

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 27, 2020

WILLIAMS: [RECORDER MALFUNCTION] Commerce and Insurance Committee. My name is Matt Williams. I'm from Gothenburg and represent Legislative District 36, and I am honored to serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on a proposed legislation that is before us today. The committee members may 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 bills being heard in the committee today, 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 ready to testify. The order of testimony on each of the bills will be first the introducer, followed by proponents, followed by opponents, then neutral testimony, and a closing by the senator. Testifiers need to sign in. Hand your pink sign-in sheet to the committee clerk when you come up to testify, and please, when you begin testifying, please spell your name for the record. Be concise. It is my request that you limit your testimony to 5 minutes. We will be using the clocks-- or the light system this afternoon. It will start on green and, when it goes to yellow, you've used 4 minutes and you have 1 minute left. And when it turns red, we would appreciate if you'd wrap up your testimony. If you will not be testifying at the microphone, but want to go on record as having a position on a bill being heard today, there are white tablets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members as exhibits, only while you are testifying. Hand them to the page for distribution to the committee and the staff when you come up to testify. We will need ten copies. If you do not have ten copies, our page can make them for you. To my immediate right is committee counsel, Bill Marienau; to my far left at the end of the table is committee clerk, Natalie Schunk, and the committee members that are with us today will do self-introductions, starting with Senator Gragert.

GRAGERT: Good afternoon, Senator Tim Gragert from District 40: northeast Nebraska.

HOWARD: Good afternoon. I'm Senator Sara Howard. I represent District 9 in midtown Omaha.

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

LINDSTROM: Brett Lindstrom, District 18: northwest Omaha.

McCOLLISTER: John McCollister. Sorry.

QUICK: Dan-- Dan Quick, District 35: Grand Island.

McCOLLISTER: John McCollister, District 20: central Omaha.

WILLIAMS: Thank you. And our page today is Lorenzo, and he is a student at UNL. And our first bill this morning, this will open the hearing on LB902 with Senator Pansing Brooks, to adopt the Uniform Trust Decanting Act. Welcome.

PANSING BROOKS: Thank you, Chair Williams and members of the Banking, Commerce and Insurance Committee. I'm Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, and I am here representing Legislative District 28 right here in the heart of Lincoln. I'm here today to ask you for your support of LB902, which would adopt the Uniform Trust Decanting Act in Nebraska. The Uniform Laws Commission is a prestigious and highly respected group of attorneys, including two former deans of the University of Nebraska Law School, former Chancellor Harvey Perlman, and former dean Steve Willborn, along with Nebraska's Revisor of Statutes, Joanne Pepperl, and retired attorney Larry Ruth. I've been honored to work with this esteemed group on previous legislation, including a 2015 bill that saved our state over \$80 million annually-- have to keep bringing that back up. I have introduced LB902 at the request of the Uniform Laws Commission and members of the Nebraska State Bar Association who practice in the areas of estate planning, probate, and trust law, and who regularly advise Nebraskans about the best way to handle their assets and manage their estates. Adopting the Uniform Trusts-- Trust Decanting Act would provide these professionals a statutory framework for the use of an important trust management tool referred to as decanting. Sadly, for some of you, I am not talking about the distribution of your favorite beverage from one vessel to another. Legally, decanting is a term used to describe the process by which a trustee may distribute assets from one trust and place them into a second trust. This process is beneficial in instances where an otherwise irrevocable trust no longer adequately addresses the intent of the settlor or the needs of the beneficiaries due to a change in circumstances that might not have been contemplated at the time of the creation of the trust. The

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Uniform Trust Decanting Act provides a set of statutory rules for how the decanting process can play out. The framework included in LB902 is crafted in a way that provides clear expectations for the decanting process, as well as measured protections for both the beneficiary's needs and the settlor's intent. I have just an aside. In our law firm at Brooks, Pansing Brooks, we have actually had this case come before us. We had a client come in with a-- with a trust that didn't cover a child who had become-- who had later become incapacitated. And of course, it wasn't foreseen when the trust was initially created. So the trust was an irrevocable trust, the trustor was dead, and there was no way to create or recreate-- or to create a special-needs trust to maintain the safety and healthcare of the child. So this type of trust-- of-- of-- implement to be able to change the irrevocable trust and allow it to be modified, in certain instances, would really help because the flexibility for trustees to direct the proceeds to something like a special-needs trust, without disqualifying it for public benefits, is really important. It's a way to protect assets for children who may later become disabled, among other things. So again, because of changed circumstances, this-- this change in our laws is, is necessary, and it would allow-- allow a trust to maximize what's left for the child and thereby, also, save money for the taxpayers. There are experts here today who can explain well the provisions of the Uniform Trust Decanting Act and the process by which it has been developed. If you have any questions about the technical aspects of the bill, I can try to answer them, but I think you'll be a lot better off if you just ask the experts who will follow. So with that, I respectfully ask the committee to advance LB902 to General File. Thank you.

