently who may require assistance in medication management. LB442 would reduce the likelihood that patients missing doses because of patients forgetting to refill the prescriptions. Synchronized dispensing allows the pharmacy to be responsible for proactively coordinating when all the prescriptions need to be filled. Many of the 55-plus group have limited means of transportation. LB442 would eliminate the need for patients to make time in their schedule for multiple calls for refills and visit the pharmacy. As a population-- our population continues to age, these types of provisions will become more important. LB442 is important because it provides a mechanism for pharmacies to provide partial fills to a patient's prescription to synchronize the refill cycle on all chronic medications. In summary, AARP supports this bill as access to better medication management. And I'm open for any questions now.

WILLIAMS: Thank you, Mr. Lassen. Any questions? Seeing none, thank you for your testimony. Next proponent, please. Welcome, Mr. Faustman.

NICK FAUSTMAN: Good afternoon, I'm Nick Faustman, N-i-c-k F-a-u-s-t-m-a-n. I'm with the American Cancer Society Cancer Action Network which is a nonprofit nonpartisan advocacy affiliate of the American Cancer Society. We support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. I'm here today in support of LB442. Cancer can be a very expensive and complicated condition to treat, requiring a team of medical professionals working together to help just one patient. Many times a combination of drug therapies is needed to treat the cancer and relieve symptoms of this disease. For cancer patients, multiple trips to the pharmacy and multiple drug copays can be very taxing and serve as a significant barrier to care. Medication synchronization can be an important tool in streamlining the process into one pharmacy-- one monthly pharmacy visit and increasing medication adherence. Finding new ways to manage and treat chronic conditions is necessary in improving quality of care. Synchronizing prescriptions makes management of multiple medications easier for the patient and could lead to better coordination of care and improved quality of life for

patients and their families. LB442 would empower cancer patients with more control over their care and provide them with a strategy for potentially improving access to care. ACS CAN urges the committee to advance the bill to General File.

WILLIAMS: Thank you, Mr. Faustman. Any questions? Seeing none, thank you for your testimony.

NICK FAUSTMAN: Thank you.

WILLIAMS: I'd invite the next proponent. Welcome.

KORBY GILBERTSON: Chairman Williams, members of the Committee, for the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Association of Health Underwriters in support of LB442. And instead of repeating what you've heard multiple times already, I'd just like to add our support to the legislation and say that it makes sense for consumers. And we hope that you'll advance it to the floor.

WILLIAMS: Thank you, Miss Gilbertson. Any questions? Seeing none--

KORBY GILBERTSON: Thank you.

WILLIAMS: --thank you for your testimony. I would invite the next proponent. Seeing none, are there any opponents? Seeing none, is there anyone here to testify in the neutral capacity? Seeing none, Senator McCollister.

McCOLLISTER: Thank you, Chairman Williams. And all I wish to say is thank the-- the proponents that agreed to speak on this bill. I think with-- this is a bill that we can quickly move to the floor. And I would urge early adoption of this bill. Thank you.

WILLIAMS: Thank you, Senator McCollister. Are there any questions? Senator Howard.

HOWARD: Thank you, Senator Williams. Thank you, Senator McCol-- McCollister for bringing this. Mr. Hallstrom mentioned a concern from the Pharmacy Association with the-- the Section 1(3)(d). Are you going to ask the committee to make that change before it goes to the floor, or are you planning on making that change on the floor, or what were you thinking about that one?

McCOLLISTER: Yes, Senator Howard. I first heard about this small issue this morning.

HOWARD: OK.

McCOLLISTER: So we will deal with it in some-- some kind of way, and if it results in a committee amendment, I will present it to the committee.

HOWARD: OK. Thank you.

WILLIAMS: Any additional questions? Thank you, Senator McCollister. And before we close the hearing, we do have letters. We have proponent letters from: Britt Thedinger, from the Nebraska Medical Association; Peggy Reisher, from the Nebraska Brain Injury Alliance; Andrea Skolkin, from OneWorld Community Health Centers; and Brian Krannawitter, from the American Heart Association. We will include those. And that will close our public hearing on LB442. We will now open the public hearing on LB172, and welcome, Senator Pansing Brooks.

