

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Banking, Commerce and Insurance Committee January 28, 2020

**WILLIAMS:** And welcome to the Banking, Commerce and Insurance Committee hearing. My name is Matt Williams and I'm from Gothenburg, representing Legislative District 36 and I serve as Chair of the committee. The committee will take up the bills in the order posted. Our hearing today is your part of the public process. This is your opportunity to express your position on proposed legislation before us today. The committee members will come and go during the hearing. We have bills to introduce in other committees and sometimes are called away. It is not an indication that we are not interested in the bill being heard in the committee; it's 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. Move to the front row when you are ready to testify. The order of testimony on each bill will be the introducer first, followed by proponents, opponents, neutral testimony, and then a closing by the introducing senator. Testifiers, please sign in. Hand your pink sign-in sheet to the committee clerk when you come up to testify, and when you testify, if you would begin your testimony by pronouncing and spelling your name. Please be concise. Your testimony will be limited to five minutes. We do use clock-- excuse me, a light system. The green light will be on to start. You will have four minutes under the green light. It will switch to yellow when you have one minute left, and when the light turns red, we will please ask you to conclude your testimony. 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 where you may leave your name or 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 staff when you come up to testify. We do need ten copies. If you do not have ten copies, our page would be happy to make them for you. To my immediate right is committee counsel, Bill Marienau; to my far left on the end is committee clerk, Natalie Schunk. The committee members are with us today and I will ask them to do self-introductions, starting with Senator Gragert.

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

**HOWARD:** Senator Sara Howard. I represent District 9 in midtown Omaha.

**LINDSTROM:** Brett Lindstrom, District 18, northwest Omaha.

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

**KOLTERMAN:** Mark Kolterman, District 24, Seward, York, and Polk Counties.

**McCOLLISTER:** John McCollister, District 20, central Omaha.

**WILLIAMS:** And our page today is Lorenzo, who is a student at UNL. Welcome, Lorenzo. And we will begin our hearing process today with LB764, which will be presented by Senator Lindstrom, to change investment provisions for fiduciaries. Welcome, Vice Chairman Lindstrom.

**LINDSTROM:** Thank you, Chairman Williams and members of the committee. Today, I bring before you LB764-- start again-- Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18-- to change investment provisions for fiduciaries. LB764 amends Section 30-3205 to permit a Nebraska trust company, acting in its investment discretion as a trustee or agent, to invest fiduciary funds and private investment funds managed by an affiliate of the trust company, national banks, as well as state banks by virtue of Nebraska Statute 8-1,140, commonly known as the Nebraska "wild-card" statute, currently have the authority to do so, invest fiduciary funds, and sufficiently authorized under the trust document or agency agreement, which puts Nebraska chartered trust companies at a competitive disadvantage to state and national banks. In addition, a number of states, including South Dakota, have adopted statutes expressly permitting trust companies to invest in affiliated private funds, again putting Nebraska chartered trust companies at a competitive disadvantage. Thank you for your consideration and I'd be happy to answer any questions that you may have today. Thank you.

**WILLIAMS:** Questions for the Senator? Seeing none, thank you for your testimony.

**LINDSTROM:** Thank you.

**WILLIAMS:** Invite the first proponent. Welcome.

**MIKE APP:** Thank you. My name is Mike App, M-i-k-e, last name A-p-p. Thank you for that introduction, Senator Lindstrom, and we appreciate all the work that he and his staff has done to bring this bill forward. Chairman Williams, Senators, thank you for your time today. As I said, my name is Mike App. I'm with Bridges Trust, a Nebraska-domiciled trust company, and I'm here to present information in support of LB764. We have Nebraska-based clients that would like to

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invest their trust assets into affiliated private funds. We could make the funds through Bridges Trust in South Dakota. However, we and our clients would much prefer to keep the trusts, their investments, and the taxable income generated by those trusts here in Nebraska. Nebraska banks can make these investments; trust companies in other states can make these investments; however, Nebraska trust companies are not able to make investments into affiliated private equity funds. The Nebraska Department of Banking and Finance has weighed in on this proposed amendment and we've worked with them to narrow the scope to include affiliated private investments only. We'd like to thank Director Quandahl and his staff for working quickly towards an agreement, and I believe he's here to speak today about LB764. We'll provide this committee with that amended language this week. In conclusion, we'd ask that the committee advance LB764 to the Unicameral so that we can amend state statute, level the playing field, and allow Nebraska trust companies to make these kinds of investments for the benefits of their clients and the trust beneficiaries. Thank you, and I'll entertain any questions, please.

**WILLIAMS:** Questions for Mr. App? Seeing none, thank you for your testimony. Invite the next proponent. Welcome, Director Quandahl.

**MARK QUANDAHL:** Thank you. Chairman Williams, members of the Banking, Commerce and Insurance Committee, my name is Mark Quandahl. It's 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 conditional support of LB764, which proposes to amend statutes governing trust companies. The department administers the Nebraska Trust Company Act, which applies to four state-chartered trust companies and 30 banks which have been chartered to operate a trust company in a trust department of a bank. A list of those entities is included with my testimony. Bridges Trust Company brought the outlines of this proposal to the department in 2019, focusing on obtaining additional authority to invest client monies into private equity funds created by its affiliates. Current law dictates that a trust company may not invest the funds of trusts or estates that it manages in stock or securities of the trust company or its affiliates unless the stock or securities is received in kind from the grantor of the estate or trust and the terms of the governing document authorize the retention of the stock or securities. Section 30-3205 governs activities of fiduciaries, including banks and trust companies acting as fiduciaries. This statute authorizes fiduciaries to direct investment of funds held in a fiduciary capacity in the securities of an open-end or closed-end investment company registered pursuant to the Federal Investment Company Act of 1940, just so long as the

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portfolio of the investment company consists substantially of investments not prohibited by the governing document. Section 30-3205 also permits the bank, trust company, or affiliate to receive reasonable compensation for providing investment advisory or related services to the entity's trust account customers. LB764 seeks to amend Section 30-3205 to permit a trust company or bank to invest fiduciary funds in a wide range of private investment funds managed by an affiliate of the trust company, including open-end or closed-end investment companies, unregistered or exempt from registration under the Federal Investment Company Act of 1940. As introduced, the bill is overbroad and the expanded powers may conflict with the best interests of trust and the state beneficiaries. Bridges Trust Company has worked with the department to draft an amendment to address those issues. The department believes such amendments to LB764 will protect Nebraska citizens while allowing our chartered companies the ability to remain competitive in today's financial environment. With the adoption of the amendment, the department supports the bill. So I want to thank Senator Lindstrom for being receptive to the department's comments and proposals to amend this bill. So I'd be happy to answer any questions that you might have at this time.

**WILLIAMS:** Thank you, Director. Questions for the Director? Director, do you know potentially the timing of the amendment?

**MARK QUANDAHL:** I do not.

**WILLIAMS:** OK. But it's been--

**MARK QUANDAHL:** I-- I understand, yeah, it's been submitted and I expect it, hopefully, even later on this week.

**WILLIAMS:** OK, thank you. Any additional questions? Seeing none, thank you for your testimony.

**MARK QUANDAHL:** Thank you.

**WILLIAMS:** Invite the next proponent. Seeing no one, is there anyone here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Seeing none, Senator Lindstrom waives closing and that will close the hearing on LB764.

