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Judiciary Committee  
February 01, 2012

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[LB737 LB812 LB899 LB939 LB1000 LB1051]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 1, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB737, LB1000, LB899, LB939, LB812, and LB1051. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR ASHFORD: Welcome, everyone, to the Judiciary Committee. It's a little after 1:30. We have five...six, so let's get going. [LB737]

SENATOR MCGILL: Six outstanding pieces of legislation. [LB737]

SENATOR ASHFORD: LB737. Senator Gloor, welcome. For those who haven't been here before, and I think almost everyone has been, we've asked you to confine your testimony to the light system, which means that around three minutes we'd ask you to conclude. There will be a yellow light that will tell you that the time is running out so it would be time to conclude your comments. Senator Gloor, welcome. [LB737]

SENATOR GLOOR: Thank you, Senator Ashford, Judiciary Committee members. Thank you for the opportunity to be here, and I can guarantee you I can beat the yellow light today. My name is Mike Gloor, M-i-k-e G-l-o-o-r. LB737 is introduced at the request of the Nebraska State Patrol. It provides cleanup language to amend Nebraska State Statute 43-107 requiring fingerprint-based national criminal history record background checks for adoptive home studies specifically for prospective adoptive parents. Background checks are currently statutorily required for all prospective adoptive parents. The language is being updated because it has been the experience of the State Patrol that applications that are submitted to them quite frequently come without the adequate number of fingerprint cards and without the necessary fee. The language that I'm proposing specifies to prospective adoptive parents that they are to submit two sets of fingerprints as required by the FBI and the appropriate fee to cover the cost of a national background check when they submit that application to the State Patrol. Changing the statute should be effective, because we're always concerned about if we're making this a law why do we think this will work. We think it will be effective because most if not all adoptions involve clients who have legal counsel who pay attention to these statutes. And because of that we think they'll be able to better guide their clients to provide the necessary information. If all necessary information is provided upon application, the national criminal history record check can be completed as efficiently as possible and the processing time can be kept to a minimum. So this is a bill to reduce hassles. I'd say it's also one about customer service, so that at this important time of their life adoptive parents aren't faced with unwelcome delays because they don't come with the required information. There's no fiscal impact. I'd appreciate

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

Judiciary Committee  
February 01, 2012

---

your support. I'd be glad to answer questions, but there's a representative of the State Patrol here to provide some testimony. [LB737]

SENATOR ASHFORD: Any questions of Senator Gloor? [LB737]

SENATOR COUNCIL: I have one. [LB737]

SENATOR ASHFORD: Yes, Senator Council. [LB737]

SENATOR COUNCIL: Yes, thank you, Senator Gloor. I was thinking that most adoptive parents, and even in the case of certain foster parents, when they go for the criminal background check that they...I know in Douglas County they go out to the sheriff's department and fill out the application, and then that's when they're told they need to provide two sets of fingerprints and they generally get them. Maybe the better question is to ask the State Patrol... [LB737]

SENATOR GLOOR: State Patrol. [LB737]

SENATOR COUNCIL: ...what the problem is, because at least that's been my experience is that a number of these adoptions are coming through the Department of Health and Human Services and they've been provided with all of the steps that need to be taken, including getting the background check which would be two sets of fingerprints. [LB737]

SENATOR GLOOR: Sure. [LB737]

SENATOR COUNCIL: So maybe there's some broader...something outside of Douglas County that's occurring that... [LB737]

SENATOR GLOOR: That I know, Senator Council, it is the State Patrol that's responsible for sending those into the FBI for the national background criminal checks. [LB737]

SENATOR COUNCIL: Right, right. [LB737]

SENATOR GLOOR: I know there are...the Department of Health and Human Services gets involved because there's a quick look back to see if there's any history of child abuse complaints that have been filed and whatnot. So perhaps maybe there's some degree of overlap in there that I don't understand. But, yeah, there is a representative of the State Patrol that might be able to better answer your question. [LB737]

SENATOR COUNCIL: Okay, thanks. [LB737]

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

Judiciary Committee  
February 01, 2012

---

SENATOR ASHFORD: Thank you. Thanks, Mike. [LB737]

SENATOR GLOOR: And given, as you are well aware, the weightiness of some of the bills in Health and Human Services, I'll waive my closing and head off to my HHS Committee. [LB737]

SENATOR COUNCIL: Ah, yes. [LB737]

SENATOR ASHFORD: What do you think of all those? No, just kidding. (Laughter) [LB737]

SENATOR GLOOR: Pardon? Yeah. [LB737]

SENATOR LATHROP: Thanks for what you do there. [LB737]

SENATOR MCGILL: Just a summary. [LB737]

SENATOR COUNCIL: In a nutshell. [LB737]

SENATOR ASHFORD: Captain, are you coming up? [LB737]

JULIE MAASKE: (Exhibit 1) Good afternoon, sir. Chairman Ashford and members of the Judiciary Committee, my name is Captain Julie Maaske, J-u-l-i-e M-a-a-s-k-e. Colonel Sankey sends his regrets as he is unable to appear before you today and has asked that I appear on behalf of the Nebraska State Patrol in favor of LB737. We would like to express our appreciation to Senator Gloor and his staff for their working to sponsor this bill on our behalf. One of the State Patrol's responsibilities is to maintain the centralized repository of criminal history records and fingerprints for the State Patrol...or, excuse me, for the state of Nebraska; function as the state's conduit to the Federal Bureau of Investigation national criminal history databases; and then furnish this information to any person authorized by state statute to receive it, such as those covered under LB737. LB737 is a straightforward bill which codifies the current practice for those persons needing to submit information to the Nebraska State Patrol to fulfill the fingerprint-based national criminal history record check as required for petitioners in 43-107(1)(b)(ii) for any adoptive home study. It clarifies the requirements for what is to be submitted and in what format in an effort to provide statutory guidance to all those involved in the adoptive home study, the purpose of which is to increase the efficiency of the process and subsequently decrease the processing time. This information is then included in the investigative report provided to the county judge at least one week prior to the hearing date per 43-107(1)(a). Currently, requests come to the Criminal Identification Division without the adequate number of fingerprint cards as required by the FBI or without the necessary fee. These errant submissions are not intentional but rather we believe to be simply a result of a lack of information. They do, however,

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

Judiciary Committee  
February 01, 2012

---

lengthen the processing time, resulting in a delay of information for those awaiting and needing it, which is a source of frustration for the petitioners. It's the intent of LB737 to provide better guidance to the petitioners as to the items needed to receive the information they desire. Over the last 23 months, the State Patrol has committed considerable time and resources to address and improve the backlog of criminal history check requests. The corrective process included a review of the work flow, staffing, equipment, and training needs. As a result, new leadership was introduced into the Criminal Identification Division and the work flow was restructured. This new leadership continues to explore avenues to improve the service to those in need of the fingerprint-based national criminal history record checks, and LB737 is the result of the process to maximize efficiencies. In 2011, 1,135 fingerprint-based checks were completed for the reasons listed in LB737, with an average processing time of 19 days. I thank you for the opportunity to be here as the State Patrol continues to strive to provide professional services to those in need of criminal history information and encourage you to advance LB737 to General File. I'd be happy to answer any questions you may have. [LB737]

SENATOR ASHFORD: Yes, Senator Council. [LB737]

SENATOR COUNCIL: Thank you, and thank you, Captain Maaske. [LB737]

JULIE MAASKE: Yes, ma'am. Yes, ma'am. [LB737]

SENATOR COUNCIL: And I don't have any problem with codifying a practice because I was correct in my understanding of what the practice is now. But my question is, is it really going to help with the backlog unless the adoptive parents are represented by counsel who would check the statute and make sure that they knew in advance, or the Department of Health and Human Services provides these adoptive parents with the requisite information. Otherwise, I mean, the average nonrepresented adoptive parent is going to be told you need to do a background check. They go out to the sheriff's office and that's when they find out they have to pay the fee and do the fingerprints. I'm just saying, I mean,... [LB737]

JULIE MAASKE: Sure. [LB737]

SENATOR COUNCIL: ...do you really think it will result in efficiencies in that process? [LB737]

JULIE MAASKE: We do. We're looking for everything we can to narrow down that processing time. Sometimes that processing time gets expanded because if things come to us without everything, to begin with, then it sits in delay and requires contact back to the petitioner, and then they have the inconvenience of having to come back with us with information. So we're looking for every way we can to improve that because

