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Judiciary Committee  
January 24, 2007

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[LB92 LB132 LB237 LB259]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 24, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB92, LB132, LB237, and LB259. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None.

SENATOR ASHFORD: (Machine malfunction)...rules that I'd like to go over real briefly. We have a system of lights that allows us to get through the hearings and give everyone a chance to testify, that when you sign in, and I wish...if you would sign at the table behind the witness table here, and sign in your name. And then when you prepare to testify, if you would give your name and spell your name, so that the record clearly has that information. Also, the light system is designed to give you fair warning when your three minutes is about up, and the yellow light will go on. The blue light will come on, and then the yellow light will come on, and we'd ask you to kind of wind up your testimony. And then when the red light flashes, we'd ask you to just close. The introducer has additional time, five minutes to introduce the bill and then five minutes to close, if he or she wishes. The members of the committee that are here--Senator Lathrop from the 12th District; Senator McGill is here; Senator Pirsch; Senator Schimek; and I'm Brad Ashford, from District 20. The first bill we have is LB92. That's Senator Cornett. Ron, do we have Senator Cornett? Do you want to call her? We'll call Senator Cornett and see if we...Senator Chambers has arrived. We're waiting for our first introducer, Senator Chambers, so you haven't missed a thing.

SENATOR CHAMBERS: Okay.

SENATOR ASHFORD: How many are here to testify on LB92? Two people. Three? Okay. How about LB132? One. LB237? Okay. LB259? Only Bill. That's not too bad. All right. Hello, Senator Pedersen. Senator Pedersen is here. Everyone is here except for the introducer, but I know she's on her way, so, right? [LB92 LB132 LB237 LB259]

SENATOR CHAMBERS: This is like the Thanksgiving dinner and everybody here except the turkey! (Laughter)

SENATOR McDONALD: I don't think Senator Cornett would like to be referred to as a turkey.

SENATOR CHAMBERS: Now I didn't call any names. [LB92]

\_\_\_\_\_ : Senator Cornett had a mistaken scheduling--sorry.

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SENATOR ASHFORD: That was figurative only, I think. Wasn't it, Senator Chambers?

SENATOR CHAMBERS: Well, if I give a description and somebody applies a name, that's them, not me.

SENATOR ASHFORD: No, that's not what you meant.

SENATOR CORNETT: How are members of the Judiciary Committee today?

SENATOR ASHFORD: We're fine, Senator Cornett.

SENATOR CORNETT: Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Abbie Cornett, and I represent the 45th Legislative District. I'm here to introduce LB92. Last year I, with the help of the committee, was able to pass LB1149. This bill dealt with the protection of foreign national minors which have been placed into protective custody with the Department of Health and Human Services. The department would then notify the appropriate consul to reunite the child with relatives. When the bill was drafted last year, we used the term "dual citizenship" when referring to the minor. Since the passage of LB1149, it has come to our attention that in some circumstances, the minor may actually hold citizenships in three countries, such as the parents each holding citizenship in separate countries, with the minor being born in the United States or in the third country. LB92's intent is only to change the terminology within the statute that was passed last legislative cycle. There is a representative from the Mexican Consulate who can explain why this change is beneficial. I thank you for your time and consideration, and I'd be happy to answer any questions you may have at this time. [LB92]

SENATOR ASHFORD: Any questions of Senator Cornett? Yes? [LB92]

SENATOR LATHROP: I would like to ask, the statute that you're changing, you used the term "dual citizenship" in the statute when it went through last year; is that the case? [LB92]

SENATOR CORNETT: Yes, and it passed unanimously last year. [LB92]

SENATOR LATHROP: What does the statute do? What are we doing for...presently doing for children holding dual citizenship? [LB92]

SENATOR CORNETT: Well, I will explain it. The state of Nebraska was out of...a little bit out of sync with what was being done on the national and international level, with children of foreign nationals. They weren't being necessarily protected in our foster care system, if their parents were taken into custody. What the bill did was put into statute a memorandum of understanding that Health and Human Services came to an agreement

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with the Mexican Consulate on how juveniles were to be treated. When the Mexican Consulate came to us and asked us to look at making this memorandum of understanding into a law, we did, but we expanded it because there are a lot of children in the state that are from different countries. Whether they're here illegally or legally is not the issue. It is how they are being treated inside of our system in regards to, are they trying to be placed with a family member back in the country that their parents are from, whether they're being provided with translator services. The bill simply...in its most simple essence, when a child that is a foreign national or whose parents are foreign nationals are taken into custody, then their consulate is notified, and then that consulate will do everything they can to reunite them with family members in the country that their parents are from. [LB92]

SENATOR LATHROP: So this doesn't involve us conferring the benefit upon these children or their families? [LB92]

SENATOR CORNETT: No, it actually relieves the state of some obligation. If we can return these children...the Mexican...say, for instance, the Mexican Consulate, as an example, because that is our largest minority. If the state takes a child into custody, rather than that child remaining in the foster care system for months or years, that child can be returned to its home country and relatives there. [LB92]

SENATOR LATHROP: Who did you capture with the use of the terminology "dual citizenship," and who do you want to...what other persons do you want to get with the phrase, "multiple nationalities"? Who did you miss in that... [LB92]

SENATOR CORNETT: Who did we miss? Well, Jose Cuevas of the Mexican Consulate is here to explain that. I believe his son is an example. He was born in one country and citizen of another, and...you can explain this specific situation. But I can give you a personal example. My half brother was a United States citizen, he married someone from the United Kingdom, was stationed in Germany. So when his children...his child was born, the child actually had multiple citizenships. There was this...it had to choose which country it was going to be a member of at age 18. But there are children that we take into custody whose parents may be from South or Central America, and not from the same country, who then are then born in the United States. So they actually are multinational. [LB92]

SENATOR LATHROP: Okay, thank you. [LB92]

SENATOR ASHFORD: Senator Chambers. [LB92]

SENATOR CHAMBERS: So Senator Cornett, is that why the term "nationalities" rather than "citizenships" would be used? "Multiple nationalities" rather than "national citizenships,"... [LB92]

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SENATOR CORNETT: Yes. [LB92]

SENATOR CHAMBERS: ...because they may not... [LB92]

SENATOR CORNETT: Because they might not actually...they may not actually be citizens of the United States. [LB92]

SENATOR CHAMBERS: Okay, thank you. [LB92]

SENATOR CORNETT: A lot of times with some of the people that are fleeing areas that are not necessarily safe, you may have a parent from different countries, and then that child is born in a third country, not being the United States. [LB92]

SENATOR CHAMBERS: I just wanted that in the record. Thank you very much. [LB92]

SENATOR CORNETT: Yes. [LB92]

SENATOR ASHFORD: Any other questions? Thank you, Senator. Do you desire to remain and/or close? [LB92]

SENATOR CORNETT: I will withhold that option. [LB92]

SENATOR ASHFORD: Okay, any other testifiers on LB92? Have we... [LB92]

JOSE CUEVAS: Thank you. Good afternoon. My name is Jose Cuevas, C-u-e-v-a-s. I'm the consul of Mexico here in Omaha, Nebraska, or should I say the state of Nebraska and the state of Iowa, so. And I apologize for this contraption that I'm using, but regrettably I have a broken ankle, and it's in the process of healing. [LB92]

SENATOR SCHIMEK: Mr. Chairman, would you ask the good consul to speak a little louder so that we can hear you? [LB92]

SENATOR ASHFORD: Sure. Thank you. Mr. Cuevas, if you could...can you...maybe you...can you get up there with your leg close enough to the... [LB92]

JOSE CUEVAS: Can you hear me now? (Laughter) [LB92]

SENATOR ASHFORD: That's better. (Laughter) [LB92]

JOSE CUEVAS: Now I'll raise my voice. Thank you, thank you. Thank you, Senator. I appreciate very much the introduction of LB92, because it does indicate that certain changes or one particular change needs to be done to the law that was signed, LB1149,

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last year which has allowed the Mexican Consulate to help the state of Nebraska and the state of--well, we also have an agreement with the state of Iowa--but specifically the state of Nebraska. It has helped it greatly in relieving any burden that might be imposed on them when the Department of Health and Human Services takes up children and puts them in custody and just leaves them there. And eventually, what was happening before, they were giving them up for adoption. Right now, what we're doing is if one of the parents is put under arrest, we're taking them--the child--back to Mexico and giving it to the other parent. Senator Cornett asked me to give an example as to what multiple nationality might mean. One of my sons was born in Peru, and he also acquires Mexican nationality by, just by blood. So...and I mean, the United States recognizes dual citizenship and dual nationality, so in that case, it's basically if you have a child that is born in the United States and is the child of a Mexican national, he has dual nationality. So that's the only purpose. And I have a colleague with me who works in the Protection Department. He I have entrusted directly the taking of the children back to Mexico, and we have been very successful, and I think Department of Health and Human Services could specify to that effect, that we have been very successful in that respect, and we have taken a lot of burden off the state of Nebraska. [LB92 LB1149]

SENATOR ASHFORD: Thanks, Mr. Cuevas. Do we have any questions? [LB92]

JOSE CUEVAS: Yes, Ma'am. [LB92]

\_\_\_\_\_: Oh, no. [LB92]

SENATOR ASHFORD: No, I think she was...and I appreciate seeing you again. I remember we had a nice conversation when I was at the housing authority. One day I came over. And you've done some great work and I appreciate you coming down and testifying. [LB92]

JOSE CUEVAS: Thank you, Senator. [LB92]

SENATOR ASHFORD: Any other testifiers? Thank goodness. That's a...I hope you get that taken care of soon. [LB92]

