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Judiciary Committee
February 10, 2017

[LB193 LB509 LB517 LB647]

The Committee on Judiciary met at 2:00 p.m. on Friday, February 10, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB647, LB193, LB517, and LB509. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Steve Halloran; Matt Hansen; and Adam Morfeld. Senators absent: Ernie Chambers and Bob Krist.

SENATOR EBKE: Good afternoon. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete, representing Legislative District 32. I'm the Chair of the Judiciary Committee. And what I would like to do at this point is go ahead and get started and hopefully some more of our committee members will show up before we actually get to the bill introduction. I'd like to start off by introducing our members who are present. Senator Baker.

SENATOR BAKER: Senator Roy Baker, representing the Judiciary Committee.

SENATOR EBKE: (Laugh) And...

SENATOR PANSING BROOKS: Oh, and I'm Senator Patty Pansing Brooks from District 28, right here in the heart of Lincoln.

SENATOR EBKE: And I believe that Senator Morfeld and Senator Chambers may join us again. Senator Hansen and Senator Halloran will be along shortly I believe. Senator Krist is out of town today. Assisting the committee today are Laurie Vollertsen, our committee clerk, and Tim Hruza, one of our two legal counsels. Our committee pages are Kaylee and Sam, right? And on the table over there, if you would like to testify we ask that you fill out the yellow testifier sheets. If you're planning on testifying just bring that up, filled out, with you and hand it to one of the pages. There's also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. We'll begin testimony with the introducer's opening statement. Following the opening we'll hear from those who are in favor or proponents of the bill. Then we'll hear from opponents of the bill, followed by those speaking in a neutral capacity. We'll finish with the closing statement by the introducer if she, today, wishes to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you're going to testify I ask that we kind of stay to the front as we approach the bill that you're planning on testifying on. If you have any handouts please bring up at least 12 copies. Give them to the page. If you do not have enough copies, the page can help you make more. We'll be using a five-minute light system. When you begin your testimony the light on the table will turn green. The yellow light is your one-minute warning, and when the red light comes on we ask that you try to wrap up your final thought and stop, although I realize we have a lot of attorneys so that might

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be tough to do. As a matter of committee policy I would like to remind everyone that the use of cell phones is not allow during public hearings. You may see some senators using their computers or their cell phone to take notes or stay in contact with staff or to look something up. At this time I would ask everybody to take out their cell phones, if you haven't already, and make sure that they're silenced or on vibrate mode. Also, this won't be a problem, verbal outbursts or applause are not permitted in the hearing room. One more thing: You may notice committee members coming and going. That has nothing to do with the importance of these bills but rather senators may have bills in other committees to introduce. So with that in mind, we start off today with LB647. Senator Pansing Brooks.

SENATOR PANSING BROOKS: Thank you, Chairman Ebke and fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, and I represent District 28 right here in the heart of Lincoln. And I am here today to introduce LB647. LB647 increases the salary of the Chief Justice and the judges of the Supreme Court. Because other judges' salaries are set as a percentage of the Supreme Court salaries, the bill also helps to increase the salaries of judges of the Court of Appeals, the district courts, separate juvenile courts, county courts, and Workers' Compensation Court. This is a process that the Legislature engages in regularly and the intent of the bill is that judges' salaries would move up with the salaries of other state employees when those salaries are set, as is typical. Increasing these salaries is important because our judiciary is a very important branch of our government. The weight of our judges' work cannot be overstated. They adjudicate our most intense controversies involving our most basic rights, whether it be a civil case involving property rights or personal injury or a criminal case implicating a person's personal liberty. Due to the gravitas of such issues, our judges' salaries should at least be connected to other state employee increases. Recently there's been a real problem attracting candidates to fill judicial vacancies. When lawyers volunteer to serve on the bench, they give up their ability to engage in certain community activities and civic activities, and they usually walk away from successful careers elsewhere in government or in private practice. LB647 is intended to ensure that judges' pay is competitive in order to attract a diverse and qualified pool of candidates to serve in the Nebraska courts as judges. The testifiers behind me will be able to answer any detailed questions that you may have. And I would ask you in advance to bring...to advance LB647 to General File once the Judiciary Committee is able to amend with the appropriate salary details. Thank you. [LB647]

SENATOR EBKE: Any questions for Senator Pansing Brooks? Can we have our first proponent? Good afternoon, Chief. [LB647]

MIKE HEAVICAN: Senator Ebke, good afternoon to you. Members of the Judiciary Committee, my name is Mike Heavican, that's spelled H-e-a-v-i-c-a-n, and I'm the Chief Justice of the Nebraska Supreme Court. I'm here to testify in favor of judicial salary increases for the upcoming biennium. Our request is that judges receive the same increase that other state

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employees receive, which we understand, at the moment at least, to be 1 percent for the first 18 months of the biennium, and then an additional 1.5 percent increase beginning January 1, 2019. Our judges work hard and, as Senator Pansing Brooks noted, they decide issues such as guilt or innocence, how long someone should be incarcerated, whether parental rights should be terminated, who gets compensated in automobile accidents, and who gets the football tickets in a divorce. In short, judges decide cases big and small. But every case is important to someone. Our judges strive to apply the law in every case in a fair and equitable manner. In recent years we have asked our judges to take on additional responsibilities. Many of our judges run drug courts or other problem-solving courts, including most recently veterans' courts. LB605 requires additional supervisory responsibilities for most of our judges. They are now responsible for reentry supervision, an entirely new task for our judiciary. Indeed, the entire community corrections solution to our state's prison overcrowding problem designed to save taxpayers hundreds of millions of dollars, to a large degree, rests on the good judgment and hard work of our judges. Our salary increase request to you today is modest in recognition of the state's budget problems. A modest increase, however, helps to attract good lawyers to and retain good lawyers on the bench. I note that particularly in rural Nebraska we have increasing difficulty in getting lawyers to apply for judgeships. While adequate pay is only one of the reasons lawyers apply for judgeships, it is an important part of any applicant's consideration in applying. Judges are of course constitutional officers so their salaries can only be set at the beginning of a new biennium. They don't get longevity raises, step increases, or other opportunities to supplement their wages. We appreciate the support you have given our judges in the past and ask for your support in our requested raise increases for the next biennium. I would be happy to answer any questions any of you may have. [LB647]

