

# LEGISLATIVE UPDATE

108<sup>th</sup> Legislature



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February 17, 2023

Lawmakers adjourned on Thursday for a long, four-day weekend. With one-third of the 2023 Legislative Session in the books, much work remains. Having completed two weeks of two-a-day Committee hearings, the Legislature scheduled initial floor debate on bills that had advanced from Committee on Monday, February 13. Unfortunately, the Legislative body ground to a screeching halt over confirmation reports (Gubernatorial appointments) that typically take a few minutes each to process, by spending three full mornings of debate (approximately eight hours) on the confirmation reports. At long last, on Thursday morning, bills on General File were debated, with 12 bills advanced to Select File, including three bills on the NBA Affirmative Legislative agenda.

## FLOOR DEBATE COMMENCES

The following NBA Affirmative Legislative bills were debated on the floor of the Legislature on Thursday morning and have been advanced to Select File:

**LB 94 – UCC ARTICLE 12:** Introduced by Senator Julie Slama (Dunbar), LB 94 would adopt Uniform Commercial Code, Article 12, relating to controllable electronic records. **(NBA Position: Support)**

**LB 207 – TRUST DEEDS-LOCATION OF TRUSTEE’S SALE:** Senator Brad von Gillern (Omaha) is the sponsor of LB 207, which would clarify that the sale of property pursuant to a power of sale under a trust deed may be conducted on the premises, at the county courthouse, or in any public building in which county offices are located within the county in which the property to be sold is situated. **(NBA Position: Support)**

**LB 279 – EXECUTIVE OFFICER REPORTING REQUIREMENTS:** Senator Kathleen Kauth (Omaha) introduced LB 279, which would eliminate the requirement for executive officers to make annual reports regarding the amount of loans or indebtedness on which he or she is a borrower, cosigner, or guarantor, the security therefor, and the purpose for which the proceeds have been or are to be used. **(NBA Position: Support)**

In response to concerns expressed by the Nebraska Department of Banking and Finance, a Committee amendment to allow the Board of Directors to retain flexibility to obtain a credit report for its executive officers on an annual basis was adopted prior to advancing the bill.

## COMMITTEE HEARING ACTIVITY

The following bills, opposed by the NBA, were heard before the Banking, Commerce and Insurance Committee on February 13:

**LB 730 - FAIR ACCESS TO FINANCIAL SERVICES ACT:** Introduced by Senator Rick Holdcroft (Bellevue), LB 730 would restrict financial institutions from limiting access to financial services (financial product or service) for any reason other than objective financial criteria. The bill would prohibit a financial institution from denying any person a financial service offered by the financial institution unless justified by such person’s documented failure to meet quantitative, impartial and risk-based financial standards established in advance by the financial institution. **(NBA Position: Oppose)**

Many thanks to Brad Koehn, Midwest Bank (Lincoln), and Nick Vrba, First State Bank & Trust Co. (Fremont), for testifying in opposition to LB 730 on behalf of the NBA. Koehn noted that the bill, by only

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allowing provisions of banking services to be denied based on “quantitative, impartial, and risk-based financial standards” would prevent a bank from utilizing the “CHARACTER” component of the five-C’s of credit and management experience in making loan decisions.

Vrba suggested to the Committee that “banks should be free to lend to, invest in, and generally do business with any entity or activity that is legal, without government interference. Banks should be free not to lend, invest, or otherwise engage so long as they do not violate statutory, regulatory, fair lending or other anti-discrimination laws.” He also noted that “the free-market approach to banking industry regulation has produced the strongest and most resilient financial system in the world.”

**LB 743 - INVESTMENT NEUTRALITY IN PUBLIC FUNDS ACT:** Also introduced by Senator Kauth, LB 743 would require any investment manager, fiduciary, governing body or financial institution in making and supervising investments of any public fund to discharge its duties solely in the financial interest of the beneficiaries for the exclusive purposes of a) providing financial benefit to the beneficiaries, and b) defraying reasonable expenses related to administration of the benefits.

The bill would require a fiduciary to take into account only financial (having a material effect on the financial risk of the financial return of an investment) factors when discharging its duties with respect to investments of public funds (financial does not include any action taken, or factor considered, by a fiduciary with any purpose whatsoever to further social, political, or ideological interests). **(NBA Position: Oppose)**

NBA General Counsel Bob Hallstrom testified in opposition to LB 743, indicating that an investment manager’s fiduciary duty currently prohibits utilization of ESG factors for personal reasons by the fiduciary and that prohibiting a fiduciary from investing in certain, specified types of investments that may be in the financial best interests of beneficiaries inhibits the ability of a fiduciary to fulfill its obligations to the beneficiaries.