JORGE A. BORREL: Well, good morning, everybody. My name is Jorge Borrel, from the Consulate of Mexico. I work for the Department of Protection. I work along with Mr. Cuevas, and we consider this a law very important for us, because it has helped us a lot with the kind of cases that...for example, sometimes a Mexican national is getting into trouble with immigration authorities, police authorities. And sometimes they are in danger to lose the custody of their children. So this document has helped us a lot to deal with the Department of Health and Human Services, social workers, and sometimes judges, so that we can demonstrate that we are trying to keep the family union. That's most important for us, to keep the family union here in the United States,

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of the Mexican families; and obviously, there in Mexico. I have worked a lot with a lot of cases like this, and actually, I have taken four or five Mexican minors that were born here. We consider a Mexican minor, based on the Constitution of the United States, can be the son of a Mexican father or a Mexican mother that was born abroad; for this case, in the United States. So what we try to do is to demonstrate to the Department of Health and Human Services that they are going to receive the same services, and they are going to be in good health and economic conditions there in Mexico, so that they can allow us to take the children back to Mexico in order to keep the family union. I think that's the most important point for us. The Department of Health and Human Services is very happy with our job. I have worked directly with 10 or 15 social workers, and they are very, very...they trust a lot in the Consulate of Mexico, because we hand over the children, and we fulfill all their requirements they ask us, and we try to provide them some reports from Mexico so that they can be sure that this is working pretty well. So if you have any question about this? [LB92]

SENATOR ASHFORD: Thank you for your testimony. Any questions of Mr. Borrel? Just so I fully understand this--these children are born in the United States to, in many cases, to Mexican nationals, and your role is to...in those cases is to enable them to return to Mexico. [LB92]

JORGE A. BORREL: Yeah. [LB92]

SENATOR ASHFORD: But in order to do that under federal law, U.S. federal law, the Department of Health and...the state department of Health and Human Services is involved in that process; is that correct? [LB92]

JORGE A. BORREL: Yep. [LB92]

SENATOR ASHFORD: That's a federal... [LB92]

JORGE BORREL: Yeah. [LB92]

SENATOR ASHFORD: The federal government says, we need to make sure that this child is adequately protected, and so that's the case, the most normal case, or the most usual case involves that scenario. They could stay here; they're American citizens, correct? [LB92]

JORGE A. BORREL: Um-hum. [LB92]

SENATOR ASHFORD: But in many cases your goal is to unite the family in Mexico and mother or the father has returned to Mexico. [LB92]

JORGE A. BORREL: Yes. There are some cases...for example, I'm going to tell a

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certain case. Maybe the father is in jail, and the mother was poor, or maybe both parents are in jail. Obviously, the first thing they ask us is to...they don't want to lose the custody of the children. Obviously, they are very limited to fight for their right of keeping the custody of the children here, because they are in jail, or maybe they are in another difficult situation with the justice. So what we try to do is to promote another option for the Department of Health and Human Services; for example, the grandparents. The grandparents usually are in Mexico, and they usually can take care of the children. So by means of house studies and criminal background reports from Mexico, we try to demonstrate to the DHSS and also to the courts, to the juvenile courts especially, that these children are going to be in good conditions under the custody of the grandparents. In the meantime, the fathers...the parents are incarcerated and once they are released or sent back to Mexico, they can rejoin with their family. So what we are trying to promote is the union of the family and that maybe if the parents get into trouble here, we try to avoid that they lose the custody or their rights they have on their own children. So that's the main point. [LB92]

SENATOR ASHFORD: That's a good answer. Any other questions of Mr. Borrel? Thank you, Mr. Borrel. [LB92]

JORGE A. BORREL: Thank you very much. [LB92]

SENATOR ASHFORD: I don't believe we had...do we have any opponents to this bill? I can't recall. We do; I'm sorry, excuse me, sir. I apologize. [LB92]

JOHN COPENHAVER: My name is Copenhaver, John H. I live in Omaha, Nebraska. Thank you for allowing me to make a few comments about this. One of the things that puzzles me about this bill, in the first place, is the term "dual citizenship." And I don't have...apparently don't have the same sort of interpretation of what a dual citizenship means. If we're talking about people who are under 18 years old and not born here, they don't have citizenship. Yet you have people here that presumably, after they get to be maturity, if they do become citizens, obviously, they have dual citizenship. So I don't see, number one, why this is applicable. And the second thing that bothers me about this is having multiple nationalities is like having multiple personalities. I don't know what a multiple nationality. And I think that the issue basically that I'm pointing out here should be phrased in a question. Number one, why did you use...why is the term "dual citizenship" used, to start off with, because it seems inappropriate, and secondly, what is opening up the door when you're redefining this as multiple nationalities? So I'll ask those questions. Basically, I oppose this bill, because I think, in effect, what it does, if I've interpreted it...incidentally, I'm not an attorney, so I can't do it from a legal standpoint. This continually opens up the door to what is happening to our country, and I think it comes to some...under basically, under the aiding and abetting. And it's a very broad sort of thing, but any person who encourages or induced an alien, an illegal alien, to reside (inaudible) or recklessly disregard of the fact, that such resident is in violation

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of the law, shall be punished as provided for each alien in respect to whom a violation occurs. Fined under Title XVIII, imprisonment for not more than five years, or both. I think is a...the way I interpret this thing is it's just another opening of the door. We got a bigger problem coming in Nebraska, which is not identified with the Health and Human Services, but I know several people who work there. And I would suggest some of you, I don't know about other places, but I would suggest that come of you come to Omaha and be down there, and you will find out what's going on. And I don't think you'd approve it. Well, thank you very much. I'll submit this for the record. [LB92]

SENATOR ASHFORD: Thanks, Mr. Copenhaver. Thank you. Do we have any other opposition? Neutral testifiers? Senator Cornett, do you... [LB92]

SENATOR CORNETT: For the members of the committee that were not here last year and didn't hear the original testimony, this bill originally came about from the memorandum of understanding. The memorandum of understanding came about because of a Supreme Court decision on a case where Appleseed took a case all the way to the Supreme Court in regards to a mother having been deported. She was not a citizen. Her children would have what is called dual citizenship, because they were born in this country. And was it Guatemala? Guatemala. The state of Nebraska did not return her children to her when she was deported, because there was no mechanism to do so at that time. So her and one newborn baby and small child were separated for a number of years before this case made it through the Supreme Court. The case said that the children should be reunited with their mother, if she could provide, obviously, a proper home environment. This is not about opening a door to illegal immigration. This is about reunifying children with their parents or their family members, whether they're here legally or not. This is about sending them back to their country of origin to be with family members, and the procedures to do that. Are there any other questions? [LB92]

SENATOR ASHFORD: Senator Chambers. I'm sorry; Senator McDonald. [LB92]

SENATOR McDONALD: Senator Cornett, if a child is born in the United States, are they automatically a United States citizen? [LB92]

SENATOR CORNETT: I don't believe so. As Jose Cuevas would probably be able to answer that more so, they do...I believe they are, but I cannot 100 percent affirm that. [LB92]

SENATOR McDONALD: I thought they would. [LB92]

SENATOR CORNETT: I believe they are, and that is why they're considered dual citizens. But a lot of the children we're talking about, that the Health and Human Services are taking into custody, are not born in the United States. They're born in Mexico or born wherever their parents come from and have come here with their

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parents. So they are not citizens of the country at all. And we're trying to find a way or a mechanism to return them to their homes. [LB92]

SENATOR McDONALD: So would this allow them to go back to the country that...so we're actually allowing them to do... [LB92]

SENATOR CORNETT: To go home. [LB92]

SENATOR McDONALD: ...something that they're not allowed to do now. [LB92]

SENATOR CORNETT: And they have been allowed to, under the bill that we passed last year. This is simply a technical change, going from dual citizenship to multinational or multicitizenship, so we can address the issue of children that actually have more than one country of origin. [LB92]

SENATOR ASHFORD: Thank you, Senator Cornett, appreciate it. [LB92]

SENATOR CHAMBERS: Senator Cornett, I think it's a very good bill. I will support it, and those whose job it will be to administer the bill will understand what these terms mean. They will understand what the bill does. So you need not feel that you did not make clear what this bill is about. I had asked why the term "citizenship" was stricken, and "nationality" and "nationalities" was substituted in their place, and you made it very clear is to why, and the record will make that clear. So I don't want you to think that there's any misunderstanding on our part, based on what you've said. Some people may not listen well; some people may not understand. But those to whom this is directed; namely, those who are going to enforce and administer it, I'm sure will be able to understand. [LB92]

SENATOR CORNETT: And just one further comment. The department has done a very good job over the past year of working with the different consulates in returning these children home. Thank you very much. [LB92]

BRAD ASHFORD: Thank you, Senator Cornett. [LB92]

\_\_\_\_\_ : You have another question here. [LB92]

SENATOR CORNETT: Oh, I'm sorry. [LB92]

SENATOR ASHFORD: Senator Pirsch, sorry. [LB92]

SENATOR PIRSCH: I'm sorry. So is that the extent of how the bill functions, is helping those children who... [LB92]

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SENATOR CORNETT: It also provides, when the child is taken into custody, they notify the consulate so the consulate can help find translator services. Before, a lot of times children were placed in English-speaking homes and were unaware of what had happened to their parents. And the foster parents had no way of communicating where their parents were, what was going to happen to them. And you can imagine how frightening that would be for a small child. But that responsibility falls on...a number of the responsibilities in this bill fall on the consulates. [LB92]

SENATOR PIRSCH: So that wouldn't be borne by the taxpayers? [LB92]

SENATOR CORNETT: No more so than it was before. The state tried to provide translators, but now they have another resource in doing so. [LB92]

SENATOR ASHFORD: Any other questions? Thanks, Senator Cornett. Senator McDonald has arrived. I'm sorry I didn't introduce you earlier, but... [LB92]

SENATOR McDONALD: (Inaudible) [LB92]

SENATOR ASHFORD: We go to LB132. Senator Nantkes. Welcome to the Judiciary Committee. [LB132]

