

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

[LB45 LB243 LB382 LB449 LB522 LB526 LB693]

The Committee on Judiciary met at 1:30 p.m. on March 14, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB243, LB693, LB522, LB526, LB382, LB45, and LB449. 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: (Recorder malfunction) ...everyone. I think we'll get the preliminaries out of the way. Looking around the room, I see everyone here knows--and here is Senator Pirsch, so we have an actual quorum--knows the rules, but just very briefly we would ask you to abide by the light system which gives every testifier three minutes, with the red light being the conclusion, asking you to sum up when the red light comes on. And you all know about the sign-in sheets and we'd ask you to sign those prior to coming up for your testimony. We have seven bills today but not a whole lot of people in the room, so let's get started. Speaker Flood. [LB243]

SENATOR FLOOD: (Exhibits 1 and 2) Thank you, Mr. Chairman, members of the Judiciary Committee. My name is Mike Flood, F-I-o-o-d, and I represent District 19. I'm here today on LB243. Now this bill came about after conversations with Marge Schaffer, who is the clerk of the district court in Madison County. Marge reported that the clerks of the district court in Nebraska in conjunction with the court administrators have been working on a statewide manual for clerks' use. During the course of this project, the group carefully reviewed the jury's statutes and identified several provisions that need to be updated or clarified. LB243 is the result of those efforts. I want to quickly summarize the key provisions of the bill. Section 1 of the green copy would add definitions to the juror's sections of our state statutes. Many of the changes in LB243 are clarifications based on these new definitions. Section 2 of the green copy cleans up Section 25-1601, which sets forth circumstances that disqualify an individual from jury service. You'll see that subsection 3 would make it a little easier for older citizens to exempt themselves from jury service. The last provision I want to talk about specifically is in Section 9, and I do need to offer an amendment here which I would ask that be passed out by the page. The green copy of Section 9 does not reflect that we have stricken certain language from Section 25-1629.04 as it is currently written and it does not reflect that some of the language in there is actually new language. I apologize for any confusion here. This was apparently the result of issues with bill drafters' new computer system and I assure you we were not intending to do anything suspect. AM710, which you now have in front of you, fixes the problem. With the new language in Section 9, the jury commissioner will send out the summons and questionnaire only to the number of jurors ordered by the court for each trial term. This is in contrast to the current practice where we are apparently directing thousands of people to appear for jury service in various months from January through December. With this new language, the summons and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

questionnaires will be sent out only for each jury term and only to the number of potential jurors directed by the court. Section 9 also adds first-class mail to the methods by which a summons may be served upon jurors. I note that this language is consistent with what is in LB67, Senator Stuthman's bill that is now on final reading. LB67, as you may recall, does two things. Number one, it adds the first-class mail option for service of the summons, and number two, prohibits a contempt action for a family to respond to a summons that is sent by first-class mail. Again, LB243 also adds that first-class mail option. The amendment includes two other technical changes that I won't go into here. Before concluding, I would also ask the page to distribute this letter from Marlene Vetick, who is the legislative liaison for the clerk of the District Court Association of Nebraska. Marlene indicates that both she personally and this association support the changes proposed in this bill. With that, I conclude unless anybody has any questions. [LB243]

SENATOR ASHFORD: Any questions of Speaker Flood? Seeing none. [LB243]

SENATOR FLOOD: And in the interest of time I would waive closing. [LB243]

SENATOR ASHFORD: Thank you, Speaker Flood. Any testifiers on this bill? All right. My gracious, that is a first, I must say, I mean for this year; I'm sure you've seen it before. Oh my. All right. Kind of catches me off guard. (Laughter) Let me introduce my colleagues. Senator McDonald from St. Paul, Nebraska. Is that right? I always get it mixed up, because...but Senator McDonald; Senator Pirsch from Omaha; Senator Schimek from Lincoln; and Senator Lathrop from Omaha; and I'm Brad Ashford from Omaha; committee counsel, Stacey Trout; and Jonathan Bradford is the committee clerk. Let's move on to the next bill. Senator Hudkins. [LB243 LB693]

SENATOR HUDKINS: Thank you, Senator Ashford and members of the committee. My name is Carol Hudkins, H-u-d-k-i-n-s, and I represent District 19. This is a bill brought to me by both the Department of Motor Vehicles and the jury commissioner. Right now, at least once a year, the election commissioner furnishes to the jury commissioner a complete list of the names and dates of birth and addresses of all registered electors, and this is for the purpose of making up jury lists. The Department of Motor Vehicles also provides a list to the jury commissioner every December with the same information. And what we are asking for today is very simply to add the information, the driver's license numbers. What this will do is eliminate a lot of duplication. Those lists are merged together and if the driver's license numbers are also there it will result in a better list for the jury commissioner to choose from. That's what the bill does and I'll answer any questions. [LB693]

SENATOR ASHFORD: Senator Pirsch. [LB693]

SENATOR PIRSCH: And I appreciate you bringing this bill forward. How does it

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

specifically help eliminate duplication? What types of information are presently collected by the jury commissioner? [LB693]

SENATOR HUDKINS: The names, addresses, dates of birth. And the election commissioner from Lancaster County is here and he will tell you how this will make it better. [LB693]

SENATOR PIRSCH: Okay, I'll save that. Thanks a lot. [LB693]

SENATOR ASHFORD: Thank you, Senator Hudkins. Do you wish to reserve closing here? You going to close? [LB693]

