

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 28, 2025

JACOBSON: OK. Well, welcome to Banking, Commerce and Insurance Committee. I am Senator Mike Jacobson from North Platte, representing the 42nd District, and I serve as chair of this committee. The committee will take up the bills in the order posted. This public hearing is your opportunity to be part of the legislative process and to express your position on proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill it out completely. When it's your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify, but would like to indicate your position on a bill. There are also yellow sign-in sheets in the-- on the table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone and tell us your name, spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally by anyone speaking in the neutral capacity. We will finish with the closing statement by the introducer if they wish to give one. We will be using a three minute light system for all testifiers. When you begin your testimony, the light on the table will be green; when the yellow light comes on, you have one minute remaining; and the red light indicates you need to wrap up your final thoughts and stop. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It is just part of the process as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up at least 12 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the room. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of transmission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included in the committee statement. I will now have the committee members with us today introduce themselves, starting to my left.

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RIEPE: Thank you. Merv Riepe, representing District 12, which is southwest Omaha and the fine little city of, of Ralston.

von GILLERN: Brad von Gillern, District 4, west Omaha and Elkhorn.

BOSTAR: Eliot Bostar, District 29.

HALLSTROM: Bob Hallstrom, Legislative District 1, representing Otoe, Nemaha, Pawnee, Johnson, and Richardson Counties in southeast Nebraska.

HARDIN: Brian Hardin, District 48.

WORDEKEMPER: Dave Wordekemper, District 15, Dodge County and Western Douglas County.

JACOBSON: And Bob Hallstrom also serves as our vice chair of the committee. Also assisting the committee today, to my right is our legal counsel, Joshua Christolear, and to my far left is our committee clerk, Natalie Schunk. Our pages for the committee today are Ayden and Kathryn, both students at UNL. With that, we will begin today's hearing with LB251, which is my bill, so I will turn the chair over to Mr. Hallstrom.

HALLSTROM: Thank you, Chairman Jacobson. Can I see a show of hands on how many intend to testify on LB251 today? Thank you. Senator Jacobson, whenever you're ready.

JACOBSON: Good afternoon, Vice Chair Hallstrom and members of the committee. My name is Mike Jacobson, M-i-k-e J-a-c-o-b-s-o-n, and I represent District 42. Today I'm here to introduce LB251. LB251 is a bill that was brought to me by the Nebraska Department of Banking and Finance, and it seeks to update a number of statutes, that is the department's annual omnibus bill that will, that will update and clarify laws under the jurisdiction of the department. If enacted, LB251 will make these substantive revisions: one, amend the bank lending limit statute, Section 8-141, to clarify two of the exceptions to the limit, loans which are secured by livestock or warehouse receipts; the amendments align the statute with the National Bank lending limit by providing that livestock or warehouse receipts must al-- al-- always equal at least 115% of the amount of the outstanding loan that exceeds the bank's general lending limit in order for the bank to loan up to 10% over the. the limit, section 3 of the bill; amend-- second, amend the statutes which restrict or, or use the terms bank, trust, savings and loan association, and credit union to permit en-- enti-- entities which have a pending application for one of those

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charters to use the term allowed to the charter, sections 1, 9, 10, 23; next amend Section 8-1506, the failing financial institution emergency statute, to provide a process for the department to approve an emergency acquisition by a Nebraska financial institution of a failing insti-- financial institution headquartered in another state, section 15; amend the publication process for bank and credit union branch applications to provide that institutions, rather than the department, will be responsible for publishing a notice of the filing of the application and obtaining the proofs of publication and payment, sections 5 and 22; next, amend the Loan Broker Act to exempt credit unions and subsidiaries of banks from coverage under the act, section 26; next amend Section 20-- 47-724 of the Residential Mortgage Licensing Act relating to mortgage banker surety bonds to add service loans to the calculation of supplemental bond amounts, section 24; next, amend the definition of broker-dealer in the Securities Act of Nebraska to provide a limited exclusion for certain federally registered broker-dealers, that's in section 13; next, amend Section 76-710.02 to set the interest rate in eminent domain acquisitions at the judgment interest rate rather than set by the department in section 32. LB251 will also make these annual adjustments if enacted: one, provide 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 loans, and credit unions with their respective federal counterparts. Due to the state constitutional restrictions, these statutes are amended annually, sections 8, 12, and 25. And then update cross-referenced federal statutes and regulations to refer to these statutes and regulations as they exist-- as they existed on January 1st, 2025. The current reference date is January 1st, 2024. The laws included reference certain contained in the Nebraska Banking Act and savings and loan statutes, the Nebraska Credit Union Act, and Securities Act of Nebraska, the Nebraska Commodity Code, and the Money Transfer Act-- Transmitters Act, the Depository Institutions Financial Exploitation statutes, the Nebraska Financial Innovation Act, the Seller Assisted Marketing Plan Act, the Consumer Rental Purchase Agreement Act, and the Uniform Commercial Code. Sections 2-4, 6, 7, 11, 14, 16, 21, 24, 28, 31, and 33. Thank you. And I refer any questions that you might have to the bill's proponents, but I would answer the simple ones.

HALLSTROM: Thank you, Senator Jacobson. Questions of the committee? Senator Riepe?

RIEPE: I'm a simple guy, so I'll have a simple question.

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JACOBSON: Great.

RIEPE: Mine is, what, what changed to bring this legislation to us in 2025? Was there some other bill that drove this, or what, what happened?

