

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB712

Hearing Date: Wednesday January 20, 2010
Committee On: Judiciary
Introducer: Rogert
One Liner: Change the Disposition of Personal Property Landlord and Tenant Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Ashford, Christensen, Coash, Council, Lathrop, Lautenbaugh, McGill, Rogert

Nay:

Absent:

Present Not Voting:

Proponents:

Sen. Kent Rogert
Katie Zulkoski

Representing:

Introducer
Nebraska Association of Commercial Property Owners

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 712 would amend 69-2304(2) which contains a notice from the landlord to the tenant that property believed to be worth less than \$250, may be kept, sold, or destroyed without further notice if the tenant failed to reclaim the property within the time indicated in the notice by increasing the amount of property to less than \$1,000.

LB 712 would also amend 69-2308 which provides that a landlord is not required to sell at public auction, property that is not released pursuant to 69-2307 if the landlord reasonably believes that the total resale value of the property not released is less than \$250, \$1,000 and the landlord may retain the property for their own use or dispose of it in any manner that the landlord may choose.

Explanation of amendments:

Committee Amendment 2288 strikes the sections of LB712 and inserts the provisions of the following bills (listed in order of appearance by section in AM2288):

--Legislative Bill 1026 (LB 1026, as amended by the Judiciary Committee, appears in section 1 of AM 2288 to LB 712) would create a statutory process for transferring civil actions from one district court to a district court in another county in the state. The current law provides for the transfer of such cases, but does not provide statutory guidance on the procedure for the transfer.

Under LB 1026, the transfer may occur before or after the entry of a judgment. Any judgment shall commence in the transferee court on the first day of the month following the order of transfer. The transferor court would issue an order

providing direction to the clerk of the transferor court to: transfer the action to the transferee court within 15 days after the date of the order; certify the proceedings; file the original paper of such action; certify a transcript of docket entries and certify the payment of any judgment, except judgments involving support order records maintained by the Title IV-D Division. The court order to transfer must specify how filing fees for the filing of a new civil action shall be paid by the transferring party. Also, if the transferred case involves a child support judgment, the Title IV-D Division is to transfer the records of the action to the transferee court.

The bill was advanced unanimously with Committee Amendment AM 1802, which would amend the provisions of the original bill and place them into the existing statute section 25-410. The amendments would clarify the transfer process and make it more timely by requiring the transfer of the action to occur within ten days, rather than fifteen days, after the entry of the transfer order. The amendment would provide that no additional court fees shall be required for the transfer. The clerk of the transferor court must file with the transferee court certification of the payment records of any judgment in the action maintained by the transferor court, including those involving support orders. Under the amendment, the judgment shall commence, and shall be a lien on the property of the debtor in any county in which such judgment is filed, once it is filed and entered on the judgment record of the transferee court. However, if the transferred case involves a support order with payment records maintained by the Title IV-D Division, the transferor court order must notify the division to make changes in the records and support payments shall commence in the transferee court on the first day of the month following the order of transfer.

Testifiers for LB1026:

Proponents:

Sen. John Wightman, Introducer

Janet Wiechelma, Clerk of the District Court Association

Beth Bazyn Ferrell, NACO (Nebraska Association of County Officials)

Thomas Maul, Nebraska State Bar Association

Opponents:

Kent Radke, Nebraska Land and Title Association

Neutral:

--Legislative Bill 1045 (LB 1045 appears in section 2 of AM 2288 to LB 712) would amend statute section 25-1625 to eliminate the provision for the clerk of the district court to perform the duties of the jury commissioner when a county has more than 150,000 inhabitants but not more than 200,000 inhabitants. The bill would also increase the population threshold from 150,000 to 200,000 inhabitants for counties to have a separate jury commissioner or to have the duties performed by the election commissioner if authorized by the judges of the district court. The bill advanced from Committee by an 8-0 vote.

Testifiers for LB1045:

Proponents:

Sen. Scott Lautenbaugh, Introducer

Wayne Bena, Sarpy County Election Commission

Opponents:

Neutral:

--Legislative Bill 824 (LB 824, as amended by the Judiciary Committee, appears in section 3 of AM 2288 to LB 712) would amend section 25-1628(2) to reduce the frequency of production of master jury lists in counties with low population. Under current law, counties with 3,000 or more inhabitants must refresh the jury pool annually. Counties with less than 3,000 inhabitants must refresh every two years.