WILLIAMS: Thank you, Senator. Are there questions for Senator Pansing Brooks? Seeing none, thank you for your testimony.

PANSING BROOKS: Thank you.

WILLIAMS: Will you be staying to close?

PANSING BROOKS: I'll stay.

WILLIAMS: Thank you.

PANSING BROOKS: Thank you.

WILLIAMS: Welcome up our first proponent. Welcome.

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BEN ORZESKE: Thank you, Mr. Chairman, members of the committee. My name is Ben Orzeske, B-e-n O-r-z-e-s-k-e. I'm chief counsel at the Uniform Law Commission, out of the Chicago office. Thank you for considering LB902 to adopt the Uniform Trust Decanting Act. Senator Pansing Brooks has ably explained the purpose of this; I won't repeat it. I'm just going to go into a little detail, some features of-- of the act and why we think that's good for Nebraska and other states. You have in front of you copies of my written testimony, which includes an enactment map, shows which other states have-- have enacted this act. A little history on decanting. It's probably happening in Nebraska now as an exercise of a trustee's discretion under the common law. That's certainly how it began, trustees creatively looking for ways to change the terms of an otherwise irrevocable trust that had become outdated. And if the trustee has discretion to distribute, is the theory, then the trustee can certainly distribute in trust if they have that discretion. So it's a powerful tool, but powerful tools can be abused. And so in order to check that abuse, New York adopted the first Trust Decanting Act to set up some regulations for using this tool, when it can be used, when it can be appropriately used. That was in the early '90s, and then about 19 or 20 other states followed suit with their own laws. Unfortunately, none of the state laws were-- were the same. They were kind of all over the map in what they regulated and what the-- what the various rules were. And so there was a need for greater uniformity. And this project was brought to us by the-- by the National Trust and the state bar. So the American Council of Trust-- American College of Trust and Estate Counsel, who asked us to help draft an act and kind of unify the state rules on this topic. Decanting is an exercise of the trustee's discretion. The trustee is still subject to all the usual fiduciary duties, including the duty to act in accordance with the settlors wishes of the first trust. So why would then, would you decant to a second trust? Well, it, it depends. There's two sets of rules in the Uniform Act. It's a bifurcated statute. There is one stricter set of rules for trustees with limited discretion. And then there is a broader set of rules for trustees who have wider discretion to act. So let me just illustrate that with an example. If I'm a trustee of a trust and the settlor set it up and said you can distribute trustee assets from the trust to any of my descendants, in your total discretion, that you think deserve it or need it, assets from my trust, they're all eligible, and I leave the decision up to you as to who gets the money. In that case, the trustee could decant to a trust that eliminates some of those potential beneficiaries, because the trustee could already do that under their

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current discretion. They could distribute to some beneficiaries to the exclusion of others in their discretion, under the terms of the trust. But most trusts aren't like that. Most trusts will have-- say, I want to divide-- the assets divided in equal shares to my children, perhaps when they turn 35 or in steps or whatever it is. In cases like that, where the trustee has limited discretion, the trustee is limited in the terms of the second trust. So the beneficial interests have to be pretty much the same. The exceptions are, for the example that Senator Pansing Brooks used, just [INAUDIBLE]-- there's a need for a special-needs trust that the first trust didn't account for, you can decant for to make administrative changes. And then there are some types of decantings that are out-- regardless of the level of discretion, which are not permitted under any circumstances, the obvious abuses. You know, you can't decant, to increase the trustee's compensation, to a, to a new trust. So there is a lot of detail in, in the act. It goes into a number of tax savings provisions if there is an error in decanting. So it, it has some provisions where, instead of creating an entirely new trust, you can restate the original, which saves on some administrative costs so you don't have to get a new tax I.D. number and so on, so some innovative provisions. We took the best of what the-- was in the state laws. We had a national committee of trust law experts to help draft this. And since it was-- came out in 2015, so 2016 was the first year that, that was available in the states, it's been adopted so far in nine states, currently introduced this year in two more: Nebraska and Massachusetts. So with that I'll pause and am happy to take any questions from the committee.