JACOBSON: Well, let's just say I think the banking department worked overtime to dig through outdated statutes and, and bringing us into probably where we need to be today. As an example, the legal lending limit. That I think is really more clarification. We've been practicing that, but I think it clarifies it. So I think the goal was to eliminate anything that needed to be updated and was outdated and then update a lot of this. And so I, I don't think you'll see something of this extent every year. But, but evidently they had some extra time this year and so they cleaned things up. But I'll let the director speak to that.

RIEPE: OK, fair enough. Thank you very much. Thank you, Mr. Chairman.

HALLSTROM: Any other questions? If not, thank you, Senator Jacobson.

JACOBSON: Thank you.

HALLSTROM: I will now take those who are supporting or proponents of LB251. Welcome, Director Lammers.

KELLY LAMMERS: Glad to be here. Thank you. Vice Chairperson Hallstrom, 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'm director of the Nebraska Department of Banking and Finance, appearing today in support of LB251. It was introduced at the request of the department. LB251 is the department's annual bill proposing updates to laws governing many of the leg-- of the industries regulated by the department. The bill is 64 pages long, so my testimony will highlight the areas of most importance. LB251 proposes amendments to Section 8-141 of the Nebraska Banking Act, which sets the lending limits for state chartered banks. Section 3 of the bill clarifies that the market value of livestock or warehouse receipts securing a loan must at all times equal at least 115% of the amount of the outstanding loan that exceeds the bank's general limit. The amendments will harmonize state law and the lending limit for national banks. LB251 contains an annual equal rights update for Nebraska state chartered banks, credit unions and savings and loans associations. Sections 8, 12, and 25 of the bill provide these state chartered institutions with the same rights, powers and privileges as those enjoyed by their federal counterparts doing

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business in Nebraska. Section 15 will permit the director to authorize a Nebraska state chartered financial institution to operate an out-of-state financial institution on an emergency basis upon the request of the failing institution's primary state or federal regulator. It's important to have the ability to approve a transaction that will assist depositors and loan customers of failed institutions in another state if a Nebraska purchaser is the best or only option. LB251 would update the depository financial institution naming statutes. The amendment proposes in sections 1, 9, 10, and 23 to authorize entities which have a pending application for a bank, trust company, credit union or savings and loan charter to use the term allowed to that charter during the application process. If the application is withdrawn or denied, the application must be removed-- must remove the restricted term from its name or the title in 30 days, thus maintaining the intent of the statute. Sections 5 and 22 of LB251 streamline the branch application process for banks and credit unions by shifting the publication process currently conducted by the Department to the applicant institution. This process has been in place at the federal level for some time. LB251 section 27 would amend Section 45-724, which regulates mortgage banker surety bonds to add serviced loans to the calculation of the supplemental bond amounts. All licensees must have a \$100,000 bond, and depending upon loan volume, a supplemental bond is required. The scale used to add additional bonding coverage currently does not include service bonds, so some of the extremely large servicers are only required to carry the minimum bond amount, which presents a risk to Nebraska borrowers. LB251 section 13 would amend the definition of broker-dealer to exempt a federal registered broker-dealer with no place of business in Nebraska who does business with five or fewer individuals in Nebraska in a 12 month period. There would be minimal activity in this area, posing little or no risk to the public. Section 76-710.02 requires the department to issue interest rate tables to be ca-- used by acquirers of land by eminent domain in an irrigation district, and to calculate a compensatory payment to an irrigation district for the severance of the land. Section 32 of the bill proposes to tie the interest rate to the judgment interest rate. Finally, due to state constitutional restrictions on delegation of legislative authority, LB251 would update 21 cross-referenced federal statutes, regulations and standards affecting the industry under the department's jurisdiction by providing a new reference date of January 1st, 2025. These reference dates have been consistently adopted by the Legislature on an annual bas-- annual basis. These updates avoid duplication and overregulation. I want to thank Chairperson Jacobson for the

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introduction of this legislation to update the laws affecting our financial institutions. I'd happy to answer your questions. Thank you.

HALLSTROM: Thank you, Director Lammers. Any questions of the committee? Seeing none, thank you.

KELLY LAMMERS: Thank you.

HALLSTROM: Welcome, Mr. McIntosh.

RYAN McINTOSH: Vice Chair Hallstrom, members of the committee, my name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear before you today as a registered lobbyist for the Nebraska Bankers Association. I'll spare you all covering all the substantive details of the provisions of LB251. But needless to say, we do support it, and we appreciate the department's diligent efforts every single year in going through and updating obsolete provisions that are problematic within law. We appreciate the department's cooperation in including us in the process and the updates ahead of time. And with that, I would be happy to answer any questions.

HALLSTROM: Thank you. Any questions for Mr. McIntosh?

RYAN McINTOSH: Thank you.

HALLSTROM: Welcome, Mr. Shrodt.

DEXTER SCHRODT: Good afternoon, Vice Chair Hallstrom, members of the Banking, Commerce and Insurance Committee. My name is Dexter Schrodt, D-e-x-t-e-r S-c-h-r-o-d-t, on behalf of the Nebraska Independent Community Bankers Association, here to support Senator Jacobson's LB251. We'd like to thank the Senator and the Department of Banking for thoroughly looking through this bill every single year that puts state chartered banks on the same playing field as their federal counterparts, and especially to the Department of Banking, for looking at all the provisions that needed some cleanups. Nothing more to add beyond what the department has already described in the bill, as we request your support of this bill.

HALLSTROM: Any questions from the committee? If not, thank you.

DEXTER SCHRODT: Thanks.