PANSING BROOKS: Thank you. Nice to be before this committee. Thank you, Chair Williams and members of the Banking, Commerce and Insurance Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I appear before you today to introduce LB172, which clarifies existing law in several important ways. First, it expressly authorizes owners of multiparty accounts to designate specific percentages for accounting beneficiaries. Under current law, Nebraska Revised Statute 30-2723(2): On the death of the sole party or the last survivor of two or more parties, funds in the deposit account belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, funds on deposit belong to them in equal and undivided shares, and there is no right to survivorship in the event of death of a beneficiary thereafter. The requirement for beneficiaries to share in, quote, equal and undivided shares, unquote, has raised several questions regarding the ability to designate different percentages for surviving beneficiaries. This could occur, when-- for example, when a parent wants to provide different percentages to children to equalize lifetime gifts or if the owner of the account wants to provide differing percentages to provide for his or her grandchildren when a parent has predeceased the owner of the account. While there are, no doubt, banks that currently allow customers to proceed in this manner and to designate different-- differing percentages for beneficiaries under these types of accounts,

the changes proposed under Section 2 of LB172 would provide express statutory authority for this practice. Section 2(b) of the bill further provides for the manner in which the share of a beneficiary who fails to survive the sole party or the last survivor of the-- of two or more parties, or owners of an account to be divided in cases in which there are two or more surviving beneficiaries. The second component of this bill resulted from bankers who contacted the Nebraska Bankers Association indicating that they had encountered problems when dealing with court-appointed fiduciaries, such as guardians and conservators and personal representatives, as well as fiduciaries appointed pursuant to a trust. While multiple guardians and conservators or personal representatives are appointed by court-- by the court or multiple trustees designated under a trust, the default rule is to require that all cofiduciaries sign or approve a banking transaction, such as two or more signatures are required. So this restricts the ability of the bank to offer debit cards or to allow access to ACHs which are the automatic clearing houses which provide electronic debits, such as-- they-- they deal with something that we're all familiar with like the electronic transactions via routing and account numbers, also preventing the banks from offering on-line bill pay services. And they require the cofiduciaries to order expand-- expensive corporate-style checks to accommodate the bank's practice to physically inspect every payment order under these circumstances. In addition to limiting the account services provided to cofiduciaries, some banks are refusing to open two signature required, quote unquote, accounts due to the monitoring burden and additional risk to the bank which could result from a claim from a transaction which was not properly authorized if less than all the required cofiduciaries have signed off on a transaction. Other banks may have higher monthly service charges, which is certainly not in the best interest of the party for whom cofiduciaries have been appointed. So Section 1 of LB172 would allow full-service accounts to be offered by the cofiduciaries by allowing fiduciaries to act independently of one another with respect to banking transactions unless the court appointing the cofiduciaries of the trust document designating the co-- cotrustees specifically requires the fiduciaries to act jointly or in concert. The third component of this bill deals with the age of majority. A member contacted the Nebraska Bar Association last summer, indicating that a title company, in connection with a proposed real estate secured loan by the bank to an 18-year-old, had refused to provide insurance coverage, noting in the title insurance commitment that the 18-year-old would not be, quote unquote, bound by the deed of trust. The rationale expressed by the title insurance company was that

the age of majority statute under Nebraska Revised Statute 43-2101 only provides that an 18-year-old is legally responsible for contracts. Since-- since a deed of trust generally does not require the signature of more than one party, i.e. the borrower, then the deed of trust actual-- does not constitute an actual, quote unquote, contract. In con-- in conducting further research on this issue, we concluded that documents that would grant a bank lien or security interest in real or personal property or fixtures, which is an-- such as an-- it's an effective financing statement, a mortgage, trust deed, security agreement, financing statement, or other security instrument as well as the promissory note or other instrument evidencing the obligation to repay were also generally signed by only the borrower, and thus not, quote unquote, contracts. Section 3 of LB172 is designed to clarify the-- the binding nature of a prom-- of promissory notes and other instruments evidencing the obligation of an 18-year-old to repay as well as the list of documents set forth above granting a lien or security interest in real estate, personal property, or fixtures. I'd like to also point out that this is a companion piece-- companion bill to LB55 from Senator Lowe which was recently heard in Judiciary Committee and has now been sent out to General File. So in closing, I'd be glad to answer any questions you'd have, but there are some really good experts behind me so.

WILLIAMS: Thank you, Senator. Any questions? Seeing none--

PANSING BROOKS: Thank you.

WILLIAMS: --I'd invite the first proponent.