SENATOR HUDKINS: Yes, I'll waive. Well, I'll reserve. [LB693]

SENATOR ASHFORD: All right. Thank you. Next proponent. [LB693]

DAVID SHIVELY: Good afternoon, Senators. My name is David Shively, S-h-i-v-e-l-y. I am the Lancaster County Election and Jury Commissioner. And I see Senator Schimek. I get in front of Government Committee prior to this and always got to testify in front of her there. So anyway, I brought this bill to Senator Hudkins, or to our county board first, and suggested this might be a good idea to make a change in the way we get our jury list put together. What happened is that the passage of the Help America Vote Act in October 2002 by the federal Congress...one of the requirements was that we were to, in our database for registered voters, we were supposed to try to get the driver's license numbers for all the registered voters. When we now pull a list--I actually serve both in my capacity as election commissioner and as jury commissioner--when we get the driver's license list, we pull the voters list. We put those two lists together and in statute we are to remove as many duplicates as possible between those two lists. You do that by you looking at...our computer does that by looking at the name, at the address, and date of birth. This gives us one more step to try to remove some additional duplicates. People, when they get their driver's licenses, don't always keep that address up-to-date. They don't always keep their voter registration up-to-date either, but I think they're more apt to on their voter registration because of the efforts that we do in keeping our lists maintained and up-to-date. We can do that. So this will be one way...if you have a question on whether that is actually a duplicate record or not, the computer has one more check to look at by looking at that driver's license. They're already looking for duplicates the way we're doing it today, but if you take one more step and they have one more to look they say, well, both those records have the same driver's license number. You know you've got another duplicate. So that's basically how we'll try to do that. This wasn't available to us prior to going to our statewide voters system, which we did about a year and a half ago. We started doing that. That was a requirement of the Help America Vote Act and we are now able to get that driver's license number and it just be another step for us to try to remove those duplicates. [LB693]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

SENATOR ASHFORD: Senator Schimek, this is your area. There is no question about that. I would defer all questions to you. [LB693]

SENATOR SCHIMEK: Oh no, not all questions, but thank you, Senator Ashford. It is nice to see you, Dave. [LB693]

DAVID SHIVELY: Nice to see you too. [LB693]

SENATOR SCHIMEK: I have served on task forces with Dave and had him many times in front of the committee, but my question is these will only go...these driver's license numbers are not on all voter registration entries are they? They're only on the ones that you've been doing since the Help America Vote Act? [LB693]

DAVID SHIVELY: Well, we've... [LB693]

SENATOR SCHIMEK: Or have you gone back and entered these... [LB693]

DAVID SHIVELY: Well, we did an interface with the Department of Motor Vehicles when we went to our new statewide system. And most of our records now...we have about 93 percent of--I did a check this morning just to make sure how many--about 93 percent of our records here in Lancaster County do have a driver's license or our voter registrations do have a driver's license number attached to them now. [LB693]

SENATOR SCHIMEK: And in order to do that, just so I'm sure I understand this, when you match do you match them by address or... [LB693]

DAVID SHIVELY: The first match is going to be by name and then by date of birth. Address would be a third one. This would be a fourth one. But addresses aren't going to always match, so sometimes then you have to determine what is the most recent address when you look between the two. [LB693]

SENATOR SCHIMEK: Well, what I'm asking is when you put those driver's license numbers in, you had to match by something. [LB693]

DAVID SHIVELY: Right. [LB693]

SENATOR SCHIMEK: And so that was more likely date of birth than anything else. [LB693]

DAVID SHIVELY: Most likely date of birth. Date of birth and name. [LB693]

SENATOR SCHIMEK: Sound like a good idea to me. Thank you. [LB693]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

SENATOR ASHFORD: Thank you. Senator Pirsch. [LB693]

SENATOR PIRSCH: When it comes to...there's no need for additional software costs are there? You presently have the software system? And is that representative of the state as a whole then or... [LB693]

DAVID SHIVELY: I'm not sure. It would just be adding an additional field for them to give to us and I'm not sure how they go about doing it. For us, it's just going in and making a selection in the fields that we're going to be including in the list. So I'm not sure how the DMV actually makes that selection, but it would just be a different field that they would need to add when they provide that list to us. [LB693]

SENATOR PIRSCH: Okay, thank you. [LB693]

SENATOR ASHFORD: Thank you. Thanks very much. It looks like that's all we have. Thanks for your testimony. [LB693]

DAVID SHIVELY: Where do I leave these? [LB693]

SENATOR ASHFORD: Oh, with Karim there, will... [LB693]

DAVID SHIVELY: Thanks. [LB693]

SENATOR ASHFORD: Thank you. Next proponent. [LB693]

BETH BAZYN FERRELL: Good afternoon, Senator Ashford, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel to the Nebraska Association of County Officials. I'd just like to go on record as our association supporting the bill. [LB693]

SENATOR ASHFORD: Very good. That brings up a lot of questions that I'd like to...(Laughter) Thank you very much for your comments. Anyone else wishing to testify on LB693? Senator Hudkins? Okay. That's it. LB522, Senator Aguilar. Is he... [LB693 LB522]

MARGARET KOHL: On behalf of Senator Aguilar. [LB522]

SENATOR ASHFORD: On behalf of Senator Aguilar. If we all hurry this would be a world's record if we got done with these hearings by 2 p.m. [LB522]