HALLSTROM: Welcome, Mr. Luetkenhaus.

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BRANDON LUETKENHAUS: Vice Chairman Hallstrom, members of the Banking, Commerce and Insurance Committee, my name is Brandon Luetkenhaus, B-r-a-n-d-o-n L-u-e-t-k-e-n-h-a-u-s. I'm here on behalf of the Nebraska Credit Union League. Our association represents Nebraska's 52 not for profit member owned credit unions. We're here in support of LB251. We want to thank Chairman Jacobson for the introduction of LB251 and also Director Lammers and the Department for their work on this legislation. This is very important legislation for Nebraska's state chartered credit unions. Just for your information, we have 52 credit unions in Nebraska. Ten of them are state chartered. The remainder, remainder are federally chartered. And so this bill, as previous testifiers have indicated, would provide credit unions at the state level, state chartered credit unions, on the same playing level as, as their federal counterparts. So for that and other reasons mentioned by previous testifiers, we do support this bill and, and urge this committee to move it to General File.

HALLSTROM: Thank you. Any questions? Seeing none.

BRANDON LUETKENHAUS: Thank you.

HALLSTROM: Any other proponents? Anyone in opposition to LB251? Anyone here in a neutral capacity? Seeing none. The-- there were no online comment letters submitted. Senator Jacobson, if you would like to close.

JACOBSON: I'll waive my close.

HALLSTROM: Senator Jacobson waives closing. So we'll move to the next hearing on the agenda, which is LB250, also introduced by Senator Jacobson. Natalie, can you start the time clock?

JACOBSON: Well, good afternoon again, Vice Chair Hallstrom, members of the committee. My name is Mike Jacobson, M-i-k-e J-a-c-o-b-s-o-n, and I represent District 42. Today I'm here to introduce LB250. LB250 is a bill that, that was brought to me by the Nebraska Bankers Association. It would amend Nebraska revised statute 8-126. This section is part of the Nebraska Banking Act, and the most current version of the statute was enacted in 2017. Let me give you a little history on this statute. Section 8-126, at least as far back as 1963, provided that a majority of the members of the board of directors of a state chartered bank be residents of the county where such bank was located or of the counties immediately adjacent thereto and of this state. This, of course, was before the prohibition on branch banking in Nebraska was eliminated. In 1986, Senator DeCamp brought LB1035 to modify this requirement to

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provide that a majority of the directors be from this state and that reasonable efforts be made to acquire members of the board of directors from the county in which the bank was located. In 1998, the Banking, Commerce and Insurance Committee introduced LB996, which allowed a majority of the members of the board of directors to have residences in Nebraska or residences within 25 miles of the bank's main office. In 2017, the current version of the law was adopted to allow reasonable efforts for directors to be from the county in which the main office is located, or counties where branches were located. LB1035, which set forth the first modification of 8-126 since the allowance of branch banking was passed in 1986 in the midst of the '80s banking crisis. In all, 22 banks closed in Nebraska that year. In 1986, according to the FDIC, there were 437 commercial banks operating in Nebraska. Today, today, there are approximately 136 state chartered banks in Nebraska. The last four decades have seen a significant rise in mergers and consolidations, both in Nebraska, and includes the expansion of Nebraska banks into other states. This has reduced not just the number of bank charters, but also the number of family owned banks. I'm introducing LB250 to modernize the requirements for residency of bank directors for Nebraska banks. If passed, the bill would require Nebraska state chartered banks to make reasonable efforts to have a majority of its board of directors to be made up of individuals who have their residences as follows. A, in the state of Nebraska, B, within 25 miles of the main office of the bank, C in the county in which the main office of such bank is located, or in a county in which branches of such bank are located. In changing this residency requirement, LB250 accomplishes several things. First is that Nebraska state chartered banks now operating-- now operate in other states, it would allow boards to maintain a balance with representation from each state. For instance, a bank headquartered in Nebraska with branches in Wyoming and Colorado could maintain a balanced number of directors from each of the three states in which it is marketing. Second, it ensures banks can recruit the best and most qualified individuals to serve on their boards. Now we do have an amendment to the bill which I brought with me today. It is AM58. The amendment doesn't change anything substantively with the bill. It just breaks out the individual requirements of residency into separate subsections so that the readers can better understand that the requirements are separate and that the board members only needs to meet one of them. So with that, I want to thank you and I'd stand for any questions.

HALLSTROM: Any questions of the committee? Senator Dungan.

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DUNGAN: Thank you, Vice Chair Hallstrom. Thank you, Chair Jacobson. We're new, we're early on in this banking committee here. I don't want to belabor this too much, but we've talked already a couple of times about state charter versus national charter. And I've been on the committee now for a couple of years. Could you just briefly explain what the virtue is of encouraging more state charters? Because a lot of what we do here, it seems like, focuses on ensuring equity between state charters and national charter of federally, federally chartered banks and credit unions. What is the benefit of the state charters?