BOB HALLSTROM: Chairman Williams, members of the Banking, Commerce and Insurance Committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB172. Senator Pansing Brooks did such a thorough job of introducing and describing the contents of the bill that she's almost left me speechless. However, I will say a few words for the committee. I think that the section with regard to the payable-on-death beneficiaries is important-- is an important clarification. Some-- some banks, as Senator Pansing Brooks indicated, do already provide for differing percentages to carry out the wishes of their account holders. But since the statute says that it's to be divided equally in-- under those particular circumstances, we felt that the clarification would be a positive addition to the statute. With respect to the authority for cofiduciaries to act independently, we have had many indications from our bankers that, in looking at the

default rule which says if more than one cofiduciary whether it's a trustee, a personal representative, or a guardian conservator is appointed, that they are going to require all of those individuals to act in concert. And as Senator Pansing Brooks noted, there are many electronic transactions. There are issues even with paper checks to this day where we would require both signatures. We would require to examine for both signatures. Those two-party checks or two-signature checks are more expensive for the individual that's taking activities or conducting activities on behalf of the ward or the protected person. And so we think those are changes that currently-- that are certainly in the best interest of the person that's being protected. With regard to the age of majority, this is probably a more significant legal issue and one which, again, was brought to our attention by some bankers who had en-- encountered title insurance commitments that were not going to provide coverage in situations in which individuals were purchasing real estate. You might recall a number of years ago, the normal age of majority in Nebraska is 19. We made an exception for 18-year-olds to be able to contract and lease. And the policy perspective was if 18-year-olds can go and serve the country, they ought to be able to contract and enter into leasehold agreements. Unfortunately, because of the technicality-- the legal technicality of requiring two parties to sign a contract, the deed of trust, the mortgage-type of instrument clearly is covered and has problems in that respect. In researching the issue, we also felt that promissory notes, security agreements, financing statements, and effective financing statements, which are all documents that evidence the-- the lien that's granted to a bank in connection with the transactions that's secured by real property, personal property, or fixtures, ought to be addressed as well. Senator Pansing Brooks noted Senator Lowe's bill, L-- LB55, that noted a little bit different aspect of this issue, which we didn't happen to think of, which is the acquisition or conveyance of real estate by 18-year-olds where the deed is only signed by one party, again, thus arguably not a contract. And so we think those are all issues that should be clarified and touched up in the law, and LB172 will provide that. And I'd be happy to address any questions of the committee.

WILLIAMS: Thank you, Mr. Hallstrom. Any questions? Seeing none--

BOB HALLSTROM: Thank you.

WILLIAMS: --thank you for your testimony. Invite the next proponent. Welcome.

KORBY GILBERTSON: Good afternoon, Chairman Williams, members of the Committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association and the Home Builders Association of Lincoln and Metro Omaha Builders Association Coalition in support of LB172. You've heard twice now about LB55. Both the realtors and the homebuilders support that piece of legislation as well. And we think this is a natural thing to pair with it since it'd be hard to transfer real property without having financing agreements sometimes. The one thing that came up during discussions with both groups was whether or not there's a clear ability for the 18-year-olds to contract for insurance on these properties, and we want to make sure that that's covered in this. And so I've talked briefly with Senator Pansing Brooks about whether or not we could hopefully do a friendly amendment on the floor that would clarify that they would also be able to obtain the necessary insurance to-- in order to have a mortgage or transfer the property. With that, I'd be happy to answer any questions.

WILLIAMS: Thank you, Miss Gilbertson. Any questions? Seeing none, thank you--

KORBY GILBERTSON: Thank you.

WILLIAMS: --for your testimony. I'd invite the next proponent. Seeing none, is there anyone here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Welcome.

TIM HRUZA: Good afternoon, Chairman Williams, members of the Banking, Commerce and Insurance Committee. My name is Tim Hruza, that's H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association. Just to pro-- provide a couple of technical comments with regard to the bill, our estate planners section of the bill-- or a section of the bar took a look at the bill and had a couple of concerns, very small tweaks, and minor adjustments. I have discussed these with Senator Pansing Brooks, with committee legal counsel, prior to the hearing and then with Mr. Hallstrom as well. We intend on addressing them with an amendment that we believe can be brought on the floor in the bill. The-- the minor adjustments deal with references to corresponding provisions of existing statute just to make sure that people are put on notice of-- of the provisions in this bill that might affect estate planners, specifically with respect to the Uniform Trust Code. The other would be with regard to the prospective application of some of these requirements, just to ensure

that we don't affect previously created estate plans. We have some language that we've been working on. We plan on-- on addressing those on the floor. We believe that the bill could-- could advance from this committee as long as you guys are comfortable. I'd be happy to answer any questions. Thank you very much.