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

Judiciary Committee  
February 01, 2012

---

we knew that was an area where we needed to improve. And you are right, fingerprints for this purpose come to us from various areas. [LB737]

SENATOR COUNCIL: Um-hum, okay. [LB737]

JULIE MAASKE: It may be HHS, it may be a private. But there's no requirement necessarily that you go to law enforcement, whether it be the county level, to get your prints. [LB737]

SENATOR COUNCIL: Right, yeah, um-hum. [LB737]

JULIE MAASKE: And so we're just trying to get--it, as our current practice, it doesn't change anything--and to get the information to as many people as we can to improve that, to get it down to as little of a time as we can. [LB737]

SENATOR COUNCIL: All right. (Inaudible). Thank you. [LB737]

JULIE MAASKE: Thank you. [LB737]

SENATOR ASHFORD: Thanks, Captain--Julie. [LB1000]

JULIE MAASKE: Thank you, sir. [LB737]

SENATOR ASHFORD: Any other testifiers on this bill? Any opponents? Neutral? Senator Gloor waives. Senator McGill. [LB737]

SENATOR MCGILL: Hello, Senator Ashford, members of the committee. I'm Senator Amanda McGill. I represent the 26th District here in Lincoln and I'm here to introduce LB1000 which I bring to you on behalf of the counties. And this bill simply raises the marriage license fee from \$15 to \$30. I spent time with the counties looking in the last...over the interim, looking at a variety of fees that haven't been changed in a long time, and this was maybe the best example of how behind we are in some cases in allowing the counties to accurately or appropriately fund the activities that they do, just the mere...in Lancaster County they were able to figure that really about \$50 of work goes into just the production and going through all the paperwork of doing a marriage license, so. But we brought \$30, feeling it is an appropriate increase in that fee. The next testifiers have a lot of information about what those fees are around the country, and in the Midwest we certainly have the lowest. Some states are everywhere...I think one state has \$25 and everybody else is \$35, \$40, \$50. So I ask for your consideration of this bill and I have experts to follow me. . [LB1000]

SENATOR ASHFORD: Thank you. Don't see any questions. Thanks, Amanda. [LB1000]

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

Judiciary Committee  
February 01, 2012

---

SENATOR MCGILL: All right. [LB1000]

LARRY DIX: Good afternoon, Senator Ashford, members of the committee. For the record my name is Larry Dix, L-a-r-r-y, last name is D-i-x. I'm executive director of the Nebraska Association of County Officials appearing today in support of LB1000. And behind me there are a couple of county officials that will be able to give you more of the details of the costs and sort of the history of when these increases have been put forth. One of the things that we looked at as an association, and we certainly appreciate working with Senator McGill over the summer in looking at a number of fees. One of the things that's a little bit unique in the county side is that any time we have a fee, regardless of if we want to raise it \$15 or if we want to raise it 10 cents, before we have any authority to do that we always have to come to the Legislature to do that, and so we know we're held to a little higher standard in those fees. And over the years we've had fee increase bills brought in front of the Legislature but haven't had a, I wouldn't say, a tremendous amount of support. And when we look at something like this, especially in the marriage license area, this truly is a fee that is only being paid by folks who utilize or need the marriage license. And as Senator McGill had stated, we have evidence that there is more cost to process than what we're receiving, so in essence that is being subsidized by all taxpayers in our counties. And so we want to systematically look at a number of different fees that we believe over the years probably should be gradually increased to look at covering the costs of the services that we provide. And so, like I said before, I've got a couple of county officials that probably can go into more detail, but I certainly would be happy to answer any questions that you would have. [LB1000]

SENATOR ASHFORD: Okay, Larry. Yes, Senator Coash. [LB1000]

SENATOR COASH: Thank you, Chairman. Thank you, Mr. Dix. Do you know how long we've been at \$15? [LB1000]

LARRY DIX: In fact, I think there are folks that will state that behind me, but I think it was in 1995 I think. [LB1000]

SENATOR COASH: Nineteen ninety-five? [LB1000]

LARRY DIX: '95. Yes. I think that, but there will be somebody to correct me if I'm wrong on that one. [LB1000]

SENATOR COASH: Okay. Thank you. [LB1000]

SENATOR ASHFORD: Thanks, Larry. [LB1000]

LARRY DIX: Thank you. [LB1000]

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

Judiciary Committee  
February 01, 2012

---

DAN NOLTE: Senator Ashford and members of the committee, my name is Dan Nolte, D-a-n N-o-l-t-e, and I'm serving as Lancaster County Clerk and I'm here today in support of the bill. In Lancaster County, we issue approximately 2,000 marriage licenses per year. The issuance of a marriage license is but one part of the process. There's also staff time involved when the license is returned. It is then processed further into the state's database. Often licenses come back needing follow-up by staff. The information that is to be on the license oftentimes is lacking, requiring follow-up and staff time. This results in phone calls and letters being sent in an attempt of obtain the information so that we can complete the process. Sometimes the couple has to return to the office to fill out the information. There are expenses involved with purchase of paper and administrative duties, including accounting for fees, telephone, postage, receipts, etcetera. In Lancaster County, we have found that our costs for issuing and processing a marriage license is approximately \$50. While the cost, no doubt, varies by county, there are probably only a handful of counties that may actually be recouping their costs. With the proposed fee increase in this bill it will assist counties in offsetting some of the costs associated with our responsibility to issue marriage licenses. If you have any questions, I'd be glad to answer those. [LB1000]

SENATOR ASHFORD: It's pretty clear. Thanks. [LB1000]

DAN NOLTE: Thank you. [LB1000]

SANDRA STELLING: Good afternoon. [LB1000]

SENATOR ASHFORD: Good afternoon. [LB1000]

SANDRA STELLING: (Exhibits 2 and 3) Senator Ashford and Judiciary Committee, I am Sandra Stelling, S-a-n-d-r-a S-t-e-l-l-i-n-g, Jefferson County Clerk/Register of Deeds/Election Commissioner and also the cochair of the Clerks, Register of Deeds, and Election Commissioners Legislative Committee. [LB1000]

SENATOR ASHFORD: That's a really good consolidation. [LB1000]

SANDRA STELLING: Thank you. (Laughter) I'm not sure just how many counties are like that but I'm not the only one. There's quite a few of us. First of all, I wanted to thank Senator McGill for introducing LB1000 for us. I would also like to ask the Judiciary Committee for your support for the increases of the marriage license fee from \$15 to \$30 and the certified copy from \$5 to \$7. I've been in contact with fellow officials around the state of Nebraska. Yesterday I took it upon myself to call all of the states around us. Colorado, their present license fee is \$30 with a certified copy of \$1. Iowa, marriage license is \$35; certified is \$15. Missouri, marriage license \$58, certified copy \$9. South Dakota, marriage license is \$40; certified copy is \$15. North Dakota, it kind of varied a

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

Judiciary Committee  
February 01, 2012

---

little bit here; marriage license was \$65 and certified was \$10. And Kansas, the marriage license is \$50 plus a \$35.50 fee to the court, and I'm not just...the district court issues them in Kansas so I'm not just sure. They said it went to the courts, so I didn't go into it any deeper--and their certified copy is \$15. The Nebraska marriage license has not been increased since September 1975, and then it was a \$5 increase from \$10 to \$15. As the proposed increase for Jefferson County, I went back three years and it would have brought in \$1,780 just for the license and approximately \$260 for our county if everybody would have gotten a certified copy. On the other handout that I gave you is a list of all 50 states plus Washington, D.C., District of Columbia, with all of the amounts of what their marriage licenses are. And I'm going to have to apologize for the written part of it. I didn't have time to type it up for you, so if you want it typed for you I will see that that gets done. And if you look at that, out of the 51 there, Nebraska is number 50. And once again I'd just like to ask for your support, and if you have any questions I'd like to answer them. [LB1000]

SENATOR ASHFORD: Yes, Senator Harr. [LB1000]

SENATOR HARR: Thank you, Senator Ashford. And thank you for coming. I don't know, I'll just call you Ms. Stelling since I don't know what title to use since you carry so many hats. Fees are different than a tax to me, and what I mean by that is a fee is a cost for a service provided by a government entity. And so generally I like to see a fee fixed to or a reason why there's a change in the cost because it's a cost for the service. And you're now the third person to come up representing counties, and I've heard, you know, we're lower than the counties, and I've heard counties need money, but what I haven't heard is why is there a need? What has changed that the cost of a marriage license should double? I mean what new costs have occurred since 1995 that...there has to be something more than just inflation for it to have doubled and/or the cost of a certified copy to go from \$5 to \$7. Because while paper is getting more expensive, I don't think it's gone up that much. [LB1000]