SENATOR NANTKES: Good afternoon. Senator Ashford, members of the committee, my name is Danielle Nantkes, N-a-n-t-k-e-s, here today representing the Fighting 46th Legislative District, and today I'm here to introduce LB132. The purpose of LB132 is to allow a court to vacate a legal separation decree if both parties agree to reconcile. There are some people that are here today that have firsthand experience with this issue, and I'm happy to answer any questions at this time. Otherwise, I'll defer to their expertise. [LB132]

SENATOR ASHFORD: I would just ask the proponents if they would step up to the table and sign in, so we can keep things going. But Senator Nantkes, I just wanted...go ahead, Senator Chambers. [LB132]

SENATOR CHAMBERS: Do you pronounce your name with a long A, Nantkes? [LB132]

SENATOR NANTKES: Yes. [LB92]

SENATOR CHAMBERS: How many words can be derived from the letters in your name? Have you ever undertaken to do that? [LB132]

SENATOR NANTKES: I have not, Senator. [LB132]

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SENATOR CHAMBERS: Well, when a new senator comes, sometimes I find ways to fix that senator's name and face in my mind. I got at least 34 in ten minute, so see if you can beat that. (Laughter) [LB132]

SENATOR NANTKES: My goodness! Impressive! I will do my best. [LB132]

SENATOR CHAMBERS: Okay. [LB132]

SENATOR ASHFORD: That's good information. Thanks, Senator Nantkes. [LB132]

SENATOR LATHROP: That he's working on us, or that he found thirty... [LB132]

SENATOR ASHFORD: That he's working on it, but I'd like to get the results at some point. [LB132]

SENATOR PIRSCH: You know, that's amazing! I can't get two right now. (Laughter) [LB132]

SENATOR ASHFORD: And if you'd state your name and spell your name, last name, for us, please. [LB132]

JEFF KIRKPATRICK: Jeff Kirkpatrick, K-i-r-k-p-a-t-r-i-ck. Chairman Ashford, members of the committee, I come to testify in support of this bill. I had an experience...I'm an attorney practicing in Lincoln, Nebraska. I had an experience several years ago where a client hired me to get a legal separation for him and his wife, and was able to do that. Sometime later, several years later, they came back to me and said, we've reconciled. We no longer want to be legally separated, we want that vacated. And I filed a petition to have it vacated, found as I did the research that there wasn't any statutory provision in Nebraska, unlike a number of other states across the country. There was no statutory provision to allow for the vacation of the legal separation. In my case, I was successful in getting a judge here in Lancaster County to vacate that legal separation, but as I was doing my research and as I talked to some other district judges around the state, they told me that it was their belief that they didn't have that equitable power because it wasn't provided in the statute; if it was outside, at least, the term that the original legal separation decree was granted, that they couldn't grant a legal separation vacation. Like I say, I was fortunate in my client's case, because I was able to convince the judge that he did have that equitable power. But it seemed to me in the aftermath of that, that my clients could have been in an inconvenient situation, when their only option at that point would have been to become divorced, wait for the statutory six months' period, and then remarry. And one of the reasons they wanted to go with the legal separation in the first place, I think there were some religious reasons, but they also weren't sure if they wanted to be divorced and didn't want to publicize within the community that they were divorcing, because if you're divorced in, at least Lancaster County, it's in the Lincoln

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Journal Star several days later. And they didn't want to have to go through that public knowledge. They didn't want to get divorced at a time when they were reconciling. So this is a relatively small bill. I hope you will consider it. There are a number of people that become legally separated, many times because one of the spouses has an addiction problem, they're able to face up with that addiction problem, they reconcile, and they want that marriage to become whole again. This would give them that option to do that, I think, in a fairly convenient manner. [LB132]

SENATOR ASHFORD: Thank you. [LB132]

JEFF KIRKPATRICK: There... [LB132]

SENATOR ASHFORD: Any questions? [LB132]

JEFF KIRKPATRICK: ...any questions? [LB132]

SENATOR LATHROP: I do. [LB132]

SENATOR ASHFORD: Yes, Senator. [LB132]

SENATOR LATHROP: Jeff, can you tell me, your practice, how much of that is divorce work? Or how often do you run into the legal separation? [LB132]

JEFF KIRKPATRICK: I've probably done four or five of them. I would say my practice is 20 percent to 25 percent family law. It fluctuates from year to year, but that would be about the percentage. There are many more divorces than there are legal separations. Many of the legal separations that are filed are turned into divorces before it's all said and done. [LB132]

SENATOR LATHROP: The legal separation, by the time you get to a decree, it's not unlike a divorce. They just don't dissolve the marriage. [LB132]

JEFF KIRKPATRICK: That's the only difference. You can have child support established, visitation orders. You divide up the property, the debts and assets. The only difference, when you're legally separated, is you cannot remarry until you go through that divorce proceeding. And as I've talked to other family law attorneys, the one question they ask is, won't this complicate things? Because you have a division of debts and assets, and then maybe three years later you vacate that, and then the couple decides down the road to get divorced, and that's not uncommon. [LB132]

SENATOR LATHROP: And that was where I was going to go with the next question, which is, the last sentence of this says that the court can enter such orders as are just and reasonable under the circumstances. What...besides setting aside the legal

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separation, what other considerations or things might the court include in an order that's setting aside a legal separation? [LB132]

JEFF KIRKPATRICK: I'm not sure that there would be any necessary orders at that point that they would have to. Where it becomes more complicated would be if you did have a circumstance where down the road the legal separation is vacated, and then that same couple decides to go and get divorced. Then you've got the question of, the court divided up the assets, they've remarried. Do they all become marital assets, or are they nonmarital assets when they vacated the legal separation? And I don't think that actually complicates things, because if you look at my case, for example, if they had become divorced, their assets would have been divided. They would have then remarried, and you would have had basically the same legal question for the judge to decide. And it's easy... [LB132]

SENATOR LATHROP: This may get to the point of the question; that is, if the court is going to enter a decree of a legal separation in a 20-year marriage, the court might also order, for example, ten years of alimony. And if the couple...if one spouse pays the other alimony for ten years, then they reconcile and have the legal separation set aside, and then a year ago they get into a situation where they want a divorce, and it's now a 30-year marriage, are we going to then give the paying spouse credit for all of the...you know what I'm saying? [LB132]

JEFF KIRKPATRICK: The ten years of legal separation? [LB132]

SENATOR LATHROP: Yeah, yeah. Is he going to get...is he going to have to start paying alimony like it's a 30-year marriage? [LB132]

JEFF KIRKPATRICK: Then I think the answer would be, it would be an equitable question for the judge to decide, and part of the evidence that the judge, I would hope, would look at is what happened in that last ten years. Were they together? If they were paying alimony, they were separated, and you wouldn't think that you would pay more alimony for those years that they were separated. [LB132]

SENATOR LATHROP: You don't think that needs to be addressed here? [LB132]

JEFF KIRKPATRICK: I don't think so, because when you look at the area of family law, we give a lot...and must give a lot of discretion to judges to decide what's fair under the circumstances. As far as alimony, it's...what is the relative income of the parties? How long were they married? Do you really need the alimony? And you're going to have a different circumstance with each legal separation. [LB132]

SENATOR LATHROP: Thank you. [LB132]

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JEFF KIRKPATRICK: Thank you. [LB132]

SENATOR ASHFORD: Mr. Mueller. [LB132]

BILL MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB132. Our bar association legislation committee looked at LB132 when it met last week, discussed the bill, and voted to support the legislation. As Mr. Kirkpatrick has described for you, there does appear to be a hole in Nebraska statutes, if you will, and we think that adding this language would fill that, and would support the bill. Be happy to answer any questions the committee may have. [LB132]

SENATOR ASHFORD: Thanks, Mr. Mueller. Anybody have any...I...you have any questions, anyone? I just...is it...is a separation decree a final order when it's entered, or is it...I...you have to refresh my memory. Maybe I...Mr. Lathrop probably knows the answer to that, Senator Lathrop, but do you... [LB132]

BILL MUELLER: (Laugh) I'm like you, I don't know. [LB132]

SENATOR ASHFORD: I'm not sure. Is it a final order, or is it... [LB132]

SENATOR LATHROP: I think it is, since...yeah, because if you're not satisfied with the outcome, you can appeal your legal separation decree to the Supreme Court. [LB132]

SENATOR ASHFORD: To the Supreme Court, so it would be a judgment, and so this is a subsequent revocation. I don't want to ask any more questions. Thank you. [LB132]

BILL MUELLER: Thank you. [LB132]

SENATOR ASHFORD: Any further testimony? Proponents? Opponents? Neutral testimony? Senator Nantkes, you wish to waive closing? Thank you. LB237? Senator Pahls? How many testifiers do we have? I recall there are a number; is that right? Why don't we start with the first testifier...could come up to the desk and sign in, and so when Senator Pahls is done introducing, then you can proceed and...just go ahead and sign. Do you have the sheets? Greetings. Senator Pahls, LB237. [LB237]

SENATOR PAHLS: (Exhibit 3) Good afternoon, Chairman Ashford, and members of the committee. Today I bring forth LB237. This bill has caused a little...my name is Rich Pahls, R-i-c-h, P-a-h-l-s, representing District 31, the Millard of Omaha. This bill has caused a little bit of confusion. Many people read homestead exemption and they immediately think of property tax. But this bill has nothing to do with property tax. We have two homestead exemptions in our state law. This bill deals with homeowners who may be unfortunate enough to face a judgment lien against their home. Under our

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current law, we protect a portion of the value of a homestead from judgment liens if the homeowner resides in the home. We do this because we don't want to put someone out in the streets when a creditor is able to force a lien against the home. As I see it, it's cheaper and more efficient to keep homeowners, especially the elderly, in their own home rather than to force the sale, move them out, and to try to find housing for them. What I will do is give you a little bit of history. Some form of this law...I guess I just have one. [LB237]

