

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Banking, Commerce and Insurance Committee January 23, 2023

**JACOBSON:** I think we'll go ahead and start the meeting. Good afternoon, everyone, and welcome to the Banking, Commerce and Insurance Committee. My name is Senator Mike Jacobson, and I represent the 42nd Legislative District, which includes Lincoln, McPherson, Hooker, Logan, Thomas, and most of Perkins County. And I serve as Vice Chair of this committee. The committee will take up the bills in, in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members will come and go from time to time. They may have other bills to present to other committees, so please don't take that as any indication of whether they're interested in your bill or not. It's just simply part of the process. To better help facilitate today's proceedings, I'd like to abide by-- like you to abide by the following procedures. The information is posted on the chart to your left. Please silence or turn off your cell phones. Move to the front row when you are ready to testify. The order of testimony will be as follows. First, we'll hear from the introducer, then we'll hear from the proponents, then we'll hear from the opponents, then we'll hear from those who are testifying in a neutral capacity, and then the, the introducer will come back and do their closing. Testifiers, please sign in. Hand your pink sign-in sheet to the committee clerk when you come up to testify. Spell your name for the record before you testify. Be concise. It is my request that you limit your testimony to five minutes. If you will not be testifying at the microphone but want to go on record as having a position on the bill being heard today, there are white tablets at each entrance where you may leave your name and your 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 testifying-- testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We need ten copies. If you have written testimony but do not have ten copies, please raise your hand now so the page can make copies for you. To my immediate right is committee counsel Joshua Christolear, who is-- who-- and at the left end of the table is our committee clerk, Natalie Schunk. Committee members with us today will introduce themselves, beginning at my far left.

**BOSTAR:** Eliot Bostar, District 29.

**von GILLERN:** Brad von Gillern, District 4.

**AGUILAR:** Ray Aguilar, District 35.

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**KAUTH:** Kathleen Kauth, District 31.

**BALLARD:** Beau Ballard, District 21.

**JACOBSON:** Also assisting the committee today are the committee pages, Caitlyn Croft and Isabel Kolb. The committee will take up the bills today as follows, and we'll start with confirmations. And our first confirmation will be of Kelly Lammers, Nebraska Department of Banking and Finance.

**KELLY LAMMERS:** Good to start?

**JACOBSON:** Go ahead.

**KELLY LAMMERS:** Thank you, Vice Chairman Jacobson. Members of the Banking, Commerce and Insurance Committee, my name is Kelly Lammers, K-e-l-l-y L-a-m-m-e-r-s. I live near Milford, Nebraska. I am seeking confirmation as director of the Nebraska Department of Banking and Finance, a position I'm honored to serve, having been appointed by Governor Jim Pillen on December 2, 2022, having previously served in the same capacity since September 8 of 2020. For the past 39 years, I've had the opportunity of a lifetime. I've traveled the state of Nebraska, working at most safety and soundness examiner levels within the Nebraska Department of Banking and Finance. I've worked with bankers, credit unions, trust companies, and numerous other financial service providers watching the details of lending, exchange, and the art of running a financial institution. I consider myself a lifetime student of banking and finance. I'm a fourth-generation Nebraskan from Sherman County, growing up on a farm outside of Hazard. During my senior year at Ravenna High School, thanks to a business class and the influences of a high school organization, the Future Business Leaders of America, I was a student intern at the Ravenna Bank. By the time I joined the department in 1984, I'd worked for a state bank, a national bank, and an industrial loan and investment company. As a field examiner for the department in the Kearney District, my larger education in financial institution [SIC] and community began, seeing firsthand the value of Nebraska financial services. In the late 1980-- '90s, I transferred to Lincoln as a review examiner with the opportunity to supervise the Lincoln field office and special projects. Over the years, I've worked with specialty banks such as bankers' banks, credit card banks, and even a shelf charter. I hold a bachelor's degree and MBA from the University of Nebraska-Lincoln. I'm a Colorado Graduate School of Banking alum. For more than a decade, I held advanced certificates in information security and information systems auditing. I hold from the Conference of State

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Bank Supervisors the highest examiner designation, that of a certified examination manager. I am chair of the Conference of State Bank Supervisors Education Foundation, Board of Trustees, and serve on the Conference of State Bank Supervisors Board of Directors. In 2019, I earned a UNL executive certificate in leadership, sponsored through the Governor's Leadership Academy. For the past two years as director, I'm most proud of my engagement with the Banking and Finance team and their ability to define the Financial Innovation Act, as well as update department rules. Department of Banking and Finance implemented the Nebraska Financial Innovation Act, accepting applications as of 12/30 of 2022. We have opened a path forward due to the look and feel of a regulated, electronically controllable record minting and burning depository. This new kind of not-FDIC-insured bank is limited on the payment side from creating traditional checks. Thus, the path forward is the creation of bank-influenced, controlled digital assets that operate electronically. While the bank digital asset is not a current crypto asset, such payment and receipt instructions may streamline the payment-clearing processes. Just as banks opened the doors to commerce when mailing payments in the late 1800s by checks, this type of institution is planning to address commerce with an additional payment system, not check but digital. With the aid of a contractor, the department also delivered over 800 pages of Financial Innovation Act guidance documents, offering a digital asset foundation for the public trade and examiners. Along with the regulations nearing completion, the various chapters of the digital asset depository manuals reference a philosophy founded in safety and soundness banking principles with an outlook for the future. Also within the last year, many rules of the department have been updated or are very close to being updated, with Title 45, banking and trust rules, scheduled for hearing in February. Periodically updating those rules, reflecting the vision of the department, offers transparency in explaining that as times change, so do regulations. These updates include efficiencies such as enabling electronic communications and reducing number of physical copies. I strongly believe the Nebraska financial environment creates opportunity for Nebraska through responsible use of services, credit, financial in-- financial expertise and innovation. I will support and enforce the banking and finance laws of the state of Nebraska, representing both the citizens of the state as well as the industries that provide liquidity, financing, and a host of services from securities to money transmission. I will humbly offer my leadership to one of the most outstanding teams in state government, the team that daily strives to

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protect and maintain the confidence of the Nebraska financial services industry. Thank you. I'd be happy to answer any questions.

**JACOBSON:** Are there any questions for the director? I can tell you've got a long history with the department, probably one of the longer histories of most of the agencies we deal with, so thank you for being here today.

**KELLY LAMMERS:** It has been a privilege. Thank you, Senator.

**JACOBSON:** Thank you for your testimony and for your information. Next, we'll ask for-- we'll invite Anthony Goins to approach and-- for his confirmation hearing. And he's the Department of Economic Development Director.

**NATALIE SCHUNK:** Is there any proponents--

**JACOBSON:** Are you--

**NATALIE SCHUNK:** --for Lammers?

**JACOBSON:** OK. I didn't know whether you wanted to hear this. OK. Excuse me just a minute. We'll go through that process. Is there anybody that wants to speak in favor of Director Lammers? Any opponents? Anyone neutral? OK. If not, sorry. Anthony, you're up.