SANDRA STELLING: Well, for one thing, on your certified copies we hear a lot, well, we're going to the counties because they're so much less than the state of Nebraska, because the state charges \$11 right now, and we can only charge \$5. But our costs at the county level have increased with our salaries. As all of you know, the state aid to counties is basically gone, so we have to stop, because our costs continually go up just like the state costs and everything else. So we have to look for areas that we can find that we can bring in more revenue. [LB1000]

SENATOR HARR: So what you're saying is the cost to create a marriage fee is \$30 and/or greater, and that before you didn't charge that price because you were subsidized because of county aid that we took from you. Is that correct? [LB1000]

SANDRA STELLING: Well, I would say that's part of it. Have we recouped our costs to

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

Judiciary Committee  
February 01, 2012

---

issue a marriage license at the \$15? You would really be looking at probably this costs us more than \$15 to issue it, because it takes approximately 20 minutes or more by the time we get it on the computer, we print it all out and everything, and you have everybody sign it. And then when it does come back, like Mr. Nolte said, we still have to go back into the system. We have to put it on and we have to index it in our records, send it, make sure the state gets it and everything. So I don't believe the \$15 covers it right now. [LB1000]

SENATOR HARR: And you believe \$30 is probably closer to the actual cost? [LB1000]

SANDRA STELLING: It would sure help. I'd like to have the one that's \$100 like Minnesota is, but (laugh) I know that's really jumping it. But no, I think we need some help in the county at the county levels. [LB1000]

SENATOR HARR: Okay. Thank you very much. [LB1000]

SENATOR ASHFORD: How many marriage licenses do you...how many people get married in Jefferson County every year? [LB1000]

SANDRA STELLING: Okay. I went back the last three years. Last year we had 48, the year before we had 46, and the year before that we had 36. So we're coming up, so we might have 50 this year. (Laughter) [LB1000]

SENATOR ASHFORD: That's good. That's good for business with parties and all that. [LB1000]

SANDRA STELLING: Yeah, so. But no. And, you know, we're one of the smaller counties, so. [LB1000]

SENATOR ASHFORD: No. I think that's great. I'm not making light of it at all. And I thank you for the work you do in running all those offices. [LB1000]

SANDRA STELLING: Thank you. [LB1000]

SENATOR ASHFORD: I think that's it though. Thank you. Any other testifiers on this bill? Okay. Senator McGill, do you... [LB1000]

SENATOR MCGILL: I will close real quick. And to Senator Harr's point, you know, we probably wouldn't be here today if we hadn't cut our funding to the county governments. We wouldn't be here. But like I said, it then caused myself to sit down with them and say, you know, let's start looking at all the types of fees that haven't been increased in over 15 years and make sure that they are covering the real costs. And that's something they didn't...weren't pressured to have to do before. And I would actually...initially my

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

Judiciary Committee  
February 01, 2012

---

plan was to come with a whole kind of list of things to propose, and this one just was the most obvious example of an area where the \$15 clearly wasn't recouping the cost of the service. [LB1000]

SENATOR ASHFORD: Yeah, and... [LB1000]

SENATOR MCGILL: And I do, like, I'm not just trying to raise marriage fees. I hope to need one someday. (Laugh) [LB1000]

SENATOR ASHFORD: You're for it. [LB1000]

SENATOR MCGILL: I'm willing to pay the extra \$15, so. [LB1000]

SENATOR ASHFORD: And but I think what is interesting about Sandra's testimony is that she runs all the offices in the county and... [LB1000]

SENATOR MCGILL: Your favorite subject. [LB1000]

SENATOR ASHFORD: Well, but I...yeah. Thank you. How do you know that? (Laughter) But then...and then...I mean it's just amazing how hard our, you know, the people out there, like Sandra, work, and I'm just blown away... [LB1000]

SENATOR MCGILL: And yet all of the fees are in our statute so they can't even, at the county level, go and change those fees. [LB1000]

SENATOR ASHFORD: (See also Exhibits 4 and 5) Right. But I'm just impressed always by people who come up here and do the work they do. It's just...I don't know. It's just cool. Thanks. Next bill I guess is...who do we have next here? Oh, my goodness, Senator Lathrop. LB899 is the next. [LB1000]

SENATOR LATHROP: (Exhibit 6) Good afternoon, Chairman Ashford. Steve Lathrop--and members of the committee--Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 here today to offer LB899. And it's very, very, very, very simple. A year ago, I think it was, we passed a bill that essentially allows if you are getting a divorce and you go through the process, you and the ex sign all the papers and you sign all the agreements, you formerly had to go through a process called proving it up. And one of the parties had to go down to the district court, take the bench...or take the witness stand, be sworn in, and basically say that the marriage is irretrievably broken and that the agreement we've entered into is made part of the decree and approved by the court, and you go home. It adds expense to the litigants, an inconvenience to the parties. When we did that, we did not include legal separations. And maybe that oversight was a function of historically legal separations didn't happen very often. This was brought to me by a guy that offices in the space right below me who does a lot of

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

Judiciary Committee  
February 01, 2012

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divorce, Brent Kuhn. You have a letter from his explaining the reason. And essentially what he tells me, since I don't do family law, is that the legal separation is becoming more and more common because people are staying together legally for health insurance. Kind of sad that that has to happen. But people are staying together for health insurance and for whatever reasons, maybe some of them are religious, and they opt for a legal separation. And all we're doing here is saying, just like the divorce, we're going to save you a trip downtown and save some time for the court and allow you to do this without appearing before the district court. [LB899]

SENATOR ASHFORD: Senator Council. [LB899]

SENATOR COUNCIL: I just have a question, Senator Lathrop. Does this apply in a situation where there might be children? [LB899]

SENATOR LATHROP: I think you're going to hear from Katie Zulkoski, who is going to testify on behalf of the bar about a concern they have...(laughter)...which may be a suggestion. [LB899]

SENATOR LAUTENBAUGH: There goes the afternoon. [LB899]

SENATOR ASHFORD: Yeah, there goes the afternoon. (Laugh) [LB899]

SENATOR LATHROP: This should be a simple hearing but it might not be after all. (Laugh) I think that there is a problem and I think Katie will talk about the fact that some judges are not signing these without the parties appearing when there are children involved. And so I think your question may be better directed to her, and Katie should be able to answer on behalf of lawyers that do divorce work and how our other statute is working. [LB899]

SENATOR COUNCIL: And would the parties in the case of the legal separation, if they don't appear to prove up, what about the property settlement or division of...or, I mean, care, to take care of addressing any debts or assets? [LB899]

SENATOR LATHROP: Well, it says that they certify that they've entered into a written agreement signed by both parties under oath resolving all issues presented by the pleadings under legal separation. So I would assume that we divide the property, the debts and the liabilities, and that's all in what we would call a property settlement agreement or what I would understand to be a property settlement agreement. [LB899]

SENATOR COUNCIL: Okay, and then they would presumably address child custody. But I don't think they can do that without going through the whole parenting plan process. [LB899]

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

Judiciary Committee  
February 01, 2012

---

SENATOR LATHROP: And I think the purpose in having Katie come up here, as she explained it to me, is to suggest an amendment to talk about that very subject. [LB899]

SENATOR ASHFORD: Thanks, Steve. [LB899]

SENATOR LATHROP: I'll waive closing too. [LB899]

SENATOR ASHFORD: Katie. [LB899]