SENATOR ASHFORD: We'll make copies. Thanks, Senator. [LB237]

SENATOR PAHLS: I'm sorry. I apologize for that. Some form of this law has been in existence in this state since 1879. Three of the states surrounding Nebraska have adopted protecting the value of a home--Iowa, Kansas, and South Dakota, and Colorado--that is \$45,000. Missouri and Wyoming are less than our \$12,500. Only eight states nationwide have homestead exemptions less than Nebraska. The last time we raised our homestead exemption was in 1997, when we raised it from \$10,000 to \$12,500, a \$2,500 increase. I have a chart that you will receive showing the raises that have occurred since it was enacted. It was enacted in the late 1800s, starting at \$2,000. How did we come up with this figure of \$60,000? Average home values vary greatly across the state. We checked the average value for each county and added it up and divided by 93, the number of counties, and we came up with a figure a little under \$60,000. We thought about creating two values--one for the elderly and one for others, but in the end it seemed simpler to amend what we currently have. I think others testifying today will explain how this does affect Nebraska families. In light of current housing values across our state, I do believe we need to take a look at this figure. I would be willing to accept a different figure of \$60,000, but I think we need to have a reason to back up that offer. To me, this is a matter of public policy, and we should have a rational basis for it. Thank you. [LB237]

SENATOR ASHFORD: Thank you, Senator Pahls. Any questions of Senator Pahls? Senator, do you desire to close or you'll make up your mind later? [LB237]

SENATOR PAHLS: Yeah, can I make my mind up just... [LB237]

SENATOR ASHFORD: First witness. [LB237]

DOUG GERMAN: (Exhibit 4, 5, and 6) Good afternoon. My name is Doug German, spelled G-e-r-m-a-n. Chairman Ashford and members of the committee, I'm executive director of Legal Aid of Nebraska. We're the statewide law firm that serves as a law firm for one-sixth of the population of this state. That's 250,000 people. Last year we fielded 35,000 calls for assistance, so we get to see and hear the problems that this population is experiencing, and we are detecting two very disturbing trends: Number one, a significantly increasing household debt from medical bills, and secondly, predatory

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lending or what I would also call unjustified extension of unsecured credit. And what is happening is people are losing their homes, and as you folks deal with every day, things like that end up on your desk, so to speak, because ultimately this costs the taxpayer, you've got more people out on the street, so to speak, more people getting public assistance. And there is a solution, at least a partial solution, and that is to increase the homestead exemption for protection against unsecured creditors. Again, as Senator Pahls indicated, this has absolutely nothing to do with property tax. And the amount we're asking that you increase it to, or that we're in support of increasing it to, is the \$60,000 figure. Now let me put this into context. You have a chart in front of you that looks like this, and that gives you an idea of where this particular homestead exemption was in 1940. And you will see it was approximately equal to the median value of homes at that time, equal. Look at where we are today. In 2005, the median value of homes has increased over sixty fold. And over the same period of time, the exemption meant to protect that equity has only increased six fold, and it is completely out of whack, compared to the way it was originally designed. The other part of the context I would draw attention is this map, which indicates where Nebraska is on this issue, compared to surrounding...you'll find that inside of that document I handed out. I hope each of you got it. Senator Pirsch, you're looking like you're missing the map. [LB237]

SENATOR PIRSCH: (Laugh) Well, I think it's in here. [LB237]

DOUG GERMAN: I think it's inside. [LB237]

SENATOR PIRSCH: Yep. [LB237]

DOUG GERMAN: This tells you what the neighboring states have done. They have addressed this issue, they have updated this exemption, and you can see it goes all the way from unlimited to North Dakota's \$80,000, and I urge you to support this bill and increase this exemption. One thing that we're concerned about is, that with Nebraska being as out of whack as it is, we could be targeted for predatory lending practices, because those lenders know that there's all this equity sitting in these homes that is unprotected. So I would urge you to cure that situation. I urge you to pass the bill. I think it will curb unjustified extension of credit. I think it will maintain our housing ownership, which is the cornerstone of healthy neighborhoods and communities. Thank you, and I will answer questions, if you have them. [LB237]

SENATOR ASHFORD: Any questions of Doug? Senator Lathrop? Senator McDonald after. [LB237]

SENATOR LATHROP: The idea behind the homestead exemption is that if somebody has a judgment taken against them, that a creditor cannot go in and take it out of the equity in the home. [LB237]

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DOUG GERMAN: A creditor that is not secured. [LB237]

SENATOR LATHROP: Okay, and that's a good point. This doesn't keep the mortgage company from taking a house away from somebody that won't pay their mortgage. [LB237]

DOUG GERMAN: Exactly, exactly. [LB237]

SENATOR LATHROP: In fact, what it does is, it exempts or keeps...it protects for the homeowner, or the family, the equity that they have, up to the homestead exemption amount. [LB237]

DOUG GERMAN: Correct. [LB237]

SENATOR LATHROP: Right now it's at \$12,500, and you want it up to \$60,000. [LB237]

DOUG GERMAN: Correct. [LB237]

SENATOR LATHROP: An example would be someone, a middle-class family that runs into problems with medical expenses? Not uncommon? [LB237]

DOUG GERMAN: That would be a good example. [LB237]

SENATOR LATHROP: And what this would do is allow them to stay in their home, if the equity they have in it is \$60,000 or less. [LB237]

SENATOR LATHROP: Correct. [LB237]

SENATOR LATHROP: To what extent is this bill made necessary by changes in the federal bankruptcy laws? We've seen changes in the last few years in the federal bankruptcy law, have we not? [LB237]

DOUG GERMAN: Correct. I'm not aware of a direct correlation with that legislation. I know that in our work, as we work with people who are forced into bankruptcy because of this credit problem, growing credit problem, we're seeing people who are faced with losing their home. The Bankruptcy Act does not protect them, so we need this protection. [LB237]

SENATOR LATHROP: Okay, thank you. [LB237]

SENATOR ASHFORD: Senator McDonald. [LB237]

SENATOR McDONALD: My question was similar, also. So saying that I own a home

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that's worth say, even say \$60,000, and I cannot afford to pay my medical bills, but I could afford to negotiate with my mortgage lender to keep paying the house payment, the creditors could not take my home, so to speak, is that...if I file bankruptcy? [LB237]

DOUG GERMAN: They could not get to the equity in your home, up to the \$60,000 amount. Now keep in mind that the unsecured creditor would still have a judgment. That judgment does not go away. They could possibly find other ways to collect against this debtor. But they would not be able to get to this equity, which then protects the ownership of the home. [LB237]

SENATOR McDONALD: Okay. [LB237]

SENATOR ASHFORD: Senator Pirsch. [LB237]

SENATOR PIRSCH: Just based upon your experience there with Legal Aid, of the--and you've said you do a high volume, that over...approximately, you said, 30,000 cases a year. [LB237]

DOUG GERMAN: Well, we get 35,000 calls for assistance, and we end up closing about 10,000 cases per year. [LB237]

SENATOR PIRSCH: I see. And of...and not holding you to a strict number, but kind of giving a ballpark estimate, if you can, do you find that a large number of those cases involve medical problems, involving medical bills, or what is kind of the breakdown, if you would? [LB237]

DOUG GERMAN: I cannot give you a number breakdown or even a ballpark percentage, unfortunately. I do know that as I talk to our advocates, our attorneys--and we just finished a needs assessment, where we went out and had focus groups with our client community--that was a main theme, that the...one of the main things they're up against are these medical bills that is causing a large amount of debt for them. I wish I could give you a number, but I just can't. It's significant, it's significant. [LB237]

SENATOR ASHFORD: Anyone else? Doug, without getting into a long answer on this, I just...does this have any impact on the ability of low- to moderate-income home buyers buying into the affordable market? Does it restrain their ability to get a mortgage? [LB237]

DOUG GERMAN: No. [LB237]

SENATOR ASHFORD: Without, you know, just...have you looked at that question? [LB237]

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DOUG GERMAN: The answer is no. I called the mortgage association and asked if this were an issue for them, and they said it's not on their radar screen,... [LB237]

SENATOR ASHFORD: Okay. [LB237]

DOUG GERMAN: ...because... [LB237]

SENATOR ASHFORD: They don't think about...it's not... [LB237]

DOUG GERMAN: No. They rate their credit rating on a different basis, and this does not play a role. [LB237]

SENATOR ASHFORD: Right. They don't speculate on what might happen in a... [LB237]

DOUG GERMAN: No, because... [LB237]

SENATOR ASHFORD: That's not how they lend the money. [LB237]

DOUG GERMAN: ...that's secured. That's secured. [LB237]

SENATOR ASHFORD: They're secured by the land, so... [LB237]

DOUG GERMAN: Yeah. [LB237]

SENATOR ASHFORD: Okay. Thanks, Doug, very much. Thank you. [LB237]

DOUG GERMAN: Thank you. [LB237]

SENATOR ASHFORD: Next proponent? [LB237]

KIM DUNOVAN: (Exhibit 7) Good afternoon. My name is Kim Dunovan, D-u-n-o-v-a-n. I'm an attorney at Legal Aid. I practice in the area of consumer law. I'm here to speak in favor of an increase in the Nebraska Homestead Exemption, and as has been previously mentioned, this relates only to debt collection. It has nothing...it does not in any way affect the property tax base in Nebraska. As was brought up, the first homestead exemption was exacted in 1879, and at the time that \$2,000 amount protected most Nebraska homeowners. Today, rising home prices have effectively repealed the homestead exemption in Nebraska. At \$12,500 that provides very little protection to most homeowners in Nebraska. The increase to \$60,000 would at least protect home equity in an amount equivalent to the average assessed valuation of a home in Nebraska, and I think that reflects a public policy in Nebraska of trying to protect and promote home ownership. And one of the points I want to make is that if you