**LINDSTROM:** OK, we'll now move to open on LB852, introduced by Chairman Williams. Whenever you're ready, Chairman.

**WILLIAMS:** Good afternoon, and thank you, Vice Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is

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Matt Williams, M-a-t-t- W-i-l-l-i-a-m-s, and I'm here today to introduce LB852. This bill is introduced on behalf of the Secretary of State to amend two sections of statute with regard to security interest. Section 1 would amend Section 52-1308 of the central filing system statutes to expand the definition of farm products to include goats and hemp-- yes, you heard me, goats and hemp-- for the purposes of filing effective financing statements, or EFSs. Nebraska's central filing system was established in 1986 in response to the Federal Food Security Act of 1985. Under the central filing system, when farm product-- products are subjected to a security interest of a lender, a secured-- excuse me, a secured party may file an EFS with the Secretary of State. The EFS identifies the secured party, the debtor, and the farm product subject to the security interest. The Secretary of State compiles information off the EFS into a master list. Buyers of farm products register with the Secretary of State to receive or obtain the master list. A buyer, in the ordinary course of business of buying farm products are-- that are covered by the EFS, takes free of a security interest on such products if the buyer secures a waiver or release of the security interest specified in the EFS from the secured party. Typically if a buyer, in the ordinary course of business buying farm products covered by the central filing system, tenders to the seller the total purchase price by means of a check payable to such seller and the security-- secured interest holder of the seller, this takes care of releasing the lien and authorize-- authorizes the transaction. Adding goats and hemp to the definition of farm products provides specific assurance that these farm products are covered by the central filing system. And you notice, from the green copy of the bill, there's a long list of all the products that are listed there. They-- the buyer then knows that they are not going to have to pay twice, basically paying for the product and then paying the lender again. Section 2 would amend Section 9-513A of the Uniform Commercial Code. This section, enacted in 2013, sets-- sets out procedures by which victims of unauthorized financial statement filings can obtain relief. A person who is improperly identified as a debtor on a financing statement can file an affidavit with the filing office, usually the Secretary of State, seeking filing by the filing office of a termination statement with regard to the financing statement. If the filing office files a termination statement, it shall send to each secured party of record identified in the financing statement a notice advising the secured party of record that the termination statement has been filed. A secured party of record may bring an action within 20 business days against the person who filed the affidavit, seeking a determination as to whether the financing statement was filed by a person entitled to do so. The bill would provide that if a secured

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party of record timely files an action, the secured party of record shall send written notification to the Secretary of State of the filing of the action. If the secured party of record does not timely file an action, the Secretary of State may remove the filed financing statement from the searchable index. This is an update of the language. It helps all those that are in the financing system transact business in a normal and complementary way, and a representative of the Secretary of State will follow to answer your specific questions. I would ask that you advance LB852. Thank you, Mr. Vice Chairman.

**LINDSTROM:** Thanks you, Senator Williams. Any questions from the committee? Seeing none, thank you. We'll now have proponents. Hi.

**COLLEEN BYELICK:** This is Secretary of State week in this committee. For the record, my name is Colleen Byelick. I'm the general counsel and chief deputy-- it's C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm the general counsel and chief deputy for the Secretary of State's Office, here on behalf of Secretary of State Bob Evnen, testifying in support of LB852. Senator Williams did a great job of explaining the purposes of this bill. There's really two purposes. One is to add two farm products, hemp and goats, to the central filing system maintained by the Secretary of State. Nebraska is one of 19 states that has a central filing system for farm products, the system certified by the USDA. The Secretary of State is the system operator of the central filing system and in that capacity files effective financing statements and statutory agricultural liens. This information is then compiled into a master lien list and distributed to buyers of agricultural products. Both of these products have been requested by constituents that we add them to our list of farm products and add these products to the master lien list. The second purpose is really a concern regarding unauthorized financing statements that are filed with our office. These are financing statements that don't serve a legitimate business purpose. They're often filed against elected officials, judges, attorneys, law enforcement officers, state and local employees, and sometimes creditors. They're really done to harass these individuals or retaliate against these individuals for some perceived wrongdoing. The existing framework for dealing with this was adopted in 2013, and we're continuing to use that framework, but we're adding a subsequent mechanism to allow us in very limited circumstances to remove a filing from the record so that it doesn't continue to cause harm for these named individuals. We've had a couple situations with judges and attorneys where these filings, because every filing lives on a record for typically five years and then it falls into a lapsed status for a year or so, even though we've filed a termination on these filings, it's still searchable in our records for

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six years and that's causing subsequent harm to these individuals that are named in these financing statements. So we'd like a mechanism, when there's no legal challenges to these filings, there's no legitimate purpose to these filings, to be able to remove them from our record. We're going to continue to maintain the existing framework that's in 9-513A. We think that's working really well, but we just want to tweak it a little bit. So these two changes are really serving the purpose of maintaining these filing systems, providing clear and accurate records for those that need them for legitimate business and commercial purposes. Thank you for your time today.

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

**COLLEEN BYELICK:** Thank you.

**LINDSTROM:** Next proponent.

**RYAN McINTOSH:** Good afternoon, Mr. Vice Chairman, committee members. My name is Ryan McIntosh, R-y-a-n, McIntosh, M-c-I-n-t-o-s-h. I'm testifying here today as a registered lobbyist on behalf of the Nebraska Bankers Association. Nebraska Bankers Association supports LB852 in that it updates the firm product list for effective financing statements. This will ensure credit is available for these products. And with that, we would urge the committee support the bill. Thank you.

**LINDSTROM:** Great. Thank you. Any questions from the committee? Seeing none, thank you for your testimony. Next proponent. Any opponents? Any neutral testifiers? Senator Williams waives closing. That will end the hearing on LB852. We will now move to LB853, introduced by Senator Williams.

**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'm here today to introduce LB853. Over the years I've had numerous opportunities to witness sometimes successful and sometimes unsuccessful financial loss to vulnerable adults and senior citizens. This past summer we hosted LR141 roundtable, which focused on financial literacy and ways to intervene to protect senior citizens from attempted scams. Imagine yourself being a teller at a bank. A long-time customer that you know very well comes in to withdraw \$10,000 in cash, which is out of the normal mode of operation for this customer. The red flags go up and you may begin to ask a few questions. Through the questioning, you

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find out that your customer-- through your customer-- that they received a phone call informing them that they have won the Jamaican lottery. To claim their prize, they need to mail-- mail \$10,000 in cash to cover the necessary expenses. Your customer is convinced that they are the winner of the \$1 million prize, even though they've never been to Jamaica and even though they don't remember ever entering any type of a contest. A scam that started much like this example took place in my legislative district over the past year and, a result of that scam, over \$900,000 were lost by this elderly woman. And that loss could have largely been avoided had we had in effect the protections offered under LB853. LB853 provides legal protection for financial institutions so that they have the discretion to take action to assist in detecting and preventing financial exploitation. Financial institutions include trust companies, banks, savings banks, building and loan associations and credit unions, whether chartered by this state or in another state or by the United States government. Financial institutions have duties imposed by contract and duties imposed by both federal and state law to conduct transactions requested by their customers faithfully and timely in accordance with the customer's instructions. After all, it's the customer's money. Financial institutions also have a responsibility to protect the privacy of a customer's information. Banks par-- participate in specific training regarding elder abuse to help employees understand indicators of elder abuse, the products and services targeted, and what to look for during suspicious activity investigations. Banks are trained in currency transaction reports, suspicious activity reports, and other anti-money laundering activities. Under the provisions of LB853, if a financial institution reasonably believes that financial exploitation may have occurred or is being attempted, the financial institution may take certain actions. Those actions could include delaying or refusing a transaction, delaying or refusing to permit a withdrawal, preventing a change of ownership on an account, preventing a transfer of the funds. In addition, the financial institution may notify any third party reasonably associated with a vulnerable adult if the financial institution believes that the financial exploitation of a vulnerable adult is being attempted. You may hear concerns about creating an immunity for banks and bankers. I would remind everyone that public policy is all about weighing risk and often trading one set of circumstances over another for the greater good. I would argue that the financial protection of our seniors and vulnerable adults far outweigh any of the immunities created in LB853. Without these protections, financial institutions are put in an untenable situation. They recognize the scam. The red flags have gone up, but because of contract duties imposed by federal and state laws and privacy



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regulations, they are unable to protect their customer. Ten states have passed legislation similar to what we are considering today. They are Delaware, Kentucky, Louisiana, Montana, North Dakota, Oregon, Tennessee, Texas, Virginia, and Washington. In large part, LB853 allows the bank to simply call a time-out, time to step back and think about the transaction before someone sticks \$10,000 in the mail to a foreign country. The authority granted to call a time-out ends on the sooner of 30 business days or when the financial institution is satisfied that the transaction will not result in financial exploitation. I would like to thank the Nebraska Bankers Association, the Department of Banking, and the Attorney General's Office for their input and support for this important legislation. Today you will hear from several bankers who have experienced customers in these critical situations. You will hear firsthand about the seriousness of these situations, and with LB853, we can make a difference. You will also have the-- an amendment coming, AM2160, that cleans up some specific language that we found in the green copy of the bill, and we will also be presenting that later. Thank you, Mr. Vice Chairman.

**LINDSTROM:** Thanks, Senator Williams. Any questions from the committee?

**GRAGERT:** Senator Williams--

**LINDSTROM:** Senator Gragert.

**GRAGERT:** Thank you, Senator Lindstrom. Real quickly, I couldn't find it in here, but what-- what's the definition of a senior adult or a vulnerable adult?