**ANTHONY GOINS:** Good afternoon, Vice Chairman Jacobson and members of the Banking, Commerce and Insurance Committee. For the record, my name is Anthony Goins, spelled A-n-t-h-o-n-y G-o-i-n-s. I appreciate the opportunity to appear before you today, having been selected by Governor Pillen to continue my service as director of the Nebraska Department of Economic Development. I greatly enjoyed the opportunity to partner with the Governor's Office, the Legislature, fellow state agencies, the business community, and economic developers to grow the state of Nebraska. In July of 2019, I received the call of a lifetime to serve as DED's director. Shortly after I was confirmed, Nebraska reported its first positive case of coronavirus. DED resources to help protect lives and livelihoods. By disbursing funds quickly and strategically, DED assisted Nebraska in making a strong economic recovery from coronavirus. In December of 2021, Politico released a state pandemic scorecard and ranked Nebraska's pandemic response number one in the nation. This included giving Nebraska the nation's best score for managing the economy. During my tenure, we've worked hard to grow Nebraska's workforce. We've sought to recruit veterans and attract outside talent to our state and equip our graduates with the skills needed to take jobs in Nebraska after they graduate. By

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prioritizing workforce development, we've achieved America's top labor force participation rate for the past 25 consecutive months. This means we have a higher percentage of adults engaged in the workforce than any other state in America. Nebraska set a new record high for employment every month during the state's fiscal year of 2022. DED has also been successful in recruiting new investments to Nebraska and working with existing companies to expand their operations. Since I began in October of 2019, we've recruited \$7.4 billion in investment and helped recruit more than 9,500 jobs. As DED director, I have worked to create opportunities in the urban as well as in rural communities that haven't always share in our state's growth. In April of 2021, we celebrated the official ribbon-cutting of the state of Nebraska's north Omaha economic development field office. We've also had success in growing rural Nebraska through value-added agriculture by supporting Sustainable Beef, a rancher-owned beef processing facility in North Platte; the expansion of Wholystone Farms' processing capa-- capacity in Fremont; and Heartwell Renewables' diesel plant on the east edge of Hastings. So let's look at 2023. I propose the following four goals. Number one, the goal is to continue our focus on growing Nebraska through business retention and recruitment by expanding international trade and opportunities for our businesses. The second goal is to develop, retain and recruit talent. We've had success in growing our workforce, but talent availability remains a challenge. It is the most prominent obstacle our companies face today. We must be assertive and intentional about developing real-world apprenticeships and internships here in Nebraska. The third goal is to build our brand. Nebraska's story has been under-told and undersold. Nebraska is a special place. Throughout my professional career, I've lived in ten different states. Without question, Nebraska is number one. We have to tell the story of what makes the good life so great. The fourth goal is to successfully execute on our entire ARPA plan. The Unicameral passed historic legislation last year to make strategic investments in our state. DED is administering these programs and we want to optimize every dollar entrusted to our oversight. Traditionally, our agency has managed \$80 to \$100 million per year. The bills from the last session elevated our managed dollars to \$1.08 billion for fiscal year 2022 to 2023. As our agency manages this unprecedented level of funding, we're creating policies and procedures to ensure rigorous compliance with state and federal law, we're building better risk management systems and controls, and we're upgrading our agency's change management capabilities. I'm proud of what our team at DED has been able to accomplish. I'm excited to serve Governor Pillen and work with the Nebraska Legislature to

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continue the strong economic momentum we've generated. And I look forward to answering your questions. Thank you.

**JACOBSON:** Go ahead, Senator Kauth.

**KAUTH:** Can you tell me a little bit about the recruiting veterans and the internships programs. Those both caught my interest. Can you give me a little bit more detail?

**JACOBSON:** Absolutely. Yes. So I'll start with recruiting vet-- veterans first. The program is called SkillBridge. And SkillBridge is a program wherein the veteran in the United States military that is six months away from their end of active service can work for any firm in our state, and they stay on the federal government's payroll. When I joined the agency, we had two companies that were utilizing SkillBridge. We're up over 100 right now. And I absolutely think, and I feel very strongly about this-- I served in the Marine Corps myself-- that every business in the state should utilize SkillBridge. When you look at our military capabilities, Offutt Air Force Base, close to 1,500 veterans exit that base per year, and a large portion of those veterans leave our state because they are not connected with our business community and not aware of our opportunities.

**KAUTH:** Thank you very much.

**ANTHONY GOINS:** In terms of internships, we have a \$20 million bill that we're working on right now to execute for internships. We firmly believe that internships should start in high school and the freshman year in college, because it's not just about acquisition, but it's about retention. I had the opportunity to speak to a group of 25 engineers about three months ago. Of those 25 engineers, all of them had internships. Only one had an internship in Nebraska. That's a problem. Because what that's telling us is that other states are recognizing the great talent that we have in our university system and they're being very intentional about taking our talent and exiting the state. And that's something that we have to fix, and that's what this internship bill is designed to do.

**KAUTH:** Thank you.

**ANTHONY GOINS:** Thank you.

**JACOBSON:** Other questions for the committee?

**BALLARD:** Mr. Chairman?

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**JACOBSON:** Yes, Senator Ballard.

**BALLARD:** Thank you, Mr. Chairman. Can you talk a little bit about your private sector partnerships, whether that's businesses, university? How do you work together, too, especially in terms of apprenticeship and internships?

**ANTHONY GOINS:** That's a great question, Senator. So private sector partnerships, in that intern bill, there are sections in that bill that require partnership with the private sector. I'm a banker by trade myself. I come from the private sector. When I joined Cabela's as the chief operating officer of the bank, one of the things that I looked at was the internship program. And really, when you really think about internships and really talent, it should be led by the business community anyway. The, the state government should just be a supplement. So there are very strong paragraphs that are a part of that bill and the guidelines that put us-- and force us to work with the private sector in terms-- in terms of the internships. And then, you know, I'll say this. You know, our department, we continuously engage with the private sector. We have a number of advisory committees and we-- we-- we are constantly doing what we call business exploratory conversations. So there is a real strong engagement with the private business sector and the Department of Economic Development. We take their input, we take their advice, and they help us shape policy and execute on procedures.

**BALLARD:** Thank you.

**JACOBSON:** Other questions? I just want to personally thank you for the work that you've done since the time you've been serving in this role. And I certainly recognize what the Legislature dropped on your department last year with that \$1.08 billion in additional work to get done.

**ANTHONY GOINS:** Yes.

**JACOBSON:** I also want to compliment you on the fact that you understand where the Nebraska border ends to the west and it goes all the way to the Wyoming line.

**ANTHONY GOINS:** That's right.

**JACOBSON:** And-- and being a more rural senator, I might also-- I always like to give a geography lesson anytime I talk to anybody about-- I come from-- I live in North Platte, which is west-central Nebraska. There's a lot of Nebraska on west of me. And-- so I would

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just tell you that I appreciate the fact that you have reached across the state and recognized that all of the state is important, and the programs have been carried out all over the state. So thank you again for the work you've done.

**ANTHONY GOINS:** Yes, sir. Thank you.

**JACOBSON:** OK. We'll let you step down. Are there any proponents for Director Goins?

**KRIS BOUSQUET:** Good afternoon, Senators. My name is Kris Bousquet. I'm the executive director of the Nebraska State Dairy Association. My name is spelled K-r-i-s B-o-u-s-q-u-e-t. I'm here to testify in support of Governor Pillen's nomination of Anthony Goins to continue his service as the Nebraska Director of Department of Economic Development. Throughout Mr. Goins's tenure as director, he's shown exemplary direction, leadership and understanding that agriculture is the backbone of Nebraska's economy. I support this statement by sharing that Tony has allocated resources to growing Nebraska's dairy industry as well as the livestock sector overall. Growing Nebraska's dairy sector has significant value such that the University of Nebraska's recent dairy economic impact study found that landing just one large dairy processor would bring in over \$1.7 billion in annual economic value to the state. Director Goins has supported his staff to attend multiple dairy focused conventions, expos and meetings across the country with the vision and determination of growing Nebraska's dairy industry. In fact, at this very moment, DED staff are at the International Dairy Foods Conference down in Orlando, Florida, building relationships and sharing Nebraska's story to dairy food executives. Nebraska's dairy farmers and its industry are excited to continue our partnership with the Department of Economic Development, as well as Director Tony Goins, and we urge the committee to ratify his appointment. And I'll open up for any questions if you guys have any.

**JACOBSON:** Questions from the committee? If not, thank you for your testimony.

**KRIS BOUSQUET:** Thank you, sir.

**JACOBSON:** Go ahead.

**DAWN CALDWELL:** All right. Good afternoon, Vice Chair Jacobson and Senators. My name is Dawn Caldwell, D-a-w-n C-a-l-d-w-e-l-l, and I serve as the executive director of Renewable Fuels Nebraska. I'm here

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to testify in support of Governor Pillen's re-appointment of Anthony Goins as Nebraska's director of the Department of Economic Development. While serving as director, Mr. Goins has demonstrated leadership and effectiveness in one of our state's most important agencies. Especially meaningful to the renewable fuels industry is his sincere appreciation for the fact that agriculture leads the charge in terms of economic impact, and each value-added business associated with agriculture means more opportunity and success for more Nebraskans. Director Goins has assembled a highly skilled staff and wisely supports them as they work to expand markets globally and domestically as well as recruit business to build or expand right here in Nebraska. I personally have sat in on meetings at ethanol plants where foreign bus-- businesses have been looking to expand in the United States, and his department is doing their diligence to recruit them here to Nebraska to add two sites where the campus assures opportunity for them and jobs for more Nebraskans. Renewable Fuels Nebraska's member businesses are excited to continue our partnership with Director Goins to grow opportunities for all of Nebraska and especially those associated with the renewable fuels industry. We thank you in advance for your positive vote to reappoint Mr. Goins as Nebraska's director of the Department of Economic Development. Thank you.