WILLIAMS: Thank you. Senator Kolterman.

KOLTERMAN: Thank you, Senator Williams. First of all, thank you for coming-- came a long ways.

BEN ORZESKE: Glad to. Thank you.

KOLTERMAN: So you've passed it in, you said nine. You have two that are this year.

BEN ORZESKE: Yes.

KOLTERMAN: What, what's your anticipation? Is this going to catch fire and get, get approved in other states?

BEN ORZESKE: I think it will, because about 20 states had their own trust law already. It usually-- it's a slow process. It takes a bar

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study in most states, which can take a year or two. But we've seen-- for Illinois, for instance, had a previous act and decided to replace it with the Uniform Act. I think that will happen in more and more states. Some states that don't have a lot of trust business, don't have a very large banking industry, maybe it's not the highest priority for them. They're, they're satisfied with common laws the way it is. But it's been kind of steady growth over those-- over the first few years, so I would expect that, as states consider the issue, this will be the model that's enacted.

KOLTERMAN: And so this will replace what we've had in the past.

BEN ORZESKE: Nebraska had-- didn't have a law on the subject, so they were just operating under the common law if they were operating at all.

KOLTERMAN: OK. Thank you.

WILLIAMS: Additional questions? Seeing none, thank you for your testimony.

BEN ORZESKE: Thank you very much.

WILLIAMS: Invite our next proponent. Welcome.

KIM ROBAK: Thank you, Senator Williams and members of the Banking Committee. My name is Kim Robak, K-i-m R-o-b-a-k. I'm here today, on behalf of the Nebraska State Bar Association, in support of LB902. You've heard from the expert. You've heard from Senator Pansing Brooks about why this bill is important. I just want you to know that the Real Estate, Probate, and Trust attorneys of the Nebraska State Bar Association have studied this act. They've looked at it carefully, and they think that this would be a, a useful tool for Nebraska estate planning attorneys to use in the state of Nebraska. They believe that it sets forth the safeguards for the beneficiaries, as well as helps to establish the framework by which the intentions of the grantor of the trust are actually able to be carried through should circumstance-- circumstances change. So with that said, I'd be happy to answer any questions. I'm hoping that there are none, but would be happy to.

WILLIAMS: Thank you, Ms. Robak. Senator McCollister.

McCOLLISTER: Thank you, Chairman Williams. The fiscal note has an interesting comment. The amounts distributed to the Affordable Housing

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Trust Fund, Site and Building Development Fund, the Homeless Shelter Assistance Trust Fund, the Behavioral Health and Services Fund, and the County General Fund will be reduced. How's this bill interact with those particular funds?

KIM ROBAK: I'm not certain that that would be accurate, and I would certainly defer to the expert who is in the room, who could answer it specifically. But there is a provision within this particular act that says that charitable trusts are not included. I believe I'm-- I'm overstating that a little bit, but that charitable trusts are-- solely charitable trusts should not be affected by this act. And so the charitable portion of that act should remain intact. So I don't understand why that would be the case. But we'll get you that answer, Senator McCollister.

McCOLLISTER: Yeah. Thank you, Ms. Robak.

KIM ROBAK: Uh-huh.

WILLIAMS: Additional questions? Seeing none, thank you for your testimony.

KIM ROBAK: Thank you, Senator Williams.

WILLIAMS: Anyone else willing-- wanting to testify in support? Anybody here to testify in opposition? Seeing none, anyone here to testify in a neutral capacity? Seeing none, Senator Pansing Brooks waives closing. That will end our hearing on LB902, and I will be turning this over to Senator Lindstrom.

LINDSTROM: All right. We'll now open the hearing on LB775, introduced by Chairman Williams. Chairman Williams, whenever you're ready.

WILLIAMS: Thank you. Good afternoon, Vice Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I'm here today to introduce LB775. LB775 was introduced on behalf of the Nebraska Real Property Appraisers [SIC] Board. The bill was put together, over this past summer and fall, by a staff of the board and also staff of this committee, pursuant to interim study resolution LR57. The bill would update the Real Property Appraiser Act for compliance with three things: first, Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989; second, the Uniform Standards of Professional Appraisal Practice; and third, the Policy Statements

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of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. If the state of Nebraska is found to be out of compliance with Title XI by the appraiser subcommittee, the appraisal subcommittee may remove all Nebraska credentialed appraisers from the financial registry, resulting in there being no appraisers qualified to appraise real property in connection with federally-related transactions, which are approximately 80 percent of all loan activity in the state. Nebraska currently has about 631 licensed real property appraisers and 71 trainee real property appraisers. The bill would update its incorporation by reference of the Uniform Standards of Professional Appraisal Practice to mean the standards adopted and promulgated by The Appraisal Foundation as those standards existed on January 1, 2020, instead of January 1, 2018. In principal part, the bill would update and comp-- combine defined terms and then update their use throughout the Real Property Appraiser Act and the Nebraska Appraisal Management Company Registration Act. Following me is a representative of the Real Property Appraisers [SIC] Board, who has all the answers to your questions. LB775 has no financial impact, and I would urge your advancement to General File. Thank you.