**WILLIAMS:** There are definitions in statute that are covered by that, and I believe some of the testifiers will specifically address them.

**GRAGERT:** OK. OK.

**WILLIAMS:** Thank you, Senator Gragert.

**GRAGERT:** One-- one follow-up question: Would-- would the third party have to be listed with that individual?

**WILLIAMS:** It can be done in two ways. We have some customers that do actually list a third party. They tell us third party that they would like contacted if we have a situation like that. Oftentimes what happens in-- in these situations, there-- there are family members that the banker knows that they can reach out to, but right now they are-- those conversations are protected by privacy regulations. So

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you-- even though you know something's going on, the banker or the teller is unable to reach out to that son or daughter or spouse.

**GRAGERT:** OK. Thanks a lot.

**LINDSTROM:** Thank you. Any other questions? Seeing none, thank you, Senator Williams. First proponent.

**GEORGE HOWARD:** Vice Chairman, members of the Banking Committee, my name is George Howard, G-e-o-r-g-e H-o-w-a-r-d, and I'm Vice President of Five Points Bank of Hastings. I've been at my present position for 16 years and been in the banking industry for 48 years. The people who work in our industry want to help customers obtain their financial goals and protect their assets. The last thing bankers want to do is lose a customer, but it is awful for us when we see customers making poor decisions that cause them to lose money for fraudulent reasons to scammers, and unfortunately, in many cases, to family members who are the scammers. We try to discuss these bad transactions with our customers, but many times we are helpless and the transaction goes through due to the customer's demand. I've listed some examples here of what we've encountered recently, and this is in the last two years. I have eight examples. The main theme that runs through these examples is that a third party, be it a relative, a contact from a phone call, somebody that's contacted them online, has convinced our customer to part with their money in some manner due to some scheme, due to what they've said, due to what the email has said, and the-- our customer then follows through even though we've tried to tell them this isn't-- this is not a good check, this is not a good sale, they really don't want to buy your-- your item on Craigslist, or something of that nature. And the people, unfortunately, believe it and send the money out, whether it's cash, cashier's check, wire, and they are parted from their money. Other than trying to persuade customers not to do a transaction, our bank has been helpless to help our customers, mainly due to restrictions on sharing confidential information with family members or third parties who could help the situation. In every one of these cases, we believe there would have been a positive impact to the situation if we would have been able to stop the transaction, contact a related party, or give courts the time to mandate a solution. The only mechanism in place at this time is for our bank to contact the Nebraska Department of Health and Human Services. We are able to disclose confidential information related to elderly abuse; however, their only procedure is to contact the victim, and if HHS believes the victim was competent in discussing the situation, nothing is done and fraudulent or abusive transactions continue. LB853 is a way to enable Nebraska bankers to help fight these fraudulent situations by giving

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financial institutions the ability to put a temporary stop to what is believed to be a fraudulent transaction. Stopping a transaction will allow time for the courts to decide if a guardian, personal representative, power of attorney, or some other mechanism is needed to help with a customer's financial transactions because they're vulnerable. The banking industry is asking for the ability to place a hold on a transaction and receive protection from damages for its decision. This bill would really help the finances of senior or-- and vulnerable adults, as I've seen so many cases where people have lost some or almost all of their assets due to fraudulent transactions. And I think there is a financial incentive for the state of Nebraska. People lose their money, they're scammed out of their money, and then what happens when they're elderly? They go into long-term care and they're on Medicaid. And if they hadn't been scammed out of so much of their money, maybe the state of Nebraska wouldn't have to support the Medicaid that helps them with long-term care. So there is an incentive. I would encourage the committee to advance LB853 for further consideration by the full Legislature. Thank you.

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

**KENT FRANZEN:** Acting Chairman, members of the committee, my name is Kent Franzen, K-e-n-t F-r-a-n-z-e-n, and I serve as Vice President of compliance at the Henderson State Bank in Henderson, Nebraska. I've been employed in the banking industry since 1985 and during that time, I've observed or suspected many different types of elder financial exploitation, which LB853 would help mitigate. Some of the financial abuse I have observed coincides with check forgery to a large degree. In fact, forgery is often used to commit financial abuse of vulnerable persons in my experience. This exploitation is most often conducted by persons with close contact to the victim, including, but not limited to, family members, oftentimes involving grandchildren. Another common scenario involves non-family members that have physical access to the victim and/or the victim's residence. Customers' signatures on checks, especially those customers that are elderly or otherwise infirm, can have significant variations from check to check, making forgery difficult to detect without the customer's alertness watching their statement. Should that statement be withheld from the victim somehow, an unscrupulous individual can gain additional time to fleece the victim. Other methods of financial abuse employed can be bold strokes, such as using the power of attorney to convert funds from the victim to the POA's personal use. Use of the vulnerable individual's account by the agent for the purchase of goods and services that benefit the agent are commonplace in this type of financial elder-- elder abuse.

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This type of exploitation is generally more difficult to detect initially, but you will typically observe, particularly in a small-town setting, the agent purchasing a new vehicle or making significant-- significant improvements to their home or business, which can lead to the conclusion that the funds of the vulnerable adult have been misappropriated. On the smaller transaction side, one of our bank's most recent experiences, when the-- was in the form of a friend and a vulnerable adult senior in the drive-up lane, getting \$400 to \$500 cash from the victim's account at the rate of two or three times per week. The individuals rarely, if ever, came into the lobby of the bank where an extended conversation could be possible. The victim had no history of such a withdrawal pattern in our recent records, and the financial reputation of the friend was below average. In this case, we were able to alert the victim's son, who was a co-owner on the account, and the withdrawal activity was halted soon thereafter. Had the son not been a co-owner of the account, existing law would have prevented the bank from notifying the son without violating provisions of state law prohibiting the disclosure of customers' confidential financial information. In this particular instance, the son was most grateful and the subsequent termination of the withdrawal activity supported our concerns over these transactions. In many instances like this, banks are placed in the unenviable position of choosing between taking action that would help alleviate the problem by notifying a family member or other trusted individual, or remaining silent due to the restrictions on disclosing confidential customer information. LB853 would alleviate those concerns. The situations I've described come from examples encountered in my experience in four different Nebraska community banks over my career. These situations have been encountered upon multiple occasions each year. I anticipate that my experience is no different than those of nearly 175 state and nationally chartered banks doing business in Nebraska. I have also encountered the typical "your grandchild needs bail money quietly and now," as well as different types of telephone scams that this bill would help us deal with. Provisions of LB853 allowing the bank to notify an authorized contact provided by the vulnerable adult or senior to the financial institution or another third party reasonably associated with a vulnerable adult or senior adult, as described under the bill, would help immensely in curbing instances of elder financial abuse. Coupled with the authorization to place a hold on specific transactions for which elder financial abuse is suspected will give the bank sufficient time to investigate the circumstances and employ the assistance of the third party to stop the attempted transaction and hopefully deter future transactions of this nature. In closing, I wish to thank Senator Williams for introducing

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LB853 and the members of the committee for their consideration of LB853 and the tools it would provide Nebraska financial institutions to help minimize financial abuse in our state. While the legislation will not stop all victimization, it will make it much more difficult for those that seek to take what is not theirs from vulnerable adults. I am confident that Nebraska banks will use this tool with discretion and a caring attitude and encourage you to adopt LB853. Thank you for your time and attention to my testimony.

**LINDSTROM:** Thank you. Any questions from the committee? Senator McCollister.

**McCOLLISTER:** Yeah. Thank you, Vice Chair Lindstrom. Thank you for being here today. In the example you used of the family member being in the car with another person, you knew where to go because it was a co-owner of the account, correct?

**KENT FRANZEN:** Correct.

**McCOLLISTER:** Well, you said documented persons, it would give the bank some pathway to-- can you explain how that would work if you don't have a co-owner? What do you mean by documented?

**KENT FRANZEN:** The possibilities could be a power of attorney. A lot of our seniors have somebody listed as power of attorney for the account that they've given us a copy of. The other possibilities, in some cases, they have what are sometimes called agents or authorized signers on the account. Even though those people are not owners, they're still involved in activating the account and using it. They have access to the financial transactions in the account. And the last, but not least, would be a beneficiary. While not directly tied to the account, there's a reason why that senior or that adult listed that person as a beneficiary. In other words, they wished them to have the funds in the account upon their death. So you would think that that person would have a stake and a relationship to protect with the vulnerable adult.