WILLIAMS: Thank you, Mr. Hruza. Any questions? Seeing none, thank you for your testimony. Is there anyone else to testify in a neutral capacity? Seeing none, Senator Pansing Brooks, would you like to close?

PANSING BROOKS: Thank you. I just want to thank everybody for testifying today, and we are working with the Bar Association and with the-- the insurance companies to have an amendment later on the floor. So I think we're all in good stead, and I appreciate your time today. Thank you.

WILLIAMS: Thank you. Any final questions? If not, that will close the public hearing on LB172. We will now open the public hearing on LB536. Oops. Whoops. Excuse me. We have a letter from Kent Franzen of Henderson State Bank in support of LB172. Sorry, about that. Now we would invite Senator Pansing Brooks to open on LB536.

PANSING BROOKS: Great. Thank you, Chair Williams and members of the Banking, Commerce and Insurance Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28, again, right here in the heart of Lincoln. The Nebraska Uniform Law-- Laws Commission is a pre-- is a prestigious and highly respected group of attorneys, including two former deans of the law school, of the Nebraska law school, Chancellor Harvey Perlman, and Steve Willborn, who is currently on leave as interim director of the national Uniform Law Commission, along with the Nebraska Revisor of Statutes, Joanne Pepperl, and retired attorney, Larry Ruth. I have been honored to work with this esteemed group on previous legislation, including a 20-- 2015 bill that saved our state over $80 million annually. Just have to put that out there because it's a good one. Today's bill, LB536, would establish the Nebraska Directed Trust Act-- I'm going to call it the NDTA from here on, so the Nebraska Directed Trust Act, and would provide a statutory framework for the establishment and use of directed trusts in Nebraska. In a-- in a traditional trust the responsibility for all aspects of the trust's admiration-- administration, including custody, investment, and distribution, belongs to the trustee. For centuries, this allocation of authority to a trustee has been a foundation of trust law. In a

directed trust, however, a person other than a trustee has power over some aspect of the trust's administration. Such a person might-- may be called a trust protector, trust adviser, or in the terminology of the NDTA, a trust director. This division of authority between a trust director and a trustee raises a host of difficult questions for which the NDTA provides clear practical answers. As compared to a traditional trust, in a directed trust, a trust director is not a trustee, but has the power either to direct the trustee in that trust's-- trust's administration or to administer the trust directly. A trust director that-- can have any power over a trust as outlined by the settlor, including the power to direct the trustee in the investment and distribution of trust property and the power to amend or terminate the trust. To provide a prote-- a practical example of when a directed trust might be valuable, consider the following circumstance: an individual works closely with a financial adviser for many years, who manages their money and investments. In preparing their estate plan, the individual desires that the money be placed in a trust-- that is to be placed in a trust continue to be invested and managed by the financial adviser with whom the individual has had a longtime relationship. By using a directed trust, the financial adviser could be named as the trust director and could continue to manage the money even after placing it in the trust. With the use of directed trusts, however, some questions can arise about which party is responsible. The Directed Trust Act would provide answers to those questions. The NDTA expressly validates terms of a trust that give certain duties to a trust director and prescribes a simple set of rules for allocating liability. The NDTA's basic strategy is to impose primary rules for-- excuse me, the NDTA's basic strategy is to impose primary fiduciary-- fiduciary responsibility for a trust director's actions on the director while preserving a minimum core of duty in a trustee. A trust director has the same fiduciary duties as a trustee would have in a like position and under similar circumstances, but a trustee that acts subject to a trust director's direction is generally liable only for the trustee's own willful misconduct. The NDTA authorizes a similar allocation of power and duty among cotrustees at the option of the settlor. In addition to this modified fiduciary scheme, the NDTA also offers solutions to the many practical problems created by the presence of a trust director. Among other things, the U-- the Uniform-- it's the UDTA, Uniform Directed Trust Act, deals with the sharing of information among a trustee and a trust director and the compensation, succession, and appointment of a trust director. Ultimately, the NDTA provides greater flexibility for estate planners to design trusts tailored specifically for each individual client.