KATIE ZULKOSKI: As announced and eagerly anticipated, Katie Zulkoski, testifying on behalf of the Nebraska State Bar Association. Z-u-l-k-o-s-k-i. We do support Senator Lathrop's bill because it would bring legal separation in line with divorce and the changes that you all made last year that would allow the parties to waive their final prove-up hearing. And I am appearing specifically for what Senator Lathrop referenced. There is...I just want to bring to the committee's attention I don't have a suggested amendment. I just want you to know that this is an issue that is out there and being discussed. Section 43-2935. As you know, Chapter 43 is the sections of statutes that deal with children, and in divorces most specifically the Parenting Act that was passed in 2007 as a part of the Parenting Act. That Section 43-2935 states that after a hearing the court looks at the parenting plan and makes sure that that plan meets all of the requirements required by the Parenting Act. That statute is being interpreted differently across the state. Some judges see that because of the words "after a hearing," that they cannot waive the final prove-up if there are children and a parenting plan needs to be reviewed. Other judges are allowing that final prove-up hearing to be waived even when there are children. So we just want to bring that to your attention to let you know while this would allow that final prove-up hearing to be waived if the parties agree, there is still a statute in the parenting plan that can cloud whether that is available or not. And with that I'm happy to answer any other questions. [LB899]

SENATOR ASHFORD: Yeah. Go ahead. I'm not sure I totally get it yet. Go ahead, Senator. [LB899]

SENATOR COUNCIL: Yeah, yeah. And that's one of the concerns because...I mean you can have the parties agree on custody, you know, visitation. But if the court doesn't approve that visitation setup, then the fact that the parties agree to it doesn't mean that you're going to have the right kind of decree. So I think we have to come to some kind of amendment to incorporate some provision if minor children are involved. [LB899]

KATIE ZULKOSKI: And I do think that is exactly what Chapter 43-2935 addresses, that that hearing would allow the judges to look at that parenting plan and make sure that just because you agree, it may not be a good idea. [LB899]

SENATOR COUNCIL: Right. [LB899]

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

Judiciary Committee  
February 01, 2012

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SENATOR LATHROP: So, if I may, is the bar section dealing with domestic relations or family law, are they looking at this? Are they going to come back to us? Do you want us to wait for an amendment? [LB899]

KATIE ZULKOSKI: We are happy to work with you on an amendment. We do not have one. We have talked to Speaker Flood about this issue. As you know, he was very involved in the Parenting Act at the beginning, and so we brought this to his attention, and he asked that we in turn bring it to your attention and just let you know this minor children and a court looking at that is a major policy decision and we're happy to be in those discussions. But Speaker Flood just asked that we bring it to your attention. [LB899]

SENATOR LATHROP: Okay. Do you want us to do something? Does the bar want us to do some...? [LB899]

KATIE ZULKOSKI: We would love to work with you and make this issue clearer. [LB899]

SENATOR LATHROP: And you want to use this as the vehicle for the clarification. [LB899]

SENATOR ASHFORD: This bill? [LB899]

KATIE ZULKOSKI: If the committee is willing to work with us, we would love that opportunity. [LB899]

SENATOR LATHROP: Okay. Hard to get to yes. [LB899]

SENATOR ASHFORD: Senator Council. [LB899]

SENATOR COUNCIL: How did we deal with it for the...when we did the waiving the... [LB899]

KATIE ZULKOSKI: We didn't, and that's why it's an issue now. [LB899]

SENATOR COUNCIL: Okay. So it's a problem in both. Okay, that's good. [LB899]

KATIE ZULKOSKI: Yes, exactly. This is a current issue. [LB899]

SENATOR COUNCIL: Okay. Gotcha. [LB899]

SENATOR ASHFORD: Fair enough. Thanks, Katie. Do we have any other proponents

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Transcriber's Office

Judiciary Committee  
February 01, 2012

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or opponents? Neutral? Senator Lathrop waives...has waived. [LB899]

SENATOR HARR: He waived. [LB899]

SENATOR ASHFORD: Okay, Senator Harr, LB939. This could be a...has all the earmarks of a record. [LB899]

SENATOR MCGILL: Especially for six bills. [LB899]

SENATOR ASHFORD: Yeah. Do you have a couple more? [LB899]

SENATOR MCGILL: (Laugh) You have a couple more. [LB899]

SENATOR HARR: Are we ready? Senator Ashford and members of the Judiciary Committee, fellow members, I am Burke Harr, H-a-r-r. I represent Legislative District 8 which is in midtown Omaha, including the neighborhoods of Dundee, Benson, and Keystone. I am here to introduce LB939. LB939 would change statutory specified means of delivery of notice of court proceedings to sureties and conservators. Currently, the specific means of delivery is registered or certified mail. LB939 would change the means of delivery to regular or electronic media. Any related impact upon postage expenses borne by the counties would be--I'm reading the fiscal note--would be borne by the counties. And with that, it's a very simple bill. It allows us to use modern technology which I think we all agree is more efficient. That being said, I have individuals coming behind us. I believe the bar association has a problem with this bill, although we have been working with them and I believe we have come up with an amendment to clarify this bill. With that I would be open to questions. [LB939]

SENATOR ASHFORD: Yes, Senator Council. [LB939]

SENATOR COUNCIL: I didn't think...you didn't think you were getting away without a question, did you, Senator Harr? I mean it's been a long time since you've had a bill before this committee. [LB939]

SENATOR HARR: Hoped. I hoped. (Laughter) [LB939]

SENATOR COUNCIL: Okay. Being amongst the technology challenged, and I understand we're moving toward the electronic media, but there was a reason it was certified mail, if you used certified mail. And I'm just concerned if a conservator doesn't have an electronic media, we're just saying regular mail is okay when before only certified or registered mail was okay. Should it be your choice is electronic media or certified mail? [LB939]

SENATOR HARR: We could always...I'm always more than willing to work with the

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

Judiciary Committee  
February 01, 2012

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committee. [LB939]

SENATOR COUNCIL: Okay. All right. No problem. [LB939]

SENATOR ASHFORD: Okay. Thanks, Burke. [LB939]

SENATOR HARR: Thank you. [LB939]

SENATOR ASHFORD: John. [LB939]

JOHN LINDSAY: Senator Ashford, members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing today on behalf of the Nebraska County Judges Association in support of LB939. LB939 was brought to Senator Harr's attention by the association. Our judges, when they see things occurring out as they're administering justice, where there are things that are typically noncontroversial, they try to bring those to the attention of the Judiciary Committee and the Legislature. This is one of those cases. The concern that was seen was that the standard notices that need to be given in the situation where a conservator is already...typically is already in a ongoing...has an ongoing situation with the court, the reports that are required annually, the different communication that already has to take place, the court found that there was quite a bit of expense associated with certified mail and registered mail in that as courts now are moving towards a paperless system, that it would be appropriate to look at that change at this time. The fact that not all persons do have electronic media was the reason that the thought was to maintain first-class mail so that whatever address the conservator maintains in the court file would be the place at which the conservator would be notified. Secondly, we are aware that some people don't have yet access to electronic media, and in that case there would be no electronic media address on file with the court, so that would not be the method of notification. It would be the paper notification, first-class mail notification. The bar association did have a concern with the...on the surety, in Section 1, that the surety would...who is just being named a party defendant would not have that ongoing relationship or connection with a particular case, should receive a registered or certified mail so that they are notified that they are now being brought in. So the amendment that we have suggested or that we've visited with the bar association would reinstate the stricken language in Section 1 so that it would be registered or certified mail, and then change that next piece to "by consent of the parties by electronic media," which would then...typically we would think that once the surety is notified, they're probably going to say, let's go to e-mail at that point. With that, we'd be happy to answer any questions for the committee and would urge the amendment and advancement of LB939. [LB939]

SENATOR ASHFORD: Any questions of John? Yes. [LB939]

SENATOR COUNCIL: And thank you, Mr. Lindsay. I appreciate the amendment relative

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

Judiciary Committee  
February 01, 2012

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to the surety, but my question is to the conservator. And I understand if the conservator relationship is established, but I don't know how far, I mean, how this would apply once enacted. There may be a lot of conservators who have been in a relationship for a long time, don't have electronic media, everything has been sent to them by registered or certified mail, whether...I mean providing the option to use electronic media in the cases where there's an e-mail address available but in all others that it be registered or certified. And the only reason I say that is because electronic media, you're going to get some evidence of receipt. [LB939]

JOHN LINDSAY: Right. [LB939]

SENATOR COUNCIL: On a regular mail there's no evidence of receipt. And I've got to tell you, I have a situation in my office right now of a person whose conservatorship was terminated and he claims that he never was notified. So, you know, without some electronic media receipt or a certified registered letter receipt, you're going to be fighting that battle. [LB939]

JOHN LINDSAY: And I think in some cases I don't disagree that very well could and probably would happen. But I think that becomes a question of proving that notice was received, which is problematic if there's no receipt. The problem also occurs with certified mail that it often goes unclaimed. [LB939]