**McCOLLISTER:** But the beneficiary is noted when you open the account?

**KENT FRANZEN:** Usually. They can be added at any time.

**McCOLLISTER:** OK. What happens when you don't have any of those connections?

**KENT FRANZEN:** Then it gets really difficult.

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**McCOLLISTER:** But what do you do?

**KENT FRANZEN:** Then you're left to try to decide for yourself. And I've been in that position twice, and I really don't enjoy that one at all--

**McCOLLISTER:** Well--

**KENT FRANZEN:** --because trying to figure out who to go to and who to talk to is very, very difficult.

**McCOLLISTER:** What's the legal status of that account in your-- in that instance?

**KENT FRANZEN:** If there is no other person on the account besides the senior that's being victimized, our ability to do anything beyond watch is very, very limited.

**McCOLLISTER:** OK. Thank you.

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

**MARK COLLINS:** Good afternoon. Vice Chairman Lindstrom, members of the committee, my name is Mark Collins, M-a-r-k C-o-l-l-i-n-s. I am Assistant Attorney General and director of the Medicaid Fraud and Patient Abuse Unit at the Nebraska Attorney General's Office. One of the responsibilities that the unit that I supervise has is to investigate and prosecute cases where residents of Medicaid facilities, such as nursing homes and group homes, are abused, neglected or exploited, including financial exploitation. And I'm here on behalf of Attorney General Doug Peterson to lend our support to LB853 and the amendments that Senator Williams has mentioned. LB853 provides a mechanism where a banking transaction can be delayed if a financial institution believes in good faith that their customer, if a vulnerable or a senior adult, has been or is about to be financially exploited. The delay allows time for the financial institution to notify a third party or law enforcement of a proposed transaction and determine whether it's intended to financially exploit-- exploit their customer. As you may recall, the Adult Protective Services Act was strengthened several years ago when Senator Coash brought a bill for Attorney General Peterson whereby senior adults over the age of 65 were included in the protection of the APS Act and LB853 likewise strengthens those protections to be afforded to vulnerable and older Nebraska. And we recommend that you advance this bill, including the amendments that Senator Williams has mentioned. With that, I thank you

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for your time and consideration and I'm available to answer any questions that you might have.

**LINDSTROM:** Thank you, Mr. Collins. Any questions from the committee? Seeing--

**MARK COLLINS:** One thing, if I may, Senator Gragert, you had asked earlier about--

**GRAGERT:** I see that on your--

**MARK COLLINS:** --yep, senior adults and vulnerable adults. In the bill, it makes reference to a section of the-- of the Nebraska Statutes where those are defined. That's in the Adult Protective Services Act. A senior adult is a person over the age of 65, and a vulnerable adult is a person 18 years of age or older who has a substantial mental or functional impairment or for whom a guardian or conservator has been appointed under the Nebraska probate code. That's found at 28-371. The senior adult definition is found at 28-366.01. And all of this is in the Adult Protective Services Act, which starts at 28-348.

**GRAGERT:** Thank you.

**MARK COLLINS:** You're welcome.

**GRAGERT:** Unfortunately, I'm pushing that. [LAUGHTER]

**LINDSTROM:** Thank you. Any other questions from the committee? Seeing none, thank you for coming.

**MARK COLLINS:** Thank you.

**LINDSTROM:** Next proponent.

**THERESA HEYE:** Good afternoon, members of the Banking, Commerce and Insurance Committee. My name is Theresa Heye, T-h-e-r-e-s-a H-e-y-e. I'm the Vice President and IT manager of Tri Valley Bank in Talmage, Nebraska. I'm testifying today in support of Senator Williams' LB853 on behalf of Nebraska Independent Community Bankers Association. Our association strongly supports this bill as a tool that we can use as we work with customers at our banks. I'm speaking from experience today. Unfortunately, as you have already heard this afternoon, this is not a hypothetical situation. And unfortunately, this is not a situation that is only affecting one or two of Nebraska's citizens. And in my case, which I have nothing new to present that you have not already heard, but I want to say that this has been a reoccurring

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problem for us with particularly one customer over a six-year period. In our effort to protect the customer and prevent this, we've learned that there are services to protect and support physical well-being of the elderly, but none of these services cover financial aspects of elder abuse. So this legislative tool would have allowed us one more protection for a customer we knew was being taken advantage of. Unfortunately, at the time, there was no such tool available. Thank you for working on behalf of Nebraska and for your consideration of this bill. I'm happy to answer any questions you may have.

**LINDSTROM:** Thank you, Ms. Heye. Any questions from the committee? Seeing none, thank you very much for coming.

**THERESA HEYE:** Thank you.

**LINDSTROM:** Next proponent. Good afternoon.

**ELIZABETH SIMPSON:** Good afternoon. Committee members, thank you. Thank you for the opportunity to test-- testify today in support of LB853. I'm Elizabeth Simpson, E-l-i-z-a-b-e-t-h S-i-m-p-s-o-n. I'm regulatory counsel for Home Instead, Inc., based in Omaha, Nebraska. Home Instead, Inc., is a franchisor of a network of independently owned and operated Home Instead Senior Care businesses that provide personalized in-home senior care services across Nebraska, the United States, and in 12 countries. At Home Instead, our mission is to enhance the lives of aging adults and their families. In the 2019 calendar year, Home Instead Senior Care provided approximately 677-- 685,000 hours of care to about 1,486 seniors in the state of Nebraska. There are nine Home Instead Senior Care franchise locations in Nebraska, and these franchises employed around 1,599 employees in 2019. As an organization focused on supporting seniors, we appreciate the Legislature's recognition of an important issue of financial exploitation of seniors and support efforts to prevent such exploitation. Studies also support such efforts. Seniors are the fastest-growing segment of the population. In 2010, there were just over 40 million seniors in the U.S. The number of seniors will at least double to over 80 million in the next 20 years. By 2060, it is estimated that nearly one in four Americans will be 65 years and older. The Securities and Exchange Commission has published a white paper stating that there is quantitative evidence that elder financial abuse is growing as the population ages. In 2019, the Consumer Financial Protection Bureau issued a report finding that while financial institution reports of financial exploitation of seniors quadrupled between 2013 and 2017, these likely represent a tiny fraction of actual incidents of elder financial exploitation. In reports involving loss by an older adult,



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the average amount of loss was \$34,200; in 7 percent of these reports the loss exceeded \$100,000. One study found that a mere 5 percent of victims partially or completely recovered the items or funds taken from them, but the impacts are not merely financial. Financial exploitation is recognized as a form of elder abuse and it's been shown that elder abuse increases the likelihood of early mortality, and neglect and financial exploitation have the highest mortality risk. These studies tell us a compelling story. At Home Instead, we understand the importance of caring for seniors and preventing fraud. We created Protect Seniors Online, available at [www.protectseniorsonline.com](http://www.protectseniorsonline.com), as a free resource to educate older adults about cybersecurity to prevent financial exploitation. At Protect Seniors Online, seniors can test their cybersecurity skills with "Can you spot an online scam?" quiz, and learn steps to protect themselves online. Home Instead also provides resources for family members and other caregivers at [caregiverstress.com](http://caregiverstress.com). This website provides resources that include how to prevent fraud and the warning signs of fraud against seniors. While educational resources are helpful, we recognize the importance of diverse interventions, including the involvement of policymakers. We support the prevention of financial exploitation and appreciate Senator Williams' efforts to enhance senior protections in Nebraska. With that, I'm happy to answer any questions.

**LINDSTROM:** Thank you. Any questions from the committee? Seeing none, thank you very much.

**ELIZABETH SIMPSON:** Thank you.

**LINDSTROM:** Next proponent.

**BRANDON LUETKENHAUS:** Vice Chairman Lindstrom, members of the Banking, Commerce and Insurance Committee, my name is Brandon, B-r-a-n-d-o-n, Luetkenhaus, L-u-e-t-k-e-n-h-a-u-s. I'm here on behalf of the Nebraska Credit Union League. Our association represents Nebraska's 60 credit unions and their member credit-- or credit union members. Credit unions are not for profit, member owned, democratic-- democratically controlled financial institutions. Their board of directors are elected. They are members of the credit union elected by the members of the credit union. And so they-- these directors have a-- very much a priority to oversee and manage the credit union and make sure that the members are protected. Credit unions strongly support efforts to protect some of our most vulnerable citizens in the state, senior citizens. We want to thank Senator-- or Chairman Williams for introducing HR853 [SIC]. We strongly support it. We take very

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seriously our role in protecting their member owners from financial exploitation and fraud, which we believe LB853 is a tool that will help in that. And financial institutions, much like credit unions, are really the first line of defense for these senior members that they have when they're being exploited by either family or others. So with that, I'd be happy to answer any questions. I do have information. One-- one credit union in particular I talked to said in 2019 alone, they had 14 members that they suspected, or at least that they looked at, that were likely financial elder abuse, which resulted in \$314,000 in loss for those members, so.