LINDSTROM: Thank you, Senator Williams. Any questions from the committee? Seeing none, thank you. We will now move to proponents of LB775.

TYLER KOHTZ: My name is Tyler Kohtz, T-y-l-e-r K-o-h-t-z, and I'm the director for the Nebraska Real Property Appraiser Board. I'll try not to repeat too much of what Senator Williams already expressed to you. So I'd like to begin by thanking Senator Williams and the members of the committee for the opportunity to speak on behalf of the Real Property Appraiser Board concerning LB775. Title XI of the Federal Financial Institutions Recovery and Enforcement Act of 1989 [SIC] requires each state to prescribe appropriate standards for the performance of real estate appraisals in connection with federally-related transactions. In addition, real estate appraisals are to be performed in accordance with the Uniform Standards of Appraisal Practice [SIC], also known as USPAP, and are to be performed by individuals whose competency has been demonstrated and whose professional conduct is subject to effective state supervision. This is the purpose of the board's establishment in 1991 to carry out Title XI and the Federal Financial Institutions Examination Council Appraisal Subcommittee requirements. The purpose of LB775, as Senator Williams mentioned, is to update the Real Property Appraiser Act with comp-- for compliance with Title XI, USPAP, and the Policy Statements

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of the Appraisal Subcommittee. The act consists of qualifications for credentialing, as well as standards for appraisal, practice, and appraiser conduct. And the board's primary functions, related to the act, are: to issue and renew appraiser credentials; develop and implement standards for appraiser credentialing; approve appraiser qualifying and appraiser continuing education activities; investigate and adjudicate grievances; disseminate relevant information to the general public, credentialed appraisers, and appraisal management companies. The board's program is primarily funded by appraiser credentialing and appraisal management company registration fees, and no taxpayer money is used to support this program. Specifically found in LB775, the changes to the Real Property Appraiser Act include: The definition of appraisal, assignment results, client, valuation services, and work file are modified to reflect the language in the 2020-21 edition of USPAP. The year in the definition of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is updated to 2020. The date of internal reference for the Uniform Standards of Professional Appraisal Practice is updated from January 1, 2019, to January 1, 2020. The definition "real property appraisal activity" is amended to "real property appraisal practice," and the definition "appraisal practice" is repealed to establish a harmonized definition for clarity and consistency throughout the act, and better align with the language used in USPAP. Terms and phrases throughout the act are also amended to incorporate the definition "real property appraisal practice." The definition of "report," along with terms and phrases throughout the act, are amended to utilize the definition "assignment results" for clarity and consistency. The definition of "credential holder" is also amended for clarity and consistency purposes. The definition of "real property appraiser" is amended to simplify the definition and the language found in subdivisions (1), (2) and (3) is stricken and incorporated into existing provisions more relevant to the language. Terms and phrases throughout the act are also amended to reflect this simplified definition. Subdivisions (13), (14), (15) and (16) are stricken from 76-223.8 concerning grounds for disciplinary action or denial of an application, as these specific acts are already included in USPAP. Along with changes required by Title XI, LB775 also includes minor changes to address the administration of the act, such as striking moot language and amending language to clarify the nature of a service or assignment being performed by a real property appraiser. Finally, the definition of "scope of work" is outright repealed, as the definition no longer appears in the Real Property Appraiser Act. LB775 updates the act for compliance with Title XI, USPAP, and the ASC Policy Statements. Once again, if the state of

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Nebraska is found to not be compliant with Title XI by the Appraisal Subcommittee, all Nebraska credentialed appraisers may be removed from the federal registry, resulting in no appraisers qualified to appraise real property in connection with federally-related transactions. Such action would have a substantial negative impact on the mortgage loan industry in Nebraska. The Real Property Appraiser Board supports LB775. Thank you for this opportunity and, if you have any questions, please feel free.