JACOBSON: Well, I'll give you my short list. I've, I've had the privilege of being a national chart-- nationally chartered bank. So when I chartered Nebraska Land National Bank back in, let's see, I guess that would be 1998, we were a national charter and we remained that until just a few years ago when we converted from a national charter to a state charter. I would tell you that for banks, the biggest reason to convert from a national charter to a state charter is you're doing-- where you're, where you're working with regulators that actually understand your business in, in the dom-- in the state that you're operating in. It was not unusual when we were a national charter that we would get examiners who have come from California or New York and come into Nebraska and not know a pig from a cow. And, and it's, it made it more difficult when it came to your examination process. I would tell you that, that a lot of the, of the processes are the same. But as you found in the, in the previous bill, the legal lim-- lending limit for a state chartered bank was, was 25% of capital and surplus. The legal lending limit for a national charter was 10% of capital, surplus, undivided profits, and the loan loss reserve. So they were separate, separate calculations. Plus, then you had the exception, which we talked about, that you could loan an additional 10% of your capital as long as it was secured with warehouse receipts or cattle to the extent of 115% coverage of that excess. So typically, the wild card bills have come in every year and they've equalized, you know, the rules, those kinds, so there's no advantage from that standpoint to be a national charter over a state charter. But I would tell you that, you know, we mentioned in the earlier testimony how many state chartered banks there are? We didn't mention the number of national chartered banks because there's only a handful of them that are left. Most have converted to state charters. So-- and I think that's a testament to the banking department and the work that they do in, in, in the state. So I think a lot of this in this bill is we're really focused on the fact that you're going into other states, and there'll be a testifier behind me, a banker who has that very thing. They've got a bank that's got branches in Wyoming and they've got

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branches in Colorado. And so you really want to balance your directors, and and you really want to get input from each of those markets. And so that's part of the reason for this change. That still puts some [INAUDIBLE], as we said before, either in the state of Nebraska, within 25 miles of the main office, the bank, in a county which the main bank has a branch or is located, and/or in the county in which branches of such bank are located. Any one of those would qualify that director to be on the board.

DUNGAN: Thank you.

JACOBSON: You bet. Thank you.

HALLSTROM: Any other questions? Senator Bostar.

BOSTAR: Thank you, Senator. Thank you, Chair. How is reasonable efforts defined?

JACOBSON: Oh, vaguely.

BOSTAR: I was, I was worried about that.

JACOBSON: Yeah. You know, there's-- when you look at talking to people about becoming a bank director, when they're a full blown director, there are fiduciary responsibilities. OK? If you're, if you're on the board of directors of a bank that would fail, the FDIC is probably gonna ask you to write a check. OK? So there are, there are some real consequences to directors that, that, let's say, are on a bank and not doing actively involved in, in helping management manage the risk. OK? And generally you would be asked to write a check if a bank fails if you voted for policies that helped lead the bank to its demise. OK? So I think when you look at reasonable efforts, you know, you may have people that, that say, I don't want to serve on a bank board, or you can't find someone that's really going to add to your board. And so the reasonable efforts is a little bit undefined, but there surely, in North Platte, for example, I ought to be able to find somebody in North Platte that can serve on my board, and we do. But if you went into a smaller market, that may be more difficult.

BOSTAR: If-- I mean, and I don't expect this would happen, but if we-- let's say there was a Nebraska chartered bank based here that branched into surrounding states even, but just in our general region. And their entire board was made up of folks from California. Would they be able to just-- is there a standard that needs to be met or could they just say we've, we've applied reasonable efforts to get folks near us, but, you know, the closest we could find was a bunch of people from

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California, and that's what we got. Is there--would the department--
how would we look at that?

JACOBSON: I would-- I would-- I can almost guarantee you, well, not almost. I could guarantee you the department would have a problem with that. OK? Because there would clearly be people that are qualified to serve on your board that are in the markets that-- as we've listed here. So I would not see that happening. I would, I would also tell you that there are banks that will reach out to people that are IT experts, fraud experts and so on that might be in a completely different market that will serve on your board because of their expertise. But from my perspective, I like-- I look at board members and I like to bring board members on who can help us grow, that can bring connections. And as an example, if you look at our board, they don't generally run in the same circles, and that's by-- for-- on purpose because I want them to be able to be outreach for the bank as well as provide, you know, useful information in terms of economic trends. We've got a bank branch in Rock Springs, Wyoming. It's a fun place to visit. I don't know that I'd want to live there, but, and my staff will be upset with me for saying that, but I would tell you that we have an advisory board out there and they bring a lot of very useful information to us about what's going on in that Rock Springs community. So you think about that in reverse. All of my main board members are-- fit the criteria of, for the most part of being in Nebraska because we're head quartered in Nebraska. But we have this branch clear out in Rock Springs, Wyoming, which is southwest Wyoming, and we don't have any full board members on the board from Rock Springs, but we have a very active advisory board who are not fiduciarily-- they don't have fiduciary responsibilities, but they provide us great input about what's going on in the market, which I think is very valuable.

BOSTAR: Thank you.

HALLSTROM: Any other qu-- Senator Riepe.

RIEPE: Thank you, Chairman. Do you as a bank provide to your directors fiduciary-- that have this fiduciary, do you provide them with officers and liability insurance?

JACOBSON: We do.

RIEPE: OK. To what-- or are you-- is it proprietary to say how much?

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JACOBSON: It's, it's, it's a requirement, and the regulators have a set minimum in terms of the coverage levels. And, and so we do, that's just a standard, standard procedure for officers, directors.

RIEPE: So that's helpful in recruiting directors.

JACOBSON: It is. It is. And, and really, that will not completely shield you from liability. If you're involved in some kind of a crazy scheme that made no sense, you're leaving yourself wide open.

RIEPE: Can't insure against negligence.

JACOBSON: No that-- you can't fix stupid. Yeah. Yeah.

RIEPE: OK. Thank you. Thank you, Chairman.

HALLSTROM: Any other questions?