SENATOR COUNCIL: Right. [LB939]

JOHN LINDSAY: And part of what the judges have seen is the expenses that are then paid out of a conservatorship for notices that are unclaimed or notices for people that already know what is going on. And if there's a better approach than maybe having a court look at that and order specific notice or something, but the cost issue to the wards is one of the things that the...the primary thing the judges are looking at. [LB939]

SENATOR COUNCIL: Okay, but there...okay, if you're sending it to the conservator and that person is there for the benefit of the ward, and if that person isn't claiming certified or registered mail, the court has more problems than the cost of serving the conservator. [LB939]

JOHN LINDSAY: Agreed. And...but it does happen, and then... [LB939]

SENATOR COUNCIL: All right. But my preference is to be able to go before the court and say, you know, here's the certified receipt of mailing and here are the three notices from the post office that said we tried to serve this person and then go on about your business. [LB939]

JOHN LINDSAY: I would say we'd be happy to work with you on addressing those

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

Judiciary Committee  
February 01, 2012

---

issues. And it is, it does pose a problem one way and a problem the other way. There's...I don't disagree with that. [LB939]

SENATOR COUNCIL: Thank you. [LB939]

SENATOR ASHFORD: Thanks, John. [LB939]

KATIE ZULKOSKI: Good afternoon, Senator Ashford. Katie Zulkoski testifying today on behalf of the bar association. Z-u-l-k-o-s-k-i. Mr. Lindsay did an excellent job of summarizing our concerns with the bill and with the suggested amendment that it appeared that was handed out earlier. We...our concerns are addressed and we would then support the suggested changes in this bill. [LB939]

SENATOR ASHFORD: Okay. [LB939]

SENATOR LATHROP: Can I just ask a question? [LB939]

SENATOR ASHFORD: Yes. [LB939]

SENATOR LATHROP: If I sign up and I say I want to get my notice by certified mail...or by e-mail, rather...I don't know how those junk mail filters work, but if there are...let's say that you're going to send one to the conservator and all interested parties and the surety or whoever it is, and you blast six people at once, does that send something into the junk filter? Do you know? [LB939]

KATIE ZULKOSKI: I think each e-mail is set up differently in that, but I would...especially where...I think if I'm signing up to be a conservator and I put in my petition for appointment my e-mail address, I would be watching for that more closely than... [LB939]

SENATOR LATHROP: Yeah. But a lot of...I have got to tell you I don't go through my junk, because most of it I've sent there for, the filter picks it up as spam. And the concern I have with these things is I just don't want something to be blasted to six people and then have somebody's filter show it up as spam. And I don't know, maybe we talk to somebody that's a geek to make sure that doesn't happen. [LB939]

KATIE ZULKOSKI: Um-hum. I agree. [LB939]

SENATOR LATHROP: It may need an individual notice by e-mail to each person. [LB939]

SENATOR ASHFORD: Thanks, Katie. Anyone else for or against this bill? Burke. [LB939]

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

Judiciary Committee  
February 01, 2012

---

SHERYL CONNOLLY: Neutral. [LB939]

SENATOR ASHFORD: Neutral. Sorry. Excuse me. [LB939]

SHERYL CONNOLLY: I'm sorry. You were already (inaudible). Senators, good afternoon. My name is Sheryl Connolly, S-h-e-r-y-l C-o-n-n-o-l-l-y. I'm the trial court services director for the Administrative Office of the Courts, and I'm appearing today in a neutral position on LB939. Eliminating the requirements for certified or registered mail for notice to conservators and sureties may in some instances prevent a delay in the court's ability to act in a timely manner to protect the assets of the protected person. Some individuals do not or cannot pick up certified mail but they are able to receive first-class mail which is left in their mailbox. In addition, eliminating the requirement for certified or registered mail for all the notices to a conservator or to a surety in a conservatorship would reduce the work for the court staff and would reduce the expense that the county may incur in sending those certified notices. For example, in 2010, Douglas County Court had approximately 3,500 active guardianships and conservatorships, and approximately 300 new conservatorships and combined guardianships and conservatorships filed. While I have no information on how many of those cases may require a notice under the current statute, at \$3.40 for a certified letter with no return receipt, eliminating the requirement has the potential to save Douglas County taxpayers thousands of dollars each year. This savings would be seen on a lesser scale in counties across the state. I would ask you on behalf of the courts to consider these areas of impact during your discussions on LB939 which would eliminate the requirement for certified or registered mail for all notices to conservators and sureties in a conservatorship case. And I'd be happy to answer whatever questions I can. [LB939]

SENATOR ASHFORD: Any questions of Sheryl? Thank you. Thanks for...I'm sorry to have gone over your neutrality position. [LB939]

SHERYL CONNOLLY: That's okay. [LB939]

SENATOR ASHFORD: Burke. [LB939]

SENATOR HARR: Thank you, Senator Ashford. Quickly, I want to thank everyone who came and testified. I think they each made a very good and valid point. Senator Council, to your issue on registered mail, it is something we need to address, and will. That's the beauty of the committee system. It allows us to clean up bills a little bit to determine where we want to go. As far as Senator Lathrop, your issue with electronic mail, I think we have a way of knowing if the mail has been opened or not, electronic mail, and so if it's...I would think if a party saw, hey, I've sent this three times and it hasn't opened, you could either call or say, hey, look at your spam. There are programs out there to avoid

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

Judiciary Committee  
February 01, 2012

---

spam. Both parties have to sign up for it and I think probably that's the best answer. But I don't know who...if we have to put that in statute. It seems as though sometimes we do have to...statute ties common sense. But hopefully the parties would understand that. With that I would ask you to advance LB939 with the amendments that we can work out in committee, and then also that was sent to you during the hearing, and I am open to any questions from anybody. [LB939]

SENATOR ASHFORD: Any other questions? Seeing none, okay, you're...oh, I'm sorry. [LB939]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. Thank you, Senator Harr. Senator Lathrop raises a valid concern. I mean I know in my own practice I extensively use e-mail, and there was one attorney in particular on a case where one of the...he has two e-mail addresses. And if he sends from one, I get it. If he sends the other, it goes to my junk mail, and I have to go check and see if it's there. And I mean I don't have enough knowledge as to how junk filters and spam filters work because they're all different. Even if I knew, I wouldn't...there's no way to know I guess is what I'm saying. How can we address that? Maybe with some kind of a test e-mail at the beginning of the case that you the conservator has a duty to respond to or the party has a duty to respond to, to make sure it works, that it's not going to junk. I mean I don't know but it is a problem that Senator Lathrop identifies. [LB939]

SENATOR HARR: It's a very valid issue. I would say this, I would hope a court administrator, if they're saving money on the back end by not having to use registered mail, would be smart enough to purchase a system that allows mail to go through spam, so even if you sent it to 100 people, if you signed, both parties signed an agreement and it says, hey, if it comes from this party it's not spam. There's a program called Emma that does that. [LB939]

SENATOR LAUTENBAUGH: See, my concern is that the court administrator might not. [LB939]

SENATOR HARR: What's that? [LB939]

SENATOR LAUTENBAUGH: I don't know if it's controlled on the sender's end. I think it's controlled on the recipient's end. [LB939]

SENATOR HARR: It is...and the system...yeah, it is controlled. And so both parties have to sign up for it. That is correct. And there's a system out there, Emma, that I've used extensively for that purpose when working on cases where we had...or transactions where we would send out to larger numbers of parties e-mails. All parties would agree to use this to sign this contract, and as a result it would avoid spam. There are solutions out there if the parties are willing to look for it is what I would say. [LB939]

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

Judiciary Committee  
February 01, 2012

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SENATOR LAUTENBAUGH: I think it was in this committee, but now that I think about it, it was in Transportation where someone made the observation that anything that comes by certified mail or registered mail isn't good news, and so most people, a lot of people I should say, don't go get their mail. Is it your belief that regular mail might actually be better notice to people because it more routinely gets there than certified mail and registered mail, which may not be picked up? [LB939]

SENATOR HARR: Yes. Thank you for the leading question. [LB939]

SENATOR LAUTENBAUGH: Thank you for that succinct answer. [LB939]

SENATOR ASHFORD: Thanks, Senator Lautenbaugh. Thanks, Burke. I think you have the next bill. Oh, I'm sorry. Senator Council. [LB939]