MARGARET KOHL: Well, this will be just a short... [LB522]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

SENATOR ASHFORD: I don't mean that. I don't mean that seriously. Go ahead.
[LB522]

MARGARET KOHL: Senator Ashford, members of the committee, I'm Margaret Kohl, M-a-r-g-a-r-e-t K-o-h-l. I am here on behalf of Senator Aguilar who is busy in Government Committee. LB522 is about recovery of a settlement in civil case regarding eight things: services rendered, labor done, material furnished, overcharges made and collected, lost or damaged personal property, damage resulting from delay in transmission or transportation, livestock killed or injured in transit, or charges covering articles or services affecting the life and well-being of the debtor. Current statute allows for recovery of a judgment. This language additionally would allow for recovery of an out-of-court settlement prior to disposition of the case. The current statutory limit of cases under this statute is \$2,000. LB522 asks that that be raised to \$5,000. The attorney fees that were set when this statute was originally put into place back in 1955 set the attorney's fees at \$10. LB522 asks that that be raised to \$20 in cases where the judgment is \$50 or less, and in cases where judgment is \$50 or more--higher than \$50--they ask that the attorney fee be \$20 plus 20 percent. There will be some other testifiers telling you more about this. So I'll let them come up. [LB522]

SENATOR ASHFORD: Okay, thank you. Any...I'm sorry, Senator Schimek. [LB522]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. I just have a real quick question. When this bill was explained to me this morning I understood it to apply to small claims court, but this is county court. [LB522]

MARGARET KOHL: Right. [LB522]

SENATOR SCHIMEK: County court in which claims are brought. [LB522]

MARGARET KOHL: And it's only on those particular list of things. [LB522]

SENATOR SCHIMEK: Do we even have small claims courts anymore? I think we do.
[LB522]

MARGARET KOHL: Yes, we do. [LB522]

SENATOR SCHIMEK: It doesn't apply to those at all though. [LB522]

MARGARET KOHL: No. [LB522]

SENATOR SCHIMEK: Thank you. [LB522]

SENATOR ASHFORD: That's a good question though. Thanks, Margaret. Next

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

proponent. [LB522]

DANA KAY FRIES: (Exhibit 3) Good afternoon, Senator Ashford, Senators. My name is Dana Fries, F-r-i-e-s, and I am general counsel for a corporation located out of Grand Island, Nebraska, called Credit Management Incorporated. I'm here as a proponent of LB522 and I do have some...I have a handout for you guys. LB522 refers to statutory section 25-1801. Just a brief history of that so you understand why we're looking to do some increases or some changes on that. Section 25-1801 allows for the recovery of attorney fees and certain claims under \$2,000 currently. Senator Schimek, you had mentioned the small claims court. It's commonly referred to in legal committee as the small claims statute or a way to get costs and attorney's fees. However, small claims court only goes up to \$2,700 and attorneys aren't allowed. So it really doesn't apply there. [LB522]

SENATOR SCHIMEK: That's right. You're right. Thank you. [LB522]

DANA KAY FRIES: The statute has been in existence in some form since 1919. Originally, the statute allowed for "reasonable attorney fees for claims under \$300," which was the court's jurisdictional limit at the time. In 1955, the statute was amended increasing the statutory limit to \$1,000, which again reflected an increase in the court's jurisdictional limit. In 1955, also established the minimum attorney fee of \$10. A 1967 amendment increased the statutory limit claims of \$1,000 to \$2,000, which again coincided with the increase in the county court's jurisdictional limit at the time. Statute has not been amended since 1967, although the court's jurisdictional limit has been increased several times and is currently at \$51,000 and is adjusted every fifth year starting from, I believe, 2005 when they enacted that. And the minimum attorney's fee has not been adjusted since 1955 when it was originally enacted at the \$10. What I passed out to you is just kind of showing you the average cost of some representative items in 1955 compared to present day just to kind of show you that this particular "minimum attorney's fees" has not changed in the state at what in 1955 was probably reflective of a reasonable attorney fee, but today is not, and I'll let you read that on your own. What we're asking for obviously is simply to increase the statutory limit up to \$5,000. We realize that probably up to \$51,000 is too big of a jump, even though currently that is the court's jurisdictional limit. The statute has seemed to coincide with the jurisdictional limit. We are only asking for it to go up to \$5,000, and change the minimum attorney fee from the \$10, up to \$50, to \$20; and then over \$50, to \$20 plus 20 percent. With that, I'll open it to questions. [LB522]

SENATOR ASHFORD: Any questions? Senator Lathrop. [LB522]

SENATOR LATHROP: I do. This applies to certain actions, but it would include basically a great deal of collection work. Is that right? [LB522]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

DANA KEY FRIES: Correct. Yes. [LB522]

SENATOR LATHROP: I'm curious. Is there a corresponding statute that allows the defendant to collect an attorney fee from the plaintiff in the event they prevail? Or are we just allowing plaintiffs to collect attorney fees from defendants? [LB522]

DANA KEY FRIES: I think the way the statute is written it would...I don't know of any to be perfectly honest, the top of my head, other than say asking for say a, you know, a frivolous pleading-type attorney fee under that statute if they felt it was brought in frivolously. [LB522]

SENATOR LATHROP: Okay, thank you. [LB522]

SENATOR ASHFORD: Maybe I'm...these are cases brought in county court that are just county court only, is that...any court... [LB522]