**LINDSTROM:** Thank you very much for your testimony. Any questions from the committee? Seeing none, thank you. Next proponent.

**JINA RAGLAND:** Vice Chair Lindstrom and members of the Banking, Commerce and Insurance Committee, my name is Jina Ragland; that's J-i-n-a R-a-g-l-a-n-d, here today testifying in support of LB853 on behalf of AARP Nebraska. AARP is a nonprofit, nonpartisan organization that works across Nebraska to strengthen communities and advocates for the issues that matter most to families and those 50-plus. AARP has a long history of fighting for protections against financial exploitation of seniors, specifically through our Fraud Watch Network. Elder abuse is an often hidden phenomenon that affects hundreds of thousands of older Americans and is a relevant issue in Nebraska. In 2017, Nebraska's Adult Protective Services investigated 2,650 allegations of abuse, neglect, and exploitation of vulnerable adults. More than 230 of those total were age 60 or older. Elder financial exploitation touches all of us. We may have aging parents or other relatives who could become victims. We also have relatives, colleagues, customers, friends, or neighbors who show signs of diminished capacity or of financial exploitation, and all of us could become at risk as we grow older. Elder financial exploitation is a significant problem now and is expected to become worse with the aging of our population. As you heard before, dramatic increases in the population spark steep rises in the potential for exploitation. According to the June 2011 MetLife Study of Elder Financial Abuse, the annual financial loss by victims of elder financial abuse is estimated to be \$2.9 billion nationwide, up 12 percent from the 2008 figure. Elder financial abuse is by far the greatest crime committed against those age 65 and older. This figure is likely to be grossly underestimated or understated because financial loss is significantly underreported. Moreover, older Americans are disproportionately affected by this crime. Although older people make up just 12 percent of the population, they constitute a full 30 percent of the victims of consumer fraud and crime. Women, in particular, who make up an

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increasingly large percentage of the older population by virtue of a longer life expectancy, are also the majority of the victims. So why are seniors more susceptible to financial exploitation? Many forms of vulnerability make elders more susceptible to the abuse. Some vulnerabilities are consistent and explicit. Older adults may have poor physical or emotional health, impaired-- impaired mobility, or both, and some may not have the full capacity to make financial decisions as they once did due to the progression of cognitive impairment due to dementia or Alzheimer's disease. Low social support and exposure to previous traumatic events, risk for clinical depression, as well as social vulnerability can also be factored in, and some vulnerability is situational. As many of the situations you heard behind, the wealth or assets that many seniors have accumulated over a lifetime can make them a victim or a target. Elders who are alone or isolated may be more likely to be victims of financial abuse. The goal of financial exploitation are often achieved through deceit, threats, and emotional manipulation. Elder financial abuse wipes out incomes, both great and small; it engenders healthcare inequities; it fractures families; and it reduces available healthcare options and also increases the rates of depression. Elder financial abuse is an intolerable crime resulting in losses of human dignity and rights. This bill is a good first step in the necessary work to be done to combat elder financial abuse in our state. Is our hope that discussions continue and we can work across all branches of government in various professions to identify additional policy solutions and other safeguards. Consumer education, professional training, and general public outreach and awareness are critical next steps to combating this phenomenon. We thank Senator Williams and Senator Kolterman for cosigning the bill and for the opportunity to comment. I would be happy to answer any questions.

**LINDSTROM:** Thank you for your testimony. Any questions from the committee? Seeing none, thank you. Next proponent.

**MARK QUANDAHL:** Vice Chair Williams, members of the Banking, Commerce and Insurance Committee, Mark Quandahl, Q-u-a-n-d-a-h-l, director of the Nebraska Department of Banking and Finance. My testimony that's going around, I'm just going to paraphrase it, but-- because I really can't add to the impetus of many of the testifiers prior to me. But suffice it to say that protection of consumers and prevention of elder financial abuse has been and remains to be a key priority for the department. And the department has been in receipt of numerous reports of-- from financial professionals and institutions about customers and clients that have been the victim of fraud and financial exploitation. We have investigators that have worked with those customers to limit

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the harm that's being done and to make referrals to appropriate agencies to investigate this suspected exploitation. In addition to that, the department does conduct public outreach on financial abuse of vulnerable adults. We train industry professionals to recognize and report suspected financial abuse and provide senior consumer outreach on fraud and scams and participate in national committees dedicated to researching senior issues, which includes financial exploitation. So the department shares the concerns about financial exploitation that LB853 seeks to address. And so LB853 is a great first start in protecting our vulnerable adults and seniors. LB853 is written-- it should be said it pertains only to transactions involving financial institutions in the state of Nebraska, and so this delay provision does not extend to securities transactions. And so just so you know, to give you a kind of a precursor of things to come, the North American Securities Administrators Association, in consultation with securities industries, state and federal regulators, gerontologists, and consumer advocates, they have proposed a model law involving securities transactions. And that law, that model law has been adopted in substantial form in 26 different states. So the department is committed to providing appropriate tools to our financial and securities industry professionals to combat exploitation. We support Chairman Williams and this committee, industry representatives, other government agencies, and senior advocates in furthering the protection of seniors and vulnerable adults from financial exploitation. And with that, I would welcome, or I'd try to address, any questions that the committee might have.

**LINDSTROM:** Thank you, Director. Any questions from the committee? I will say, in the securities industry, we do a lot of testing on "know your customer," and I think that the-- that introducing that in the securities indus-- industry would be a good next step, so, for what it's worth.

**MARK QUANDAHL:** May be by to see you next year, so.

**LINDSTROM:** Maybe. Any other questions? Seeing none, thank you. Any other proponents?

**ROBERT HALLSTROM:** Vice Chairman Lindstrom, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association to testify in support of LB853. I'm also circulating some amendments which I'll explain and describe in just a few minutes. I'm going to bypass most of my written testimony. I certainly would encourage you to-- to read through that. But I-- I've gone through the training and

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the reporting requirements in great detail that financial institutions and their employees undertake to ensure that they are able to identify and notice the red flags that are associated with elder financial exploitation and abuse. I have some statistics in there. The bankers under the Bank Secrecy Act are required to file suspicious activities reports. FinCEN, one of the federal regulatory agencies, indicated total suspicious activity reported amounts from July to August of 2018, three-quarters of a year, at \$5.1 billion nationwide. That underscores what all of the other witnesses today have told you, that this is a burgeoning and growing problem that is worthy of being addressed in the fashion promoted under LB853. What I would like to tell you, a couple things, first one is the amendments. With regard to the amendments, I've addressed the background on pages 7-8 of my written testimony. We worked with the Attorney General's Office with regard to some issues that were identified and are addressed in AM2160, which has been circulated to the committee. The first question or issue that the Attorney General raised was to make sure that the bill does not prohibit financial institutions from notifying law enforcement agencies. Actually, that is-- excuse me, that's item number two, so we have an amendment that makes it clear that there's nothing that prohibits a financial institution from notifying law enforcement agency. Second issue is there's a provision in the bill that says there is no obligation to notify a third party. And in that instance, the Attorney General asked that we clarify that there would not be a notification of a third party if the financial institution was notified by law enforcement that there's an ongoing investigation and that any notification might otherwise interfere with that ongoing investigation. And the third issue was to clarify that the good-faith standard that applies in Section 3(6) of the bill, which is the standard for protections from liability under the bill for delaying or refusing a transaction or not delaying or refusing a transaction applied to all of those potential actions or nonactions by a financial institution, so that is what the amendment essentially does. Last couple of items I touch on, we have been jousting with the trial lawyers over the standard for protections from liability, over whether the good-faith language in the bill or reasonable belief should apply. I think we both had an epiphany as we were sitting here listening to Senator Williams' testimony that the triggering mechanism throughout the bill is that there must be a reasonable belief that financial exploitation has occurred, is occurring, has been attempted, etcetera. And so I believe and I'm hopeful that we will be able to work out and-- and not have to joust any longer on that particular issue. The last thing I close with, Senator McCollister, is to address your question of Mr. Franzen. The issue currently, because of the

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confidentiality of-- of customer information under Nebraska law, is that in the absence of a co-owner, we're not going to be able under law to make that notification to provide some assistance from an immediate family member that might be able to help us stop what we believe is a exploitation or abusive situation. What the bill does, we focus on the fact that the bill is described as elder abuse transaction hold, and that's an important aspect. But it goes hand in glove with the ability under the bill with the customer either identifying somebody specifically that we can notify under these circumstances, or the bill defines a closely associated third party with the customer. So it designates in statute other individuals, an attorney that may have prepared legal documents and so forth, and that I think is an important element of being able to have that third party who is closely related and trusted by the individual who may be subject to exploitation to have them assist the bank in-- in trying to deter not only the-- the transaction at hand but the reoccurrence of transactions, which unfortunately so many times happens that it becomes a pattern of abuse in-- in multiple types of transactions that-- that are damaging to the individual. So I think those two elements of the bill are both vitally important to the banks being able to assist these vulnerable adults in their-- in their financial transactions. Be happy to address any questions.