SENATOR COUNCIL: Just one question. And, Senator Lautenbaugh, you make the point, but it's been my experience if you send something regular mail, the person is just as apt to say they didn't get it as not to go get a certified letter. I mean... [LB939]

SENATOR LAUTENBAUGH: Well, that they could say it certainly. [LB939]

SENATOR COUNCIL: But I mean...and you are left in the same lurch, although reasonable minds would conclude that you are more than likely to have received it if it was just dropped into your mailbox, but then you don't have any way to prove it. And we've all received somebody else's mail in our mailbox. So that's all I'm concerned about. I mean I think the other way, certified or registered, you know, and after so many attempts it's deemed to have been received...I mean you put a...bring the hammer down if they don't pick them up. [LB939]

SENATOR HARR: I will concede I do receive Senator Ken Haar's mail quite frequently and I can't figure out why. [LB939]

SENATOR COUNCIL: Okay. [LB939]

SENATOR ASHFORD: Thanks, Burke. Next bill, LB812. [LB939]

SENATOR HARR: Thank you, Senator Ashford and fellow members of the Judiciary. My name is Burke Harr, H-a-r-r, and I am the senator from Legislative District 8 in the great city of Omaha. I am here to introduce LB812. I'm bringing this bill on behalf of the Nebraska Bankers Association, and I appreciate them presenting me with this bill. LB810 (sic) would require a judgment creditor at the time of issuing a garnishment summons and interrogatories to pay the garnishee a \$50 fee. Failure to pay the fee would render any garnishment in which a fee is not paid void and eliminate the need for

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

Judiciary Committee  
February 01, 2012

---

the garnishee to answer the interrogatories or take any action under such circumstances. The fee paid by the judgment creditor to the garnishee would be included as part of the taxable costs of the action. Under current law, a judgment creditor is not required to pay any fee to the garnishee, whether the garnishee is a financial institution or an employer, for services rendered in responding to the garnishment interrogatories and paying funds into court for application for the judgment creditor's judgment. Judgment creditors clearly derive significant benefit from the services provided by financial institutions and employers, and should provide reasonable compensation for fees and services...or for services delivered. As you are aware, this issue was raised by...well, this issue was raised as a result of what is commonly referred to as shotgunning, where some creditors, not all--as Senator Larson knows, sometimes you have 99 percent good and 1 percent bad, and it's the 1 percent that causes the other 99 percent the pain--was called shotgunning where someone will send out a bunch of interrogatories to a bunch of banks and/or employers to try to find that count. There is a fee associated, a cost for that bank to fill out those and to respond to those interrogatories, and that's what this bill is addressing. We all want the person who pays for or receives the benefit of the service to pay for the service is basically what this bill does. I have a lot more but I would be open to questions, and I'll be able to answer more questions at closing as well. But... [LB812]

SENATOR ASHFORD: Senator Lautenbaugh. [LB812]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. Do you know how prevalent this practice of shotgunning is? [LB812]

SENATOR HARR: If you're asking for a specific number, I wouldn't say there's a specific number out there. I can tell you that this issue was raised by the bankers because they felt as though it's becoming more and more prevalent and that there is more and more abuse out there would be the answer I would give you. [LB812]

SENATOR LAUTENBAUGH: Do you know what the cost is--and I don't mean to put you on the spot because I don't know either--the cost of filing a garnishment just to get the ball rolling? [LB812]

SENATOR HARR: To get the ball rolling. [LB812]

SENATOR LAUTENBAUGH: Is it \$5, \$15? [LB812]

SENATOR HARR: The court fee, is that what you're referring to? [LB812]

SENATOR LAUTENBAUGH: Yes. It is used to be \$5 when I used to do these, but that was, I think, that was a long time ago and I may be wrong. [LB812]

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

Judiciary Committee  
February 01, 2012

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SENATOR HARR: And I don't know that myself. I think there's an additional court fee of, like, \$3 that goes to something else too. [LB812]

SENATOR LAUTENBAUGH: Yes, I'm familiar with that one. That said, I guess what I'm getting at is I would like to know how much it costs to actually start a garnishment, because I think that might provide a window into how prevalent the shotgunning is. [LB812]

SENATOR HARR: Yeah. [LB812]

SENATOR LAUTENBAUGH: I mean, if you've got a \$275 debt out there and it's \$10 in garnishment, and you send out 20 garnishments...I know you were told there would be no math so I'll stop at that point. But that's another \$200 just to collect the...so I guess from an economic standpoint... [LB812]

SENATOR HARR: And that's a valid argument and that's something to be talked about. I guess the other issue is, when those banks receive those interrogatories, there's a cost to them. They have to have employees who that's their job is to go through and see, does this person have an account, yes or no. And then they have to figure out where does that money come from. If it comes from certain federally protected accounts, i.e., Social Security, you have to keep a certain amount in that account, so you have to have lawyers who have to keep up to date with what that amount is and with what the current regulations. So banks are being watched more closely, and as a result they're trying to say, okay, well, then let's do a fee for services, meaning, hey, we provided service to these creditors, they should pay for what we provide. We can't just give it away for free anymore. It's not the heydays anymore. And so that's really...while it does help prevent "shotgunners," banks do have a cost to do this, and so they're just asking to be reimbursed for their cost. [LB812]

SENATOR COUNCIL: Senator Ashford? [LB812]

SENATOR ASHFORD: Yes, Senator Council. [LB812]

SENATOR COUNCIL: Thank you, Senator Harr. I certainly understand and appreciate the concern about shotgunning now, and I want to look at it from both sides. My opinion is it should be minimal cost if you get it, but you've still got to answer the garnishments, don't you, even if they don't have an account there? [LB812]

SENATOR HARR: Still have to answer. So there's a cost associated with that. Now if want to... [LB812]

SENATOR COUNCIL: So but if you don't have an account there, I mean I don't...do you...I can't remember. I used to do garnishments a long time ago, but I think you just

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

Judiciary Committee  
February 01, 2012

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check a box and send it back. But I know there's a cost associated with that. But when the person actually does have an account there, there's a little more work because you have to look to see about the federal direct deposit stuff and then you have to complete the thing and you have to seize the funds, freeze the account, and...is there any way? One of the things that I was made aware of is that if there are funds available, the bank is obligated to send all the funds, everything that's there. So while they may have an agreement with their customer that, you know, should we be presented with a garnishment there's a fee of \$35 to your account, once the garnishment hits, the bank can't withdraw that amount, withhold that amount from the account, because they have to send everything that is in the account on the date they received the interrogatories. Is there something we can do to allow the banks...? You know, I know it only addresses half the problem. [LB812]

SENATOR HARR: Um-hum. [LB812]

SENATOR COUNCIL: But is there something we can do to allow the banks to withhold, you know, their fee before the funds are remitted? [LB812]

SENATOR HARR: So and I think what you're saying is the account is frozen. Someone owes, let's say, \$1,000. Account is frozen and there's only \$500 in the account. All \$500 goes and the bank doesn't get any of that fee. [LB812]

SENATOR COUNCIL: Correct. [LB812]

SENATOR HARR: You would like to see that the fee is paid up front and the remainder would then go to pay them. [LB812]

SENATOR COUNCIL: Correct. [LB812]

SENATOR HARR: Okay. [LB812]

SENATOR COUNCIL: I mean is there some... [LB812]

SENATOR HARR: And the answer is, I don't know the answer to it. [LB812]

SENATOR COUNCIL: Okay. [LB812]

SENATOR HARR: I would like to look at what the federal regs are and the FDIC. If we could change that, that would seem to... [LB812]

SENATOR COUNCIL: Um-hum. I mean I'm just trying to strike a balance. I appreciate, you know, that there's an expense and I can't even say whether \$50 covers it or not. But if the account is there and then the judgment creditor--excuse me--still is in a position to

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

Judiciary Committee  
February 01, 2012

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recover whatever the balance is due and owing after the bank withholds their fee, I would like to see if there's, you know, at least as a way of addressing both the judgment creditor's concerns and the banking concerns. I know from an employer's position...I'm surprised I've not seen employers. I mean that's what I did when I first started at Union Pacific, and we used to get a ton of garnishments a month, and it took a lot of staff time. But there's no provision... [LB812]

SENATOR HARR: And this would apply to employers as well. So it's an equity issue is why I brought this bill forward. [LB812]