JACOBSON: Oh yes. And I also have copies of the amendment here, which is-- to LB250. And it just simply states that on page 2, line 5, after "residences" insert, and after the underscored comma insert, in line 6-- in-- insert "(b)," and after line 6 after the underscored comma insert "(c)," and in line 8 after "or" insert "(d)." So with that, here you go. You, you followed that precisely, I know.

DUNGAN: If the record is clear.

HALLSTROM: Could you provide more detail?

JACOBSON: Not at this time.

HALLSTROM: Thank you, Senator Jacobson.

JACOBSON: And I'm going to need to run to another committee, so I'm going to waive my close and hopefully be back.

HALLSTROM: First proponent? Welcome, Mr. Nelson. Welcome.

MIKE NELSON: Thank you. Vice Chairman Hallstrom, committee members, thank you for allowing me to offer my support of LB250. I moved to Kimball in 1973 to join what is now First Tier Bank. And my initial role was as a vice president. Subsequently, I served as the president and chairman. I now live in Lincoln, but I continue as a director of First Tier today. First Tier was chartered in Kimball County in 1955 as the Kimball County Bank. It's been owned by the same family since 1963. However, it was interrupted for two years in the early 2000s when it was sold to Compass Bank and then subsequently repurchased.

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The most recent finance-- state financial information shows we're the 23rd largest bank, bank based in Nebraska with \$900 million plus in assets, and supported by capital and reserve accounts of \$130 million. In addition to the Home Office in Kimball, we have three retail branch locations in central Nebraska, three in Wyoming, and three in Colorado. Of the seven branches-- of the seven-- seven of the branches were de novos or startups. Here's something we think's really interesting for our bank. Of our 100% total assets, 13% are corporate, 17% are Nebraska, 31% are Colorado, 39% are Wyoming. With that growth in our sister states of Colorado and Wyoming, it has really enhanced our employment opportunities in Nebraska, as 54 employees of our 124, or 44% of our employees reside in Nebraska or in Nebraska offices, as we have a centralized loan ops and mortgage application division supported in states. But Kimball located 20 miles from Pine Bluffs, Wyoming, we could be within the 25 rule and have all Wyoming directors. What we're suggesting is for us to add an additional director in Wyoming or Colorado today, we'd have to in turn had a token Nebraska director to comply. We have five Nebraska bank directors. We have two Wyoming directors and two Colorado directors. Also of interest is in the state of Wyoming, for example, they have no residential requirement to serve on a Wyoming based bank board. LB250 allows us to-- us and other Nebraska banks with multi-state locations the ability to increase their potential director pool with local market knowledge. It restricts directors to be Nebraska or in residents of counties where branches are located. And the final positive is it makes no changes to the existing Nebraska board and the process to be a director still has to be approved by the Nebraska Department of Banking under the direction of, of Director Lammers. So I thank Senator Jacobson for in-- introducing LB250, I thank you for your attention, and if you have any comments, happy to hear them.

HALLSTROM: Thank you. Mr. Nelson. Any questions of the committee? Yes. Mr. Nelson, could you please spell your first name and last name--

MIKE NELSON: Oh I'm sorry.

HALLSTROM: --for the record?

MIKE NELSON: OK. Mike, M-i-k-e, Nelson, N-e-l-s-o-n.

HALLSTROM: I knew your name and how to spell it, so I apologize for asking.

MIKE NELSON: Thank you.

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HALLSTROM: Thank you. Next witness?

von GILLERN: [INAUDIBLE] this guy?

RYAN McINTOSH: I'll spell my name this time. Vice Chair Hallstrom, members of the Banking, Commerce and Insurance Committee, my name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear before you today as a registered lobbyist for the Nebraska Bankers Association, testifying in support of LB250. I will note that I neglected the first hearing to introduce our leadership class that's behind me that's spending their day with us today learning about the state Legislature. So welcome to them. You've heard the opening from Senator Jacobson and the individual story from Mr. Nelson and First Tier Bank of Kimball. That is not unique in Nebraska. Many of our state chartered banks have branches in Kansas, Wyoming, Texas, Iowa, South Dakota and elsewhere. As Senator Jacobson states, LB250 accomplishes two primary goals. It allows banks chartered in Nebraska to maintain a balance on their board of directors that represents their market shares. Second, it does absolutely allow our banks to have the best and most qualified individuals serving on their board of directors. Senator Dungan, just to, to note one add-on for, for your comment earlier, we have a dual banking system where all state charter banks still do have a federal regulator. So we do have parity in the ti-- and in the ways that banks are regulated for safety and soundness, soundness. And I would suggest that if Director Lammers does testify behind me that you ask him about the health of Nebraska banks compared to other states. Senator Bostar, with regard to your question on reasonable efforts, I believe that is something that is being done now with regard to county residency for directors that are made up by the department. I'm not aware of any issues with them. Now, we did use the reasonable efforts and included that specifically with regard to having family owned banks in mind, where family members with financial skin in the game and expertise in their bank and in the banking sector may choose to move or retire out of state but still want to be involved on their bank board and not to have that count against their director requirement. So that is why we did choose to include the reasonable efforts in there for-- and other extenuating circumstances where you may have a nationally renowned expert that you can find to serve on your bank. So with that, we would urge the committee to advance LB250, and I thank you for your consideration.

HALLSTROM: Thank you. Any questions for Mr. McIntosh? Seeing none, thank you.

RYAN McINTOSH: Thank you.