SENATOR EBKE: Are there any questions for the Chief Justice? Clear as can be. Thank you very much. [LB647]

MIKE HEAVICAN: Thank you very much. And I want to especially thank Senator Pansing Brooks and the other senators who sponsored this legislation. Thank you. [LB647]

SENATOR EBKE: Next proponent. [LB647]

TIM ENGLER: Chair, good afternoon, members of the Judiciary. My name is Tim, T-i-m, Engler, E-n-g-l-e-r. I'm a lawyer in private practice in Lincoln, Nebraska, and I currently serve as the president-elect of the Nebraska State Bar Association. Our current president, Judge Joseph Battalion, is in Chicago and could not appear today so he asked me to come in and make some remarks on behalf of the Bar Association. I don't want to repeat what the senator said nor what the Chief Justice said but I want to emphasize that I certainly agree with their comments and would echo those, but I want to give a slightly different perspective and that would be the

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perspective of a private practice attorney. I've had the privilege in my 38 years of practice to appear in front of many judges throughout the entire state. Although my practice is primarily in Lincoln, I've been in Omaha and virtually every corner of the state appearing before our judiciary. We have excellent judges. I've been impressed throughout my entire career with the commitment they have, the passion they have, the hard work, the dedication, and the difficult tasks that they have to endure every day. We've been able to recruit qualified candidates for these positions for many reasons. It's true that attorneys, many attorneys, aspire to be appointed to the judiciary. But for some, it can be a financial hardship to give up their private practice of law, to give up their successes to join the judiciary. And so it is important, it is important that we maintain salaries that are commensurate with the position if we want to continue to attract good, quality candidates to be judges. We see throughout the last several years as positions become open, fewer and fewer members of the bar, the practicing bar, applying for judicial positions. Whereas before it would be not uncommon to have seven to ten applicants for a single position, now that's down to three and four and sometimes only two. The cost of maintaining, the cost of maintaining not only a fair and impartial judiciary but one that is qualified, competent in excellence is a cost that we must bear. And that requires that we regularly, regularly increase those salaries. And although it is a very modest increase, it is one that we cannot miss. We can't miss a year and fall further behind. So I would encourage the Judiciary Committee to present this bill to the floor. Does anyone have any questions? [LB647]

SENATOR EBKE: Thank you, Mr. Engler. Any questions? Thank you. [LB647]

TIM ENGLER: Thank you. [LB647]

SENATOR EBKE: Next proponent. [LB647]

ROB OTTE: Senator Ebke, Senators on the Judiciary Committee, thank you for your time today. Thank you to Senator Patty Pansing Brooks for introducing the legislation. My name is Rob Otte, R-o-b O-t-t-e. I'm a district court judge. I'm in Lancaster County which is the Third Judicial District and I'm cochair of the Nebraska district court judges legislative committee. I had almost 30 years in private practice and now I've had almost 9 years on the bench, so I have a perspective from both private practice and now the judiciary. Obviously I appear in support and I'll start with a 1954 quote from Winston Churchill who said, the bench must be the dominant attraction to the legal profession, yet it rather hangs in the balance now and heavy will be our society if we cannot command the finest characters and the best legal brains we can produce. As Chief Justice Heavican indicated, the judiciary is where we have our rights protected. We have the government held accountable for its principles. We protect business interests. We assess damages and rights and we are playing a critical role in people's lives. My premise is that even taking into consideration the incentives for joining the judiciary, judicial salaries have become a little less

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rewarding and they actually have become unattractive to lawyers, leaving aside lawyers in top practices and others. This is especially true in larger districts and I would say Lincoln, Omaha, Sarpy County, some of those, maybe to a lesser extent or to the same extent in outstate Nebraska because in larger districts often there is a potential for larger amounts of income and more opportunity. Today, judicial salaries struggle to keep up with the cost of living. They don't stand in the comparison to what similarly situated lawyers would be able to command if they were out in private practice. And the long-term effects of this really cannot be understated. In Lancaster County we recently went through filling a position that we had vacant. There were three applicants. Of the three applicants, one of the applicants had applied for several judicial positions on county court and district court and had not made it out of committee in any of those. That left two applicants. I recruited both of those applicants and so I knew kind of their thinking ahead of time. And quite frankly, neither one of them, until we kind of talked to them, had been thinking about the judiciary. There were no applicants that had been employed by the state. There were no applicants from the public defender's office. There's no applicants from the university and no applicants that had been working as corporate counsel in any capacity. The expectation of judges is reasonably high, and it should be. But there's no provision for inflation or cost-of-living increases. We rely on the salary bill and I have come to you every couple of years because of that. Our workload has been increasing. The cases are increasingly complicated when you deal with pipelines and when you deal with the water issues along Republican River Valley and those sorts of things. A district court judge in Nebraska makes 25 percent less than the general counsel at the University of Nebraska and a little more than half of what a similarly tenured UNL law professor makes, I would suggest, without maybe the benefits of an academic lifestyle. Additionally, everybody has mentioned the private practice a little bit. I came from private practice. I knew the reduction that I would take by joining the judiciary but did it for some other personal reasons. But one of those reasons was for recognizing that there might be an increase in salary. You or your family might be fortunate enough never to be in front of a district court judge. But if you are, you are going to want somebody that is among the best and the brightest. You get to determine the long-term quality and diversity and character of the judges. I suggest, like Churchill, you insist on the judiciary being the dominant attraction for attorneys that can give their best to the state. All right, I would stand for any questions. [LB647]