SENATOR COUNCIL: Yeah, but even then an employer can't withhold from an employee's account without consent or by statute. So you'd have to do the same kind of thing. Unless you've had a wage assignment or some other written agreement with the employee, the employer can't withhold. There would have to be some statutory provision to allow the employer to withhold. So it's just something to look at. [LB812]

SENATOR HARR: And I appreciate that comment and we will. Thank you. [LB812]

SENATOR ASHFORD: Thanks, Burke. [LB812]

SENATOR HARR: Thank you. [LB812]

SENATOR ASHFORD: Bob. [LB812]

BOB HALLSTROM: (Exhibit 7) Chairman Ashford and members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association to testify in support of LB812. I'm also appearing on behalf of the National Federation of Independent Business and its small business owners to support the bill as well. Senator Harr has pointed out the substantive requirements or provisions of the bill. I want to make clear for the committee, the Nebraska Bankers Association's interest in this was spurred by our membership on two principle grounds. The first one is that we think there should be reasonable compensation for services provided. There's clearly a benefit that's provided to judgment creditors when garnishments are processed by banks and employers alike. And secondly is the issue of the so-called shotgun garnishments that Senator Harr pointed out that our bankers are seeing more and more frequency of getting those, and particularly I think where they see it or realize it is that there's more and more that are "no account" status types of garnishments that they respond to. We did a survey of our membership and we found in their figures about 25-30 percent were "no account" status. So there's a fairly significant amount involved there even though the statute says that there's supposed to be a good reason to believe that the garnishee has property or credits of the judgment debtor. With regard to the issue of freezing the account or holding the account funds, Sections 25-1010 and 25-1056 that are both in LB812

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

Judiciary Committee  
February 01, 2012

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addressed the issue of having to hold all funds that are in the possession or control of the garnishee at the time that the summons and interrogatories are received. And so as Senator Harr pointed out in his example, the way that the law reads, the way that the law is supposed to be carried out is that when you get that \$1,000 judgment you have \$500 in the account. All of that goes forward. So based on the first two issues I've talked about, you can't get a fee in a situation where there's a "no account" status and you can't get a fee when you have a situation where all the funds are properly remitted to the court and there's no money left. The kicker is that many times, as you might expect when an account is garnished and all of the funds are taken out of it, that person soon terminates their account relationship with you so you don't have a chance to go back and recoup those fees in that case either. I think from talking to some of the opponents that you'll no doubt hear from today, they will raise the issue that we do have the right to obtain a garnishment processing fee from our customers, but we've indicated the two situations in which you will not recoup a fee. Another thing you might hear later is that there are situations that they will point out where the bank maybe has taken their fee off the top before they remitted the monies. If that's the case, it certainly runs counter to what we believe the law is and what we have told our bankers that the law requires them to do. In looking at the survey, a couple other things that might be important to the committee: average time incurred, 45 minutes for employees' time in processing the garnishments. And in closing, I'd be happy to address any questions. I think we again simply would reiterate that it's about providing a service and being reasonably compensated up front for that service by the judgment creditor. At any other stage of the process, Senator Lautenbaugh, I think the filing fee is \$5. Eighteen dollars is the writ of restitution or the summons of service for the sheriff and so forth. So I'll go through some of those if there's any questions. [LB812]

SENATOR ASHFORD: Bob, let me just... [LB812]

BOB HALLSTROM: Yeah. [LB812]

SENATOR ASHFORD: Would you just clarify for me, where can the bank collect money now for their service for doing this, what circumstances? Did I misunderstand what you said? There are some circumstances where there's money left... [LB812]

BOB HALLSTROM: Yeah, Senator, there's three primary situations. The first one is you have no account so you don't have a...there's nothing to draw against. [LB812]

SENATOR ASHFORD: Anything to...there's nothing to get. Okay. [LB812]

BOB HALLSTROM: The turnip doesn't have any blood. [LB812]

SENATOR ASHFORD: Yeah. [LB812]

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Transcriber's Office

Judiciary Committee  
February 01, 2012

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BOB HALLSTROM: You have a second situation where the law requires you to freeze the account if the account balance is less than the amount ordered or the amount of the judgment. You pay all of it in. You can't take your fee if the account is closed. Particularly, you're not going to get your fee later either. The situation where you would have the ability to get a fee is the judgment is \$1,000; there's \$2,000 in the account. I send \$1,000 to the court and I've got \$1,000 left over to take my fee out of. [LB812]

SENATOR ASHFORD: Okay. And how is that fee calculated? [LB812]

BOB HALLSTROM: Generally, that fee will be between the depositor and the bank pursuant to the deposit agreement. [LB812]

SENATOR ASHFORD: Agreement. [LB812]

BOB HALLSTROM: We surveyed our members and the vast majority of fees, we gave them \$1-10, \$11-25, and \$25-50, and I think 75 percent of the fees were between \$11 and \$50 for the garnishment processing fee. [LB812]

SENATOR ASHFORD: And those are agreed upon when they open up the account, is that right? [LB812]

BOB HALLSTROM: Yes. [LB812]

SENATOR ASHFORD: Okay. [LB812]

BOB HALLSTROM: And the other thing, in my testimony I had information or should have had attached to the testimony a chart that shows there are 18 states, at least, from our research that we did, that do have a specific garnishment fee that is either paid directly up front by the judgment creditor or, and Senator Council, in response to your question, there are some states that allow the deduction to take place before the funds are remitted. So that is possible. That is an alternative that we certainly would be interested in, as well, to look at solving part of it. [LB812]

SENATOR ASHFORD: Okay, so what you're saying is that you can collect some money now if there's an excess in the account. What you are saying is that isn't...doesn't...is not enough compensation. So the \$50 may or may not be enough either, but it's a shot at it. [LB812]

BOB HALLSTROM: Yes. [LB812]

SENATOR ASHFORD: Okay, I was just trying to understand. Yes, Senator Council. [LB812]

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

Judiciary Committee  
February 01, 2012

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SENATOR COUNCIL: Senator Ashford, no. I think you're misunderstanding what...what he's saying is if in the unlikely event...because if you're getting garnished, then there is the unlikely event that you have the amount of the judgment sitting in your bank account. If after paying the entire...freezing the entire amount of the judgment, if they still have a balance in their account, they can get the \$50 or whatever, \$35. [LB812]

SENATOR ASHFORD: Right. No, I get that part I think. [LB812]

SENATOR COUNCIL: But if there's no balance... [LB812]

SENATOR ASHFORD: They get nothing. Yeah. [LB812]

SENATOR COUNCIL: ...or if the balance in the account is less than the total judgment, they get nothing. [LB812]

SENATOR ASHFORD: They get nothing. Okay. [LB812]

BOB HALLSTROM: And our bank survey indicated maybe 15-25 percent of the cases are those where the excess funds exist after satisfying the garnishment. [LB812]

SENATOR ASHFORD: Gotcha. Okay, thanks, Bob. Any other questions of Bob on that? Seeing none, thanks. [LB812]

BOB HALLSTROM: Thank you. [LB812]

SENATOR ASHFORD: Any other proponents? Opponents? [LB812]

TESSA HERMANSON: Good afternoon, Senators. My name is Tessa Hermanson, T-e-s-s-a H-e-r-m-a-n-s-o-n, and I'm here in opposition to LB812. I'm here in my capacity as general counsel for a large Nebraska collection agency, Credit Management Services, Inc. A few things that I wanted to address that have already been talked about. First of all, the bill as written states that there would be a \$50 fee per judgment debtor. In many cases you're garnishing a joint bank account of a husband and a wife, so this is actually a \$100 fee that will be applied to bank garnishments. Several reasons we don't think this fee is needed. First of all, banks are charging a fee up front. There's been a lot of discussion about, well, that's not in all circumstances, and I will get to that. But I was able to generate a list of banks in which Credit Management sends the most of its garnishments to. I'll go through them real quickly but they have these arrangements that you can find on-line. I found I think 6 of the 11 on-line or by calling them. But Wells Fargo charges a \$100 fee if a garnishment is issued. First National Bank charges a \$100 fee. Bank of the West charges \$100. U.S. Bank charges \$75. Cornerstone charges \$75. American National Bank charges \$75. Pinnacle Bank charges \$50. Valley Bank and Trust, \$40; Five Points Bank, \$30; Heritage Bank, \$25;