Under LB 824, counties with 7,000 or more inhabitants must refresh the jury pool annually. Counties with a population between 3,000 and 7,000 inhabitants must refresh every two years. Counties with less than 3,000 inhabitants must refresh when ordered to do so by the district judge.

The bill was attached to LB712 as amended with Committee Amendment AM 1600, which would amend the bill to

require jury pool refreshment every five years for counties with less than 3,000 inhabitants.

Testifiers for LB824:

Proponents:

Sen. Deb Fischer, Introducer

Elaine Menzel, NACO (Nebraska Association of County Officials)

Janet Wiechelman, Clerk of the District Court

Elizabeth Neeley, Nebraska Minority Justice Committee

Opponents:

Neutral:

--Legislative Bill 915 (LB 915 appears in section 3 of AM 2288 to LB 712) would amend section 25-1628(1) to provide that driver's license numbers and state identification card numbers be included in the lists of information given to the jury commissioner by the officer in charge of the election records and by the Department of Motor Vehicles. The jury commissioner shall use the information in reducing duplication and producing a master jury list. LB915 was advanced from Committee by a vote of 7-0, with one member absent.

Testifiers for LB915:

Proponents:

Sen. Amanda McGill, Introducer

David Shively, Lancaster County Election/Jury Commissioner

Elaine Menzel, NACO (Nebraska Association of County Officials)

Opponents:

Neutral:

--Legislative Bill 847 (LB 847 appears in sections 4,5 & 6 of AM 2288 to LB 712) would amend statute sections related to Small Claims Court to restore provisions that were removed from law under LB 1014 in 2008 which provided a method for a defendant to vacate a default judgment. The bill would also provide that parties may be represented by attorney for the purpose of filing a motion for a new trial to set aside, vacate or modify a default judgment. LB847 was advanced from Committee by a vote of 8-0.

Testifiers for LB847:

Proponents:

Sen. Brenda Council, Introducer

Angela Burmeister, Nebraska State Bar Association

Opponents:

Neutral:

--Legislative Bill 1046 (LB 1046, as amended by the Judiciary Committee, appears in sections 7 & 8 of AM 2288 to LB 712) would amend statute sections 29-1207 and 29-1208 to change speedy trial and indefinite continuance provisions. Under the bill, a defendant who seeks and obtains an indefinite continuance has an affirmative duty to end the continuance by giving notice of a request for a trial date. The court may end such a continuance by setting a trial date, in which case the excludable period ends on the date the trial commences.

Also under the bill, a defendant would be deemed to have waived his or her right to a speedy trial and would be excluded from asserting a right to a speedy trial when the period of delay resulting from a continuance granted at the request of or with the consent of the defendant or his or her counsel extends beyond the statutory six month period.

The bill was attached to LB712 with a committee amendment, which would provide that the defendant or his or her counsel must request a continuance, not merely consent to a continuance, that extends beyond the statutory six month period in order for the defendant to be deemed to have waived his or her right to a speedy trial.

Testifiers for LB1046:

Proponents:

Sen. Scott Lautenbaugh, Introducer

Kimberly Pankonin, Nebraska County Attorneys Association

Katie Zulkoski, Nebraska State Bar Association

Linda Hogan, Self

Opponents:

Neutral:

--Legislative Bill 988 (Sen. Council) advanced from the Judiciary Committee with AM 1685 attached by an 8-0 vote and would simply increase the amount of credit for imprisonment for nonpayment of a fine, or cost, or for default on an installment plan used to pay a fine from the current daily amount of "\$60" to the new amount of \$80. (Located in Section 9 of AM 2288)

AM 1685 to LB 988 would change the amount listed on p.2, line 21 from "eighty" dollars to "ninety" dollars.

Testifiers for LB988:

Proponents:

Sen. Brenda Council, Introducer

Marty Conboy, City of Omaha

Mark Foxall, Douglas County Department of Corrections

Joe Kohout, Lancaster County Department of Corrections

Opponents:

Neutral:

--Legislative Bill 687 (Sen. Wightman) advanced from Committee by an 8-0 vote. LB 687 would change the amount of money exempted from an estate that is provided to the spouse and or child of a decedent leaving an estate beginning January 1, 2011 in the following instances:

- A surviving spouse of a Nebraska resident would be entitled to a homestead allowance of \$20,000 beginning January 1, 2011 upon the resident's death an increase from the current amount of \$7,500 which continues until January 1, 2011. If the Nebraska resident dies leaving no surviving spouse, each minor child and each dependent child of the deceased resident is entitled to a share of the \$20,000 that was available to the surviving spouse if such spouse existed with the amount being divided by the number of minor and dependent children. (Section 10 of AM 2288)