LINDSTROM: Thank you, Mr. Kohtz. Any questions from the committee? Senator McCollister.

McCOLLISTER: Yeah, thank you, Vice Chair Lindstrom. I'm, I'm grateful for your presence here.

TYLER KOHTZ: Thank you.

McCOLLISTER: Do you receive a state of Nebraska paycheck?

TYLER KOHTZ: Yes. Yes, I do.

McCOLLISTER: Oh, OK. And you're a member of the executive branch?

TYLER KOHTZ: Yes.

McCOLLISTER: OK. And you noticed, I'm sure, that there's no fiscal note to this-- to this bill, right?

TYLER KOHTZ: There, there is a fiscal note; there should be. There's no-- it doesn't have an impact.

McCOLLISTER: If there is a fiscal note, I don't think that it, it showed that on, on our, our list.

TYLER KOHTZ: I, I submitted one, on behalf of the board, with zero impact.

McCOLLISTER: Zero impact.

TYLER KOHTZ: Yes. Correct.

McCOLLISTER: OK. Well, I'm just noting that, you know, you're going to undergo some expense to do this, no doubt, but I change a comma in a report at HHS and I end up with a \$100,000 fiscal note, so just making that editorial comment.

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TYLER KOHTZ: Understand.

LINDSTROM: Thank you, Senator McCollister. Any other questions from the committee? Seeing none, thank you for your testimony.

TYLER KOHTZ: Thank you.

LINDSTROM: Next proponent? Seeing none, any opponents? Seeing none, any neutral testifiers? Also seeing none. Senator Williams waives closing, and that'll end the hearing on LB775. We'll now move to LB908, also introduced by Senator Williams, whenever you're ready.

WILLIAMS: Good afternoon again, Vice Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I am pleased to present today LB908. This bill would modernize how the Department of Banking and Finance provides for issuance and renewal of delayed deposit services licenses. These licensees are more commonly known as payday lenders. The bill would provide that, beginning in 2021, DDS licensees will be required to be licensed and registered through the Nationwide Mortgage Licensing System and Registry known as the NMLS. The NMLS is a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of state-regulated financial services entities and industries. Under the bill, the department may contract with the NMLS to collect and maintain records and process fees related to applicants, licensees, or other persons subject to the DDS Act. The department may allow the NMLS to collect licensing fees on behalf of the department and may allow the NMLS to collect a processing fee for the services of the NMLS directly from each applicant or licensee. The NMLS can be helpful by maintaining records of background checks, fingerprints, credit history, and other items. The director may use the NMLS as a channeling agent for requesting information from, and distributing information to, the United States Department of Justice. This bill makes no changes to the underlying powers of, or restrictions on, DDS licensees. Of course, the NMLS is not new to our Department of Banking. It is already used in the regulation of mortgage loan bankers, loan originators, installment sales licensees, installment loan licensees, and money transmitters. Once again, this bill does not make any change to the substantive regulation of DDS licensing, but does move their licensing from a 20th century to a 21st century process. I want to make it exceedingly clear that, if there is any attempt to use this legislation in a manner to change any underlying powers of DDS

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licensees, the legislation will not move forward. I would urge your moving forward on this bill and advancing it to General File. Thank you.

LINDSTROM: Thank you, Senator Williams. Any questions from the committee? Senator Kolterman.

KOLTERMAN: Thank you, Senator Lindstrom. Senator Williams, have we seen any aspect of this bill in the past?

WILLIAMS: You've seen this bill, almost in its entirety, last year in a bill carried by you in front of this committee that was advanced from this committee and is currently on the floor of the Legislature.

KOLTERMAN: And that was advanced unanimously, is that not correct?

WILLIAMS: I do not believe that bill was advanced unanimously out of this committee.

KOLTERMAN: Oh, I thought it was.

WILLIAMS: There are other provisions in that bill that may have stopped it from being advanced unanimously.

KOLTERMAN: All right. Thank you.

WILLIAMS: You're welcome.

LINDSTROM: Senator Howard.

HOWARD: Thank you, Senator Lindstrom. Thank you, Senator Williams, for bringing this bill to us. I want to be really clear about your last statement. So essentially, you're saying that, should this bill be used as a vehicle for any other type of payday lending bill, you would withdraw the bill or you would step back from moving it forward?

WILLIAMS: That's what I'm saying, absolutely. So that this could not be used-- by opening up this section of law and this topic, I would not allow it to be used in a way that could advance any of the substantive changes of payday lending.

HOWARD: OK. Thank you, Senator Williams.