DANA KEY FRIES: Well, realistically, you could bring a \$500 claim in district court... [LB522]

SENATOR ASHFORD: Right. No, I agree. [LB522]

DANA KEY FRIES: The reality is... [LB522]

SENATOR ASHFORD: It's county court. [LB522]

DANA KEY FRIES: Correct. [LB522]

SENATOR ASHFORD: But does this statute preclude other fees being charged? Maybe I'm missing something here. Is there a...there's a statutory limit, but can you not also collect additional fees? This doesn't preclude a client and a collection agency from having other arrangements aside from the stated fee, does it? [LB522]

DANA KEY FRIES: This statute doesn't, but federal law that governs the collection of accounts does have restrictions on what you can charge back to specifically adding fees to accounts when you're collecting them. [LB522]

SENATOR ASHFORD: Well, not to accounts, but if a creditor and a collection agency could have another arrangement. [LB522]

DANA KEY FRIES: Certainly, yeah. I would assume. [LB522]

SENATOR ASHFORD: Okay. That's all I have. Thank you. [LB522]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

DANA KEY FRIES: Thank you. [LB522]

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 Collectors Association in support of LB522. I won't repeat what Ms. Fries testified to. I would point out that one of the requirements in order to obtain the attorney fees provided in 25-1801 is that the plaintiff, the person who is owed the money, actually present the claim to the defendant and then wait 90 days before you can recover this. So it's not like someone could owe you money and you could run into court and file this lawsuit, and if you prevail, make a claim for these attorney fees and costs. On page 2, lines 17-19 of the bill, is this requirement of presenting your claim, and if at the expiration of 90 days you've not been paid, then you're entitled to this. So the defendant does have an opportunity to pay off what is owed the plaintiff and avoid this fee. I just wanted to point that out. I practiced law for 27 years. This statute has not been amended in that time period. And I think that Ms. Fries testified that we've been at this \$2,000 level since 1967. I think that it makes sense to adjust that, and the bill would increase that amount from the current \$2,000 or less to \$5,000. It would also adjust the attorney fee. [LB522]

SENATOR ASHFORD: So it's a \$5,000 claim, the fee would be \$1,000. [LB522]

BILL MUELLER: It would be... [LB522]

SENATOR ASHFORD: Twenty percent. [LB522]

BILL MUELLER: Twenty percent, yes. I'd be happy to answer any questions you may have. [LB522]

SENATOR ASHFORD: Oh, I'm sorry. Senator. [LB522]

SENATOR LATHROP: I do have a...one thing that got into this bill besides changing the fee is that once suit is filed, even if the guy gets served with the pleadings, it says you've now been sued by, take your pick, Nebraska Furniture Mart, whoever it is. At that point in time, if it's over \$50, there's automatically 20 percent added to that person's...the amount that they have to pay to get the claim satisfied. I mean, we're not just talking about paying you a fee because you went through a trial and everything else. Once suit is filed, then the 20 percent is added to the amount of the debt plus the cost, and now the \$5,000 debt is up to \$6,000 plus the filing fee. [LB522]

BILL MUELLER: Yes. [LB522]

SENATOR LATHROP: Okay. [LB522]

BILL MUELLER: Again, I think it's the act of actually making the plaintiff file a lawsuit,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

get service that would bring this into being. [LB522]

SENATOR ASHFORD: Would you have an objection to inserting a fee for the defense? [LB522]

BILL MUELLER: Senator, as you know, we in America don't generally have a winner recovers attorney fees system. We do have certain areas. I know... [LB522]

SENATOR ASHFORD: Except in this case. [LB522]

BILL MUELLER: Well, but... [LB522]

SENATOR ASHFORD: Sort of. Sort of. I mean... [LB522]

BILL MUELLER: Yeah. I mean, we do have particular statutes, and I think if one of us were to sue our insurance company under a policy and prevail, I believe that the attorney fees are provided in that situation. I'm not aware that there's a general statute that says we pay the attorney fees of the defendant who prevails. That's not been the American system. [LB522]

SENATOR ASHFORD: No, I understand that. Just asking. We wouldn't want to be un-American in this committee. Okay. Thanks, Bill. [LB522]

BILL MUELLER: Thank you. [LB522]

SENATOR ASHFORD: Bob. [LB522]

BOB HALLSTROM: Chairman Ashford, members of the committee. My name is Robert J. Hallstrom. I appear before you today on behalf of the National Federation of Independent Business in support of LB522. I think the committee has received quite a bit of background information on the historical background of this statute. One item I might add for the record, and I don't know what the justification was for establishing this type of allowance for attorney fees, but I would rather imagine, at least over time, it has evolved into a recognition that we take an example where I have submitted a claim within the 90-day period. I may choose not to bring the action in county court or district court, but rather bring an action in small claims court. Our statutes allow, by way of simple motion, for the defendant to shoot that action up to county court, changing a system from which neither party was supposed to be able to have representation into one where the plaintiff may now be required because of the complexities of county court to engage counsel and incur those types of costs. And while this statutory section probably doesn't come close to covering those costs of attorney fees under those scenarios, it at least provides some modicum of recovery and protection for a plaintiff in those particular situations. With that, I'd be happy to address any questions. [LB522]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

SENATOR ASHFORD: Any questions of Bob? Seeing none, thanks, Bob. [LB522]

BOB HALLSTROM: Thank you. [LB522]