The-- LB536 was brought to me at a joint request of the Nebraska Uniform Law Commission and the Nebraska State Bar Association. I understand that there are representatives from both represen-- from both organizations here today to speak on behalf of my bill. And I'm sure they'll be able to answer any technical questions because they're all brilliant and fabulous so. But I'll answer anything you might specifically have of me.

WILLIAMS: Thank you, Senator Pansing Brooks. Any questions for the senator? Seeing none, I'm-- I'm assuming you'll stay to close?

PANSING BROOKS: I will. Thank you very much.

WILLIAMS: Invite the first proponent. Mr. Ruth, welcome.

LARRY RUTH: Thank you, Senator Williams and members of the Banking, Commerce and Insurance Committee. My name is Larry Ruth, L-a-r-r-y R-u-t-h, and I'm representing the Nebraska Uniform Law Commission to be distinguished from the person who follows me who is just the Uniform Law Commission. This is the group of commissioners in Nebraska that are on a commission of state government. And the Uniform Law Commission, the folks right behind me-- or the person right behind me, is actually an umbrella organization of all the states, uniform law commissioners. I appear in support of LB536. And last week, I was here on two legislative bills. They're off and flying off of General File last week, pleased to see that. Thank you very much. Bring LB536 in coordination with the Bar Association. And I just want to point out one thing, that although our organization drafted the uniform law com-- drafted the bill originally, it was tailored to the Nebraska law, and was supported by the Bar Association. We have a long history of working in trust law. Back in 2003, the trust code which we had drafted became the law of the state of Nebraska and is now the foundation for all of trust law in Nebraska, all of statutory trust law, that is. Here to explain the bill farther-- or further is Ben Orzeske from Chicago, and I would encourage you to listen to his presentation. Thank you very much.

WILLIAMS: Thank you, Mr. Ruth. Any questions? Senator Lindstrom.

LINDSTROM: Thank you, Chairman Williams. And maybe this is something you can answer, I'm just going to throw it out there, and maybe the gentleman can address it. And more of a real-life situation, just to understand maybe how this plays out in the real world. So say, for example, you have say a dad who has-- is the trustee of a significant

amount of money. They have the beneficiary as maybe one of their kids, but their kid might be unable to make good financial decisions. So they would direct-- under this law, would direct somebody that would be able to do that on their behalf in the instance where maybe the dad in this case passes away. Would that be a scenario that would be in line with this?

LARRY RUTH: I'd say that would be-- could be a fairly common one, especially if the financial adviser had been one that had been working with the family, had been doing the work. And as you grow older, you might want to make sure that's a seamless transition to the next-- to the trust. So that is what this is for, is to make sure that the settlor, that is the person who's the-- the trustee-- or rather the trustor, can designate someone to be the-- the directed trust and then-- directed trustor. That-- that way, you apportion the responsibility between the financial institution that holds the trust, for example, and the specialized adviser. That's what this does.

LINDSTROM: Right. OK.

LARRY RUTH: Good example, good example.

LINDSTROM: Just as-- as a-- kind of just getting my head around it--

LARRY RUTH: Yeah.

LINDSTROM: --a real life scenario.

LARRY RUTH: Thank you.

LINDSTROM: Thanks.

WILLIAMS: Welcome.

BENJAMIN ORZESKE: Thank you, Chairman Williams, members of the committee. My name is Benjamin Orzeske, B-e-n-j-a-m-i-n O-r-z-e-s-k-e. I'm representing the Uniform Law Commission in support of our Nebraska commissioners here today. Thank you to Senator Pansing Brooks for sponsoring this legislation. And she did a fine job of explaining the purpose of it. I'm only going to elaborate on a few points, and then I'm happy to take any questions that you may have. In a traditional trust, the trustee wore many hats. They were the custodian of all the trust assets. They were responsible for investing them. They might be responsible for deciding when to distribute funds to a beneficiary. They were responsible for trust accounting and so on. The modern trend