SENATOR EBKE: Thank you, Judge Otte. Any questions for the judge? Thank you for being here today. [LB647]

ROB OTTE: All right. Thank you so much. [LB647]

SENATOR EBKE: Next proponent. [LB647]

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ARTHUR WETZEL: Good afternoon, Senator Ebke, members of the committee. My name is Arthur Wetzel, A-r-t-h-u-r W-e-t-z-e-l, and I am a county judge in District 9 which consists of Hall and Buffalo Counties. I would echo many of the sentiments that the previous proponents have talked about. But I want to I guess take a little different route and talk to you about some of the changes that I've seen in the judiciary in my responsibilities since I took the bench a little over five years ago. There's been some drastic changes, quite frankly, in the areas of guardianship, juvenile law. We obviously are always striving towards community corrections within our communities to try to save costs. But those challenges obviously take time, take effort. I want to specifically talk a little bit about the changes that I've seen in the juvenile law. Obviously since the juvenile law was essentially taken away from the Department of Health and Human Services and placed with the judiciary branch, it's been a challenge for judges, challenge for myself to continue to provide quality work for those juveniles that come before you. We're constantly, with the guidance of the Chief, looking to try to save funds. We're trying deliberately to keep juveniles from going to out-of-home placements, which obviously are expensive. We are trying to find alternatives to those out-of-home placements. Those are things that we didn't really have to worry about five years ago when I took the bench. If you had juveniles that were out of control, we simply would make commitments to out-of-home agencies, the youth correctional facilities. And those are things that obviously we're trying to avoid. Guardianships are another area where obviously I'm sure the committee is aware we've had some substantial changes in guardianship laws which take additional time and effort by not only the judges but by our staff. There is obviously supervision now that is required more so of the district judges than the county judges in that the, essentially, parole branch has been turned over to the judges. So those are all areas that I have seen some pretty substantial changes in and seen changes in my job description from when I took the bench five years ago. With the assistance of the Chief Justice, the juvenile law, we have made some concentrated efforts with programs like Through the Eyes of a Child and, as I previously mentioned, programs have tended to try to keep juveniles out of out-of-home detentions. There has been an increase in workload. I'm not complaining about my workload-- simply indicating to the committee that there have been some substantial changes. Again, I would echo the sentiments of the previous speakers. I think that it is important that we continue to get qualified individuals applying. That's a particularly sensitive area for me right now. We just had a judicial vacancy declared within the last day or two for our county. And so I want to make sure that obviously we get qualified individuals and the compensation package is certainly one of the things that those individuals are going to look at. With that, if there are any questions I'd be happy to answer those. [LB647]

SENATOR EBKE: Any questions for Judge Wetzel? Thank you. [LB647]

ARTHUR WETZEL: Thank you. [LB647]

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SENATOR EBKE: Any other proponents? Are there any opponents? Is there anybody in the neutral capacity? Senator Pansing Brooks, do you want...she waives. Okay, so do we have any letters? We do not have any letters so that closes our hearing on LB647. Thank you all for being here. We will proceed to LB193. [LB647]

SENATOR PANSING BROOKS: (Exhibits 1 and 2) Okay, thank you, Chairman Ebke and members of the Judiciary Committee. For the record, my name is Patty Pansing Brook, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB193. This bill was brought to me by the Nebraska Association of County Officials, or NACO, and the Administrative Office of the Courts. They have been working together to update statutory language to reflect modern practices in recordkeeping in the county and district courts and to update outdated statutes. The main intent of LB193 is to revise statutes that require keeping physical records that are no longer necessary due to the court's electronic case management system. Since NACO and the Administrative Office of the Courts both have their own ideas for changes respective to each of their own areas, I asked them to work together to develop the language for this bill. Before today's hearing, they brought me an amendment to the bill, AM221, which I have provided to you. Representatives from both the courts and NACO will be here to testify on the bill and the amendment and we will get into the details of these recordkeeping changes. We know changes in technology require changes in recordkeeping practices and I want to thank NACO and the Administrative Office of the Courts for working together to update these statutes. In closing, I would like...I would ask you to advance LB193 and its underlying amendment to General File. And with that, I'm happy to answer any questions, but clearly the experts behind me are the ones to direct any questions. [LB193]

SENATOR EBKE: Any questions for Senator Pansing Brooks? [LB193]

SENATOR PANSING BROOKS: Thank you. [LB193]

SENATOR EBKE: Okay, first proponent. [LB193]

BETH BAZYN FERRELL: Good afternoon, Chairman Ebke, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm appearing in support of LB193. We'd like to thank Senator Pansing Brooks for introducing this bill on our behalf. We appreciate the work that she's done and we also appreciate the work that the Administrative Office of the Courts has done in helping us get this bill together. As Senator Pansing Brooks said, it's really intended to clean up some outdated language and address some of the responsibilities of clerks of district court now that the electronic case management system has been up and going with the Supreme Court. I