SENATOR ASHFORD: Next proponent. Opponent? Neutral? Thank you very much. That concludes the hearing on LB522. Is that LB522? LB526, Margaret. [LB522 LB526]

MARGARET KOHL: (Exhibit 4) Chairman Ashford, members of the committee, again my name is Margaret Kohl on behalf of Senator Aguilar. Margaret is spelled M-a-r-g-a-r-e-t, Kohl is K-o-h-l. LB526 is introduced on behalf of the same constituent business as...LB526 and LB522 are both the same. It's about these certain civil court cases and the costs a plaintiff would be allowed by the court. After the initial green copy was introduced, they decided they wished a different language, so the amendment that's being handed out, AM663, is more appropriate language to get at this same issue. This change would allow a plaintiff to recover court costs in cases where the debt owed is collected after commencement of the case but prior to disposition of the case. And that's really all it does. [LB526]

SENATOR ASHFORD: Okay. Well, that's pretty straightforward. Anybody...thanks, Margaret. Any proponents for LB526? [LB526]

DANA KEY FRIES: Senator Ashford, members of the committee... [LB526]

SENATOR ASHFORD: Yes, Dana. [LB526]

DANA KEY FRIES: I am Dana Fries, F-r-i-e-s, and last time I checked still am general counsel for Credit Management Services, Inc., a collection company out of Grand Island, Nebraska. I'm here today to testify for LB526. Let me give you a little background as to why this started coming about. Originally what is happening is that in the collection sense--I guess I'll start there--we're suing defendants. They are getting served with a complaint. And at some point after they get served with the complaint, they are sending in the principal balance only. Let's say it's a \$100 dental bill. They send you \$100 or they send the underlying creditor \$100. Well, the plaintiff in this case has already expended the \$42 to file it, somewhere...and upwards of \$30 to \$50 to serve them, occasionally when it has to be done by sheriff; lesser if we can get it done by certified mail first. If...originally we could go into the court and ask the judges to award us the motion just for the cost, simply the money that was outlaid to obtain the \$100. Recently, several county court judges have started denying the costs, saying that their reading of 25-1708 says that you can only have costs upon a judgment in your favor. What that does, unfortunately, and what it has done in those counties, the judges are no longer allowing the motions for costs is forcing the plaintiffs to return the \$100. And say it's a \$100 case, which wouldn't be unusual, returning that money, because if we take it then

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

we're out or the client has to eat upwards of sometimes \$80 to \$100 of cost to have just obtained that \$100 back. But what we're only asking the Legislature to do is to allow those costs upon the commencement of the case if the defendant in the case is paid...you know, in the cases where the defendant has paid the underlying...the debt. So that we don't...and also so that the defendant does not have to have a judgment. [LB526]

SENATOR ASHFORD: Any questions of Dana? The only question...I could see that if the defendant has notice that the suit has been filed. [LB526]

DANA KEY FRIES: Yes, I would agree with that. [LB526]

SENATOR ASHFORD: So if they have no notice of the suit being filed then I would, maybe, wouldn't be quite as fair. [LB526]

DANA KEY FRIES: Flexible with that, yes. [LB526]

SENATOR ASHFORD: Okay. Thank you, Dana. [LB526]

DANA KEY FRIES: Thank you. [LB526]

SENATOR ASHFORD: Any other questions? [LB526]

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 Collectors Association in support of LB526 as Senator Aguilar is proposing to amend it with AM663. I do believe that there is a legitimate issue here where after the plaintiff files suit, does spend the filing fee, does spend the money to have the sheriff serve the defendant and then the defendant says now I'll pay, that person who's owed the money has now spent more money seeking to collect that, and as Ms. Fries testified, some courts do read 25-1701 as saying that they don't have the authority to enter an order for the costs. And again, under this bill, LB526, we're just talking about costs. We're not talking about attorney fees. And costs generally are the filing fee and the cost of serving the defendant. With that, I'd be happy to answer any questions you may have. [LB526]

SENATOR ASHFORD: Any questions of Bill? Thanks, Bill. [LB526]

BILL MUELLER: Thank you. [LB526]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Okay, that concludes the hearing on LB526. Senator Pahls, LB382. [LB526 LB382]

SENATOR PAHLS: Good afternoon, Chairman, members of the committee. [LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

SENATOR ASHFORD: This is truly unbelievable. I don't know what to do. [LB382]

SENATOR PAHLS: Pardon? [LB382]

SENATOR ASHFORD: Can you slow down a little bit, Senator Pahls? Do you have a 15-minute opening you'd like to give? We don't know what to do. [LB382]

SENATOR PAHLS: This should be relatively simple. [LB382]

SENATOR ASHFORD: Okay. [LB382]

SENATOR PAHLS: And I didn't run down this time so I have lots of air in these lungs. [LB382]

SENATOR ASHFORD: Thank you. [LB382]

SENATOR PAHLS: Okay. This bill is one of a group of bills I've introduced on behalf of the Secretary of State. Basically it's pretty straightforward. LB382 contains three elements. A notary public's commissioned name shall appear on the official ink stamp seal for his or her use. The current option of using initials for the first and last name on the ink stamp is stricken. The commissioned name is the name the individual uses on his or her application with the Secretary of State. Number two, the ink stamp seal shall now show the date of the expiration of the term of the commission. The current option to have an ink stamp seal without the date of expiration on the commission, which that is stricken. Number three, any notary public whose commission expires after the effective date of LB382 may continue using his or her ink stamp that complies with the old law until his or her commission expires. Upon renewal, the ink stamp shall require the use of the commissioned name and the ink stamp seal shall show the date of expiration of the term of the commission. And for those of you who did not know, the term is usually four years. And just so you have a figure on the stamp, you can buy a stamp between \$20 and \$50, depends on how fancy you want to get. The application fee is around \$30 and I think they also need a bond of \$40. That is the bill. [LB382]