WILLIAMS: You're welcome.

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LINDSTROM: Thank you. Any other questions? I just have one quick question. So we're, we're a part of the NMLS already--

WILLIAMS: Yes.

LINDSTROM: --for some of the other loan, installment loan. And would this allow, then, the department to have a better idea of potentially some bad actors in other states that would maybe want to operate here and, because of that database, they would have access to know a little bit of the background?

WILLIAMS: I believe that's certainly the case, Senator Lindstrom. The director of the department will be testifying behind me--

LINDSTROM: OK.

WILLIAMS: --but I believe all other regulated entities current-- they currently use the NMLS registry for their licenses. This is the only one that does not at the present time. And yes, I believe and I've noticed that happening where-- where it's a national registry, if you've got a bad actor somewhere, it can be identified across state lines.

LINDSTROM: Thank you. I'm asking the question because I know the director is probably coming up, so I thought I'd do a little bit of a layup there. Any other questions? Seeing none, thank you, Senator Williams. Any proponents?

MARK QUANDAHL: Vice Chair Lindstrom, members of the Banking, Commerce and Insurance Committee, my name is Mark Quandahl. It's Q-u-a-n-d-a-h-l. I'm director of the Nebraska Department of Banking and Finance, appearing here today, on behalf of the department, in support of LB908, which proposes to amend the Delayed Deposit Services Licensing Act. Just-- and I can get to your question right off the bat, too, if you don't mind me deviating from my-- from my testimony.

LINDSTROM: We do not.

MARK QUANDAHL: Short answer is yes. Is it-- is it-- since it's across, a kind of an entire-- an entire state platform and there are information-sharing agreements amongst the different state regulators and also federal regulators, too, there is a transparency that, that if there is a bad actor in one state or if the state takes action against it, we get instantaneous notice of that. And so it's a lot more efficient, kind of regulatory regime for the department and for

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other regulatory agencies, not only in Nebraska, but across the entire country, so.

LINDSTROM: Thank you for that, Director.

MARK QUANDAHL: Sure. The department has administered the DDS Act since it was first adopted in 1994. Today, there are 72 licenses operating from 109 offices in Nebraska. And so included with my written testimony, is a list of those licensees current as of January 21, 2020, and a copy of the annual report of the department submitted to the Clerk of the Legislature in June 2019, in accordance with provisions of Section 45-931 of the DDS Act. So LB908 proposes to update the licensing structure required under the DDS Act by transitioning the licensing and renewal process to NMLS. NMLS has been in existence since 2008. Nebraska was one of the first 7 states to participate in NMLS and, as Chairman Williams set forth, it was originally designed for the mortgage banking industry, but the NMLS now allows consumer finance entities to submit applications, renewals, and amendments to multiple state regulators through one online system. And the department does not pay any fees to utilize the NMLS system. And so currently, Nebraska law provides that licensees for mortgage bankers, mortgage loan originators, installment loan companies, installment sales companies, and money transmitters be processed through the NMLS. The DDS licensees that are out there right now are the last remaining sort of manually processed licenses in our consumer finance nondepository division. The system provides significant efficiencies for state agencies and these industries. The NMLS online licensing system reduces regulatory burden, is consumer friendly. It's efficient and effective. Senator Williams provided the department a draft of the bill prior to introduction. The department suggested an amendment to Section 45-915, which is included in Section 9 of LB908. This amendment proposes a structural change from a per-county license with branches, limited to its home county to one statewide licenses with branches throughout the state. As noted earlier, current law allows an entity to have multiple licenses in Nebraska. Therefore, the proposed structural change that would authorize one statewide licenses with branches throughout the state would not lessen the department's authority to regulate and examine these entities. In order to preserve all the protections for consumers contained in the DDS Act, the department also proposed that, concurrent with the inception of a statewide branch-- branching regime, a licensee should be required to post an additional \$50,000 surety bond for each branch office. This has been included in Section 4 of the bill. And so just-- just to sum

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it up, based on the department's experience with NMLS, it's our opinion that LB908 provides the tools for a more efficient systems of licensing renewal and filing for the DDS industry and, more importantly, to us for the department. And so we want to thank Senator Williams for including the department's proposed amendments into this bill and to thank the committee for the opportunity to present here today. And so I'd be happy to answer any questions that the committee would have.

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

MARK QUANDAHL: Yep, thank you.

LINDSTROM: Next proponent? Seeing none, we'll move to opponents. Seeing none, any neutral testimony? Also seeing none. Senator Williams waives closing and that'll end the hearing on LB908. We'll now move to LB939, introduced by Senator Williams.