**LINDSTROM:** Thank you, Mr. Hallstrom. Any questions? Senator McCollister.

**McCOLLISTER:** Yeah, thank you, Mr. Hallstrom. This bill, LB853, is it based on model legislation?

**ROBERT HALLSTROM:** It's not model legislation, Senator, but there are at least ten states that have adopted legislation, and they are not all cookie cutter, but they are very similar in nature in terms of setting up the ability to place holds on the account, the ability to notify a third party that's either designated by the account holder or in statute, and the immunity or liability protections that accompany giving us the right to refuse a transaction or delay a transaction or not to do so.

**McCOLLISTER:** The three amendments that you suggest, are-- are those part of the usual cookie-cutter model legislation?

**ROBERT HALLSTROM:** There's probably bits and pieces of them. I certainly respect the Attorney General for raising those issues. I think they are all worthy of consideration and we have indicated that we are supportive of those amendments, certainly clarifying that-- I

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think the issue, Senator, on clarifying that nothing in the bill prohibits us from voluntarily notifying law enforcement arises out of the fact that we're saying in the statute, here's the people that you can notify if you choose to, and law enforcement wasn't within them. So it's just a clarifying amendment to say, by identifying those closely associated folks, law enforcement wouldn't be closely associated with most individuals, but nothing in that limited category as defined under the bill prohibits our ability to voluntarily notify law enforcement. Secondly, they raised the issue of if law enforcement comes to the bank and says we'd prefer that you not notify certain third parties because we've got an ongoing investigation, that certainly is not objectionable to us. And then the standard for the liability protection, whether it's good faith or whether it ties in because of the triggering mechanism of reasonable belief that's scattered throughout the bill, I think, will-- will resolve that issue. We've resolved it to the satisfaction of the Attorney General and hopefully we'll have that for the trial lawyers group as well.

**McCOLLISTER:** I know you don't practice criminal law, but what kind of violation would that be?

**ROBERT HALLSTROM:** In terms of the disclosure?

**McCOLLISTER:** Not disclosure, but if somebody were to attempt to take money from somebody's account, what--

**ROBERT HALLSTROM:** Well, most-- Senator, I apologize, I didn't look that issue up in advance. I assume there are criminal penalties in the adult-- the general adult exploitation statute that the Attorney General representative referred to. Be happy to look those up and-- and clue you in on it.

**McCOLLISTER:** I'm of that age.

**ROBERT HALLSTROM:** I'm getting close, too, as Senator Gragert said.

**LINDSTROM:** Any other questions from the committee? Senator Howard.

**HOWARD:** Thank you, Senator Lindstrom. Thank you for visiting with us today. Can you help me understand what a reasonable belief is?

**ROBERT HALLSTROM:** A reasonable belief would be based on the circumstances that-- that are at hand that the-- the financial institution employee has reasonably concluded that financial exploitation in some form or fashion is occurring.

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**HOWARD:** Is that defined anywhere in statute?

**ROBERT HALLSTROM:** I don't know whether there's other places where reasonable belief is specifically defined in statute. I think that's something that's probably been ferreted out in the court decisions. And I would assume that that's something that the trial lawyers could also speak in terms of what a reasonable belief has been under court decisions.

**HOWARD:** And then when we're thinking about sharing this information with a third party reasonably associated with the individual, are there any privacy concerns to be considered? So I come from a medical area where we wouldn't be allowed to go talk to somebody; else even if something bad was happening, you'd have to go to law enforcement or somebody else who was also HIPAA protected. Are there any banking privacy concerns where you could call somebody and say, hey, I think they're being mistreated? If it was an attorney that had previously represented them or-- or an associate, how do we--

**ROBERT HALLSTROM:** Yeah, I think, Senator, that's why we have the specific authorization in the statute, because we have a general-- a general starting proposition that customer information that's otherwise considered to be confidential is not to be disclosed to third parties. But when we look at the policy question of the benefits to be garnered from being able to have both the ability to put a hold on the transaction and the ability to obtain some level of assistance from a trusted individual that's either been designated by the account holder themselves or somebody that's recognized in the statute as being closely associated to that party, to me, the policy would be that under those circumstances and in those situations, the-- the sharing of information as to what's occurring and the concerted effort to work together to try and stop it from-- from either occurring or continuing to occur, is something that-- that weighs in favor of-- of allowing that type of-- of information to be shared.

**HOWARD:** And then when we think about the reasonable belief, is it just for one member of the organization, so like a teller reasonably believes that there's an issue, or-- or does that reasonable belief extend to the entire organization?

**ROBERT HALLSTROM:** Well, what-- what you're going to have-- it's going to be facts and circumstances as to whom is-- is directly related with that particular individual or that transaction. In most cases, you may have at the inception a single individual who has worked with the customer. The red flag has gone up that's identified that there is a



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suspicious transaction about to occur or that has been occurring, and it would be at that point that individual's belief to take action under the statute, to refuse to accept the transaction, or to put a delay or a hold on the transaction.

**HOWARD:** Since the definition-- and I apologize. I keep asking questions. Is that okay?

**LINDSTROM:** No, go ahead.

**HOWARD:** So since the definition of a senior adult is quite broad, so 65-plus, and we know plenty of people who are 66 years old and still quite cognizant, when we think about how we decide if somebody is vulnerable or whether or not the statute would apply, I appreciate the reasonable belief, but I think I'm trying to sort of figure out how you-- how you weigh sort of the protection from harm versus a 65-year-old who is perfectly capable of taking care of themselves and is having a bad day or something like that.

**ROBERT HALLSTROM:** Yeah. And-- and certainly, Senator, there-- there's a full recognition that there are plenty of senior adults that are competent and capable of handling their transactions. But this bill is simply-- and one of the issues that we look at, if somebody has got a better idea on how to classify the individuals that need protection, either on that bad day that they're having or as a practical continuing matter because they are afflicted with dementia or some other inhibiting disease or medical condition, that you look at-- you know, we've-- we've borrowed, as have other states, from the general adult exploitation, which, fortunately or unfortunately, uses those same definitional terms. And I think that's probably what the states have decided is the best course of action to follow. It certainly doesn't suggest that certain individuals aren't fully capable of handling those transactions. And in those cases, these types of situations are not very likely to occur, but if they do occur and they fit the mold and they raise the red flags that there's a reasonable belief that exploitation is occurring, then those transactions deserve these protections just as much as someone that-- that you might think would-- would have considerable concerns and issues on a regular, ongoing basis.

**HOWARD:** And then for my last question, I promise, why not have a requirement that they contact Adult Protective Services if they believe genuinely that there's a harm to a vulnerable adult or a senior adult?

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**ROBERT HALLSTROM:** I think, Senator, we-- we have voluntary reporting requirements from-- from checking with Adult Protective Services through some of our banks that have done some research and worked with the Adult Protective Services. There are a significant number of reports that are done on a voluntary basis. We would prefer not to have mandated reporting. I think as a more practical matter, when you look at this issue, there are probably, because of resource issues, a number of cases right now that get reported that do not get the level of investigation and follow-through that they should. And if we were to require mandated reporting as part of this bill, we would probably, number one, inundate Adult Protective Services to some extent. And number two, more practically, we would probably see a fiscal note on this bill that none of us would like to see in terms of the benefits that we think will be derived from getting this bill adopted in Nebraska.