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look at the major public benefits programs in Nebraska--ADC, Medicaid, food stamps. Each of these programs exempts home equity. You can qualify for those benefits and stay in your home, regardless of the amount of your home equity. And I think it's contrary to the interests of taxpayers to then allow an unsecured creditor with a judgment lien to force those people from their home, strip away that home equity to apply it...to pay down a debt. And people who lose their homes and lose their home equity, are more likely to need public assistance. The rising home prices...another effect of that has also been to increase housing costs. Homeowners are paying a larger percentage of their monthly income for housing costs, making them more financially unstable. And what that means is, if they experience a job loss, medical problems, a divorce, any sort of unforeseen crisis, they find themselves more likely today to default on that unsecured debt and then be at the mercy of these unsecured creditors that can take this home equity. As was mentioned, and I just want to emphasize, only eight states out of 50 provide less protection than Nebraska to homeowners, in terms of the homestead exemption. And if we raise our homestead exemption to \$60,000, and we compare that to the value of homestead exemptions in the other 50 states, it puts us right smack in the middle. So this is not...it brings us up to date, but it is in no means an aggressive homestead exemption valuation. So I would just ask for support for this amendment, because it's consistent with our public policy of protecting homeowners, keeping people in their homes, which is certainly beneficial to Nebraska taxpayers, makes it less likely that they're going to need public assistance in the future, and would provide Nebraska homeowners with protection that is comparable to the citizens in the other 50 states. [LB237]

SENATOR ASHFORD: Thank you. Any questions? Thank you very much. [LB237]

SENATOR ASHFORD: Next proponent. [LB237]

DOLORES GOMEZ: Good afternoon. My name is Dolores Gomez, and I live at 4830 South 19th Street, Omaha, Nebraska. I am here to testify on behalf of my mother, Dolores Garcia, that's spelled D-o-l-o-r-e-s, Garcia, G-a-r-c-i-a, who is 89 years old, suffers from Alzheimer's. I now live with my mother and care for her in her home. Her only source of income is \$896 in social security benefits. She is also a Medicaid recipient. In January of 2000, when my mother was 82 years old and suffering from dementia, she was solicited over the phone to apply for a credit card. The company sent her a card in the mail with a credit limit of \$5,000, despite the fact her only income was \$896 in Social Security. Without my knowledge, my mother charged approximately \$5,000 over an eight-month period until I discovered the card and took it away. Despite making monthly payments to credit card company for more than four years, interest charges, fees, caused the credit card balance to go \$66,000. Credit card companies sued my mother, and I asked for Legal Aid assistance. My mother's home is the only property she has to satisfy a judgment in favor of the credit card. Her home is worth \$35,000, and which it is paid for. If my mother's home is sold to pay credit card

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companies, we will have no place to care for her. She could not stay in an apartment. She would get agitated looking for familiar surroundings. Her doctor has said, people with Alzheimer's do not do well when taken out of their surroundings. My mother would be so stressed and have a serious setback in her condition. It would be more difficult for me to take care of her, and maybe not to care for her at all. And that is why I am here in support of increasing the homestead exemption to \$60,000. Thank you. [LB237]

SENATOR ASHFORD: Thank you, Mrs. Gomez. There may be some questions, so if you would just... [LB237]

DOLORES GOMEZ: Okay. [LB237]

SENATOR ASHFORD: Thank you for your testimony. Does anyone have comment or question. Thank you for your comments, Mrs. Gomez. [LB237]

DOLORES GOMEZ: Okay, thank you. [LB237]

SENATOR ASHFORD: Good afternoon. [LB237]

CURTIS ROWLAND: Good afternoon. My name is Curtis Marian, C-u-r-t-i-s. Excuse me, Curtis Rowland, C-u-r-t-i-s, Rowland, R-o-w-l-a-n-d. [LB237]

SENATOR ASHFORD: I make that same...(Laugh) [LB237]

CURTIS ROWLAND: Well, my stepfather just died, and his name is Curtis Marian, and I was really...was going to make a comment on that. I live in Lincoln, Nebraska, at the location of 6017 Logan Avenue. I'm a homeowner. I made my last mortgage payment a year ago. While I had worked for the last 15 years, I was laid off about a year ago with the knowledge I'd be hired back in six months. But while I was off work, we had to use our credit cards in order to maintain our bills. And consequently, we got behind on the credit cards. I was called back to work within that six months, and I was making enough money at ADM to catch up on my credit card bills, because I had never missed a payment since I've had the credit cards. But I was diagnosed with COPD, lung disease, and I was forced to retire because I could no longer handle the physical aspects of my job, and I could no longer make the payments on my credit card. And the credit card company started really hounding me about paying, so they suggested...well, they said they got a judgment to take all of my furniture, and I told them, well really, if that would satisfy the payments on the credit card, because we was...my wife and I are living on an income of \$1,200 a month, and our budget was just completely stressed with doctor bills, which she don't get any insurance. I'm 65; I get Medicaid, and I have to pay for her medications. She was so stressed out from the threat of losing our home, which they told us that they would get a judgment against us and take our home for the \$3,000 we owed them on the credit card, which we could not pay. And due to the fact that the

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exemption was only \$12,500, that they could get a judgment and take our house. My wife was so stressed out--and I was stressed out and wasn't helping the situation--started having to take...to double the medication for high blood pressure and unregulated heartbeat, my wife did. It was to that point. We finally had to take \$50 out of a budget that was already stressed to satisfy the credit card company, to give them something, and that's the less that they would accept. And that money came from our food budget, and our medical budget. We had to cut back on some of the bills that was necessary, and we go to Food Bank to try to supplement the food we need monthly. [LB237]

SENATOR ASHFORD: Mr. Rowland, thank you. I don't want to cut you off, because...but we appreciate your testimony. [LB237]

CURTIS ROWLAND: And I thank you for the opportunity. [LB237]

SENATOR ASHFORD: Well, we're glad you're here. Do we have any questions of Mr. Rowland? [LB237]

SENATOR LATHROP: No, just thanks for coming down. [LB237]

SENATOR ASHFORD: Thanks, Mr. Rowland. [LB237]

CURTIS ROWLAND: Thank you for listening. [LB237]

SENATOR PEDERSEN: Would you like to leave your testimony with us so we could copy it and each have a copy of it? [LB237]

CURTIS ROWLAND: Well, this is not the (inaudible). [LB237]

SENATOR PEDERSEN: Thank you. [LB237]

SENATOR ASHFORD: Mr. Rowland, we'll just circulate your testimony and we'll give that back to you, okay? So you have that. Thank you. Okay, proceed. [LB237]

MARGARET SCHAEFER: (Exhibit 8) My name is Margaret Schaefer, that's S-c-h-a-e-f-e-r, and I'm the attorney on Legal Aid of Nebraska's Elder Access line and I'm here to speak in favor of this proposal. On the Elder Access line we provide legal advice and assistance to Nebraskans 60 years of age and older. Since the Elder Access line opened in December, 2005, we've answered 2,500 calls from Nebraska seniors, and almost every single day I get a call from somebody dealing with collection issues. The average credit card debt for Americans between the ages of 65 and 69 rose 217 percent between 1992 and 1991, and let me tell you, from my callers it keeps going up. Since many seniors live on a fixed income, they often use credit cards as a safety

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net to cover their basic living expenses. Usually their financial problems become a crisis when there's a job loss, disability, or medical problems. Often I've found the death of a spouse leads to insufficient income to pay all the bills. Sometimes folks expect they're going to work through their retirement and keep working, and they find they're unable to do so. These callers when I talk with them are very frightened for their future. They don't know what to do next. After a lifetime of working hard, paying on a mortgage, the only asset many of these callers have is their homes. With Social Security as their only income, it is a shock when I tell them their homes are vulnerable to unsecured creditors. I then take time to explore with these callers what options they have. I must explain they should think about selling their home and explore senior housing options or apartments for rent. One caller who was in her eighties told me that if she was forced to leave her home, she wouldn't be able to continue to raise the food that was the majority of her diet. She was an avid gardener. Her health and independence could be lost along with that home. A recent caller has \$41,000 of equity. If he borrows from the equity he can't afford to make the payments. This Catch-22 is a common problem for people who are beyond their earning years. They've lived the American Dream--they've bought a home, paid for it over time, and retired, only to find their home vulnerable when trouble strikes. Nebraskans 75 years of age and older are particularly vulnerable, because home equity represents between 47 and 60 percent of their net worth. The proposed increase in the exemption for home equity will help the vast majority of my callers who are in this predicament stay in their homes as long as they are physically able. These concerns will only grow as the number of seniors in Nebraska grows. The number of people in the U.S. over the age of 60 will soon be growing at a rate three-and-a-half times as high as that of the general population. Being elderly in Nebraska is a goal most of us have. Our homes are a unique asset that provide us with shelter, security, and comfort. Increasing the homestead exemption will protect this asset and help Nebraskans remain independent. Thank you. [LB237]

SENATOR ASHFORD: Thank you. Any questions of our witness? Thank you very much. Any other proponents? [LB237]

KEVIN RUSER: Senator Ashford, members of the committee, my name is Kevin Ruser, R-u-s-e-r. I'm on the faculty of the University of Nebraska, College of Law, and I work specifically with students in their last year of law school in our clinical programs, to help them represent clients who are having civil legal problems. We represent low-income clients. And I won't belabor the eloquent points that have already been made in support of this bill. I think that they speak for themselves, and certainly the people that have suffered through this have supported it well. I wanted to address a couple of other points that I think maybe bear considering. One of them is Senator Lathrop's question earlier about whether the changes in the bankruptcy legislation in 2005 has any impact on this, and I would say that it does not, if only because the exemptions for homesteads under the Bankruptcy Act don't apply in Nebraska, because in 1978 when the states had the option of either allowing the federal bankruptcy exemptions to operate or opt out