WILLIAMS: Thank you again, Vice Chairman and members of the Banking, Commerce and Insurance Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I'm pleased to present LB939. Much of what you're going to hear here is very similar because this deals with the NMLS as it deals with the Collection Agency Licensing Board, which is the Secretary of State's Office rather than the Department of Banking. This bill comes from the Secretary of State and would modernize how the Collection Agency Licensing Board provides for issuance and renewal of collection agency licenses. The bill would provide that, effective October 1, 2020, the board may require licensees to be licensed and registered through the Nationwide Mortgage Licensing System and Registry, or the NMLS. The NMLS, as you know, is a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of state-chartered financial services, entities and industries. Under the bill, the board may contract with the NMLS to collect and maintain records and process fees related to licensees or other persons subject to the Collection Agency Act. The board may allow the NMLS to collect licensing fees on behalf of the board and may allow the NMLS to collect a processing fee for the services of the NMLS directly from each licensee or applicant for a license. The bill would make no changes to the underlying powers of, or restrictions on, collection agency licensees. What the bill really does is move collection agency licensing from a 20th to a 21st

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century process, and I would urge you to advance LB939. Thank you, Senator Lindstrom.

LINDSTROM: Thank you, Senator Williams. Any questions from the committee? Seeing none, thank you. We'll now move to proponents of LB939. Good afternoon.

COLLEEN BYELICK: Good afternoon. For the record, my name is Colleen Byelick; it's C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm the chief deputy and general counsel for the Secretary of State, here on behalf of Secretary of State Bob Evnen, in support of LB939. First, we'd like to thank Senator Williams and his staff for working with us on this bill and for introducing this legislation. As you know, the Secretary of State's Office licenses a variety of occupations, including collection agencies. Collection agencies that wish to do business in Nebraska file an application with the licensing board, which is administered by the Secretary of State's Office. The applications are reviewed by the licensing board and approved or denied by the board. The board is made up of three industry representatives, a representative of the public, and the Secretary of State as chair. LB939 allows the licensing board to use NMLS for licensing collection agencies. We've heard a lot about NMLS today, so I won't repeat that. After review by the licensing board, the board did determine that use of NMLS for collection agencies would improve the licensing process in Nebraska. Primary benefits include: the ability to apply online; to utilize a single application in multiple jurisdictions; and to utilize the public portal so that members of the public can look up licensee information. As the administrative office, we have faced several technology challenges related to collection agency licensing. These challenges are expensive, they're time consuming, and they're frustrating for our staff. Utilizing NMLS allows us to utilize a licensing system with a proven track record for multiple licensing areas and multiple jurisdictions. We're excited to make this transition to NMLS, and ask for your support for LB939. I also have with me today David Wilson, who's our licensing director and assistant general counsel, who can also answer any questions you may have about collection agency licensing or this transition. Thank you for your time today. I'm happy to try and answer questions you may have.

LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you. Next proponent? Good afternoon.

DAVID WILSON: Good afternoon, Vice Chairperson Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is David

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Wilson, D-a-v-i-d W-i-l-s-o-n. I am the licensing director and associate general counsel for the Secretary of State and the director of the Nebraska Collection Agency Licensing Board. I'm here on behalf of Secretary of State Bob Evnen, in support of LB939. You've already heard what NMLS is, so I won't go into any more detail unless you have further questions, but I will say that, since 2012, 10 other states have begun using NMLS for licensing their collection agencies in their state, in one capacity or another. So we would be the 11th if we were to adopt that. And-- and just to go more specifically into the benefits that our office will receive, currently a new application from our office is handled in the hybrid paper and electronic system. The applicant submits a paper application and the check to our office. The check is cashed. The application is scanned and stored into our electronic records management system that we currently have for all of our licensing records. So moving to an NMLS system would allow the applicant to apply online, pay online with a credit card or ACH, and for our office to receive it electronically, eliminating that paper stage, which would be helpful for them and nice for us. In addition to the new application, currently licensed collection agencies can also apply for and receive branch office license certificates for any other operations that they may have across the country that aren't their main office. And they have to license their solicitors or their collectors who may be operating in Nebraska or calling Nebraska consumers. Right now that is also a paper process that is ultimately scanned and put in our electronic content management system, and they have to write a check or pay by cash or money order. NMLS would allow them to do all of that electronically. And in addition to those major things that are nice, they would be able to update their record on their end if they have an address change or a contact person change, and that would be relayed to us rather than them having to contact us directly for that. And as more states adopt NMLS, they'll have to do that less and less because of one change will notify 10 states right now, 11 if we do move to this. In addition to any new applications, they would be able to do their renewals for their applications online on an annual basis. We currently do have an online portal for collection agency renewals that we had developed in 2017, but every year we've had issues with that portal and issues so severe that we've been forced to shut it down for periods of time during the renewal period, which is frustrating for our applicants and frustrating for our office because it takes away time from us processing those applications. If we move to the NMLS system, we would maintain the ability to have an online renewal system, but we would get rid of that struggle that we'd had every year, because NMLS is a functional and

