



**Ninety-Seventh Legislature - First Session - 2001  
Committee Statement  
LB 845**

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**Hearing Date:** 2/8/2001  
**Committee On:** Judiciary

**Introducers:** (Brashear)

**Title:** Change court procedure provisions covering discovery subpoenas and summary judgment motions

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**Roll Call Vote – Final Committee Action:**

- X Advanced to General File
  - Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

- |   |                     |   |
|---|---------------------|---|
| 6 | Yes                 | Senators Baker, Bourne, Brashear, Connealy, Pedersen, Tyson |
|   | No                  |   |
|   | Present, not voting |   |
| 2 | Absent              | Senator Robak, Chambers                                     |
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**Proponents:**

Senator Kermit Brashear  
Roger Kirst  
  
Bill Mueller

**Representing:**

Introducer  
Nebraska Supreme Court Committee on Practice  
and Procedure  
Nebraska State Bar Association

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 845 addresses two civil procedure subjects. LB 845 amends the procedure for a summary judgement proceeding and creates a new statute that provides rules for subpoenas for discovery of records in possession of a nonparty.

Current Nebraska procedure requires that any material used at a hearing for summary judgement be offered and received in evidence by the court if the judge is to consider it. However, the current statute (25-1332) states that material considered by a judge needs to be “on file”. The statute has a somewhat misleading reading as many attorneys use terms like “offer

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into evidence” and “to file” as two different things. The bill removes the word “file” and states that the material must be admitted in evidence, clarifying the ambiguity.

The bill also includes additional types of evidence that a court can consider in a summary judgement motion. Presently a court can consider “depositions, admissions, and affidavits”. The bill would add “answers to interrogatories and stipulations” to the types of evidence that a court can consider.

Current Nebraska law allows the discovery of documents and records in the possession of a person or business who is not a party to the case to be done by deposition only. In instances of getting a nonparty to produce documents, a deposition must be arranged and a subpoena duces tecum must be served.

LB 845 would create a statute that would authorize an attorney to issue a subpoena without a deposition to gain access to records and documents from nonparties. The bill clarifies that other statutes governing specific kinds of records (such as bank records) will not be affected.

**Explanation of amendments, if any:**

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**Senator Kermit A. Brashear, Chairperson**