**JACOBSON:** Questions? Thank you for your testimony.

**DAWN CALDWELL:** Thank you.

**JACOBSON:** Others wishing to speak as proponents? OK. If not, are there any opponents? Anyone speak-- wishing to speak in a neutral capacity? OK. If not, we'll move on-- we-- through the agenda and move on to our first bill, number one, and that will be LB279. Senator Kauth is its-- will be the introducer, and so, Senator Kauth, the floor is yours.

**KAUTH:** Good afternoon, my fellow senators. Kathleen Kauth, K-a-t-h-l-e-e-n K-a-u-t-h, and I'm introducing LB279. This bill would eliminate the requirement for executive officers of a bank to make annual reports to the bank regarding the amount of loans or indebtedness on which he or she is a borrower, cosigner, or guarantor, the security thereof, and the purpose for which the proceeds have or are to be used. What this bill does, in essence-- when I first heard it, I thought, wait, we're taking away transparency. What this bill actually does is brings state banks more in line with the national banks. This is not a requirement by the national banks, and we've seen a motion for us as a state to bring

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ourselves in line with the national banks. There is an amendment to this that Bob Hallstrom is going to be discussing briefly that will allow a credit report to be pulled, which would resolve any concerns about not having any transparency, so I would encourage you to look through it and listen to what Bob has to say. Any questions? Yeah, Eliot.

**JACOBSON:** Yes. Senator Bostar.

**BOSTAR:** Thank you, Senator Jacobson. Thank you, Senator Kauth. What-- this doesn't seem like a big deal, but what problems is the current system causing?

**KAUTH:** What-- is this something that's being done just-- just because? Apparently, the-- this has been a rule in place for many, many years and it's not been followed. Because it hasn't been followed accurately, 100 percent all the time, people weren't aware and-- and got in trouble because they weren't doing something that was no longer common practice, so this is just rectifying that type of situation--

**BOSTAR:** Yep.

**KAUTH:** --and making sure that everyone knows what they're supposed to be doing and that they're actually doing it.

**BOSTAR:** So we're just trying to prevent people from unintentionally--

**KAUTH:** Right.

**BOSTAR:** --violating some provisions?

**KAUTH:** Exactly. Exactly.

**BOSTAR:** Thank you very much.

**KAUTH:** Absolutely.

**JACOBSON:** Thank you. Other questions? If not, Senator Kauth, thank you.

**KAUTH:** Certainly.

**JACOBSON:** Anyone speaking in support as a proponent?

**BOB HALLSTROM:** Vice Chairman Jacobson, members of the Banking, Commerce and Insurance Committee, my name is Bob Hallstrom--

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Natalie's been committee clerk long enough that she can spell my first name both backwards and forwards-- last name is H-a-l-l-s-t-r-o-m, appearing as a lobbyist for the Nebraska Bankers Association to testify in support of LB279. Senator Kauth has indicated what the bill does specifically. We were approached by a member bank last year who indicated that, for some 15 years, their bank had not been obtaining the annual reports from their executive officers and were cited in that last examination and raised the question as to whether or not state banks should be required to make this-- have this report made by the executive officers. In the course of looking at the issue, the bank examiner indicated that national banks are not required to make these types of reports, having been eliminated by a regulatory relief act passed by Congress in the early 2000s. And with the state policy for the most part being to provide parity between state and national banks, we believe that the regulatory burden associated with making those reports should be eliminated for state banks to put them on a par with national banks. Basically, after the bill was introduced, the Department of Banking contacted us, raised some concerns with regard to the bill. We made them aware that it was an issue of parity, that there had been federal law passed to re-- eliminate this particular requirement. In my written testimony, I've noted that the federal regulators, when Congress made the change back in the early 2000s for national banks, made it crystal clear that they still had all of the requisite authority and power for enforcement of insider lending and that they did not believe that those particular reports were any longer required. But to address the concerns of the Department of Banking, I think we've come with language, which I have distributed, which is designed to provide a win-win situation, if you will. The win for the banking industry is that our initial quest was to provide for an elimination of the reporting requirement. The amendment will continue to do that. The Department of Banking was looking for some flexibility that the directors, if so inclined, could make a request to get information regarding outside indebtedness, and so we have retained the ability of the directors to obtain or pull a credit report on an annual basis if they want to get that information. I would also note that under the current law, there's either a reporting requirement annually or, as an alternative, to pull a credit report. So we end up having the flexibility of the board to check on this if they desire, but we've eliminated the specific reporting requirement and, however modest, have provided some relief from regulatory burden in the process. And with that, we would ask the committee to look favorably upon the amendments that we've

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submitted and to advance the bill to General File. I'd be happy to address any questions that the committee may have.

**JACOBSON:** Senator Bostar.

**BOSTAR:** Thank you, Senator Jacobson. Thank you, Mr. Hallstrom. It's good to see you.

**BOB HALLSTROM:** Thank you.

**BOSTAR:** I have two questions. One, have you seen AM86 to LB279? I just-- the language that you distributed is a little different than what we were given at the start of the hearing.

**BOB HALLSTROM:** Yeah, I have not. I didn't know that Mr. Christolear had received back the amendments from Bill Drafters, so I indicated that I would distribute it in case they didn't get back in time. I will review that, and as well as the department will review it, I would imagine, to make sure that it-- it carries out the intent of what we want to have occur.

**BOSTAR:** So you'll just provide clarity, just-- and just from scanning them for the last minute, it looks like there's just some slight differences, so you'll provide some clarity on--

**BOB HALLSTROM:** Yes.

**BOSTAR:** --what the--

**BOB HALLSTROM:** I will communicate--

**BOSTAR:** --intent is?

**BOB HALLSTROM:** Yeah, I will communicate with Senator Kauth and committee counsel as well as the committee, if necessary, to let them know, and the department, I would trust, would do the same.

**BOSTAR:** Thank you. And the second question is, so as I-- as I-- you're probably familiar, all of us members of Legislature, we have to provide financial disclosure reports to the state annually for our financial interests, to disclose them for the purposes of transparency to the public. Now, we don't have to list anything that can be found on a credit report because-- the idea being that that's accessible. However-- well, I-- I'll speak for myself. I still have to end up listing several other things because they don't appear on a credit report. Is there any concern that limiting this to what's

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available on a credit report could miss a potential red flag or conflict?

**BOB HALLSTROM:** I would hope not, Senator. Like I indicated, the-- the current law provides for either the annual report with the specific items to be disclosed or, in the alternative, a credit report. And I would assume-- the department may speak to this if they get up to testify. I would assume that some banks historically have used the credit report alternative as opposed to asking their executive directors to make a specific annual report. So I would-- I would think that they are getting sufficient information, and the policy of the state to this point has been that the information contained on a credit report is adequate to allow the board directors to know what is significant with regard to outside indebtedness of executive officers. And again, as I noted, when the federal law changed, the regulators made it perfectly clear that they had all the tools at their avail to make sure that the outside indebtedness and the executive officer insider lending laws were-- were upheld.

**BOSTAR:** OK. Thank you very much. That's helpful.

**BOB HALLSTROM:** Yep. Thank you.

**JACOBSON:** Senator von Gillern.

**von GILLERN:** Thank you, Mr. Jacobson. The-- you mentioned something, and it was actually leading to a question I was going to ask Mr. Hallstrom, and that is, when did the feds change that regulation? And is there any track-- is there proof of that track record being successful? I presume there is, otherwise you wouldn't be--

**BOB HALLSTROM:** Yeah, I think--

**von GILLERN:** --designing that similar change to bring parity for the state banks.

**BOB HALLSTROM:** It was the Regulatory Relief Act of 2006.

**von GILLERN:** OK. So it's got--

**BOB HALLSTROM:** Yeah, I-- I'm not aware, Senator--

**von GILLERN:** --it's got some daylight on it?

**BOB HALLSTROM:** Yeah. Obviously, I wouldn't have data or statistics--

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**von GILLERN:** OK.