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would be happy to try to answer any questions about the specifics, but there are clerks of the district court that follow me that could and answer those in more detail than I could. [LB193]

SENATOR EBKE: Are there any questions? I guess not. Thank you. [LB193]

JANET WIECHELMAN: (Exhibit 3) Good afternoon, Chairman Ebke and committee members. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n, and I am the clerk of the district court of Cedar County and also the legislative liaison for the Clerk of District Court Association. I am here in support of LB193 and also the amendment that Senator Pansing Brooks has identified. This bill was brought on behalf of the Clerks of District Court Association. We thank Senator Pansing Brooks for introducing this legislation. I'd like to give some background to this legislation. As Senator Pansing Brooks may have said, this has been a long-term project. It's been several years in the making. In the 1990s, JUSTICE, which is the Judicial User System To Improve Court Efficiency, was developed by the Supreme Court for a statewide court management system for all courts. Prior to the development of this program, the records of the clerk of district court were required, under Section 25-2209 and several other statutes, in the form of large record books which had not been amended since 1943. In 1992 and 2001, 25-2209 was amended to make reference to the automated system and how certain records were to be maintained for retention. However, when the statutes were reviewed with the records retention schedule for the clerk of the district court office in 2013, it was determined that the statutes and the records retention schedule contradicted each other or certain records were no longer needed as they were contained within JUSTICE. Thus, we began this large project of reviewing the statutes to update the terms, records, and disposition of the required records--hence, a very large bill. Some of the changes now indicate that documents, not papers, are filed instead of docketed. I have attached a document that gives a brief explanation of the changes to each of the statutes for your review. Some are minor word changes and some are adding new language to the statutes. The use of these terms can be interchanged between the manual process and electronic processes within JUSTICE. There have been discussions with the staff from the Court Administrator's Office to finalize this bill and also this amendment. It was decided that the language should reflect the physical processes and case files and also the electronic case files and processes that are done within JUSTICE. Some of the changes would be for future development of other processes within JUSTICE. I want to thank the Court Administrator's Office for their guidance and foresight. An example in this legislation is how the records and case files are processed to and from the district court and the different courts. The transfer of cases between the courts now requires the "certification of the case file." This language can be used to interpret the manual filing or the electronic filing through JUSTICE of a transferred case. With the changes in this legislation, it will allow the records retention schedule to effectively make a determination of the retention of our case files. Also, the district courts will no longer need to microfilm or maintain a paper volume of the journal or complete record. Counties have reported that their county will see a cost savings between \$105 to \$173 for a medium-sized court

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per month for converting the scanned images to a journal or a complete record. The journal documents and complete records are already maintained within the physical case file, the electronic case file available through JUSTICE or microfilm or the physical case file. I have attached with my statement a letter from Pam Scott who is the clerk of the district court in Richardson County. She is chairperson of our records retentions schedule. She has worked also with this legislation in finding a way that we can also address the concerns within our records retention schedule. And I have also attached the records retention schedule for your information. Just to address some of the issues in the amendment, you will see that there are particular sections that are struck in the first paragraph. In discussion with the Court Administrator's Office, we try to again define more terms and one of them that came up was the word "docket fee." There are several statutes that say "filing fee." And actually the self-help center on the Supreme Court's Web site says "filing fee." So we had hoped that we could perhaps change that language. But in discussion with the Supreme Court Clerk's Office, we decided that it was an issue that we did not feel was worth changing, so that's where we're striking those particular provisions. All the other changes are...just makes more minor changes to the bill as in further discussion with the Court Administrator's Office. And also, the major change is we move from 25...one statute to direct that it's just the records of the clerk of district court where we define the particular records that are maintained within JUSTICE, is the other major change to the amendment. If you have any questions I'd be willing to answer them. [LB193]

SENATOR EBKE: Are there any questions? Senator Halloran. [LB193]

JANET WIECHELMAN: Yes. [LB193]

SENATOR HALLORAN: It's a stupid question. Will this make your job easier? [LB193]

JANET WIECHELMAN: Well, the processes are... [LB193]

SENATOR HALLORAN: I hope yes. [LB193]

JANET WIECHELMAN: The processes are already allowed in statute to some extent with some of this. This just makes it more modern to...that it fits with JUSTICE. I can tell you the next testifier will tell you how it makes his easier in one aspect of this bill. But it will save a cost to county if we don't have to have the physical journal anymore or physical complete record. And it is a cost savings from that aspect. [LB193]

SENATOR HALLORAN: And microfilm is out? [LB193]

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JANET WIECHELMAN: Microfilm is still an approved measure and that's why, as far as the case file, we're still saying it's the physical case file or microfilm or the electronic images within JUSTICE. [LB193]

SENATOR HALLORAN: I'm heartbroken though. Microfilm is close to my heart. [LB193]

JANET WIECHELMAN: We understand that. (Laughter) [LB193]

SENATOR HALLORAN: No, I'm just kidding. [LB193]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB193]

JANET WIECHELMAN: Thank you. [LB193]

SENATOR EBKE: Next proponent. [LB193]