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proven system. And just on the payment side of that, if we continue with our portal, we wouldn't be able to take payments online through our own portal just because the issue that we experienced every year dealt with the amount that applicants and renewals were charged on the portal. And we wouldn't want them to accidentally pay too much and us to have to refund them. So that's been an ongoing issue, and one of the reasons we are really looking forward to, moving forward, is, is using a proven system like this. And then lastly, the NMLS would just serve as sort of a central communication hub for licensee and regulator. We can send messages to them. They can send messages to us. We keep our internal notes on it. We can set timers for ourselves and for them for any required filings they may have throughout the year. We can draft and send invoices and have invoice tracking on it. So really, it would allow us to have a one-stop place for us to keep track of our collection agency licensees and for them to work with us on their side of it, as well. And as I mentioned, there are 10 other states that use it, and we believe that about 75 percent of our licensees in Nebraska are already on a NMLS for one reason or another, whether a collection agency or other services they provide. So the transition to NMLS for most of our agencies would be rather painless because they've already completed the main application. And lastly, just a benefit for the public in general, is the consumer access portal that allows consumers to see licensee information, what other states they might be licensed in, and just more information that is generally available right now. So for those reasons, we see this as a next step forward for our office and we really look forward to a more modern and efficient system and we ask you for your support. And thank you for your time.

LINDSTROM: All right. Thank you.

DAVID WILSON: I would take any questions you may have.

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

MARK QUANDAHL: Vice Chair Lindstrom, members of the Banking, Commerce and Insurance Committee, my name is Mark Quandahl, Q-u-a-n-d-a-h-l, and I'm director of the Nebraska Department of Banking and Finance. I'm appearing here today, on behalf of the department, in support of LB939, which proposes to amend the Collection Agency Act. And so it, it may be-- I guess, since the Department of Banking and Finance has quite a bit of experience with utilizing the NMLS system and we can attest to how efficient and how effective and how kind of customer

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friendly it is, not only for the industry, but also for the agencies of the regulatory bodies that utilize the same, that's in essence why I'm here and that's why I-- why the department is appearing in support of LB939. And so I'm not going to read my prepared testimony, but just to kind of give you an idea of the scale of NMLS and how it, it creates efficiencies for regulatory agencies, the department has just completed processing 4,228 year-end renewals for licensees that required mortgage bankers, mortgage loan originators, installment loan companies, installment sales companies, and money transmitters through NMLS. And that was at the end of last month. And so the efficiencies that allowed the department to actually process that many renewals through the system can also be experienced by the Secretary of State's Office. And so, based on that experience, it's our opinion that LB939 would provide tools for a more efficient system of licensing, renewal, and filing for collection agencies and for the Nebraska Secretary of State. And so I'd welcome any questions that you might have for me.

LINDSTROM: Thank you, Director. Any questions from the committee? Seeing none, thank you. Next proponent?

JULIA PLUCKER: Good afternoon. Julia Plucker, J-u-l-i-a P-l-u-c-k-e-r, here on behalf of the Nebraska Collectors Association. This is somewhat off-the-cuff testimony. We haven't had our bill reviewed to take an official position, but I've talked to the association and they are in support of this. We do, as-- as mentioned earlier, have some agencies that are licensed in other states on this system, some that will just appreciate the-- it being updated and being online. So just wanted to offer that we were in discussions about this and are supportive of this change. Any questions?

LINDSTROM: Good. Thank you. Any questions from the committee?

JULIA PLUCKER: Thank you.

LINDSTROM: Seeing none, thank you. Next proponent? Seeing none, we'll move to opponents. Seeing none, any neutral testifiers? Seeing none, Senator Williams.

WILLIAMS: If there are no questions--

LINDSTROM: Senator Williams waives closing. That will end the hearing on LB939.

WILLIAMS: And we will be going into Executive Session, so--