**BOB HALLSTROM:** --to back it up, but I'm not aware of any situations that would give rise. And-- and I'm assuming that the regulators would be back in like a barking dog--

**von GILLERN:** OK.

**BOB HALLSTROM:** --if there was any concern that-- that this was-- was not sufficient.

**von GILLERN:** OK. One-- one other question, or two-part question: what ratio of state banks had been making these reports and what was happening to them with the reports?

**BOB HALLSTROM:** I don't have, Senator, any information regarding the, you know, the law. The law on its face required the banks to do one or the other. It was brought to our attention that one bank, for whatever reason-- and I'm not criticizing the department in any respect-- but for some reason they had not been getting the reports for some period of time. And then it popped up based on the-- the state of the law in the course of an exam, and that triggered that banker's interest to bring to our attention, why do we have different requirements for state banks than apply to-- for national banks?

**von GILLERN:** OK. Thank you.

**JACOBSON:** Other questions?

**BOB HALLSTROM:** Thank you.

**JACOBSON:** Thank you, Mr. Hallstrom. Other proponents?

**DEXTER SCHRODT:** Chair Jacobson, members of the committee, my name is Dexter Schrod, D-e-x-t-e-r S-c-h-r-o-d-t. I am president and CEO of the Nebraska Independent Community Bankers Association, here to testify in support of LB279. I thank Senator Kauth for-- for bringing the legislation to put state banks back on par with their national competitors, as Mr. Hallstrom just alluded to. With the amendment, we feel it strikes the right balance and allows for a control mechanism to still exist if a board director is interested in executive officer indebtedness. But it, again, removes the-- the overarching concern that banks might be out of compliance with state law when they had been federal-- following federal law on this-- in this regard before. Senator von Gillern, to answer your question, I surveyed a few of our members and we were told those that do it, it is a-- a very big pain,

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especially executive officers do have other interests and other business endeavors. And those can get wrapped up in this as well, so sometimes the scope is larger than perhaps what the law intended as well, so. I don't have any much more to add to that, but thank you for your consideration.

**JACOBSON:** Questions? Thank you--

**DEXTER SCHRODT:** Thank you.

**JACOBSON:** --for your testimony. Other proponents? Anyone wishing to speak in opposition to this bill, LB279? Anyone wishing to speak in a neutral capacity? Director Lammers.

**KELLY LAMMERS:** Vice Chair Jacobson, members of Banking, Commerce and Insurance Committee, my name is Kelly Lammers, K-e-l-l-y L-a-m-m-e-r-s. I am director of the Nebraska Department Banking and Finance. I'm appearing today in a neutral position to LB279 with the amendment offered by the Nebraska Bankers Association. The Nebraska Department of Banking and Finance is a regulatory agency established by Nebraska law. The department is required to enforce the Nebraska Banking Act, which would fall within the reach of LB279. Department understands that LB279 is intended as a reduction of regulatory burden and to coordinate with federal removal of a similar reporting requirement for national banks. Department supports such reduction when it can be balanced with our statutory charge to protect the safety and soundness of our depository financial institutions. The department's authority does not change-- change with the bill's proposed revisions to the Nebraska Banking Act, and any change by LB279 will not change the substantive restrictions on the loans by community bankers to executive officers. Nebraska's state-chartered banks are quasi-public financial institutions. As quasi-public institutions, state banks are entrusted with monetary deposits of not only consumers and businesses, but with the deposits of public organizations from our communities as well. While the department is taking a neutral position on LB279, department does wish to express that the Nebraska Revised Statutes 8-143.01, sub (4), as currently written, does provide bank board of directors an important and valuable tool in which to monitor the personal credit posture of the officers they employ and trust to serve their customer base and their local communities. We believe the burden that LB297 [SIC] addresses is minimal. Under Section (8)-143.04, sub (4), department examiners do not dictate or prescribe how community banks are to analyze individual statements provided to the bank's board of directors or analyze employment decisions as part of their exam procedures.

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Department examiners only verify a board's minutes to determine if the reports of indebtedness were filed timely for each applicable executive officer. If no report was collected, they determine if an executive officer is properly excluded by the bank board for the requirement due to not participating in policymaking functions of the state bank. If LB279, with the amendment, becomes law, it will still be vital that all state bank boards stay diligent regarding any internal risk to their institution's safety and soundness. Bank boards are the fundamental overseers of bank soundness, and they will still have a responsibility to their communities to maintain strong standards for their institution's operations and health. Thank you for letting me speak today. I'll answer any questions the community has-- the committee has.

**JACOBSON:** Questions from the committee? If not, thank you for your testimony. Any other testifiers in the neutral capacity? OK, if not, Senator Kauth I think had to leave. I'm assuming she's waiving her closing.

**von GILLERN:** She's right here.

**JACOBSON:** Oh, she-- she's over here. All right, Senator Kauth.

**KAUTH:** Still [INAUDIBLE] sit back in my cushy chair.

**JACOBSON:** Oh, golly.

**KAUTH:** So in closing, this is a proposal to make our state banks come into parity with the national banks. We're doing that in many other areas, and it-- it is a minimal burden, but it is a burden nonetheless. And I think the more we can do to focus on things that actually matter and have controls in place, if we can still pull a credit report and we can still have some measures, I think this is a very good solution. So thank you very much for your time.

**JACOBSON:** Thank you, Senator Kauth. Are there any letters for the record? All right. If not, we're going to close the hearing on LB279, and we'll open the hearing on LB207. Senator von Gillern will open.

**von GILLERN:** Good afternoon, Banking, Commerce and Insurance Committee. I'm Senator Brad von Gillern, B-r-a-d v-o-n G-i-l-l-e-r-n. I represent District 4, which includes portions of west Omaha and Elkhorn, and today I'm introducing LB207. LB207 clarifies of the sale of property by a trustee pursuant to the-- to a power of sale under a trustee may be conducted in any public building in which the county offices are located within that county. The current statute leaves

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some ambiguity as to specifying the location of such transactions. As such, there was a situation this past year in Saunders County where the county court offices had relocated from the traditional courthouse. Officials at the law enforcement center suggested to an attorney that nonjudicial sales needed to be conducted at the old courthouse, which continues to house the register of deeds but not the county and district courts. The strict reading of the word "courthouse" could include its-- it is the physical building in which the court is located, or it could be argued "courthouse" meaning where the operations of the county are held. There was an occasion where a deputy at the law enforcement center in Saunders County told those in attendance the sale had been canceled or was not held at the location where the sale had been published to be held. The matter thankfully was resolved without a challenge, but of course we want to clean this up to prevent any potential for such issue to rise again. LB207 makes a technical change to the statute regarding these sales by allowing trust deed sales to be conducted in any public building in which the county offices are located within that county in which the real estate to be sold or part of that real estate being sold is located. The notice of sale requirements remains the same. The bill does include an emergency enactment, as we believe that this is something best resolved as soon as possible to avoid any further legal complications at the county level. Bob Hallstrom with the Nebraska Bankers Association will-- is going to testify as well. I'd be happy to answer any questions you may have at this time.

**JACOBSON:** Questions for Senator von Gillern? Thank you. We'll open it up to those wishing to speak as proponents of this bill. Go ahead.