SENATOR ASHFORD: Any questions of Senator Pahls? Okay. Do you have the next bill as well? [LB382]

SENATOR PAHLS: I think there's something from the Secretary of State. [LB382]

SENATOR ASHFORD: Okay. First proponent. [LB382]

RON MORAVEC: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Ron Moravec, R-o-n M-o-r-a-v-e-c. I'm chief deputy Secretary

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

of State. I'd like to thank Senator Pahls for presenting this LB to you for consideration passing on to General File. When this committee, in 2004, heard the significant revision of the notary public law, it improved, in our opinion, greatly, the task and duties and requirements of notaries public that didn't exist before. And when in the new statute it talks about having to take an examination prior to being issued a commission, or as the old law provided that you submitted 25 names of registered voters to the Governor for approval, the 2004 revision made the requirement that the examination be taken prior to the issuance of the commission and that it cover the laws, procedures, and ethics for notary publics. That, along with the requirements in the statute as to when a notary public can take an acknowledgement and those requirements tend to show that, again, the notary public duties that they perform are serious. The business and legal world depend upon provable documents and notarization as one of those avenues. By LB382, what the Secretary of State is proposing is that when an individual files to become a notary public, initially the form they fill out specifies that they should print their name exactly as they want it to appear on their notary commission on their stamp. And the purpose of that, again, is to avoid confusion as to maybe putting my complete name on the application, but then when I notarize I may use initials, which the law currently allows under 64-210. And also, it gives me the option currently of whether or not I want to put my date of expiration of the commission on the notary stamp. And that gives me an option. LB382 eliminates that option and makes the requirement that I have that expiration date on my notary commission. Again, for determination of whether or not when the notary notarized that document if, in fact, they were commissioned by the Secretary of State's Office. That's the basic import of LB382 and we would ask that you give consideration to passing this bill on to the full Legislature. [LB382]

SENATOR ASHFORD: Thanks, Ron. Senator Pirsch. [LB382]

SENATOR PIRSCH: Just briefly could you kind of touch upon the type of...I would surmise this is probably in reaction to some problems you've been experiencing there with people who are not using their name, but rather their initials, or not having the date of expiration. [LB382]

RON MORAVEC: Most significant thing we see is the lack of a date of expiration. And in my opinion, the purpose for not having that placed on my notary stamp is that every four years then when I renew I don't have to buy a new notary stamp. But we're finding that many people with a blank line--my commission expires blank and you're to fill it in--don't fill it in. And again, in... [LB382]

SENATOR PIRSCH: That's not a legal requirement though, currently, right? The... [LB382]

RON MORAVEC: That's not. It's an option under 64-210 that I may put that date in there. [LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

SENATOR PIRSCH: And since so many...is it a matter of you find it...is it helpful for the Secretary of State's Office to have that? [LB382]

RON MORAVEC: Well, I think, yes, it is helpful for the Secretary of State, but initially it's helpful for the people that are involved in that transaction to know whether or not when I notarized the document for you and left that blank there for you, was I a notary public commissioned by the Secretary of State, which in some instances, a notarization is required by statute? [LB382]

SENATOR ASHFORD: Any other...Senator McDonald. [LB382]

SENATOR McDONALD: And I didn't know it was an option and I'm a notary. I like the date on there so I know when it expires, otherwise you forget and you could be using an expired notary stamp and not know it. [LB382]

RON MORAVEC: True, and you know, that date that you were commissioned is not a real significant date, as you indicate, that will stay in your mind forever or will you probably put it on your calendar for four years to renew? So it is significant in that regard. [LB382]

SENATOR ASHFORD: Thank you. Thanks a lot, Ron. [LB382]

RON MORAVEC: Thank you. [LB382]

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 LB382. Senator McDonald, like you, the notary stamps that I've seen had someone's full name on it and the date when their commission expires, but apparently there are others that don't have that information on it. When the Bar Association looked at this bill, it just made sense to require this. It made sense to have a notary use their full name and have this stamp that actually has the date of expiration of their commission. And I think that the Secretary of State has made provision that people won't have to run out and buy new stamps right away, but when they come up for renewal they would then, if they didn't already...well, I guess they would have to buy this new stamp with the expiration date. Dealing with the people who do rely on notaries, this is important information that should be on a document that's notarized. We support the bill. Be happy to answer any questions you may have. [LB382]

SENATOR ASHFORD: Thanks, Bill. Any questions of Bill? Thank you. [LB382]

BILL MUELLER: Thank you. [LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

SENATOR ASHFORD: That's very good. Any other proponents? Opponents? Neutral? That concludes the hearing on LB382. LB45. [LB382 LB45]

LISA JOHNS: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Lisa Johns, J-o-h-n-s. I'm the legislative aide for Senator Tim Gay of the 14th Legislative District and he's sorry he could not be here due to a conflict. I'm here today to give a very brief introduction of LB45. [LB45]

SENATOR ASHFORD: What was the conflict? No just kidding. (Laughter) [LB45]