TROY HAWK: Senator Ebke, members of the committee, thank you for having me here today. Thank you, Senator Pansing Brooks, for bringing this bill to the floor. My name is Troy Hawk, T-r-o-y H-a-w-k, and I am the clerk of the Lancaster County District Court. I'd also like to apologize for my voice. I thought I was going to make it through the cold and flu season without getting hit and I was wrong. But I think I can make it through today. I specifically would like to talk about Section 18 of this bill which amends Nebraska Revised Statute 25-1301.01. That statute requires the clerk of the district court to send a judgment notice to any parties when a civil judgment has been rendered, obviously in a civil case. However, in 2015, the court's JUSTICE, the electronic file management system, was programmed to start sending out copies of the judge's order by e-mail to the attorneys or to the pro se litigant automatically whenever we put that order on to JUSTICE. So now you have a situation where when a final judgment has been rendered in a civil case, the attorneys or per se litigant get that order, but statute still requires me to send out that civil judgment. I have talked with my staff and put some numbers together. In 2016, my office sent out about 2,700 of those judgment notices. It took us about 195 hours of staff time to do that over the year. That equaled about \$5,800 in staff time, and paper and postage required another \$1,500. So every year I spent about \$7,500 to do duplication of effort in sending the judgment notices out since the system already automatically sends a copy of the order to the judge. This amendment would allow the "e-noticed" order that JUSTICE sends out to take the place of that civil judgment. And with that, I'd entertain any questions. [LB193]

SENATOR EBKE: Any questions? Okay, thank you. [LB193]

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TROY HAWK: Thank you. [LB193]

SENATOR EBKE: Are there any other proponents? Do we have any opponents? Anyone here speaking in the neutral capacity? (Exhibit 2) We have one letter of support from Bub Windle of the Nebraska State Bar Association. Senator Pansing Brooks waives. That closes our hearing on LB193 and we will move to LB517. [LB193]

SENATOR PANSING BROOKS: Thank you, Chairman Ebke and members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here to introduce LB517 today. This bill was brought to me by the Nebraska Bar Association. LB517 updates provisions of the Nebraska Uniform Probate Code related to the effect of divorce or annulment on the distribution of assets. The Uniform Law Commission completed the Uniform Probate Code in 1969. The UPC as it's frequently called was designed to simplify and unify most aspects of state probate law. The UPC also includes provisions regarding the nonprobate transfer of property. This would include transfer-on-death assets like life insurance policies and other investments for which you can designate a beneficiary to whom assets pass immediately upon death without requiring probate. These types of transfers on death or beneficiary assets are increasingly common practice and LB517 updates Nebraska's laws regarding the effects of a divorce or annulment on these types of assets or transfers. Specifically, Nebraska statutes contain the 1969 version of the UPC which deals only with the revocation of a will upon divorce. The 1969 version of the UPC did not address the effect of divorce or annulment on nonprobate transfers. The 1990 revisions to the UPC promulgated by the Uniform Law Commission includes updates to these sections and provisions governing the effect of divorce on nonprobate beneficiary designations. LB517 simply incorporates these updates from 1990. This makes our probate code more complete and sets rules governing the distribution of assets whether in or out of probate. LB517 would generally nullify upon divorce or annulment the designation of the spouse as a beneficiary of nonprobate or nontestamentary assets such as life insurance policies, individual retirement accounts, and payable-on-death accounts unless expressly stated otherwise. In Rice v. Webb, it was a Supreme Court case from Nebraska, 287 Neb. 712 in 2014, just such a similar situation arose. Brenda and Dale were divorced after ten years of marriage. Dale passed away a few days after the divorce became final. Dale had two life insurance policies both naming Brenda as the beneficiary. The case ended up in court. The Nebraska Supreme Court ruled that the life insurance money should go to Dale's estate, not the ex-wife, since the settlement agreement expressly set that designation. The Supreme Court Justice Cassel, concurring with the majority Opinion, wrote, "But existing law relies upon the general rule that divorce does not affect a beneficiary designation in a life insurance policy. This in turn requires close examination of the judgment dissolving the marriage. This framework lacks certainty, contradicts ordinary expectations, and encourages litigation. These flaws could easily be remedied by legislation." "The basic practical problem is that after a marriage is dissolved, the former spouses frequently do not change preexisting

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beneficiary designations in life insurance policies and similar contractual arrangements. Sometimes there is only a brief interval between the dissolution and the policyholder's death." "For whatever reason, beneficiary designations often go unchanged. Human experience teaches that most policyholders would prefer a death benefit pass to someone other than a former spouse." Except for an express direction of the contrary, LB517 would allow nonprobate property to pass in a manner similar to that of testamentary property under a will so that the contingent beneficiary, not the primary beneficiary, the ex-spouse, would receive the property where there is an intervening divorce of one of the spouses. In response to Judge Cassel's Opinion, the Bar Association drafted this bill. I hope you will favorably consider this corrective legislation. And you will hear testimony from a number of people behind me who have studied this issue. So in closing I would ask that you advance LB517 to General File. Thank you. Any questions? [LB517]

SENATOR EBKE: Any questions for Senator Pansing Brooks? Okay. [LB517]

SENATOR PANSING BROOKS: Thank you. [LB517]

SENATOR EBKE: First proponent. [LB517]

SUSAN SPAHN: Good afternoon, Senator Ebke, Chair, members. My name is Susan Spahn, S-u-s-a-n S-p-a-h-n, and I'm an attorney in private practice in Omaha. For the past 25-plus years, my practice has focused probably exclusively, almost exclusively, in all matters concerning estates and trusts. And that includes planning and also the post-death administration. I have...I mirror the comments made by Senator Pansing Brooks and thank her so much for bringing this bill...introducing this bill and bringing it here today. I mirror and agree with everything she testified to. I will add that I have personally sat with a family and counseled a family who not only were dealing with a loss of a loved one, but they were also going to be raising that loved one's children and they had to deal with the angst and the frustration of really realizing that their loved one's life insurance policy was going to pay out to the ex-spouse because the beneficiary designation hadn't been changed. Most people think that law does change: Well, he's not my husband anymore, she's not my wife anymore, so the bond is broken so doesn't that legal right break? But it doesn't. Today under Nebraska's law it doesn't. If property is titled in joint tenancy, that joint tenancy controls. If property designates a beneficiary, the designated beneficiary receives that asset regardless of whether there's been a change in their marital relationship or not. And the same is true with trusts today currently. The only change...the only rule in the probate code currently is that a will is basically rewritten to take the divorce into account. So this bill opens the door and acknowledges that many estates transfer without use of a will. They transfer via in trust, beneficiary designation, or joint tenancy. And sometimes you can have a multimillion-dollar estate and the will controls nothing because ownership transferred through