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of it, Nebraska chose to opt out of it. So the homestead exemption that we're talking about here in LB237 is the exemption that applies either in bankruptcy or out of bankruptcy. And the reason that's important to realize is because bankruptcy isn't an option for people who have too much equity in their home. If they have more than \$12,500 in equity, they're going to lose that equity, whether they file a bankruptcy or not. You say, could they file a Chapter 13 bankruptcy, sort of a repayment plan? And the answer is, in most of my clients' cases, no, because they are equity rich but cash poor. They can't afford to service a Chapter 13 plan; they can't make the payments that would be required, because they have to pay as much through the plan as creditors would get in a liquidation proceeding. And that means, essentially, they'd have to pay off the amount of the equity that they have in their home over the life of the plan, and my clients can't afford to do that, and I'm sure that Legal Aid's can't, either. The other point that I wanted to make was that the housing figures, if you look at that median income figure, this is a very conservative figure of \$60,000. My guess is that if, instead of dividing the total number by 93 counties, if you divided it by the number of housing units in Nebraska, that figure would be much higher because there's a lot more housing units in Lancaster and Douglas and Sarpy counties, and the average value of those houses, I suspect, is going to be a lot higher than it would be in rural Nebraska. So I think a \$60,000 figure is very, very reasonable, and that's all I have. [LB237]

SENATOR ASHFORD: Thanks, Mr. Ruser. Any questions of Professor Ruser? Thank you. Thanks for those points. Next witness. Gary, are you next? [LB237]

GARY FISCHER: (Exhibit 9) Good afternoon, members of the committee. My name is Gary Fischer. I'm General Counsel to Family Housing Advisory Services, a nonprofit company in Omaha, Nebraska. We located at 2401 Lake Street in Omaha, and our primary mission as an agency is to build community and increase housing opportunities by empowering people to secure and sustain affordable housing. Roughly translated, that means that we're an anti-poverty agency, and we believe that to help people out of poverty they need to have an asset. For most people that asset is the equity in their home. And we're representing and serving mostly low, very low, and moderate income families, although we do serve people across the economic spectrum. We operate a number of programs, and I just want to talk to you a couple minutes about those programs, because the reason I'm here is to testify in behalf of the housing counselors and educators that are running those programs who think that you should have some information when you consider this bill, and believe that you should support this bill. We have a program called Financial Management that is a financial literacy program that is directly focused on providing basic financial management skills, basic understandings of the credit system, and how to use credit effectively as their curriculum. We also have a prepurchase home buyer education program. The goal of that is to get people ready to buy a home and be responsible homeowners, and to use credit responsibly, and doing so means to get their credit score in the best possible position they can get it in so that they can afford the credit that they have to use to buy their home. Just for an example,

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to give you an idea of the scope of that program, in 2005 and 2006 we had approximately 1,500 people go through a 12-hour seminar, and of those people about 20 percent or 340 people purchased homes. At any given time we have about 1,200 people that have been through our seminar who are receiving some kind of one-on-one counseling and follow-up regarding credit correction plans, so that they can cure or solve a credit problem they have, enable them to get lower-cost credit to buy a home. We have other programs--and I listed them in my written materials--but those three programs are principal programs that are focused at home ownership and financial literacy. We also have a program that counsels elderly who are 62 years of age or older, in order to allow them to obtain what's called a reverse equity mortgage, and this is a mortgage that allows people who are elderly to supplement their monthly income with the equity that they have in their homes. So we're heavily invested in helping people acquire and maintain home equity. We as well have a foreclosure prevention program that works with people who have run into some kind of trouble with their mortgage. When I talked to the housing counselors and educators, they wanted me to emphasize a couple of trends. You've heard about...you've heard those trends today from other people who have spoken. I'm not going to dwell on them or the numbers that support them. But they want you to know that there's an extensive and growing circumstance of working families and elderly persons alike who have equity in their homes and are using credit to obtain basic medical services and medications, as well as to cover other basic needs such as food and clothing. Skyrocketing medical costs and the lack of available health insurance are contributing to that problem. So we have a particularly vulnerable population of folks who are using credit, who have equity in their homes, and they're using equity to get their basic needs. [LB237]

SENATOR ASHFORD: Gary, this is very helpful, and we have this information, but we're just going to...I'd ask you to sum up, if you would. [LB237]

GARY FISCHER: Okay. Well, I guess the major point for us is that all this individual work that we do with people translates into a community issue that's very important, and that is that people who have home ownership, have equity in their homes, are stakeholders in the community to an extent and degree that is very important in providing for community stability. And when you see lack of home ownership in communities and you see lack of stability, there's a connection between those things. So the work that we're doing in this area is very important, and I think that LB237 will help protect that equity. So I urge you to pass this bill forward and support it. I'd be happy to answer any questions, now or later. [LB237]

SENATOR ASHFORD: Any questions of Gary? Thank you, Gary, for coming down. [LB237]

GARY FISCHER: Thank you. [LB237]

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SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Opponents? Mr. Hallstrom. [LB237]

ROBERT HALLSTROM: (Exhibit 10) Jim Ashford, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association in opposition to LB237. My written comments go through some of the justification that we think exists for not taking as large a leap as has been proposed under LB237. I have some statistics that are probably fairly similar, or information that's fairly similar to what you've heard today about where Nebraska ranks or where Nebraska might rank on the radar screen, in terms of comparing this to other states with regard to the level of the homestead exemption. You've obviously heard some arguably heart-wrenching stories today, which unfortunately is the case when we have bankruptcies and people that have hardships thrust upon them. We probably also have a fair amount of cases where someone goes out, knowing that they're not going to be able to afford paying particular bills, and building up credit card debt, as well. Some things have happened on the federal level to address those types of situations where someone is gaming the system or taking advantage of them, but those cases, nonetheless, exist just as well in our system. And the problem with raising the homestead exemption to \$60,000 to address some of the hardship cases that you've heard, that do inevitably occur, is that you also provide that type of protection for those that are gaming the system and taking advantage of main street merchants, healthcare providers, and others who have, keep in mind, provided goods and services to these people, that they then claim they cannot pay. As a result, we would ask this committee and the body, as they always do, to take a step back from some of the case-by-case situations and do what the Legislature does best, which is look at it from a policy perspective. The historical figures show that the Legislature has methodically increased the homestead exemption from \$2,000 to \$12,500 over a significant period of time. The NBA has been involved in negotiations in making modest increases in the exemptions over the years. If perhaps the time has come to look anew at the homestead exemption, we certainly have made it clear to Senator Pahls and to Senator Ashford our willingness to engage in those discussions. I would note there was some comments made about predatory lending driving some of these issues. The bankers' association has been actively engaged at both the federal and the state level in looking at legislative approaches to restricting and getting a handle on predatory lending activities, which lead to some of these problems. I'm not so sure, and would welcome the parties that are here that are talking and complaining about predatory lending, would welcome them to come to that table, if they haven't already been there. We've had legislation here, and my memory can be fuzzy, but I don't recall that those parties were around the table with us when we worked with the Department of Banking on some of these issues. And we would certainly welcome their involvement, because I know they have a well-founded interest in curing those types of abuses. With that, I'd be happy to address any questions of the committee. [LB237]

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SENATOR ASHFORD: Any questions of Bob? Do you have a number in mind, Bob?  
[LB237]

ROBERT HALLSTROM: Senator Schimek may have had a question. [LB237]

SENATOR ASHFORD: I'm sorry, Senator Schimek. Excuse me. [LB237]

SENATOR SCHIMEK: That's okay. I was thinking the same thing that you just asked. But it occurs to me that 35 percent of these folks must be between \$25,000 and \$60,000, if 20 percent have a homestead exemption of \$10,000 or less; 25, between 10 and 25. And then 20 percent...well, we'd (inaudible) to the top 20 percent, if it were 60. So I'm not sure exactly where that other 35 percent is. But... [LB237]

ROBERT HALLSTROM: Senator, just to... [LB237]

SENATOR SCHIMEK: You would be willing to talk about the figure? [LB237]

ROBERT HALLSTROM: Yes, and I would suspect that Mr. German and myself may need to be more reasonable than either of us might want to be initially coming to the table and in reaching some consensus, because I rather imagine I'm inclined to be a lot closer to \$12,500 than \$60,000, and he's probably in the same boat. And I guess, Senator Ashford, I think, was starting to ask me what figure I had in mind. I don't know that the ribbon card has been played yet, so I would be a little bit reluctant to suggest that I've got any particular figure in this mind, but certainly willing to engage in those discussion. Senator, just to explain those figures, and I think the one difficulty in terms of looking at the statistics and seeing that they might lie, is that one of the areas that becomes difficult in trying to gauge this comparison between states is that there are, I think, about 15 states that did not opt out of the federal exemptions. And so the question becomes, do you compare us to the states that have acted as we have, in saying we're opting out of the feds and we're only going to set our own state exemption level, in which raising us to \$60,000 is going to be significantly higher in terms of how few states or fewer states are above \$60,000 in that respect. There are not a great number of states that are above--probably 10 or 12, perhaps--that are above \$60,000, unless you take the federal exemptions, where they have not opted out, into consideration. [LB237]

SENATOR SCHIMEK: It does sound like this is a problem. It's difficult to see how large of a problem it would be, but would we have any way of looking at these numbers and saying, if we increase this to \$30,000--let's just take that as a figure--that that would take care of 80 percent of these problems? Or do we have any way of knowing that?  
[LB237]

ROBERT HALLSTROM: Yeah. I don't know that we have those figures, Senator. The issue that we get into and the concern,...and quite frankly, and I think Senator