**CAMILLE HAWK:** Good afternoon, Senators. My name is Camille Hawk, C-a-m-i-l-l-e H-a-w-k. I'm an attorney and a partner with the law firm of Walentine O'Toole LLP, with offices in Omaha, Iowa, and South Dakota. I've been a licensed attorney in the state of Nebraska since 1994 and have been admitted into Iowa since January of 2009. For the last several years, I've also been and continue to be the education chair for the Nebraska State Bar Association, as well as-- this current year, I am the vice chairs for both the bank attorneys section and the bankruptcy section of the NSBA. I thank Senator von Gillern for introducing this bill today and for the other senators whose names are attached to the bill. I am the attorney who experienced that unfortunate situation in Saunders County most recently. However, this has been an ongoing issue for myself and my colleagues that practice in this area. Since 2001, my law practice has focused in the areas of bank-- banking and real estate law. My special areas of law are foreclosure law, bankruptcy law, real estate

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law, and other creditor's rights law. I've handed out several thousand foreclosures as successor trustee, the attorney for the trustee, or the attorney for the plaintiff, who generally is the lender. In addition to my service with the NSBA, I've spoken at seminars regarding these areas of the law. I've written several articles for trade magazines and published both locally and nationally. And I have also participated in several pieces of legislation and in the passage of those legislation pieces regarding real estate, foreclosure and lending practices. I do take my responsibilities seriously. I strive to maintain the utmost professional and ethical standards related to my practice. I'm here today in-- in a-- as a proponent of LB207. And I provide you my testimony as well in writing that makes the comments that I'll make today. The current law, as the senator has mentioned, identifies that the property of the location of the trustee sale is either at the premises or at the county courthouse in which the real property is located. The law does require the notice to be published in advance five consecutive weeks prior to the sale in a newspaper of general circulation in the county in which the property or some part of the county is located, with the date, time and location of the sale to be identified in that notice of sale, the sale being held 10 to 30 days after that fifth publication. The notice is mailed out, and so the notice requirements are standing and they are not at-- being requested to be changed to the parties entitled thereto, which would include the borrower, trustor, or owner, depending upon the responsibilities of that particular party. Thus, anyone having an interest in bidding in the sale would have notice of the sale, where it will be held, the exact time, the location, and would have the opportunity to come and place their bid at the sale, including the owner of the property, to try to save their property. Practicing-- practically speaking, the sales are almost exclusively held at a courthouse. They are not generally held at the premises, although that does occur from time to time, so I'm not seeking to have the premises piece of the legislation removed in any way. There are some reasons for doing that. However, at the county courthouse is where primarily the sales are held for several reasons. Sometimes it-- you have several sales and so it's just more efficient to have them all located in the same place. Additionally, it is a public location, so there is protection there, which, if you held it at the premises-- you know, foreclosure is a very personal and emotional thing for people who are going through that. It's a very unfortunate thing, and sometimes people handle it less well than others. And so it could be a danger to-- sometimes to have the-- a public danger to have the foreclosure sales held at a premises versus a public location such as

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a county courthouse. So within the last several years, the county courthouses have expanded, they've been remodeled, they've been updated, and they've even moved some of their courtroom locations to newer buildings, such as a law enforcement center. The old courthouse may still be maintained; however, there may be another building that might be a block away or adjacent to the old courthouse, where there's a walkway, where maybe county courts have been relocated or perhaps district courts or both. But maybe sometimes the county courts or the district courts maybe re-- remain in the old courthouse building. And so the question then becomes, does the location of the place where the district court hearings are held, does that consider the courthouse; or if there's a county court being held in another building that might be adjacent or a block away, you know, is that the courthouse? So the question becomes, what is the courthouse? Shortly after the Saunders County situation that we had, I worked with the-- both the sheriff and the clerk of court as well as the-- as well as the county attorney, and we all agreed that there-- there probably needed to be some clarification. So I would ask that you would find and-- and be in favor of the passing of this bill. And I appreciate your time today. Are there any questions?

**JACOBSON:** Questions from the committee? If not, thank you for your testimony.

**CAMILLE HAWK:** Thank you.

**JACOBSON:** Are there other proponents?

**BOB HALLSTROM:** Vice Chairman Jacobson, members of the committee, my name is Bob 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 LB207. There's only so many ways that you can tell this story, and Senator von Gillern and Ms. Hawk have done a nice job of setting forth the situation that gave rise to the need for this legislation. I would, just maybe for way of-- of perspective or background, indicate that until the mid-1980s, banks and-- and other lenders were using mortgages which were required to be foreclosed upon through a formal court proceeding, which involved, on the one hand, the ability of the lender to call an absolute default and make demand for the entire payment of the remaining balance of the indebtedness, but also, by having a court proceeding involved, required some extended period of time in order to finally get to the sale if one was necessitated. When deeds of trust came into play, the deed of trust was designed to balance the interest by providing protections to the lender and the borrower, and those protections

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essentially are, as Ms. Hawk proposed or-- or, set forth in some detail. there's a number of notifications. One is a notice of default. That notice of default, like under a mortgage where you could declare the entire balance of the debt due and paying. And if it wasn't paid, you could pursue your-- your remedies. You give the borrower the amount that they are in default and give them the opportunity within a limited period of time to bring themselves current, and then you're back to square one and hopefully go on without any further incidents or-- or defaults. On the other hand, the nonjudicial power of sale that the trustee has is designed to provide a much quicker opportunity to get to the ultimate sale in the event that the borrower simply is unable to cure the default and bring the loan current. So there's a balancing act that's out there that I think provides equal protections for both lenders and their borrowers. So with that, we would suggest that the committee act favorably on the bill and advance it to General File. And I'd be happy to address any questions that you may have.

**JACOBSON:** Questions for Mr. Hallstrom? OK. If not, thank you for your testimony.

**BOB HALLSTROM:** Thank you.

**JACOBSON:** Other proponents?

**DEXTER SCHRODT:** Senator Jacobson, members of the committee, my name is Dexter Schrod, D-e-x-t-e-r S-c-h-r-o-d-t, president and CEO of the Nebraska Independent Community Bankers Association. I think Ms. Hawk described the current situation perfectly and Mr. Hallstrom gave us a fabulous history lesson, so I don't have much more to add other than to en-- encourage, as our counties grow and modernize, that we also update the state statutes so that any business that needs to take place can continue to take place because the trustees are fiduciaries and they do have an obligation to see things through, and we want to make sure that that continues to happen. Thank you.

**JACOBSON:** Thank you for your testimony. Questions for Mr. Schrod?

**DEXTER SCHRODT:** Thank you.

**JACOBSON:** Thank you. Other proponents? Anyone wishing to speak in opposition? Anyone wishing to speak in a neutral capacity? If not, Senator von Gillern, you're welcome to close. You'll waive closing. Any letters for the record?

**NATALIE SCHUNK:** No.

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**JACOBSON:** All right. If not, we're going to close the hearing on LB207, and we will open the hearing on LB94. OK. All right. I think we're going to take a quick recess and we'll probably take ten minutes. What do you want to take, five minutes? Let's take a five-minute recess.

[RECESS]

**JACOBSON:** OK. I think we've got everyone back that's coming back, so we'll go ahead and open the hearing on LB94, and we'll turn it over--

**TORI OSBORNE:** Good afternoon, Vice Chairman Jacobson. Members of the committee, my name is Tori Osborne, T-o-r-i O-s-b-o-r-n-e, and I'm the legislative aide for Senator Slama, who represents District 1 in southeast Nebraska. Today, I am here to introduce LB94. The Uniform Commercial Code-- Code, UCC, among other things, governs commercial transactions and the granting and perfection of security interests and personal property. The UCC is updated periodically to keep up with the new types of personal property in evolving markets. During a period beginning in 2018, a committee appointed by the American Law Institute and the Uniform Law Commission-- the sponsoring organizations of the UCC-- considered and formulated amendments to the UCC to address emerging technological developments. This included addressing such things as virtual currencies, distributed ledger technologies and, to a limited extent, artificial intelligence. In 2021, the Nebraska Legislature adopted LB649, which passed into law the then-existing draft of the Uniform Law Commission, ULC, proposed amendments to the UCC, and it took effect on July 1, 2022. And in July 2022, the Uniform Law Commission approved amendments to adopt the new Article 12 and to make accompanying amendments to UCC Article 9, creating a new category of assets, controllable electronic records for transactions, and security interest in digital assets. While similar in many respects to the final version of UCC Article 12 recommended for adoption by the ULC in July of 2022, there are a number of changes that need to be adopted to bring Nebraska law into conformity with the final version of UCC Article 12-- recommended for adoption by the ULC. The-- those changes are found in LB94 and are the reason for its introduction. And there has been one amended-- amendment drafted for this bill. AM77 fixes a technical citing error in the statute, and I believe a member of the ULC Article 12 drafting committee is present to testify on-- on the substantive provisions of UCC Article 12, and a representative of the Nebraska Uniform Commissioners will also testify on the process and procedures surrounding adoption of UCC Article 12 by the ULC joint committee.