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alternative means. So this LB517 just brings us up to current practicalities of how assets transfer upon death. And that's why I'm here on behalf of Nebraska State Bar Association. I'm a member of the real estate probate trust section. I'm also a member of the legislative committee and its house of delegates and that is why we support this bill. If you have any questions, I'm more than happy to answer them. [LB517]

SENATOR EBKE: Any questions for Ms. Spahn? Okay. [LB517]

SUSAN SPAHN: Okay, thank you. [LB517]

SENATOR EBKE: Thanks for being here. Next proponent. Do we have any opponents? Anyone testifying in the neutral capacity? Senator Pansing Brooks? Okay, that closes our hearing on LB517. I'm going to trade places with Senator Pansing Brooks. [LB517]

SENATOR PANSING BROOKS: Okay, Senator Ebke. You're up for LB509. [LB509]

SENATOR EBKE: (Exhibit 1) Thank you, Senator Pansing Brooks, members of the Judiciary Committee who remain on a Friday afternoon. My name is Laura Ebke, L-a-u-r-a E-b-k-e. I represent District 32. I'm pleased to introduce LB509 to you today. LB509 is simple but does deal with a number of statute changes affecting procedures with subpoenas. Some of these are just modernizing languages. Others are bringing uniformity to procedures. Others changes are to bring us in line with Federal Rules of Civil Procedure. One change focuses on changes in technology. Another change is simply to make statutes more user friendly, if you will. We will have some attorneys from the Bar Association working group that actually put this together--this is a bill that I'm introducing on their behalf--who can address each change specifically. I have handed around a list of summaries and I will not go through each section one by one with you. If you have any questions...unless you really want me to. (Laugh) Unless you want me to. But I would say that there are folks behind me who will have much more to say about this, I'm sure. If you have any questions I'll try to answer them. Otherwise, I'll pass the ball to the more expert witnesses on this. [LB509]

SENATOR PANSING BROOKS: Any questions? No? Okay. Thank you, Senator Ebke. Proponents. Thank you. Welcome. [LB509]

AMIE MARTINEZ: Thank you. Vice Chairwoman Pansing Brooks and members of the committee, my name is Amie Martinez, it's A-m-i-e, last name M-a-r-t-i-n-e-z. I'm testifying today on behalf of the Nebraska State Bar Association in support of LB509. I'm a partner at Anderson Creager and Wittstruck here in Lincoln. And I am a past president of the Nebraska

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State Bar Association, also a member of the working group that was convened by the Bar Association to work on LB509. Today I will describe the genesis of the bill and the Bar Association's process to date and then I'll begin to highlight the changes made by the bill. Professor John Lenich from the University of Nebraska College of Law will follow me to describe in greater detail the other changes in the bill. Together hopefully we can walk you through the bill and answer any questions that you might have. LB509 comes from the ground up. For years, lawyers have been debating an ambiguity in the current law, particularly Section 25-1226 regarding the time frame within which subpoenas must be served. About a year ago on one of the LISTSERVs maintained by the Nebraska State Bar Association it became clear that this was an issue where some clarity would be very beneficial to the administration of justice. Ultimately, the discussion percolated up to our legislation committee who decided to form a working group to address the issue. The working group included four practicing attorneys, both civil and criminal, from the Bar Association, and in addition we reached out to the illustrious Professor Lenich because of his expertise regarding civil procedure. We met through the fall and over the holidays a number of times and we reached out to colleagues for their input including court clerks, judges, and other attorneys regarding how courts practice throughout the state. This work led to the creation then of LB509. Since the bill's introduction we've worked with prosecutors, criminal defense attorneys, civil plaintiffs' attorneys and civil defense attorneys, as well as all other basically members of the bar. Our goal is to make sure that the bill is a constructive set of changes that will work for all litigators in Nebraska. These ongoing discussions have yielded changes that we have raised with Chairwoman Ebke and we hope to incorporate them into an amendment for the committee to consider. We will try to identify those in our testimony where we're able to do that. Moving to the substance of the bill, one of the primary changes addresses the time frame for serving subpoenas. The issue is addressed in Section 3 of the bill and it is the issue that I described earlier. The statute currently sets six days as a minimum notice period when you're served with a subpoena before you're required to appear in court or for testimony. The statute currently sets those six days as the minimum period but because of the way the law is currently written there are some questions about whether the six-day minimum applies only if you have been personally served or if you've been served by certified mail. This bill clarifies the ambiguity and sets the time frame to 24 hours. The purpose of shortening the time frame is largely to address the uncertainty created by trial terms and how trial terms, including jury trials, are actually scheduled in local courts. It's also intended to affect the efficiency to be able to make sure that folks can do the...lawyers can issue subpoenas on their own without the need of that process going through the clerk of the district court or the other court. Generally speaking, a court will have set trial terms which is a set period of time in which the court will hear trials. Sometimes those are jury trials, sometimes they are bench trials. To be efficient because a number of cases settle, in fact about 90 percent of cases typically do settle, more than a dozen cases can be scheduled, all to be set at the same time on a particular day, beginning at 9:00 a.m. Trial terms can run for a couple of days or a couple of weeks depending on that particular court's practice. As a lawyer, we might know the order in which the cases are