in estate planning is to-- toward specialization, to divide a trustee's traditional duties among two or more parties. And beneficiaries and-- and settlors of trusts are well served by this trend. They get the expertise that comes along with somebody who's a specialist in their one particular aspect of that job. However, the law hasn't kept pace with that. So we have this large body of fiduciary law that holds trustees responsible for their decisions over trusts. So when you have another person who can direct the trustee in certain aspects of it, the question becomes who's responsible if it's a poor decision, if the beneficiary decides they're going to sue? How do you-- do you allocate that responsibility? And there has been some litigation over this which kind of led to the development over the last five to ten years over-- over these laws which we're starting to see in states. Uniform Law Commission took this on. We had a few examples of states that had already enacted laws of this sort. We looked at what they did. We've tried to-- the way that Uniform Law Commission drafts is to bring in national experts. We hold open meetings. We-- we try to reach consensus on what the best policy should be taking examples from what states have already done and what-- what experts are recommending. What we have come up with here we think is a big improvement on any of the existing state laws. It's far more comprehensive a treatment of the subject, and it's very logical. It-- dut-- the duty follows the power. If you have a power over a certain aspect of trust administration, then the-- what this law does is it gives you the fiduciary duty over that aspect as well. In addition, the trustee, who serves as kind of the quarterback of the whole operation, retains a basic duty not to commit willful misconduct. So let me illustrate with an example. If you have a trust director who's in charge of investing trust assets, is a-- is a common arrangement, and so the trust director chooses to invest in a series of stocks that, for whatever reason, underperform. The trustee was actually executing the trades on the trust director's direction. Well, you can see why the trustee in that situation-- it wasn't their decision. They don't-- if there was a-- a-- a poor decision-- if-- if somebody is going to be held liable for-- for-- for a poor decision, it shouldn't be the trustee who was following direction there. And what our law does is it holds-- it-- duty follows power. So in that case, if there was somebody who should be held responsible for a poor decision, it would be the trust director who made the decision on where to invest. And the trustee is not liable as long as they have not committed willful misconduct in the-- in the process of carrying out those trades. So in actuality, in-- in a directed trust, there is greater protection for beneficiaries. There is-- all the traditional

fiduciary duty, that a trustee would have, is allocated to somebody. There can be no reduction. If you have the duty-- if you have the power, then you have the duty that goes with it. And then in addition, the trustee retains this-- this basic responsibility to kind of oversee things and make sure that nobody is-- is playing any shenanigans with-- with trust assets. So we think it's a-- it's a good-- it's a proven legal structure. It has been-- it was based-- that willful misconduct standard is based on a law that was first pioneered by Delaware and has attracted much trust business. So we know that it's workable in real life. We-- we-- we've put in some additional provisions in this law that are not present in any state laws, such as the duty to share information. So to go back to my example, if I, as a trust director, have responsibility to direct investments, but the trustee is sending out reports to beneficiaries, under this law, I have a responsibility to share information with the trustee so that they can send out those reports. I have to share the performance information. So with that, I think I will stop. I welcome any questions from the committee.

WILLIAMS: Thank you. Senator Lindstrom.

LINDSTROM: Thank you, Chairman Williams. I-- I apologize if you answered this. Could-- you said you could have multiple directors or directed people, so you might have a financial person, an estate planning attorney, a CPA,--

BENJAMIN ORZESKE: Yes, conceivably you could.

LINDSTROM: --and they would all work together in some fashion to report to the trustee if the trustee is making those financial decisions on behalf of the beneficiary?

BENJAMIN ORZESKE: If the trustee is-- I'm sorry--

LINDSTROM: I'm sorry, the trust.

BENJAMIN ORZESKE: --making which decisions with the--

LINDSTROM: The trustees operating on behalf of the trust but are directing the responsibility for investment estate planning attorney-- or estate planning and taxes to those three directed advisers. Is that a situation?

BENJAMIN ORZESKE: So generally, it wouldn't be the trustee who-- who chooses those other specialists. It would be the settlor, whoever creates the trusts.

LINDSTROM: OK.

BENJAMIN ORZESKE: And they would put it into the terms of the trust. You know, I'm-- I'm creating this trust for the benefit of my three children. I'm naming myself as trustee while I'm alive, and when I am-- after I pass, I'm going to name so-and-so as a successor trustee, my trusted brother, whoever I want.

LINDSTROM: Right.

BENJAMIN ORZESKE: I'm going to name my trusted financial adviser to handle investments. It's the settlor of the trust who makes those-- who divides that duty among whatever parties they want.

LINDSTROM: OK. So you could essentially say that the adviser would handle the investments and so forth? He'd lay it out in the trust documents, saying specified responsibilities.