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DEXTER SCHRODT: Good afternoon, Vice Chair Hallstrom, members of the esteemed Banking, Commerce and Insurance Committee. My name is Dexter Schrodt, D-e-x-t-e-r S-c-h-r-o-d-t, president and CEO of the Nebraska Independent Community Bankers Association, here in support of LB250 this afternoon. I'd like to thank Senator Jacobson for bringing the bill and for going through the history of the bank board requirements and why certain changes were made at certain times, it's very helpful, and Mr. Nelson, for giving the real world scenario, if you will, on the need for this bill. As Mr. McIntosh alluded to, community banks in Nebraska border, a lot of our border states. Nebraska is the only triple landlocked state in the country, and we have six neighboring states. And due to the success and vibrance of our community banking industry, many of them have found success in our neighboring states, which we think is great, and overall reflection of Nebraska's banking industry. The only other item I'd add to the additional testimony is another example. Last spring, the FDIC actually issued a proposed rule on independent directors, requiring more independent directors on closely held family banks. And part of the pushback on that rule is that, as Mr. Jacob-- Senator Jacobson explained, it can often be hard to find qualified directors that want to serve on a bank board that have the skills, expertise, and are willing to take on that fiduciary duty. So when you couple that with any federal regulations that are coming down, because as Mr. McIntosh described, we are a dual banking system, so our state banks are still subject to federal regulation. That provision by the FDIC, that proposed rule would have made it hard to still comply with the existing bank board statutes here in Nebraska. I do believe this change would help open that up and open up the field of available directors to banks. Now, I will concede that with the change in administration the last couple of weeks, I do believe that proposed rule is on ice currently. But the point remains that in another four years, if an administration were to change and that rule were to come back up, or any other rules coming from our federal regulators, I do believe that this change by Senator Jacobson will help us comply with those federal rules as well.

HALLSTROM: Thank you. Any questions for Mr. Schrodt? Seeing none.

DEXTER SCHRODT: Thank you.

HALLSTROM: Thank you. Any further supporters or proponents of LB250? Seeing none, anyone in opposition to LB250? Anyone in a neutral capacity? We have no online comment letters, and Senator Jacobson waived closing. That concludes the hearing on LB250. And we'll move next to LB231, Senator Bostar, would you take over? Thank you.

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BOSTAR: We'll open the hearing on LB231. Senator Hallstrom, welcome.

HALLSTROM: Thank you. Acting Chair Bostar, members of the Banking, Commerce and Insurance Committee, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m, and I represent Legislative District 1, consisting of the counties of Otoe, Johnson, Nemaha, Richardson and Pawnee in southeast Nebraska. I'm introducing LB231, the Uniform Special Deposits Act, which is the result of a multiyear collaborative drafting process by the Uniform Law Commission, which provides clarity to an area of law that has been uncertain for a number of years. Special deposits are banking products that have different characteristics than other deposit accounts like checking or savings deposits. They are a type of protected escrow account. Special deposits are established for a particular purpose, and a beneficiary's entitlement to payment is determined only after a specified contingency has occurred. That contingency could be the closing of the sale of real estate, the distribution of funds to class members after a court approves a settlement of a class action, or the distribution of a commercial tenant's security deposit when the leasehold ends, among others. These deposits ensure funds will be available to the person entitled to them, the beneficiary, in the future. Special deposits serve an important function. They are safe, secure and efficient. Safety and security are provided by a regulated bank, banking regulation, including the regulators and sometimes deposit insurance. Parties using a special deposit expect that when the contingency occurs, the money will be available for payment. While they are a vital component of our banking infrastructure, legal uncertainties have caused many to avoid using special deposits. These uncertainties thwart the parties' expectations that funds in a special deposit will be available to them once the contingency has occurred. Historically, courts have attempted to fashion protections through, among other measures, common law referring to special deposits. However, the attributes that make a deposit special, that is the rights of the parties interested in the special deposit, remain uncertain under current law. Now, there are four problems in particular that LB231 attempts to address and cure. First is clarifying what a depo-- a special deposit is as opposed to a general deposit. In my testimony, I have gone through the five different criteria that are required to identify a special deposit, primarily the fact that upon a specified contingency, a payment will be made. And the requirement that the special deposit serve a permissible purpose is a crucial feature of the act. A special deposit must serve a permissible purpose from creation until termination. If the special deposit ceases to serve such a purpose before termination, the

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protections of the act will not apply to any future funds deposited in the account. Importantly, in addition, the act ensures that a deposit or transfer voidable under other law is not protected simply by designating it as a special deposit. LN231, and I believe Mr. Swanson, who will testify after me, will go into more detail with regard to the treatment of a special deposit in the event of a depositor's bankruptcy. But there is case law that the deposit, if not a special deposit, could be part of the individual's bankruptcy. I've got an example where a commercial office building landlord requires tenants to prepay rent as a security deposit. Those deposits typically would be placed into a single co-mingled account and at the end of the, the leasehold period, the deposit is to be returned to the tenants. If the landlord in the intervening timeframe declares bankruptcy, the deposit, under current law, could get caught up in that bankruptcy proceeding. If it's designated as a special deposit under this act, it would be protected from being included in the bankruptcy process. Other issues that we look at are the availability of creditors to gain access to the account. We've had a lot of cases, court decisions, where a garnishment of account or some other legal process intervenes and the, the account is frozen and it's put into limbo as to who really has the right to the account. This bill, in general terms, allows those uncertainties and those continuations and freezing of account to not have to take place. And that's under section 9 of the bill. Section 10 of the bill eliminates the ability of creditors to use an injunction or temporary restraining order to achieve the same or a similar outcome. And finally, LB231 addresses the rights of set off or recoupment of a financial institution, and also limits those while the special deposit is subject to the contingency. And then once that contingency occurs, the special deposit will be paid over to the beneficiary. Just in closing, I know that the, the act, an important aspect of the act, is that it's on an opt in basis so that the depositor and the bank will determine whether or not their account agreement is going to designate and specify the account as a special deposit. We're not introducing any new concepts into law, but rather trying to eliminate uncertainty that otherwise applies in the area of special deposits. And I distributed AM30, which changes the definition of bank to financial institution to be consistent with definitions under the state banking code. And we've made corresponding changes to remove all references to bank and change them to financial institutions in connection with the change in definitional terms. Be happy to address any questions that the committee may have.