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set during the trial term, but it's unlikely that we'll know the exact date on which our trial will begin. So it starts as kind of a cattle call unless the court is able to negotiate those set forth and know a day ahead of time when those will be heard. We try to keep contact with witnesses to make sure that they'll know when they actually need to appear, but that call is often made just a day or two before trial. By shortening the statutory time frame in which subpoenas must be served, we hope to reflect this reality and allow lawyers to specify in a subpoena the actual date of the trial. Practically speaking, this primarily means that subpoenas can be more targeted and more accurately stated, offering providing more...often providing more courtesy and detail to the witness. Additionally, because there are circumstances in which an even shortened time frame may not be sufficient, the bill also provides that a court can shorten the time frame for good cause shown. This is meant to address true short-term situations, such as a rebuttal witness in a short trial. Since the bill's introduction, some attorneys' groups have expressed that the 24 hours might be short and those concerns are well regarded; therefore, we are working on an amendment that would create a two-day notice period. We feel that strikes the right balance. It means that subpoenas can be drafted with greater accuracy and that the lawyers can manage the uncertainty created by the court. It also provides enough notices to witnesses and opposing counsel to be fair and practical. And I would be remiss if I didn't thank the attorneys' groups, including the County Attorneys Association in particular, for working with the Bar Association on these changes--really been a very...a strong, concerted effort. If there are no questions for me, I'd be happy to turn it over to Professor Lenich, or I stand available to answer questions. [LB509]

SENATOR PANSING BROOKS: Go ahead, Senator Baker. [LB509]

SENATOR BAKER: Thank you. I'm just reading under the Tim Hruza's explanation. It says additionally the bill allows an attorney to issue a subpoena. Right now an attorney cannot issue a subpoena? [LB509]

AMIE MARTINEZ: In state court, that is true. In state court the statute provides, keeping in mind that...and I think the professor will be able to tell you the exact date, but these are...this is a statute that's more than I think a hundred years old where the clerk was doing essentially everything. In state court, the clerk of the county court or the clerk of the court in which the testimony will be is where you go. You file a document. It's called a praecipe. You say please issue the subpoena. They have to process it. It then comes back to you and then you take it to the entity or to whoever to have it served. The federal courts, however, far more progressive I think in many instances and more efficient, simply say, as an officer of the court, if you know and you can include on your subpoena where and when, with specificity, and the nature, meaning the type of case, if you include all of that you can create your own subpoena. So it's very much more efficient but really mirrors the federal rule. And also, by the way, many states surrounding Nebraska have gone to this mirroring of the federal rule. [LB509]

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SENATOR BAKER: So this would be a big change in the way it's done in state courts? [LB509]

AMIE MARTINEZ: I'm sorry, it would or would not? [LB509]

SENATOR BAKER: This would be a big change. [LB509]

AMIE MARTINEZ: It would be...it would be a change in process... [LB509]

SENATOR BAKER: Right. [LB509]

AMIE MARTINEZ: ...just as to who creates it. But the document itself would remain essentially the same. [LB509]

SENATOR BAKER: Thank you. [LB509]

AMIE MARTINEZ: Thank you. [LB509]

SENATOR PANSING BROOKS: Thank you for coming, Ms. Martinez. Any other questions? I...on the group, I presume it's a well-balanced group including defense attorneys. You mentioned county attorneys so I'm presuming you have all sides of the... [LB509]

AMIE MARTINEZ: The working group is actually...was folks that did criminal and civil work. I mean I am on the group. I've prosecuted cases and I've done criminal defense as well. But that was when we were crafting it. Obviously you've been on both sides of the case so you want to make sure that is fair to everyone, which is the imperative to us when we were circulating this with everybody. The county attorneys' group has been fantastic in terms of sending comments back and forth and addressing concerns and working through a lot of those things. And I think you'll see those changes in the amendments. [LB509]

SENATOR PANSING BROOKS: Okay. Well, I guess I understand the county attorneys were included. Were the defense and the public defenders also included in all these discussions? [LB509]

AMIE MARTINEZ: Yes, they were. Again, Jim Mowbray was one of the folks that was in the working group originally. And he was counsel for the Commission on Public Advocacy. So, yes, I think all of the groups have been addressed and certainly have been presented with this. It is also something that we've gone through in terms of the legislation committee for the Bar

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Association which includes public defenders, includes some judges, it includes prosecutors. So it has been well circulated. [LB509]

SENATOR PANSING BROOKS: And some of the juvenile court advocates as well? [LB509]

AMIE MARTINEZ: Yes, yes. Many of the folks...again, having done guardian ad litem work, been in the juvenile court, and the juvenile court judges as well. So a number of us have served in that. And again, the prosecutors, the county attorneys association would be appearing in juvenile court, so certainly on that side as well. [LB509]

SENATOR PANSING BROOKS: Well, that's wonderful. I just want to thank all the members of the committee and, you know, it's really important for this committee to have people from the bar coming forward and helping us with the work that we do. So thank you. [LB509]

AMIE MARTINEZ: Thank you. And thank you for those questions. Those were...it's good information to have. Thank you. May I be excused? [LB509]

SENATOR PANSING BROOKS: Yes, thank you very much, Ms. Martinez. Thanks for coming. Yes, Professor Lenich. [LB509]