LISA JOHNS: That's classified information. Yeah. [LB45]

SENATOR ASHFORD: Just for the record. No, that's fine. Proceed. [LB45]

LISA JOHNS: Under current law, a litigant in a civil or criminal action is required to pay a complete record fee, which is then remitted to the county in which that case was filed. The complete record is a permanent copy of a case and is required to be created in every case. Section 33-106 currently allows for that fee to be waived. Under LB45, this fee could only be waived in certain circumstances. Nebraska law requires the fee to be taxed as part of a case cost, and because of this, the clerk of the district court must refund the fee by either filing a claim for the refund from the county or issue a refund check. This results in a lot of extra paperwork and results in the court not being able to recoup their cost for making that record. Under LB45, the \$15 fee would automatically be waived for Title IV-D cases, in former pauper's cases, and in civil cases filed by the county attorneys. There's somebody here from the county here to testify, but I will try to answer any questions if you have any. [LB45]

SENATOR ASHFORD: Any questions of Lisa? Thanks, Lisa. [LB45]

LISA JOHNS: All right. Thanks. [LB45]

SENATOR ASHFORD: Okay. [LB45]

BETH BAZYN FERRELL: (Exhibits 5 and 6) Good afternoon, Chairman Ashford, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. First, we'd like to thank Senator Gay for introducing the bill for us. You are being handed out a letter in support of the bill from Marlene Vetick. She is the Platte County clerk of the district court. She's also the legislative liaison for the Clerks of the District Court Association, and she sends her apologies for not being here today, but she would ask that her letter be included as part of the record. This bill is not about implementing any kind of a new fee. The fee is already there. It's already statutory. The issue that we're looking at is sometimes the fee is waived, sometimes it's not. It's based on whether the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

attorney chooses to ask for a waiver of the fee. This is something of an issue of fairness and application of the fee rather than, you know, the idea of having the fee itself. Every time a case is completed in district court, the clerk of the district court has to make a complete record of the case. The second document that you received has a list from the Supreme Court's website of what is required within that complete record of the case. It includes a petition, the process, return, pleadings subsequent thereto, reports, verdicts, orders, judgments, material acts and proceedings of the court, and by reference, any journal entries and filings that are required to be entered in full in the appearance dockets. In some cases, that's a fairly sizeable amount of information. In some cases, it's a lesser amount. The record then needs to be retained permanently according to records retention requirements. Those can be microfilmed. Microfilm can be sent to the historical society after 20 years, but the records do have to be retained permanently. Existing law applies a \$15 fee to the compilation of the complete record. For every case except Title IV-D cases, which are essentially child support cases, in forma pauperis filings, and then some of the cases that are filed by the county attorney. In those, the complete record fee is just automatically waived. There is no fee. What we're looking at is the fee in the other cases where the fee is charged up front, and then at the end of the case the attorney can ask to have that waived. As was indicated, that involves either filing a claim with the county board or having the clerk of the district court issue a check in some counties. As I said, this bill would just eliminate the ability to waive that fee, so everyone would be assessed the same fee that would help pay for records retention and the preparation of that document. I'd be happy to try and answer any questions. [LB45]

SENATOR ASHFORD: Senator Lathrop. [LB45]

SENATOR LATHROP: I just want to ask a few. In 25 years, I've waived the complete record a thousand times and I honest to God don't know what it is. Do you know what the complete record? And if I have a civil action and goes to trial or settles, whatever the case, would get an order and then the order we put complete record waived. What is the record that's being waived? [LB45]

BETH BAZYN FERRELL: The record is, if you'll look at that second document, it's a list of all those items. The clerk has to put those together whether the fee is waived or not. So that's... [LB45]

SENATOR LATHROP: Okay, so that's...well, as you can...you're not waiving the fee, you're waiving the record. So they don't need to make the record if the record has been waived, do you? [LB45]

BETH BAZYN FERRELL: Well, they have to make the record and retain that, as I understand it, regardless of whether there's a fee or not. [LB45]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

SENATOR LATHROP: They retain the file, but they don't make a complete record if you waive it. Is that true? [LB45]

BETH BAZYN FERRELL: Not the way I understand it, but I wish a clerk was here that would be able to address that for you. I can find out for sure, though. [LB45]

SENATOR LATHROP: Okay. I think I understand it. Thank you. [LB45]

SENATOR ASHFORD: I think, Senator, it would helpful to me if you could find that out, because I think most cases the complete record is waived. And so if that is in fact the case then this is collecting the fee that is never collected. [LB45]

BETH BAZYN FERRELL: Well, from what I've been told, in some counties it is collected. It depends on the attorney. [LB45]

SENATOR ASHFORD: Okay. You might check that out just so we know what we're dealing with here. [LB45]

SENATOR PIRSCH: I guess I kind of echo that. If you have an understanding of where it is apparently...I guess part of the impetus of this is you're saying there's inequality or basic issue of fairness implicated that some counties are, some aren't, therefore some people are paying more. And so to the extent that we flush that out to quantify I'd certainly appreciate that. [LB45]

BETH BAZYN FERRELL: I'd be happy to find that out. I can tell you, Platte County, she indicated that there's one attorney that always requests the waiver. Typically, the other attorneys don't. In Colfax and Saunders County it's almost an automatic thing. So it really varies. [LB45]

SENATOR PIRSCH: The waiver is in Colfax and... [LB45]