BOSTAR: Thank you, Senator Hallstrom. Are there questions from the committee? I have one.

HALLSTROM: Yes.

BOSTAR: What is the recourse if someone were to try to utilize a special deposit in order to effectively shield financial resources from some kind of potential seizure?

HALLSTROM: Yeah, Ba-- basically what we have there are specific provisions, and Mr. Swanson may be better able to, to address it, your question, more specifically. But we have fraudulent transfer provisions under law, voidable transactions under that particular fraudulent conveyance or fraudulent activity, that are not overridden by this, this law, so that if they are putting the account into special deposit account as a deposit, as a, as a mechanism to avoid creditors' rights, then the creditors would have those options and alternatives under other provisions of law.

BOSTAR: OK. Thank you.

HALLSTROM: Thank you.

BOSTAR: Any proponents for LB231? Welcome, Mr. Schrodts.

DEXTER SCHRODT: Thank you, Senator Bostar. Members of the Banking, Commerce and Insurance Committee. My name is Dexter Schrodts, D-e-x-t-e-r S-h-r-o-d-t, president and CEO of Nebraska Independent Community Bankers, here to testify in support of LB231. The Uniform Special Deposit Act establishes a clear framework for special deposits, were-- which are increasingly common in today's financial landscape. By-- this con-- the consistency of our laws will allow financial institutions to enhance the confidence of the consumers and businesses engaging in these types of financial transactions. One of the most compelling aspects of this bill is its focus on protecting the rights of depositors and beneficiaries. The act clearly defines the roles and responsibilities of banks, depositors, and beneficiaries, ensuring that all parties understand their rights and obligations under the act. This clarity is essential in preventing disputes and fostering trust in our financial system. And as Senator Hallstrom mentioned, special deposits were a function of common law. And what that means is the rules regarding special deposits have evolved over the years under, under case law. And that's where most of the rules themselves now are housed, if you will. And, and what that happens, the result of that is creditors who are going after an account holder and funds in an account can then make the claim that this account actually was a special deposit account and the bank should be compelled to turn over any funds in that account that were

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owed to the creditor or beneficiary as they would now be known under this act. So the act provides a, a playing field, a script, instructions for all parties involved on what they have to follow when designating special deposits, how beneficiary gets those funds, and then the role of creditors against those funds. So for those reasons, we would urge the committee to support LB31 [SIC, LB231], and I'd be happy to answer any questions, but I know the Uniform Law Commission folks are behind me, much smarter lawyers than I am. And with that, I will end my testimony.

BOSTAR: Thank you, sir. Are there any questions from the committee? Seeing none.

DEXTER SCHRODT: Thank you.

BOSTAR: Additional proponents? Welcome.

DONALD SWANSON: Thank you. My name is Don Swanson, D-o-n S-w-a-n-s-o-n. I'm from Omaha, live near Zorinsky Lake. I'm an attorney with the Koley Jessen law firm, but I appear here today as a commissioner on the Nebraska delegation of the Uniform Law Commission. I tell people, if you can't remember my name, Don, just call me Commissioner. And I, I, I understand that Larry Ruth explained to this committee yesterday what the Uniform Law Commission is all about. But let it suffice to say that the Uniform Law Commission creates uniform laws on boring subjects that are helpful for a state to function well. And that's one of these laws. The Uniform Special Deposit Act exists to solve a gotcha problem. The problem is when people set up a fund that they expect to be used for a specific purpose in the future, only to find out later that it didn't work. Often in a bankruptcy, they find out that that money is taken and used for a different purpose, and that is what this act is designed to solve. I'd like to give four concrete examples of the type of gotchas that have happened that bring this about. The first one is money paid into an escrow account to be used to pay a landlord's future rent. The te-- everybody thinks that's set, the tenant files bankruptcy, and lo and behold to find out that, no, that didn't work. That money is going to be brought into the bankruptcy estate and used and dissipated for other purposes. Another example, insurance money paid to-- for repairs to water damage on a building sitting in an attorney's trust account. The tenant files bankruptcy, and lo and behold, give us the money. That escrow didn't work. It's going to go into the bank-- in bankruptcy and be used for purposes other than repairing that building. Number three, parties to a land contract decide to sell the land, but they keep a certain amount of money in a fund to be paid to one of the two of them,

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depending on which one wins the lawsuit. But one of them files bankruptcy, and the bankruptcy takes all that money without ever resolving the lawsuit. That was never intended. Number four, a subcontractor does work on an apartment complex. Money is set aside to pay that person, but there's not enough to go around, but they enter into this settlement agreement where the subcontractor gets less money, goes in the account, somebody files bankruptcy within 90 days. Lo and behold, that escrow didn't work, so the 90 days runs from the payment, has to give it back. Those are the kinds of problems that this law is designed to address. And here's how the solution works. When parties want to set aside money to be used for a particular purpose in the future based upon what happens next, they set up a bank account and enter an agreement that provides for payment to a particular per-- person upon the occurrence of the event, and if it doesn't happen, it goes to another person. And it sets up the rule specifically so that it works in bankruptcy by saying that no one ha-- neither of those has an interest until the event occurs and then, then whoever's entitled to it, if they're in bankruptcy, then it can be, be reached, but not until it goes for that particular purpose. And if someone complies with this act, that intent will be effectuated and enforced in a subsequent bankruptcy, either inside or out, when creditors or others start putting a lustful eye on that fund of money. So we're asking that you move this forward and thank you for your time. Are there any questions?