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And thank you. I would refer any questions you might have to those individuals and to the bill's other proponents.

**JACOBSON:** Thank you for your introduction. I'll open it up then to proponents. Go ahead.

**DON SWANSON:** Good afternoon. My name is Don Swanson, D-o-n S-w-a-n-s-o-n. I'm an attorney with the law firm of Koley Jessen in Omaha, and I serve on the Nebraska Uniform Law Commission. It's great to be here, always great to see a fellow Rotarian. And my wife and I live by Zorinsky Lake. And, Senator Jacobson, I-- I spent my youth on a livestock farm on the eastern edge of Lincoln County, went to school in Arnold. We played in the LHTC conference: Logan, Hooker, Thomas and Custer. And for the record, I've always thought that I grew up in central Nebraska.

**JACOBSON:** I like you already.

**DON SWANSON:** So with LB94, it's-- it's a monster. What I'd like to do is talk about the intensive process that went into preparing this. The Uniform Law Commission has been around for a century and more, and it focuses on doing what has been described as preparing boring-but-necessary laws for states and their citizens to function. And the Uniform Law Commission came up with the Uniform Commercial Code back in the '40s, I believe, and there have been a number of adjustments to it, and-- and this is the latest. And this came about through a-- well, I-- I should say first that the commission focuses on those laws that uniformity across state lines is important, and of course the flow of commerce is-- is one of those things. And whenever the Uniform-- Uniform Law Commission works on a law, it does so intensely and it brings in all the constituencies it can think of so that those stakeholders can have their views aired and so that we know what those are and those are fully vetted and included and incorporated when these laws goes out to the Legislatures, and that's what's happened here. Now, the Nebraska delegation to the National Uniform Law Commission also includes Professors Harvey Perlman and Steven Willborn, includes attorneys Larry Ruth and Jim O'Connor and includes the former judge, Arlen Beam, and the former and current Revisor of Statutes, Joanne Pepperl and Marcia McClurg. And so this bill, legis-- LB94, when it went through the process at the Uniform Law Commission, there was a study committee, and it included representatives-- more than 300 representatives of various stakeholders across the country, including people described as UCC-- Uniform Commercial Code geeks, technology nerds, crypto experts, international law representatives, and a host of other stakeholders,

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and so these have been thoroughly vetted and included in the process. And the study committee that included all those met for a long time and intensely worked through it. One of its-- one of its subcommittees met once a week for ten months. And at the last annual meeting of the Uniform Law Commission, where this was finally approved, we went through it section by section, line by line. At the end of each section, the-- it was open to the floor for people to have input. So this has been thoroughly vetted and it is being recommended now for-- for adoption. So I would urge you to-- as you go through this, that you will consider the intense process that went into it, that it's been prepared by the same group that did it before. Plus, in addition to that, it was done in conjunction with the Unif-- the American Law Institute. You go up to the law libraries, you'll see Restatements of the law and torts and contracts. Those are the ones that do that. They were in conjunction with this as well as the American Bar Association. Thank you.

**JACOBSON:** Thank you. Questions for Mr. Swanson? I'm sure everyone's read that completely and it answered all their questions. Thank you. Further testifiers in-- in support? Proponents? Go ahead.

**BEN ORZESKE:** Mr. Chairman, members of the committee, my name is Ben Orzeske. I'm chief counsel at the Uniform Law Commission. I'm here from our Chicago office today on behalf of the Nebraska Uniform Law Commissioners, including Mr. Swanson. The Uniform Law-- the Uniform Commercial Code is one of those laws that operates in the background. Most of us are not aware of--

**JACOBSON:** Could I get you-- could I get you to go back and spell out your name?

**BEN ORZESKE:** I apologize. My name is Ben, B-e-n, Orzeske, O-r-z-e-s-k-e. I knew I had to do that. I still forgot.

**JACOBSON:** A pretty simple name, but still [INAUDIBLE] spelled it out.

**BEN ORZESKE:** All right. The Uniform Commercial Code operates in the background. We don't normally think about it. And yet, for most of us, it's operating to make our lives easier every day. It's the reason why, when we order something online through Amazon or eBay, we don't worry about what state the seller is in. It doesn't matter. The law is the same because it's uniform. It's the Uniform Commercial Code providing the rules that govern that transaction. So if something goes wrong and you need a refund or it needs to be replaced or it's not under-- there's a warranty claim on it, all of those

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rules are provided in the Uniform Commercial Code. The bill you have before you now is the first major update of the UCC in 13 years, and it does a variety of things. Some of the changes are very simple terminology changes. So any time in the UCC where it used the word "writing" or "written document," it's been replaced now with a "record," and record is defined so that it includes both paper documents and electronic documents stored-- stored as computer files. Other changes were more complex, to incorporate new types of technology, including new types of property like digital assets. The rules for transacting business with virtual currency were not clear, and now they are with the operation of the-- of the new Article 12 of the UCC. The only part of this bill that is different from the Uniform Commercial Code has to do with some transition rules, and that's because Nebraska is one of six states that, responding to the demand for clearer rules on virtual currency, went ahead and adopted a version of Article 12 of the UCC two years ago based on a draft of the-- what the drafting committee was working on at the time. And as the introducer said, this-- the intent was always, once the final amendments were-- were finished, to come back and pass a cleanup bill that would make sure that Nebraska's law was in conformity with all of the other states, so that's what this bill is today. There are some unique transition rules so that if there are any transactions that were since that last law was passed in-- in 2021 and until this new law goes into effect in 2024, they'll be governed under those rules. And the new rules will kick in in 2024, the late effective date, to give everybody time to adjust and to make sure they're aware of the rules. With that, I will stop. I'm happy to take any questions you have from the committee.

**JACOBSON:** Senator Kauth.

**KAUTH:** Hi there. What happens if this bill gets voted down? How does it impact Nebraskans and what-- what actually occurs?

**BEN ORZESKE:** Nebraskans wouldn't have the clarity of law to govern transactions. So maybe I can illustrate it best with an example, if that's OK.

**KAUTH:** It is.

**BEN ORZESKE:** If you have a business in Nebraska, say, a grocery store, that is doing business with its customers and one day a police detective walks in and says, one of your customers yesterday actually paid with funds that weren't his. They were-- embezzled those funds. Under the rules of the Uniform Commercial Code, the grocer, they

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don't have to unwind that transaction if there were certain-- if the grocer gave value in exchange for the-- for those funds and if-- was not aware at the time of any competing claim. The grocer is the innocent party. So that transaction is-- is-- doesn't have to be unwound. We have an identical rule now for transactions in virtual currency. If somebody pays you in virtual currency and you give value for it and you don't know of any other competing claim to it, doesn't matter if it later turns out that those funds were embezzled or they-- the person shouldn't have paid them to you. The transaction is final. And it seems like a simple rule, but imagine if it weren't there, if it weren't the case. Then all these businesses would have to operate-- they'd have to keep large reserves in case they're going to get sued for some transaction that they didn't know about. So it's rules like that. It's a-- it's a simple example and there are-- there are a number of other rules in there that-- but to kind of give finality to the transactions and allow people to have confidence that their transactions are not going to be unwound later on.

**KAUTH:** Thank you.

**JACOBSON:** Other questions from the committee? I do have one question for you. It has to do with-- you mentioned that you're dealing with digital signatures, and DocuSign, I presume, would be one that-- I know there are a number of banks and credit unions and-- out there today that are members of the Federal Home Loan Bank of Topeka, I think right now dealing with some issues with regard to UCC and the ability to recognize DocuSign as a valid signature as opposed to a wet signature, and hence making loans that were closed with DocuSign ineligible for collateral. So do you believe that this is taking steps to close that piece as well?

**BEN ORZESKE:** Yes, the state law part of it. I believe that part of that is also some federal regulations that, of course, we don't have-- have control over. But this will-- as long as it's in compliance with the federal regulations, then this updates the rules so that electronic documents and electronic signatures will be permitted under the same conditions that paper sig-- signatures were permitted before.