**HOWARD:** Thank you, Mr. Hallstrom.

**ROBERT HALLSTROM:** Thank you.

**LINDSTROM:** Thank you. Just to piggyback on Senator Howard's question with reasonable belief, we had an individual, Ms. Simpson, testify from Home Instead. So hypothetical, you have an in-home nurse or somebody that's with an elderly customer-client, observes a family member that comes over, maybe takes advantage of that person, and does that in-home nurse or somebody taking care of the elderly person, would they be able to contact the bank, say there was a statement or something sitting on the kitchen table, and let them know I observed this situation? Would the bank then be able to note that particular incident and put a red flag on the account to say, if I--

**ROBERT HALLSTROM:** They-- they may, Senator. I-- I don't know that that's probably going to happen very frequently.

**LINDSTROM:** OK.

**ROBERT HALLSTROM:** I suppose the bank could take that into consideration in the-- in the full circumstances that they had this additional information. But traditionally, it's going to be the-- the direct observation--

**LINDSTROM:** OK.

**ROBERT HALLSTROM:** --the review of the transactions. There are banks that have software tracking systems that-- that can do a remarkable job of showing unusual patterns, whether they're ATM withdrawals or

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regular checking account activity. So there are a lot of different tools at their disposal to be able to identify it, plus the training that they take from, you know, the-- the educational activities and the training activities that our federal and state banking regulators provide. Our state banking trade associations provide that our-- our bankers are, I think, well trained to identify. In that particular situation, that might be another element of information. It's-- again, it's probably highly unlikely that they're going to get much from that type of source. But if they did, it-- I suppose it certainly could be part of-- of what they consider.

**LINDSTROM:** Could be noted, but maybe not.

**ROBERT HALLSTROM:** Yeah, I mean, it's-- at that point, you're relying on-- on a third-party's recitation of something that happened outside the banking premises and that type of thing, so it may or may not. It would probably be weighed.

**LINDSTROM:** OK. Thank you.

**ROBERT HALLSTROM:** Thank you.

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

**ROBERT HALLSTROM:** Thank you.

**LINDSTROM:** Next proponent. Seeing none, we'll now move to opponents. Seeing none, we will now move to neutral testifiers. Good afternoon.

**CAMERON GUENZEL:** Good afternoon. Chairman Lindstrom, members of the committee-- excuse me-- assistant Chairman Lindstrom, members of the committee, my name is Cameron Guenzel. I am a practicing attorney here in Lincoln, Nebraska, and I am here on behalf of the Nebraska Association of Trial Attorneys. I have been listening in-- interestedly to the discussion about reasonable belief and good faith. We-- I-- I-- I'm a little mixed up because, as the previous testifier mentioned, he and I, I think, both reached a little bit of an epiphany regarding how reasonable belief interacts with good faith. But I was prepared to come and testify in opposition to the bill, not having anything to do with the substance other than the immunity provision. Overall, this bill is a terrific idea. I have sat across the table from nursing residents weeping because their children took their money. I was involved in a court action where we went to trial to get back a house that was taken from a woman with advanced Alzheimer's. So this is necessary. However, to the extent that this bill provides immunity based on good-faith belief, that is problematic. A couple of

things to discuss as far as that goes. As was mentioned, the-- this section, perhaps the hold-- the triggering event is under Section 3, is that the financial institution or employee thereof reasonably believes that there is an issue. To the question as to what reasonable belief means, there is not a-- a clear definition that I could immediately find that directly ties on this. I would submit that the definition is essentially that a reasonable-- a reasonable belief is the knowledge or belief that a prudent person would have in that same position. Reasonable belief comes up in criminal matters with what allows officers to make certain-- take certain actions under the due process rules. It comes up in landlord-tenant law where it's specifically defined; it's involved in a tort situation called the rescue doctrine. But none of those really directly tie on this. Reasonable belief is what ought to be the standard for the immunity situation here, and I think it may be, depending on how one reads the law-- I understand that there's discussions about amendments that may clarify that, but reasonable belief is the standard that has really been reached through several hundred years of jurisprudence in this law-- in this country. It is the objective standard whereby we can say, what would a reasonable person do? It's what we generally-- we generally expect of one another in a society is that we will act in a reasonable way. To the extent that we are trying to give immunity to something and-- and we have a problem with reasonable belief, or with reasonable, what we're-- what we're trying to protect then is something that is unreasonable and may be good faith, but unreasonable, and I would submit that that's not really where we want to go to. To look then at the honorees-- or at the good faith, as-- as you might read the current provision, as the current immunity provision, good faith is really problematic. So good faith, totally subjective; good faith is not as-- is not sub-- is not capable of being inquired into by really anybody else. If someone says he or she has good faith, there's really no way to challenge that unless there's some inconsistent statement that's out there. As a bit of an absurd example, this, I'm sure, would-- as a bit of an absurd example, in another state, there was a bank that called the cops on a black person who was coming to withdraw funds because the bank teller assumed that that was problematic. That person had good faith, totally unreasonable, but that person had good faith. And so to the extent that this immunity provision retains protection over that sort of thing, that's problematic. We want to move towards the-- to the objective, rather than subjective, and that objective would be the reasonable belief, rather than good faith. And if there's any other-- that's what I've come to say. If there's any other questions, I'm happy to answer.

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**LINDSTROM:** And I apologize. Would you mind just spelling your name for the record?

**CAMERON GUENZEL:** Totally skipped over that. I'm sorry. My name is Cameron, C-a-m-e-r-o-n, last name, Guenzel, G-u-e-n-z-e-l.

**LINDSTROM:** Thank you very much. Any questions from the committee? Seeing none, thank you very much.

**CAMERON GUENZEL:** Thank you.

**LINDSTROM:** Any other neutral testifiers? Seeing none, I do have one letter for the record in support from Nebraska Home Care Association, and with that, Senator Williams, if you'd like to close.

**WILLIAMS:** Well, certainly. Thank you for your time this afternoon. I think you can see from the testimony that these are not isolated situations. These situations happen on a regular basis. We run a very small financial operation right in central Nebraska. And I will tell you, hardly a week goes by that someone does not come in where they've received a call or an e-mail or one of those kind of things. As you've heard, we firmly believe, and it's proposed in this legislation, that financial institutions, including not just banks but credit unions and savings and loan, the whole thing, are the front line to this level of protection. There is a level of training that each one of those employees in those institution has to recognize these kind of things and the red flags that pop up. I don't believe in coincidence, but today's World-Herald, in the Midlands section: Omaha FBI Office warns of scammers spoofing bureau's phone number to demand money. Caller is making it appear that someone from Omaha's FBI facilities is calling, have been trying to scam the public out of money. And I won't go into the details, but this is right in our backyard. It goes on later to say that these types of scams, impersonating government people, happened over 12,000 times nationwide last year, amounting to \$112 million in losses right here in-- in our backyard. One of the points I would like to make, especially when we get into these definitional things of adults, our experience is that many competent people fall for these scams. It's not that you question whether they are competent or not. One that I would tell you about, a highly respected and elected official in a community that we do business with, who has just retired, not lonely at home, has a wife, has grandkids and all of this, came in this past fall absolutely believing that they had won the Publisher's Clearinghouse prize. And that's a real prize that's out there, but, believe me, the Publisher's Clearinghouse doesn't have you sending them cash in the mail so that you can start redeeming your

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prize. Before it came to our attention, he had already sent in close to \$10,000 because he went to different places to-- of our locations to withdraw \$1,000 here, \$2,000 here, and then it finally came to our case. And it pointed out also that he absolutely believed that he was the winner. I mean, there's that sincere belief. It was not until we contacted his son, who recognized the red flags and was willing to help talk with his father, that he finally realized, you know, this is too good to be true. So those situations happen. I appreciate Jina Ragland's comment that this is a first great-- a great first step, and I believe that's what it is. As Director Quandahl talked, we did look at legislation on the security side this year. Could not find the sweet spot to get that done in this short period of time, but I'm sure that will be coming back and-- and I suspect either Senator Lindstrom or I will be looking at that next year. So with that, I would encourage the committee to look hard at advancing this with AM2160. Thank you for your time.

**LINDSTROM:** Thank you, Senator Williams. Any final questions for the Senator? Seeing none, thank you, Senator Williams, and that'll end the hearing on LB853. We will now move to LB854, introduced by Chairman Williams.