BENJAMIN ORZESKE: That's exactly right.

LINDSTROM: OK. Very good. Thank you.

WILLIAMS: Additional questions? You've talked about, so far, the designate-- designation of what I would call professionals, an investment adviser, a lawyer, an attorney, accountant. Have-- have there been any experience where somebody tried to do something unusual with a designation of something that's outside of that level of professional area?

BENJAMIN ORZESKE: One example that comes to mind is sometimes you'll have a family distribution director. So for instance, you have a trust that's set up, I name a trust for the benefit of my children and grandchildren. And I name myself as a distribution director so that I can tell the trustee when I want-- this grandchild needs college funds, I want you to go ahead and make a distribution to them for their benefit right now. After I'm gone, I may na-- name another family member, my spouse or my sister or somebody who I trust to make those decisions. So sometimes it's not a professional. You may want the trustee doing all the professional management and a family member

to make those kind of more personal decisions. It's a very flexible law on how you might structure that trust.

WILLIAMS: Seeing no other questions, thank you for your testimony.

BENJAMIN ORZESKE: Thank you.

WILLIAMS: Any further proponents? Welcome back, Mr. Hruza.

TIM HRUZA: Thank you, Chairman Williams, members of the Banking, Commerce and Insurance Committee, Tim Hruza, it's H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in support of LB536. Before I begin, let me thank Senator Pansing Brooks for carrying this legislation. We are very supportive of this bill. Members of the estate planning section of the bar have been looking at this for a little while, and they believe that it is a much-needed tool, a piece of legislation for them to employ in assisting their clients. I'm distributing to you two letters: one on behalf of an attorney for Union Bank and Trust, John Atkins; and another on behalf of an attorney from Omaha, Dan Wintz. Both of these gentlemen have been instrumental in getting this bill in Nebraska and getting it to a point where we felt comfortable that it will serve Nebraskans well. Both of those letters really describe the interest of estate planners in Nebraska and why they believe that the use of the directed trust for a number of clients is extremely beneficial. And I would point to Mr. Wintz's letter as-- as a-- a pretty good example. I think we've talked a lot about flexibility in the use of the directed trust as a tool for clients in Nebraska. And I think the flexibility is-- is something that Nebraska estate planners are using for their clients, and with this act, we'll be able to ensure that they can continue to do into the future. I would also note that the division of authority is-- is quite important, especially for some of the financial institutions that service trustees. So you can have an investment manager that handles the financial investment side and the decisions there while providing the trustee, or the bank that might serve as a trustee, a little bit of protection from some liability with regard to those decisions that are made. And I think that's a really important aspect of this important tool. So with that, I would answer any questions. I would tell you that I know Mr. Wintz and Mr. Atkins were both very disappointed they couldn't make it today, but I'm hopeful that their letters will help explain some of their position on this bill. We ask you to advance the bill to General File, and we appreciate your time.

LINDSTROM: All right. Thank you.

TIM HRUZA: Thank you.

LINDSTROM: Any questions from the committee? Seeing none, thank you. Next proponent? Seeing none, any opponents? Seeing none, any neutral testifiers? Seeing none, Senator Pansing Brooks, you're welcome to close.

PANSING BROOKS: Thank you. Thank you all for listening today, and-- and some of this is sort of complicated. My intro was a little long because I wanted to get all the facts into the record so to set the record. Also just as an aside, I think this-- this is such a common-sense bill because if you think about-- when I was 14, my dad died, and my mom was-- was left sort of on her own. And she had directly worked-- my dad had worked with and-- with her because he knew he was dying, worked with investment advisers and different people who helped. And then, you know, the law all of a sudden request-- requires a shift to-- to go to a bank that she does-- she didn't know them. She wasn't comfortable. You know, you're under a period of stress. So that's just one example where I think this is such a valuable way to deal with it so that-- that-- that people can-- can move forward and ease transitions in their lives and to make sure that, you know, that a directed trust is allowed. It also protects the-- the banker or the-- the trustee, whoever is appointed the trustee at that point. So I think it's really a positive, win-win situation for the people of Nebraska, for the business people in Nebraska as well as individuals who need to use this tool. So thank you all for listening today. I hope you'll forward this to the floor. Thank you.

LINDSTROM: Thank you, Senator Pansing Brooks. Any final questions? Seeing none, thank you very much. And that'll end the hearing on LB536, and that will end the hearings--