- The surviving spouse of a Nebraska resident would be entitled to exempt personal property valued up to \$5,000 from the estate for a Nebraska resident who dies before January 1, 2011 and \$12,500 for a resident who dies on or after January 1, 2011. (Section 11 of AM 2288)

- The personal representative of an estate may provide a family allowance in a lump sum not to exceed \$9,000 to the family of a decedent who dies on or before January 1, 2011 and \$20,000 for a decedent who dies on or after January 1, 2011. The amount provided for the family allowance can be divided into a monthly amount not greater than the \$9,000 and \$20,000 totals. (Section 12 of AM 2288)

Testifiers for LB687:

Proponents:

Sen. John Wightman, Introducer

Opponents:

Neutral:

--Legislative Bill 703 (Sen. Wightman) advanced from the Judiciary Committee by an 8-0 vote and would amend the following acts and sections of law:

- The Uniform Durable Power of Attorney Act contained in sections 30-2664 to 30-2672 of the Nebraska Statutes (Section 14 of AM2288); and

- The Nebraska Short Form Act contained in sections 49-1501 to 49-1561 of the Nebraska Statutes (Section 31 of AM2288); and

- General powers available under a "Power of Attorney" (Section 33 of AM2288)

By providing that an agent or attorney in fact, acting under a power of attorney may create or change rights of survivorship and/or a beneficiary designation, as long as the power of attorney expressly grants the authority to do so.

Testifiers for LB703:

Proponents:

Sen. John Wightman, Introducer

Carl Sjulín, West Gate Bank

Bob Hallstrom, Nebraska Bankers Association

Opponents:

Neutral:

--Legislative Bill 757 (LB 757 appears in sections 15 & 16 of AM 2288 to LB 712) would amend statute section 30-2715 and add provisions to statute allowing a motor vehicle governed by a certificate of title to be titled in transfer-on-death. A person who owns a motor vehicle may provide for the transfer of such vehicle upon his or her death, or the death of the last survivor of a joint-tenancy-with-right-of-survivorship by including in the certificate of title a designation of beneficiary or beneficiaries to who the vehicle will be transferred on death. LB757 advanced from Committee by an 8-0 vote.

Testifiers for LB757:

Proponents:

Sen. John Wightman, Introducer

William Lindsay, Nebraska State Bar Association

Opponents:

Neutral:

--Legislative Bill 939 (LB 939 appears in sections 17 through 30 of AM 2288 to LB 712) would amend statute sections related to child support enforcement to allow the Department of Health and Human Services to effectively collect child support and remain in compliance with federal regulations. To comply with federal law, the bill would allow DHHS to modify a child support order in health care coverage cases within three years of entry of the order. The bill would also provide that DHHS may review child support orders within the three year period after the obligation is ordered when a substantial change in circumstances is demonstrated, has lasted at least three months and is expected to last for an additional six months. The bill would also authorize DHHS to utilize income withholding to collect other monetary judgments related to the support of the child that the obligor has been ordered to pay and owes to a federal or state governmental unit in cases when services are being provided under Title IV-D and the support obligation is current. The bill would also require financial institutions to include the account balance with the information provided to DHHS for each obligor that is matched to an account within the financial institution's system. LB939 was advanced from Committee by an 8-0 vote.

Testifiers for LB939:

Proponents:

Sen. Arnie Stuthman, Introducer

Todd Reckling, Department of Health and Human Services

Opponents:

Neutral:

--Legislative Bill 712 (Rogert) advanced from the Judiciary Committee by an 8-0 vote and would amend 69-2304(2) which contains a notice from a landlord to a tenant that property believed to be worth less than \$250, may be kept, sold, or destroyed without further notice if the tenant failed to reclaim the property within the time indicated in the notice by increasing the amount of the property identified in the notice to less than \$1,000. (Section 34 of AM 2288)

LB 712 would also amend 69-2308 which provides that a landlord is not required to sell at public auction, property that is not released pursuant to 69-2307 if the landlord reasonably believes that the total resale value of the property not released is less than \$1,000 and the landlord may retain the property for their own use or dispose of it in any manner that the landlord may choose. (Section 35 of AM 2288)

Brad Ashford, Chairperson