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McDonald had hit on it earlier, in a lot of cases, the lenders that I represent are taken care of, so to speak, in that they have the ability to take the homestead as security. And if the house doesn't have any equity in it, then we may lose some funds in having advanced that loan. On the other hand, if there's sufficient equity in the property or if there's any equity in the home, if it has to be sold due to a foreclosure, that secured lender will be made whole. So it's only the issue where I have a \$100,000 loan out...a \$60,000 loan out and \$100,000 equity in the home. That example will lead to currently, the \$60,000 lender will be taken care of if you have to sell the property. You then have \$40,000 in equity. Our current system says \$12,500 of that off the top can be protected and claimed as an exemption. It's the remaining \$27,500 that then is available for unsecured creditors who have advanced goods and services, I presume, in good faith and so forth. And so the question becomes and the issue historically that we've had some problems with--and Senator, you might recall...I think you were probably here when this happened back in the late eighties, there was a loophole in the bankruptcy exemption laws that allowed bankruptcy attorneys doing their job to advise their clients on the eve of bankruptcy, to go plow monies into annuities, because state law did not address that there was any exemption. And we saw folks that were capable of paying off their debts plowing hundreds of thousands of dollars into annuities, filing bankruptcy, and then being able to preserve those monies. Little different issue but the same concept--how large a homestead exemption is going to provide those same types of opportunities for folks that do have the funds to say, I'm going to disregard that main street business, I'm going to disregard that medical provider, and instead, on advice of counsel, plow some monies into my equity and my homestead, because now I've got \$60,000 instead of \$12,500. So that, I think, is a legitimate concern in looking at balancing the issues of the judgment creditor's ability to go aggressively pursue collection of expenses that they are entitled to collect, versus balancing the hardships that inevitably occur with individuals. [LB237]

SENATOR SCHIMEK: Thank you. [LB237]

SENATOR ASHFORD: Any other questions? Steve? [LB237]

SENATOR LATHROP: Yeah, I do. This...did you...have you had an opportunity to see this map? [LB237]

ROBERT HALLSTROM: I have not, Senator. [LB237]

SENATOR LATHROP: It suggests that the homestead exemption South Dakota, Iowa, Kansas, and Oklahoma is unlimited. [LB237]

HALLSTROM: That would be my understanding. I think Senator Pahls may have referenced \$45,000, but I'm thinking, Senator, if my recollection is correct, there's three states that have no homestead exemption, and there's probably a handful or a half a

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dozen that are unlimited. Now the impact or the interplay, as I understand it, with the federal bankruptcy changes that you referred to earlier in your questioning, is that the feds, in recognition, I think, from a policy perspective of saying, we don't want unlimited exemptions to dictate where people locate and where they plow significant amounts of money into homesteads, has been capped by federal law. [LB237]

SENATOR LATHROP: Okay. And so those states--and you said there's 15 in number that have essentially... [LB237]

ROBERT HALLSTROM: They chose not to opt out. [LB237]

SENATOR LATHROP: ...piggyback or adopted the federal homestead exemption, that's at \$125,000; am I right? [LB237]

ROBERT HALLSTROM: That would be my understanding, yes. [LB237]

SENATOR LATHROP: You're here for the bankers. The fact is, is that when a banker loans money to a homeowner and gets a mortgage back, they have to pay every bit of it or they lose their house; is that true? [LB237]

ROBERT HALLSTROM: They could have it foreclosed if they don't pay back according to the terms. [LB237]

SENATOR LATHROP: In other words, they don't get the first \$60,000 worth of the value of the home. If they don't pay their mortgage, they get the house taken away. [LB237]

ROBERT HALLSTROM: Correct. It's the first amount of equity over and above liens or loans against the property, yes. [LB237]

SENATOR LATHROP: I moved a while ago, and after I moved into a new home, I got a whole bunch of credit card applications. Do you know if the bankers that issue the credit card applications, or that solicit credit card holders target folks that own homes? [LB237]

ROBERT HALLSTROM: Senator, I can't tell you personally. I've heard that debate and discourse on the federal level, and suggestions as to that being the case. I personally...I can check with credit card companies. I personally today, sitting before you, don't know the answer to that question. [LB237]

SENATOR LATHROP: Okay, thank you. [LB237]

SENATOR ASHFORD: Anyone else? Thanks, Bob. Any other opponents? That will close the hearing, and we'll proceed now to LB...oh, Senator Pahls, I'm sorry. [LB237]

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SENATOR PAHLS: Oh, no,...(Inaudible). [LB237]

SENATOR ASHFORD: I thought you waived. I thought you waived; I apologize. [LB237]

SENATOR PAHLS: I just want to...my intent is not to hurt the lender or hurt the homeowner. I think by listening you can see we could probably come to some figure, and I did misquote. Iowa, Kansas, and South Dakota are unlimited. Colorado is \$45,000. The thing I just want to point out is, if you're concerned about it, the Department of Revenue can tell you exactly the average of every county, what the average homeowner...I mean, the information is there. So I think if we, you know, take a look at this, we could probably come to some... [LB237]

SENATOR ASHFORD: Thanks, Senator Pahls. Excuse me for cutting you off. I misunderstood you at first. Thank you very much. [LB237]

SENATOR PAHLS: I'll just wait until you get in front of Banking. (Laughter) [LB237]

SENATOR ASHFORD: I'm hopefully...can't wait. (Machine malfunction)...LB259, Senator Friend. Thanks for being here. [LB259]

SENATOR FRIEND: Thank you, Mr. Chairman, members of the Judiciary Committee. Brings back some haunting memories that are not so long ago. Hi, Senator Schimek. (Laughter) Seems to be somewhat of a routine with us, that...I've made it a routine, I guess. Thank you, Mr. Chairman, again. Members of the Judiciary Committee, my name is Mike Friend, F-r-i-e-n-d. I represent the 10th Legislative District, northwest Omaha. I am here to introduce LB259 at the request of a constituent, a gentleman named Joseph Vacca--he's an attorney in Omaha--it's V-a-c-c-a. Turns out that Joe just had a recent surgery, and I know he's not here. But we've been working on this for a few months, and I thought it was a halfway decent idea. I wanted to present it to the Judiciary Committee; see what you folks thought. LB259 amends the Nebraska Rev. Stat., Section 25-1011, subdivisions 1 and 2, and both enhancements make garnishment procedures fair, we believe, fair to the judgment debtor, fairer and less costly and burdensome to the employers or other garnishees, and less costly and burdensome on the court system, we also believe. It achieves these goals by making some simple changes. A) It allows the court in which the judgment was first obtained to issue garnishments to any employer, bank, etcetera, in any county within the state, with the result that the court which granted the judgment will also be the court to control the garnishment process. Okay, and B) LB259 allows notice of garnishment and request for hearing form, which must be sent to the judgment debtor to be sent by first-class mail rather than by certified mail. As the legislation stands, a garnishment can only be issued to a garnishee,...or excuse me, as the law stands now, it's my understanding that a garnishment can only be issued to a garnishee located within the geographic boundaries of an issuing court, and this gives rise to several problems. And I think an

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example of this is that there are a large number of people who reside in one county and work in another, maybe generally speaking. They've sued, and the judgment obtained in the county of their residence; however, in order to enforce the judgment by garnishment, the judgment creditor must obtain a certified copy of the judgment from the original court--about \$1.25--and then file it in the court in whose geographical jurisdiction the garnishee lies--and that's at the cost of about \$20--and then issue a garnishment out of that court. The following problems, the way we saw it, then seemed to arise. First, the judgment debtor is charged with all of the additional costs, and second, many employers have more than one work location, located in different counties, have a payroll office in another state. I want to skip through a little bit here. I mean, I can hand out some abstracts for you to peruse. I think one of the...another key point and a third thing is that the vast majority of garnishees are corporations of some type, and therefore, required to maintain a registered agent for the service of process. Many of those agents are in Lancaster County, by the way. The other piece is the certified mail piece. What Mr. Vacca has discovered is literally thousands of garnishments are issued each year in our state. In his practice he informed me that virtually 2,000...maybe 2,000 notices of garnishment delivered to judgment debtors,...virtually all of them came back unclaimed. Now the reason for that is pretty clear, and I think it's that certified mail, you know, would have to be picked up at the post office. Your...you know, the hours are somewhat...not inflexible, but difficult at times, for somebody that's working, obviously, and the...if you don't go pick it up, you're not going to get it--it's as simple as that. First-class mail, at least you've got an opportunity there. I think that's about it. I'd be happy to answer any questions. I do wish Mr. Vacca was here; he does, as well. The bottom line is, the conversations that we had over the last couple of months, some of these changes seem to make sense. I'm going to leave it up to the Judiciary Committee and some expertise here to either verify that or fly in the face of that thought. So that's all I'd have. I'd be happy to answer any questions. [LB259]

SENATOR LATHROP: Thank you. Does anybody have any questions for Senator Friend? Senator Schimek. [LB259]

SENATOR SCHIMEK: Yes, if I might. Thank you, Mr. Chairman. I don't understand this very well at all. I've never dealt with this particular issue before, but the certified mail issue has come up in other contexts, and I'm concerned about it because as I read it here, the purpose of a first-class mail is to give a notice to the judgment debtor. And then a...and a request for hearing form within three business days of issuance. If they never get that, what happens? If they have moved from their place of residence, for instance, or business... [LB259]

SENATOR FRIEND: It's never received. [LB259]

SENATOR SCHIMEK: And it's never received. Let's say it's sent by first-class mail;

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that's what I'm asking. I'm sorry I'm not being very clear. [LB259]

SENATOR FRIEND: Oh, okay. [LB259]

SENATOR SCHIMEK: If it's sent by first-class mail and they don't receive it, then what happens? [LB259]