JOHN LENICH: Good afternoon. My name is John Lenich, J-o-h-n L-e-n-i-c-h, and I'm a professor of law at the University of Nebraska. I was involved in drafting some of the language in this bill and would like to explain in greater detail some of the purposes. The bill, as Ms. Martinez indicated, rewrites the subpoena statutes. And by way of background, subpoenas are commands to appear and testify at a trial or deposition. And the bill really has three purposes. One is to ensure that witnesses in civil proceedings receive the compensation that they're entitled to; second, to make it easier to issue and serve a subpoena; and last but not least, to make the statutes clearer and easier to read because many of our statutes were drafted when Nebraska was still a territory and they read that way, complete with some ambiguities and undefined terms. Now really the core of the bill is on page 2 in Section 2 which is...I'm sorry Section 1 which amends Section 25-1223. And that provision makes it clear, which our current statutes don't, that a subpoena can be issued for a trial, a deposition, and that a trial includes any type of evidentiary hearing. Senator Baker asked earlier about the allowing attorneys to issue a subpoena, which this statute would...the amendments would authorize. And the two reasons for that, one of which was mentioned by Ms. Martinez, is to make it easier to issue a subpoena. And that's important for lawyers who don't have an office in or near the courthouse, especially lawyers in greater Nebraska who may actually be in a different county. And, two, it actually does help a little bit to reduce the workload of the court clerks, not a lot, but every little bit helps them these days when we want our personnel to do more with less. Now you might wonder, well, where's the judicial

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oversight here? Well, the answer is there currently...there won't be any and there hasn't been. Under our current statutes, the court clerks are required to issue a subpoena. It's a ministerial duty so there is no oversight that's being lost here. Now we're proposing some amendments here to make it clear that if an attorney issues a subpoena, he or she must file that on the same day as the subpoena is issued, which is easy to do electronically these days. And that way if another party thinks there's a problem here, if they want to challenge the subpoena, file a motion to quash, they'll know about it. And as Ms. Martinez indicated, attorneys have been authorized to issue subpoenas in the federal court system since 1991. I recently met with one of the federal judges here in the district of Nebraska and said have you ever heard of any problems whatsoever with that? And Judge Zwart told me no. So I have not heard of any issues with that. Now if we're going to have people issuing subpoenas, they've got to know what goes in the subpoena and surprisingly our statutes currently don't specify what a subpoena contains. Subsection (4) of 25-1223 would add that: what goes in the subpoena. And that would also include, under sections (5) and (6), some information about witness fees and mileage, because in civil...in all cases witnesses are entitled to \$20 plus mileage. Now that's not a lot of money but, you know, they're entitled to it and they ought to get it. But the current statutes don't really provide a way of people finding out about that. At least our current statutes say that if you're served with a subpoena and you demand the subpoena...the witness fee, you have to get it. And as a lawyer, I know to put my hand out. Most people don't. So the amendments here would make it clear to people that they have a right to obtain that witness fee, tell them who to talk to, to get it, and also would provide that the parties must pay those fees, because under our current law they have no obligation to under a Supreme Court decision. So 25-1228 would make it clear that the person who issues the subpoena is liable for it. We also spent...incorporated many of the changes into the criminal subpoena statutes, although some of the provisions don't belong there so they are excepted. But we also tried to make it clear that in both misdemeanor and felony cases, defendants are entitled to compulsory service. And with that, I see my time has expired. I'd be glad to answer any questions that anyone has. [LB509]

SENATOR PANSING BROOKS: Thank you, Professor Lenich. Any questions? Thank you very much. [LB509]

JOHN LENICH: Okay, thank you. [LB509]

SENATOR PANSING BROOKS: Appreciate your coming today. [LB509]

JOHN LENICH: Okay. [LB509]

SENATOR PANSING BROOKS: Any further proponents? Proponents? Okay, any opponents? Any opponents? What about anybody in the neutral? Okay, welcome. [LB509]

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GREG COFFEY: Senator Pansing Brooks, members of the committee, my name is Greg Coffey, first name is spelled G-r-e-g, last name is spelled C-o-f-f-e-y. I'm an attorney with Friedman Law Offices here in Lincoln and I'm here on behalf of the Nebraska Association of Trial Attorneys. When we went through the bill in our last legislative committee meeting we suggested some possible amendments to the bill that would make it a little more user friendly for us. And we appreciate the working committee of the Bar Association providing us with some language that addressed some of those concerns. We're still here in a neutral capacity. The language regarding the timing of the subpoenas being changed from 24 hours to two days is not something that we've had an opportunity to discuss as a committee. And so we probably will want to talk about that. I think I disagree with Ms. Martinez's interpretation of the current statute. I think it was pretty clear. I had it come up in a case recently where service was by personal means less than six days out. And I think it's pretty clear that if it's a certified mail that the requirement of six days applies, but if it's not by certified mail then it doesn't. And we've certainly had cases where exigent circumstances required that a subpoena be issued the day of trial and have it served right then and there and successfully. And so we've done that in the past where it was served like right on the day of the trial. And I understand that the statute does allow for discretion of the court to reduce the time period in the event of good cause shown. Whether that time period should start out at one day or two days, though, I think members of the bar might have...or members of our organization might have some opinions on. So we'd like to talk about that. And we'll certainly be willing to continue working with the working committee of the Bar Association if that becomes a sticking point for us. [LB509]

SENATOR PANSING BROOKS: Okay, thank you, Mr. Coffey. Any questions for Mr. Coffey? No? Thank you very much for coming. Any further in the neutral? Okay. And Senator Ebke waives closing and that closes...wait, are there any letters? No letters to report so that closes today's hearing on LB509 and I think we're done for the day. Thank you all. [LB509]