BETH BAZYN FERRELL: The waivers. Yes. The request for the waiver is almost automatic. [LB45]

SENATOR PIRSCH: But Platte, you're saying, is not. [LB45]

BETH BAZYN FERRELL: Right. There's only one attorney that typically requests the waiver. [LB45]

SENATOR ASHFORD: Senator Lathrop. [LB45]

SENATOR LATHROP: Yeah, did you say that all of the clerks of the various district courts save the file for ten years right on site and then send it away to the archives

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

beyond that? [LB45]

BETH BAZYN FERRELL: According to the records retention requirements they have to save those records, and then whether that's microfilmed or otherwise, and then after 20 years they can send the microfilm to the historical society. [LB45]

SENATOR LATHROP: Okay. I'm wondering if a complete record is obsolete. If we now have files and we can microfilm things, is the complete record, in any case, even necessary any longer? If we have the court file we can pull from the clerk of the district court. [LB45]

BETH BAZYN FERRELL: That's a good question. I can't answer that. [LB45]

SENATOR LATHROP: That would lead me to wonder why we couldn't stop with the complete record and trim \$15 off the filing fee. You think they would be okay with that? [LB45]

BETH BAZYN FERRELL: I'd be happy to check into it and see what they say. [LB45]

SENATOR LATHROP: Okay. If you wouldn't mind. [LB45]

SENATOR ASHFORD: That's a great question. I'd like to know that, too, because there's...yeah. [LB45]

BETH BAZYN FERRELL: I'd be happy to pursue that. [LB45]

SENATOR ASHFORD: Sort of an antiquarian sort of thing. Okay. Thank you. Lisa? Oh wait, I'm sorry. Any opponents? Any neutral? All right. That concludes the hearing on LB45. LB449 is next. It's me. (Laughter) Members of the committee, Senator Lathrop, Brad Ashford, Legislative District 20. The following constitutes the reasons for this bill and the purposes which are sought to be accomplished. LB449 was proposed by the Nebraska County Judges Association. It would allow the clerk magistrate who can exercise all the duties of the clerk of court to designate staff members to certify records of the court. It is simply to avoid admissibility problems for county court records. The restrictions on the certification of county court records goes back to the former days of nonlawyer judges justice courts, and is lost in antiquity, which is exactly the point we were making in the last bill, so I'm not sure we need this, Paul. I think we just do away with the court records altogether and go from there. But in any event, that is the reason for this bill. [LB45 LB449]

SENATOR LATHROP: Any questions of Senator Ashford? [LB449]

SENATOR ASHFORD: I'll waive. [LB449]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

SENATOR LATHROP: Senator Ashford will waive close. Mr. O'Hara. [LB449]

PAUL O'HARA: Mr. Chairman, members of the Judiciary Committee, my name is Paul O'Hara, O-h-a-r-a, from Lincoln. I'm a registered lobbyist appearing today on behalf of the Nebraska County Judges Association. I'm appearing here on behalf of Judge Pat McDermott, who was called at the last minute to chair a children's meeting up in Wahoo. As Senator Ashford indicated, this is an old law that no longer serves a purpose. It was done when...they're trying to protect against the nonlawyer judges and give this responsibility to the county clerks. We no longer have the nonlawyer judges and this is just a technical change to keep from problems happening. They are already doing this in many of the courts in the state, but a problem arose recently in Platte County district court where they refuse to accept records from the county court because they were not certified by the clerk magistrate. So it's time to just clear this up so that we don't have to go through any needlessly expensive delays in court proceedings. And you have another bill that you're holding, LB214. I'd respectfully suggest that perhaps this could be folded into LB214. Report it out, hopefully, and put on consent calendar, and then you'll have four sections of the law that the county judges found that are obsolete or in need of cleaning up that we could do in this year. With that, I'd be happy to answer any really easy questions about the operation of county court. [LB449]

SENATOR ASHFORD: Just let me make...any questions of Paul? Let me just make sure. It's LB214? Is that the only... [LB449]

PAUL O'HARA: LB214. [LB449]

SENATOR ASHFORD: Is that the only other one? [LB449]

PAUL O'HARA: That is. [LB449]

SENATOR ASHFORD: That has county court implications. Okay. Very good. Thanks, Paul. Bill. This is a pretty powerful lobbyist for these bills, but it's good to have you here. [LB449]

BILL MUELLER: Mr. Chairman, the sponsor of the bill, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association and LB449. We have reviewed this bill and we do agree with the county court judges that this is a change that makes sense to make and we support the bill. I'd be happy to answer any questions you may have. [LB449]

SENATOR ASHFORD: Thanks, Bill. Any questions of Bill? Any other proponents? Opponents? Neutral? [LB449]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

BILL MUELLER: For the record, I don't know what a complete record is either. We just always waive that fee. [LB449]

SENATOR ASHFORD: And if you don't know, yeah, then nobody knows. (Laughter) Okay. Thanks, Bill. If he doesn't know, there isn't such a thing. Thanks, Bill. That concludes the hearing on LB449 and LB45 and all the rest of the bills. Thank you. [LB449]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 14, 2007

Disposition of Bills:

LB45 - Held in committee.
LB243 - Held in committee.
LB382 - Advanced to General File.
LB449 - Advanced to General File.
LB522 - Held in committee.
LB526 - Held in committee.
LB693 - Held in committee.

Chairperson

Committee Clerk