SENATOR FRIEND: Well, the same thing that would happen now with certified mail, that you're still going to get garnished, would be my understanding. I mean, I'm with you, Senator Schimek. The way Mr. Vacca and maybe,...like I said, some folks on the committee can shed some light on this, or possibly some other testifiers. My...I'm assuming that it wouldn't change the way that garnishment is effected. We're just telling, you know, you've got to provide that notice either...well, right now, it's by certified mail. If I don't go...it's my understanding if I don't go pick up that certified mail, it doesn't matter. The garnishment is still going to be, because you did your...the due diligence is on our end, according to the law, to provide that notice. And that was...and by law, it's by certified mail. If I don't go pick it up, that's my choice. I'm still going to get, you know... [LB259]

SENATOR SCHIMEK: But if a person never picks it up, how can there be notice? [LB259]

SENATOR FRIEND: Exactly. [LB259]

SENATOR SCHIMEK: If a person never gets the first-class mail, how can there be notice? [LB259]

SENATOR FRIEND: The last two years we sat here and talked about these type of issues. I mean, I don't know. That's a good question, and I don't think notice has been given. But I would defer...I think this is a good discussion. I don't have a good answer for you. Now according to the statute that I have here, all we're changing is that we're slashing certified and we're putting first class. Now the thing is, I'm guessing what you're asking, Senator, is that at least if it's certified, we know the person didn't get notice, because they didn't go pick up the mail. [LB259]

SENATOR SCHIMEK: Right. [LB259]

SENATOR FRIEND: But that's not going to stop the garnishment from happening, according to the way I read this. So it doesn't really matter if you get notice or not, right? [LB259]

SENATOR SCHIMEK: I guess not, but I can't imagine why. [LB259]

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SENATOR FRIEND: I would like some others to speak to that. This...I do wish Mr. Vacca was here. He apologizes. I think some others could probably speak to it, possibly even in this room. But it seemed to very strange to me, and the abstract that I will distribute might be able to answer some of those questions a little better than I could. [LB259]

SENATOR SCHIMEK: And I just feel badly that I don't know enough about this to really grill you like you just grilled me in the Government Committee. (Laughter) [LB259]

SENATOR FRIEND: I did not grill you, Senator. I...we were having a nice, polite conversation. [LB259]

SENATOR SCHIMEK: (Laugh) Okay. [LB259]

SENATOR ASHFORD: Yeah, that was a good conversation. Any other comments or questions? Senator Friend, do you wish to close? [LB259]

SENATOR FRIEND: I will not close. I will waive closing. [LB259]

SENATOR ASHFORD: Thank you. Any proponents of... [LB259]

SENATOR FRIEND: Thank you. [LB259]

SENATOR ASHFORD: Thanks, Senator Friend. Bill? [LB259]

BILL MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB259. For the record, the bar did not have any role in introducing this bill. When the bill was introduced, we looked at it. Our committee did review it and thought that the changes proposed were good ones. My reading of the bill indicates that there are two changes proposed by this. The first one is one lines 6-8, and what that does, as Senator Friend described well, if a judgment is obtained in say, Douglas County, and the person against whom it is taken works in Sarpy County, the way that the legal process would work now is you would get a certified copy of the judgment in Douglas County, you would file it in Sarpy County. Then the Sarpy County court would issue the garnishment. This change would provide that the Douglas County court where the judgment was originally rendered, would be able to issue the garnishment documents to Sarpy County or any other county in the state. Number two, it changes this certified mail versus first-class mail, and the bar association looks carefully at bills that change that, because your chances of actually having evidence that someone got notice are better if you serve someone certified mail, return receipt requested, than if you serve them first-class mail. When we looked at this, I raised this issue. Our committee of lawyers--and again, we have lawyers who represent people who are suing someone,

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plaintiffs' lawyers, and people who being sued, defendants' lawyers. They did not believe that this change was a negative one. I think, as Senator Friend stated, even if the debtor doesn't actually get notice of the garnishment, I still believe that the garnishment goes forward. And you have to remember: In order to get the judgment in the first place, the plaintiff had to show to the court that it gave notice to the defendant. It served a summons on the defendant to get the original judgment. What we're talking about here is other legal proceedings that are taking place to actually collect the judgment, to actually get the money. I'd be happy to answer any questions that the committee may have, or attempt to. [LB259]

SENATOR ASHFORD: Thank you, Bill. Any questions of Bill here? Thank you. [LB259]

BILL MUELLER: I must have been terribly clear. [LB259]

SENATOR SCHIMEK: You are. [LB259]

SENATOR ASHFORD: I've got it now. Thank you. [LB259]

BILL MUELLER: Thank you. [LB259]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? (Laugh) [LB259]

ROBERT HALLSTROM: Senator Ashford, members of the committee, my name is Robert J. Hallstrom; didn't have any more sign-up sheets, so that's H-a-l-l-s-t-r-o-m, for the record. I appear before you today on behalf of the Nebraska Bankers Association to testify in a neutral capacity. As I sit here in the room, I found myself kind of in Senator Schimek's position of being a little bit confused with exactly what the first part of the bill was designed to do. Senator Friend has provided me with an abstract provided by Mr. Vacca, and I will certainly read that in more detail. But I find myself somewhat on the horns of a dilemma, in that my testimony probably is going to be a little bit positive/negative/neutral--positive in terms of Senator Friend noting that avoiding the cost of a judgment creditor of having to transcribe the judgment is a positive thing. The issue that I'm not quite so sure on is that lenders find themselves both as judgment creditors in some cases, and as garnishees in others, having to respond. The consequences of not properly responding are that you can be held responsible if you should have turned property over and did not do so. My concern--and I need to check this out with my bankers; I trust maybe with technological advances that we can communicate between headquarters in one county and branches in the other--my concern would be either for banks or perhaps the committee should consider whether small businesses would be put at a disadvantage, is if we do have a customer depositor of the bank in the headquarters in Omaha, and somehow someone serves it on our branch in Ogallala, if that case factor or scenario would exist, is there a possibility that the two are not able to communicate sufficiently to know that the headquarters had a

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customer for which we were responsible for responding. And so I just raise those issues for the committee, depending upon how that's exactly supposed to work, in terms of serving it in any county in the state, whether or not that might cause some hardships for lenders or others in those particular circumstances. And I will certainly check with my lenders, and if I find out that it's not an issue, then I'll let the committee know and Senator Friend know that our concerns have been addressed. I'd be happy to address any questions. [LB259]

SENATOR ASHFORD: Any questions of Bob? [LB259]

SENATOR LATHROP: I do, if I can. [LB259]

SENATOR ASHFORD: Yes. [LB259]

STEVE LATHROP: And maybe I can talk about the process of garnishment. Generally, the garnishment happens after they take a judgment against somebody in a collection action in one particular county, and if we can, as an example, use Omaha or Douglas County, if you take a \$1,000 judgment against somebody in Douglas County. What we've done with this bill, if we pass it, is instead of having to transfer the judgment on out to Hall County, if that's where his bank account is, or if that's where the person works at, we can simply garnish him straight from Douglas County to his bank or to his employer in Hall County. [LB259]

ROBERT HALLSTROM: Yes, and I understand that's the way that it's supposed to work. I only raise the spectre of, if I have a headquarter bank in Omaha and the customer is in Hall County, I understand, as you've described it, that's probably the way that it's supposed to work. I'm still going to do it the same way, or should do it the same way as I would under the current law, which is to get it from the issuing court, then have to transcribe it to Hall County, and then issue the summons to the sheriff out there. My question is, could somebody that was trying to pull a fast one on my bank in Omaha, perhaps not knowing that the customer in Hall County ought to properly be garnished, go ahead and serve that on the bank in Omaha rather than in Hall County. Now if that's not available under the bill, then you have resolved my concerns. [LB259]

STEVE LATHROP: Well, that's what it appears to do for me, too. [LB259]

ROBERT HALLSTROM: Okay. [LB259]

STEVE LATHROP: And the maybe unintended consequences are if you take it two steps down the road, if you don't properly answer the garnishment, there's interrogatories that could be sent out--you as the bank or as the employer you have to answer questions, say, yeah, the fellow works here, I pay him X number of dollars, I actually today owe him \$1,000, and then you hold the money, right? [LB259]

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ROBERT HALLSTROM: Yes. [LB259]

SENATOR LATHROP: And in the process, if you don't answer those properly, then you're back in court on a hearing to determine whether you've answered them properly. [LB259]

ROBERT HALLSTROM: Yes, and I would clarify for the record, when I said that the person that doesn't answer properly could be held responsible, the statute does clarify, only if you did actually have property that you should have turned over. So it's not like you're responsible for something that you never had of the customer. But again, it puts you into court potentially, and that would be my concern, to make sure that's clarified. [LB259]

SENATOR LATHROP: Well, that's my...perhaps my point, and that is, is if the judgment and everything has happened in Douglas County, and you are primarily a Hall County bank, but you do business in Douglas County, you're now going to have to come from Hall County into Douglas County to answer questions about the way you answered those interrogatories. [LB259]

ROBERT HALLSTROM: Yeah, and those are issues I think ought to be clarified on this issue. [LB259]

STEVE LATHROP: You'll talk...you'll get us something from the bankers on that? [LB259]

ROBERT HALLSTROM: Yeah, I'll be meeting with the bankers over the next two weeks to take positions on legislation, and we'll raise this issue. [LB259]

SENATOR LATHROP: (Inaudible) [LB259]

SENATOR ASHFORD: Thanks, Bob. Any other questions of Bob? Thank you. [LB259]

ROBERT HALLSTROM: Thank you. [LB259]

SENATOR ASHFORD: I believe Senator Friend waived closing. That concludes the hearing on LB259. [LB259]

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Disposition of Bills:

LB92 - Advanced to General File.  
LB132 - Advanced to General File, as amended.  
LB237 - Advanced to General File.  
LB259 - Held in committee.

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Chairperson

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Committee Clerk