**JACOBSON:** Great. Thank you. Thank you for your testimony.

**BEN ORZESKE:** Thank you.

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**JACOBSON:** Other proponents? And before we move on in other proponents, I'd like Senator Dungan to introduce himself as well, for the committee-- he's a member of the committee.

**DUNGAN:** Thank you, Senator. Senator George Dungan from LD 26, northeast Lincoln.

**JACOBSON:** And it wasn't that he wasn't interested in all this. He had some other things on his plate.

**DUNGAN:** My apologies. I apologize for being late.

**ROBERT HALLSTROM:** Senator Dungan was probably more interested in the riveting testimony on UCC Article 12.

**DUNGAN:** I got here just in time.

**ROBERT HALLSTROM:** With that, Vice Chairman Jacobson, my name is Robert J. Hallstrom, here before you today as reg-- registered lobbyist for the Nebraska Bankers Association to testify in support of LB94. H-a-l-l-s-t-r-o-m. UCC Article 12 would adopt the Uniform Commercial Code provisions relating to controllable electronic records. Just by way of background, obviously, this is not a quantum leap in policy. The Legislature, as previous witnesses have indicated, have already adopted UCC 12 as the policy for the state of Nebraska by its adoption in 2021. We knew at that time that we were adopting an early version. We jumped the gun, if you will, in adopting it somewhat prematurely, knowing that there was yet some vetting to be done by the Uniform Law Commission. That vetting was accomplished in July of 2022, and so you have LB94 before you today. When we look at the law as it existed prior to July 1 of 2022, one of the reasons for the need for modernization was that the existing UCC Article 9 did not specifically address digital assets such as Bitcoin, nonfungible tokens, and the like. And so lenders were faced with having to try and arguably fit a round peg into a square hole by determining the digital assets, if they were taken as security, were constituting general intangibles, in which case a UCC financing statement would be filed to perfect or under Article 8 of the Uniform Commercial Code regarding investment property, which can be perfected by either the filing of a financing statement or by taking control of the-- of the security. And UCC Article 12 has some specific rules with regard to control that are unique to digital assets, but that is the-- control is king under UCC Article 12 in terms of trumping a financing statement perfection in digital assets. So you're going to want to take control of the digital assets through the key--

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cryptographic key and so forth in order to be properly perfected. Mr. Orzeske talked about the issues relating to the transition that's required. We had applicability and-- and safe harbor provisions under UCC Article 12 that was adopted under LB649. We have similar provisions to address the gap between July 1 of 2022, when our law took effect, and whenever this law takes effect-- which, the operative date is suggested of July 1 of 2024. I would indicate also that existing UCC Section 12-101A did reflect the intent of the body in 2021 and the acknowledgment that we were adopting an early version of UCC Article 12 by suggesting that the Nebraska Legislature will review and adopt conforming amendments to the provisions of the Uniform Commercial Code on controllable electronic records to remain consistent with the language and intent of the final proposal of the joint committee on the Uniform Commercial Code and emerging technologies of the Uniform Law Commission. And while acknowledging that that Legislature cannot bind this Legislature, I hope that we're simply continuing the policy with regard to the adoption of UCC Article 12. And with that, the amendment that Mr. Christolear noted in that 163-page bill, kudos to Bill Drafters, there was one technical-- I think it was a reference to 22 UCC rather than Article 12, and those would be addressed in the technical amendment that's been submitted to the committee. Be happy to address any questions that the committee may have.

**JACOBSON:** Questions for Mr. Hallstrom? If not, thank you for your testimony.

**ROBERT HALLSTROM:** Thank you.

**JACOBSON:** Are there further testifiers speaking in-- as proponents? If not, are there anyone who-- wishing to speak as an opponent? Seeing none. Are there-- anyone wishing to speak in a neutral capacity? All right. If not, we'd invite you, Tori, to come back--

**TORI OSBORNE:** Waive closing.

**JACOBSON:** You're going to waive closing? Are there any letters for the record? None? OK. Then we'll close the hearing on LB94, and we will open the hearing on LB-- what's the next one up? LB214. Go ahead.

**TORI OSBORNE:** Good? OK. Good afternoon again, Vice Chairman Jacobson. Members of the committee, my name is Tori Osborne, T-o-r-i O-s-b-o-r-n-e, and I'm the legislative aide for Senator Slama, who represents District 1 in southeast Nebraska. And today, I am here to

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introduce LB214. LB214 is a bill that will update a number of statutes, so I will briefly break down the bill's nature down to five categories. First, the bill provides for the annual reenactment of the depository financial institutions' "wild card" statutes to provide equal rights, powers, privileges, benefits and immunities for state-chartered banks, savings and loan-- loan companies, and credit unions, with their re-- respective federal counterparts. Due to state constitutional restrictions, these statutes are amended annually. And second, the bill would amend a number of state statute-- or, state laws to update cross-referenced federal statutes and regulations so as to refer to these statutes and regulations as they existed on January 1, 2023. Currently, these statutes have a reference date of January 1, 2022. Third, the bill would amend two statutes within the loan broker statutes. This would be done in order to remove obsolete language related to the requirements that loan brokers are to include their electronic mail and internet addresses within the disclosure statements and loan brokerage agreements given to customers. The effect of the amendments will take-- will make the requirements mandatory. Fourth, the bill would amend 45-735 of the Residential Mortgage Licensing Act to provide that the department may authorize and regulate remote work arrangements for mortgage loan originators and other agents and employees of licensed mortgage bankers, registrants and installment loan companies. Fifth, and lastly, the bill-- bill would make certain amendments to the Nebraska Installment Loan Act to define the terms "consumer" and "loan" within Section 45-1002 and repeal subsection (3) of the statute, which will be unnecessary with the adoption of those added definitions. Amends Section 45-1003 to provide that a person who markets, owns in whole or in part, holds, acquires, services or otherwise participates in consumer loans made by a financial institution, must be licensed under the act. Importantly, financial institutions are and will continue to be exempt from licensing under this act. Amends Section 45-1006 to provide that the director of the department may waive the hearing requirements for an applicant who does not originate loans under the act. And there has also been one amendment drafted for this bill. AM-- AM81 is an amendment based upon discussions between the Department of Banking and Finance and the Nebraska Bankers Association to clarify the application of the Nebraska Installment Loan Act to financial institutions. And that's all I have. Thank you. And I would refer any questions you have to the bill's proponents.

**JACOBSON:** Thank you.

**TORI OSBORNE:** Thank you.

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**JACOBSON:** I would now invite any opponent-- or, any proponents to please step forward. Director Lammers.

**KELLY LAMMERS:** Vice Chair Jacobson, members of Banking, Commerce and Insurance Committee, my name is Kelly Lammers, K-e-l-l-y L-a-m-m-e-r-s. I am director of the Nebraska Department of Banking and Finance. I'm appearing today in support of LB214, which was introduced at the request of the department. LB214 proposes updates to a number of laws governing many of the industries regulated by the department through its financial institutions' division and the Nebraska Securities Bureau. The focus of LB214 is to update 11 separate acts that the department administers, including revisions that the Legislature has been adopting on an annual basis. LB214 contains the annual equal rights updates for Nebraska's state-chartered banks, credit unions, and savings and loan associations. Sections 6, 8 and 17 of the bill provide our state-chartered depository institutions with the same rights, powers and privileges as those enjoyed by the federal-chartered counterparts doing business in Nebraska. Due to state constitutional restrictions on delegation of legislative authority, the statutes need to be amended annually to provide a current reference date. LB214 sets that date as January 1, 2023. LB214 proposes to update all cross-referenced federal statutes, regulations and standards affecting the industries under the department's jurisdiction by providing a new reference date of January 1, 2023. Nineteen Nebraska Statutes are amended, including the Nebraska Banking Act, the savings and loan statutes, the Securities Act of Nebraska, the Nebraska Commodity Code, depository institutions financial exploitation statute, Seller-Assisted Marketing Plan Act and Consumer Rental Purchase Agreement Act, the Nebraska Financial Innovation Act, Money Transmitters Act, and the Uniform Commercial Code. All of these statutes were most recently updated in the 2022 Legislative Session in LB707. Sections 18 through 23 of the bill propose amendments to laws regulating loans made by entities which are not depository financial institutions. Sections 18 and 19 will update the loan broker statutes which require loan brokers to provide disclosure statements to-- to prospective borrowers and set the requirements for loan brokerage agreements. Section 20 of LB214 proposes amendment to the Residential Mortgage Licensing Act to promote-- provide that the department may authorize and regulate remote work arrangements for mortgage loan originators and other agents and employees of licensed mortgage bankers, registrants and installment loan companies. The act currently requires these persons to work from an employed licensed main office or a licensed branch. Under this proposal, the department