**WILLIAMS:** 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 pleased to bring forth to the committee today LB854, a bill that I am introducing to clarify some things that we did last year in our Public Funds Deposit Security Act. I would also like to thank the committee and your indulgence. This is the last bill I will have in front of the committee this year. Last year, I introduced LB622, the Public Funds Deposit Security Act. Our committee advanced that bill and it was passed and enacted into law. In reviewing the work of the system, it has been recommended that a few technical improvements should be made; therefore, those items are included in this legislation, LB854. This act is complex, with many moving parts, but its overriding purpose is that depository institutions, subject to requirements by law to secure deposits of public funds in excess of the amount insured by the guarantee of the Federal Deposit Insurance Corporation, may give security by (1) furnishing securities or (2) providing a deposit guarantee bond in satisfaction of the requirement. This bill would amend the act to make a few changes in provisions regarding-- regarding what is called the single bank pooled method, and that's what we really passed last year. The bill would clarify that a bank has a limited period of time within which to bring itself into conformity with the pledging requirements. In the event that it should have a shortfall in securities pledged,

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the bill would clarify that the statements containing information relating to public funds and pledging requirements relate to governmental units rather than custodial officials. A governmental unit is defined as the state or political subdivision. The bill would clarify that the reports to be provided to governmental units by the administrator are to be provided within 20 days after the deadline for receiving reporting statements from the participating financial institutions. The bill would also clarify that the requirement for reports to be provided to governmental units may be satisfied by posting the report on the administrator's website for access by participating governmental units. Those are the highlights of the bill. Testimony in greater detail will follow me. Also, I will be passing out AM2154, and Director Quandahl, who will be coming up, will be explaining in some detail that amendment. With that, I would advance-- I would request advancement of LB854. Thank you.

**LINDSTROM:** Thank you, Chairman Williams. Any questions from the committee? Seeing none, thank you. We'll now move to proponents.

**ROBERT HALLSTROM:** Vice Chairman Lindstrom, members of the committee, my name is Robert J. Hallstrom H-a-l-l-s-t-r-o-m. I appear before today as registered lobbyist for the Nebraska Bankers Association to testify in support of LB854. Senator Williams has done a nice job of telling you what the technical corrections are from last year's LB622. What I will do, and certainly do not intend to leave Director Quandahl speechless, but I will give you my version of what the amendments are to do, which have been drafted in response to issues raised by the department. But with regard to the underlying bill itself, Senator Williams noted that one aspect is to clarify that a bank has a limited period of time within which to bring itself into conformity should it fall below the required level of securities, which is 102 percent of anything over the \$250,000 limitation for FDIC insured funds, on an aggregate basis, again, under the single bank collateral pool program. We patterned our original legislation, LB622, after Georgia law. One of the things that we've seen that they've changed over time is they do have a specific provision that says that the bank must come into compliance within ten days or such shorter period as agreed upon by the bank, the director, or the administrator. We intend, in working through at least our request to serve as administrator of the program, that we would probably be proposing that with regard to securities, there would be a three-day time limit that the banks would agree upon unless they're using federal home loan bank letters of credit, in which case five days would be allowed. We're making a technical change to change a reference from custodial officials to governmental units simply because these reports are going to reflect those governmental

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units that have public deposits with a bank that's participating in the single bank collateral pool, and it simply makes more sense to have the name of the governmental unit rather than the individual name of a custodial official representing the governmental unit. This one is-- is truly technical. There's a provision of the existing law that says banks are to provide reports on a monthly basis and they're to be in to the administrator within ten days of the end of each month. Well, as you might imagine, we're going to receive reports from banks 1 day after the end of the month, 5 days after the end of the month, and the law currently says that we're to report back to the political subdivisions or the governmental units within 20 days after we've received those bank reports. We would just clarify that it's 20 days after that deadline, which, again, is within ten days after the end of the month. The last thing has to do with providing the reports by the administrator to the governmental units. We certainly, in this day and age, do not want to have to physically mail out those reports to the governmental units, so we would clarify under LB854 that there is the opportunity to have the governmental units access the administrator's website. That moves me into the amendments that the department has proposed. The first amendment is simply to be consistent throughout the legislation and the existing law in that everywhere where we reference the director, we also say, "or administrator." There was one location, on page 328, where we missed that conforming amendment. And the second issue is with regard to providing the reports by access to the website. The department expressed some concerns that some governmental units may not have constant access to Internet and, due to the importance of the reports that are being provided, that the administrator should get an acceptance by those governmental units of their intention to access the website, as opposed to receiving a physical copy of the report. We're in support of those amendments that have been submitted by Senator Williams, support the bill, and would ask the committee to advance the bill. Be happy to address any questions.

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

**McCOLLISTER:** Yeah, thank you, Vice Chair Lindstrom. What's the scope of this bill, federally licensed banks or just state-licensed banks?

**ROBERT HALLSTROM:** These are both. Any financial institution, state or national banks, that have access to public funds are subject to the requirements of collateralization for the protection of those public funds. But state and national banks are both eligible to hold public funds, as are state and federally chartered savings and loans.



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**McCOLLISTER:** You're not changing the collateral amounts, just  
[INAUDIBLE]

**ROBERT HALLSTROM:** Correct. The-- the issue that we did last year, Senator, traditionally, the-- what we call the dedicated method that Senator Williams referred to, was that an individual bank might hold public deposits from five or six political subdivisions and a handful of state agencies, and the dedicated method says I have to have 102 percent collateral on everything-- in everything over \$250,000 FDIC insurance for each individual political subdivision. The pooled method says I can combine all those together, have an aggregate deposit figure, and the collateralization requirement is still the same: 102 percent of everything over FDIC insured amounts. But we just believe, and the banks have told us, that it's going to be more efficient and economical to be taking those collateral figures to a single aggregate deposit figure, as opposed to each individual deposit.

**McCOLLISTER:** Are there multiple places that you have to report?

**ROBERT HALLSTROM:** The reporting requirements under the law will be to the administrator who's selected by the-- or designated by the Department of Banking, and there will be monthly reporting requirements from the banks. That's step one. And then step two is those reports go back out to the participating governmental units to reflect that here's the amount of the aggregate deposits, here's the amount of the FDIC insurance coverage, here's the amount of collateral, and in most cases, hopefully all cases, it's going to be more than 102 percent of that net-- net of FDIC insurance figure.

**McCOLLISTER:** Thank you.

**ROBERT HALLSTROM:** Thank you.

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

**ROBERT HALLSTROM:** Thank you.

**LINDSTROM:** Next proponent. Seeing none, any opponents? Seeing none, any neutral testifiers?

**MARK QUANDAHL:** Vice Chair Lindstrom, members of the Banking, Commerce and Insurance Committee, Mark Quandahl, Q-u-a-n-d-a-h-l, Director of the Nebraska Department of Banking and Finance, appearing here today in a neutral position with respect to LB854. And so last year's LB622 authorized the director of the department to appoint an administrator

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for the single bank pooled method. And so just to update you, since the committee briefing earlier this month, department released a request for proposals for potential administrators on January 10. Since then, we've responded to a series of questions, last Friday, on January 24. All of this is on our website also. The deadline for proposals is February 14, so just coming up in just a couple of weeks, after which the department will evaluate those proposals, view live demonstrations, and receive public comments on those potential administrators, which will lead up to a May 1 appointment date. The administration of this single bank pooled method is expected to begin on July 1, 2020, which is in accord with LB622 from last year. So there was some talk. Mr. Hallstrom didn't leave me totally speechless, so-- so I thought I'd give that update. But then the amendment that was referenced, AM2154, which you should have there, it addresses the department's concerns. One of our concerns with just putting it out to the public entities on a website is, is that unfortunately, in certain parts of Nebraska, there still isn't sufficient broadband or Internet or Wi-Fi coverage to address all that. And so the amendments would provide that reports by the administrator to those governmental units could be posted on a website if that governmental unit has agreed in advance to receive reports by accessing that website. And under the bill, as it regards the single bank pooled method, the depository financial institution may not retain a deposit of public funds required to be secured unless within ten days or thereafter, or such shorter period has been agreed upon by the financial institution and the Director of Banking, it has secured the deposits as required. So the amendments would provide that a shorter period can be agreed upon by the financial institution and the administrator, as well as with the Director of Banking. So that's the-- the kind of a skinny on the amendments. And with that, I'd address any questions that you might have.

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

**MARK QUANDAHL:** Thanks.

**LINDSTROM:** Any other neutral testifiers? Seeing none, Senator Williams.

**WILLIAMS:** There are no questions?

**LINDSTROM:** Senator Williams waives closing and that will end the hearing on LBB854.

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**McCOLLISTER:** Any letters?

**LINDSTROM:** What's that?

**McCOLLISTER:** Any letters?

**LINDSTROM:** No.

**WILLIAMS:** I would like to have a short--