BOSTAR: Thank you, sir. Any questions from the committee? I have one. How, how broad of purpose can a special deposit be set up? I mean, as-- you know, you referenced escrow accounts, holding rent, other kinds of payment. But, but how creative could one get with these types of accounts?

DONALD SWANSON: Well, you can get creative. It depends on whether creative is a pejorative or not. You know, creative is-- creative lawyering is good lawyering, you know. So, yes, you can get creative, but it's got to be specific. It can't say, you know, if the world-- you know, sun comes up tomorrow or something, I don't know, that's a bad example, but it's, it's, it's broad. As Senator Hallstrom suggested, you can't do fraudulent purposes. You can't do fraudulent things. You can't do things that are designed for an improper purpose. But if the purpose is proper, it's just like granting a security interest to a lender. You can do that. And that survives bankruptcy unless there's a fraudulent purpose or intent, and then it doesn't work. But as long as you do these pro-- these proper things in a proper way, it'll work.

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BOSTAR: Could two parties, say, put money into an escrow account with the determining event of pay-- payout being the result of some sort of athletic event in the future?

DONALD SWANSON: Oh, gambling? I, I don't have an opinion on that. I don't have an opinion on that.

BOSTAR: Just curious if this could work with that. How far out into the future, theoretically, can the event that will determine the party receiving the money take place?

DONALD SWANSON: It's-- if the event is-- well, we have land contracts now that'll what, 30 years? And so a deed is held in escrow. 30 years later, everything performed, out it comes automatically. There's nothing wrong with the 30 years. And, and on the other hand, if you have something that's kind of speculative and who knows what's going to happen, again, you get into some improper purposes and that starts creating issues.

BOSTAR: Understood. Thank you. It's helpful. Any final questions? Seeing none, thank you very much. Additional proponents? Welcome.

RYAN McINTOSH: Thank you. Senator Bostar, members of the committee, my name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear before you today as a registered lobbyist for the Nebraska Bankers Association to testify in support of LB231. I won't go into any of the great depth that Senator Hallstrom or Mr. Swanson did, but I will state that this act aims to address long standing uncertainties regarding special deposits. Special deposits are important to commerce, but have been underutilized in Nebraska and elsewhere due to legal ambiguities in state laws and case law that often mischaracterizes special deposits. I don't know if it's been said yet, but this has been enacted in a number of states and is currently being considered all across the country right now. By providing a clear framework and resolving the uncertainties that were described by the previous testifiers, that facilitates the use of special deposits in commercial transactions, offering a safe, cost effective mechanism for managing funds while ensuring legal clarity and confidence for all parties involved. The Nebraska Bankers Association would urge your support in advancement of LB231 to General File. Thank you.

BOSTAR: Thank you, Mr. Macintosh. Questions from the Committee? Seeing none.

RYAN McINTOSH: Thank you.

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BOSTAR: Additional proponents?

BRANDON LUETKENHAUS: Good afternoon, Senator Bostar, members of the Banking, Commerce and Insurance Committee. My name is Brandon Luetkenhaus, B-r-a-n-d-o-n L-u-e-t-k-e-n-h-a-u-s. I'm here on behalf of the Nebraska Credit Union League. Our association represents 52 Nebraska credit unions. We're here in support of this bill, LB231 We thank Senator Hallstrom for, for bringing this bill, I think for credit unions anyway, I think, and, and Senator Hallstrom mentioned, I think one of the most important parts of this bill is that it's an opt in for the credit union as well as, as the depositor or member of the credit union. And so that's extremely important. I think, when it comes to credit unions, they would probably use these for escrow accounts, real estate transfers, or transactions, excuse me, rental properties, the members would have rental properties, and then commercial transactions would be these primary reasons why the credit union might open these accounts or have these accounts. But, but again, the important part is that credit unions would have the opp-- opportunity to opt in. And I think with the gambling situation like you're talking about, I don't think they would opt into it.

BOSTAR: Thank you, sir. Any questions from the committee? Seeing none, thank you.

BRANDON LUETKENHAUS: Thank you.

BOSTAR: Additional proponents for LB231? Opponents for LB231? Neutral testifiers? Senator Hallstrom.

HALLSTROM: Just briefly in closing, thank you, Senator Bostar, members of the committee for your time and attention today and for those witnesses who, who appeared. Couple of items. Mr. Swanson indicated this was a boring subject, but he did use the terminology lustful eye, so I hope the committee appreciated that. And if I understood part of your question on the gambling issue, you also asked about the length of time. There is section 13 in the bill, which indicates that a special deposit terminates five years after the date the special deposit was first funded unless otherwise agreed to by the parties. So with that, thank you again.

BOSTAR: Any final questions from the committee? Seeing none. And there were zero proponent, opponent, neutral or ADA letters for LB231. Closing the hearing on LB231. That concludes our hearings for the day. Thank you all.

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HALLSTROM: Senator Jacobson had suggested [INAUDIBLE] exec session,
but I'm not sure when he's--