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will be able to authorize and regulate such work arrangements by rule, regulation and order. LB214 contains updates to the Nebraska Installment Loan Act. As background, in 2021, the act was amended to require licensing of persons who hold or acquire any rights of ownership, servicing or other forms of participation in a loan under the act, as well as those who engage with or conduct loan activity with a borrower in conduction-- in connection with a loan made under the act. Since that time, 93 applications for licenses have been filed with the department by entities covered under the new requirement, with 72 of those approved. All but two of the applicants were loan servicers or participants rather than loan originators. The revisions proposed in Section 21 through 23 result from questions and issues that have arisen in connection with the new applications. Section 21 amends Section 45-1002 of the act to define the terms "customer" and "loan" to make it clear that the act applies to loans made or to be made to Nebraska residents for personal family or household purposes in principal amounts less than \$25,000 with an interest rate greater than 16 percent. These revisions are not new law. Rather, they bring together in one place references scattered throughout the act as to what constitutes an installment loan. Section 23 amends Section 45-1003 to clearly provide that companies that acquire, service, own, or participate in consumer loans made by financial institutions are to be licensed. Financial institutions are exempt from licensing under the act, which has led some of these companies to claim they can bootstrap the exemption. These companies are not subject to the level of regulation that financial institutions are, and such an interpretation defeats the regulatory purpose of the act. The department has required these entities to be licensed. An amendment will be presented by another testifier to further clarify this section. Section 23 amends 45-1006 of the Nebraska Installment Loan Act to provide that the director of the department may waive the hearing requirements for an applicant who does not originate loans under the act. The proposal would provide efficiencies without compromising our ability to scrutinize the merits of each applicant. Applicants would save the expenses of a hearing and could expect to receive a decision in a shorter period of time. I want to thank the committee for-- and Chairperson Slama for introductory-- introduction of this legislation. And I'll be happy to answer any questions. Thank you.

**JACOBSON:** Questions for the director from the committee? Yes, Senator von Gillern.

**von GILLERN:** Quick question regarding Section 20. Presuming the regulations around-- the previous regulations around requiring-- or,

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not allowing work from home or around confidentiality requirements, I'm also presuming that the new language in here has addressed that in some means. Are both those true?

**KELLY LAMMERS:** That is true. It would enable the firm to create rules and regulations relative to VPN, personal privacy, and the ability to define how they protect Nebraska citizens' publicly identifiable information.

**von GILLERN:** OK. Thank you.

**JACOBSON:** Other questions by the committee?

**KAUTH:** I did have one question. It says 9--

**JACOBSON:** Senator Kauth, go ahead.

**KAUTH:** --93 applications for licenses have been filed and only 72 have been approved. Can you talk to me a little bit about what those 21 that were not approved?

**KELLY LAMMERS:** Under the current statutory requirements, the applicants must present a complete application. Upon receipt of the application, that is reviewed, and then it is scheduled for hearing. After hearing, then that application is held until we receive transcript back on the hearing. And upon that chain of events taking place, we're able to make a determination. So therefore, the chain of events causes a time period of 60 to 90 or more days to take place. These are simply in the pipeline.

**KAUTH:** Got it. Thank you.

**JACOBSON:** Other questions? If not, thank you for your testimony.

**KELLY LAMMERS:** Thank you.

**JACOBSON:** Other proponents? Mr. Hallstrom.

**ROBERT HALLSTROM:** Vice Chairman Jacobson, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. Appear before you today as a registered lobbyist for the Nebraska Bankers Association, testifying in support of LB214. The NBA typically comes in in support of what we refer to as the omnibus Banking Department bill, which is what LB214 consists of in updating federal references of particular interest to the banking industry or the "wild card" provisions relating to banks and savings and loans to allow state-chartered

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institutions to have the same powers and privileges as national banks. In this case, during our review of the provisions of LB214, we had concerns with regard to the language and intent of Section 22, which amends Neb. Rev. Stat. Section 45-1003. Traditionally, as Director Lammers noted, financial institutions have not been eligible to be licensed or to make loans under the Nebraska Installment Loan Act, and their loans were therefore not subject to the act. But when you read the language of LB214 in this regard, it basically says that loans made by a financial institution are subject to the act if a third person has taken any of those activities in marketing, servicing, participating or owning some or all of the loan at or after the time that the loan is made. As a result, the department very early said, it is not our intent to bring financial institutions, either in terms of licensure or in terms of coverage of financial institution loans, under the Installment Loan Act. And so we worked with the department to come up with language to address the concerns of them, the Banking Department, to ensure that these third parties who are undertaking those activities would in fact be subject to licensure while at the same time maintaining that traditional exclusion for financial institutions, both from licensing and from having loans covered or subject to the Installment Loan Act. And AM81, which I believe is before the committee, would accomplish those purposes. The department, I understand, is in agreement with that amendment. I did neglect earlier to thank the Department Director Lammers, Patty Herstein, Tag Herbek for working with us on the amendments to LB279 as well as these amendments. Be happy to address any questions.

**JACOBSON:** Questions for Mr. Hallstrom? If not, thank you for your testimony.

**ROBERT HALLSTROM:** Thank you.

**JACOBSON:** Anyone else speaking as a proponent? Go ahead.

**BRANDON LUETKENHAUS:** Thank you. Good afternoon, Vice Chairman Jacobson, members of the Banking, Commerce and Insurance Committee. My name is Brandon Luetkenhaus, spelled B-r-a-n-d-o-n L-u-e-t-k-e-n-h-a-u-s. I'm here on behalf of the Nebraska Credit Union League. The Nebraska Credit Union League represents Nebraska's 56 credit unions across the state. We are here in support of LB214. We want to thank the department and Senator Slama for its introduction, in particular the credit union parity provision, or "wild card" provision, which provides our ten state-chartered credit unions the same rights, powers and privileges that the 45 federally

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chartered credit unions have, and so this is very important for those 10 state charters. And so with that, if you have any questions, I'd be happy to answer any-- any questions you have. And I-- I should say, I haven't seen the amendment, but sounds like it's something that we would support.

**JACOBSON:** Questions for Mr. Luetkenhaus? If not, thank you for your testimony.

**BRANDON LUETKENHAUS:** Thank you.

**JACOBSON:** Others speaking as proponents? Getting everybody today.

**DEXTER SCHRODT:** Senator Jacobson, members of the committee, my name is Dexter Schrod, D-e-x-t-e-r S-c-h-r-o-d-t, president and CEO of the Nebraska Independent Community Bankers Association. We'd like to thank Senator Slama for bringing this annual bill and the department, of course, for bringing the bill as well and recognizing the importance of state community banks playing at the same regulatory playing field as their federal counterparts, of which all of my members are state community banks. So we do appreciate this bill and urge its passage this year and every year, to be frank. And I have seen the amendment, and I agree it provides clarification. It did take me a couple readings of that section to fully understand the department's intent, but I do believe the amendment improves upon that greatly. So we appreciate the department working through that issue. And that is all my comments.

**JACOBSON:** Questions for Mr. Schrod?

**DEXTER SCHRODT:** Thank you.

**JACOBSON:** Thank you for your testimony. Others wishing to speak as a proponent? Anyone wishing to speak as an opponent? Anyone wishing to speak in a neutral capacity? If not, closing?

**TORI OSBORNE:** I waive closing.

**JACOBSON:** Waive closing. Any letters for the record? If not, thank you all for your testimony today. And that's going to conclude our committee hearing. We're adjourned.