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

Judiciary Committee  
February 01, 2012

---

and Security First Bank, \$25. So in this situation, if there is money or the circumstance where the bank can get this fee up front, they're getting possibly \$214 for this garnishment. The Wells Fargo fee is \$100. The joint bank account, now I have to pay \$100 for the privilege of issuing the garnishment. And then to address what Senator Lautenbaugh had brought up, there's a \$5 filing fee and then a requirement that I send that certified mail, so it's about \$14 for the cost of the garnishment. I think that, you know, Bob stated, Senator Harr stated, the state of Nebraska law or they advised the banks that if there's not enough money to cover the amount of the judgment, they're not supposed to be taking their fee. However, that's not happening. I mean, in practice, I've appeared at several garnishments hearings. The debtor says, you know, I have a \$500 judgment. The debtor says, well, they've withhold \$100 from my bank account, and the interrogatories say there's only \$200 available to me. So the bank is taking their funds before remitting the rest even in those situations. I haven't found the law that they've referenced that says that they can't do this, and in fact have seen it in practice. My brother worked in the garnishment department at Wells Fargo Bank. They will withdraw...they will make the account go negative by their \$100 fee if there's zero dollars in the account at the time of garnishment. So the fact is that they are collecting this fee twice. In reference to the shotgun approach, I'll skip ahead to that. I mean, it's...this practice is just not happening. First of all, there is a fee associated with it. Five dollars, I guess that would...plus the certified mailing fee, so about \$14 a garnishment. And therefore there's cost to a bank. Like Senator Lautenbaugh pointed out, if it's a \$200 judgment I'm not going to spend \$200 just guessing where they bank. We don't do that with employers either. In addition to that, the Statute 25-1010 requires that the affidavit I sign states that I have a good reason to believe that they bank at this institution. So I'm signing under oath that I have a reasonable belief to believe that they have a bank account there. We obtain that through debtor's exams, through previous payments made by checks, through banks who will give us that information, through, you know, various means. We are not just sending out these blind garnishments without more. [LB812]

SENATOR LATHROP: Okay. [LB812]

TESSA HERMANSON: I know I'm out of time. [LB812]

SENATOR LATHROP: You've got a red light. [LB812]

TESSA HERMANSON: I apologize. [LB812]

SENATOR LATHROP: And when we talk, they stay stop on the floor, "Time." So let's see if there's any questions and we'll... [LB812]

TESSA HERMANSON: Yes, thank you. [LB812]

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

Judiciary Committee  
February 01, 2012

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SENATOR LATHROP: I see no questions. Your explanation has been very helpful.  
[LB812]

SENATOR COUNCIL: Yeah, it's been... [LB812]

SENATOR LATHROP: So we appreciate your testimony as always, giving us a perspective of the collectors. Anyone else here to testify in opposition to this bill?  
[LB812]

BOB PARKER: Good afternoon. My name is Bob Parker. I'm an attorney from Hastings. I'm appearing here today on behalf of the Nebraska Collectors Association and also as a small business owner myself. My partner and I, we started a collection agency about five years ago called Central Nebraska Collections. And I have to be honest, it hasn't been too profitable, and one of the biggest reasons is our gross fees last year were \$237,000. Half of that goes back to the creditor--there's \$118,000. And we paid \$50,000 in court costs, so that left \$68,000 to pay one full-time employee, a couple of part-time employees, \$7,200 a year in rent, plus insurance, plus operating costs. And I talked to our manager of our collection agency on the way here today, and she said if they were to impose that, I think the costs would be so horrendous that I wouldn't be able to afford it. And furthermore, she's very frugal, and is so frugal that she turns the heat down to make sure she can save money on her utilities, and she would not be shotgunning, I can guarantee you, garnishments of \$14 apiece. And she does also have to sign an affidavit stating that she believes there are funds in that bank. So I thought to myself, and of course I was called yesterday to testify about this, and I thought to myself, who does it really benefit? And the only person I can think this bill would benefit would be the Nebraska Bankers who are the proponents, I believe, of the bill. I ask myself as a small business owner, where are the small business owners? We own a law office, we own a collection agency. We fill out garnishment interrogatories. They aren't that too burdensome upon us. In my 20 years in Hastings, I've had small business owners come to me and grimace about filling out garnishment interrogatories, but it didn't...it was just part of doing business to them. So with that being said, I don't like red lights; I would be glad to answer any questions. But I feel that the people who would be hurt the most are small business owners like myself, debtors who this bill is ultimately going to be passed on to. And if you think of a \$75 bill and then \$100 for the bank...yellow light...and \$100 for the bank and \$100 for additional costs which are going to be passed on to the debtor anyway, you're talking about a \$75 bill turns into a \$275 bill. And we think the credit card companies are bad? Thank you. [LB812]

SENATOR LATHROP: Okay. Don't leave. Senator Coash [LB812]

BOB PARKER: I won't. Thank you. I've got a yellow light, Senator. [LB812]

SENATOR COASH: Thank you, Senator Lathrop. You said something pretty fast and I

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Transcriber's Office

Judiciary Committee  
February 01, 2012

---

just want to go back. When you were talking about your employee signing an affidavit that states that she thinks there's a...there's money in a particular bank, can you expand on that a little bit? [LB812]

BOB PARKER: It's a statutory requirement in 25-1010 that you have a good faith belief that they are holding funds of the debtor. [LB812]

SENATOR COASH: Okay. So your company or your employee has to sign a legal document that says I really think that there's money there and I want you to go check and see if that's the case. [LB812]

BOB PARKER: And I'm not shotgunning. I have a good faith basis to believe that you are holding funds of this debtor. [LB812]

SENATOR COASH: Okay. Thank you. [LB812]

BOB PARKER: Thank you, Senator. [LB812]

SENATOR LATHROP: I see no other questions. Thanks for coming all the way in from Hastings. [LB812]

BOB PARKER: Thank you all. Thank you for your time. [LB812]

KATIE ZULKOSKI: Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying today on behalf of the Nebraska State Bar Association. We are testifying in opposition to this bill. We have talked to Senator Harr about some of our concerns and the Bankers Association representatives about some of our concerns. There are real reasons that people garnish accounts. And when \$50 is added at the beginning, and if not paid then the garnishment is void, there are some concerns there about how people are able to use the garnishment that the courts would otherwise allow them to use. And I'd be happy to answer any questions. [LB812]

SENATOR COUNCIL: Real quick. [LB812]

SENATOR LATHROP: Senator Council. [LB812]

SENATOR COUNCIL: Would you repeat again the final basis of the concern about... [LB812]

KATIE ZULKOSKI: The language on page 2 of the bill, Senator Council, and it's repeated again in subsequent pages of the bill, is that you pay the \$50 at the beginning, and that failure to pay the fee renders the garnishment void, and that really is the real

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

Judiciary Committee  
February 01, 2012

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concern. [LB812]

SENATOR COUNCIL: Okay. [LB812]

SENATOR LAUTENBAUGH: Mr. Chairman. [LB812]

SENATOR LATHROP: Oh, I'm sorry. I was reading that section of law. Senator Lautenbaugh. [LB812]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. And, Ms. Zulkoski, it's a little off topic but I'm known for asking this question. Do you know how the bar determined that this was related to its mission of improving...well, whatever the bar's mission is. I mean, how did you guys arrive that this was worthy of your attention? [LB812]

KATIE ZULKOSKI: Absolutely, you certainly are known for asking this question, Senator, and so I do think you're aware of the process that we go through with our legislation committee. Looks at the bills; then we take the bills to our executive council which is made up of representatives across the state. Then it ultimately goes to the house of delegates, which is a large body of attorneys practicing in lots of different areas of law, that look at all these bills. And we ultimately take positions on bills that we feel impact the access to justice. And certainly we think that if the court allows a person to use the garnishment procedure but then they are not ultimately allowed to use that because of the \$50 fee is not paid up front, if I don't pay this fee, I can't even know if my ex-husband who is not paying child support has an account at U.S. Bank that I could be getting money out of. And so that's where the concern comes from, and we do think that impacts the access to justice. [LB812]

SENATOR LATHROP: I see no other questions. Thank you. Good to hear from the bar. [LB812]

SENATOR MCGILL: (Laugh) [LB812]

SENATOR LATHROP: Anyone else here in opposition to LB812? [LB812]

SENATOR COUNCIL: Hey, Lautenbaugh. Good answer, good answer. [LB812]

SENATOR LATHROP: Anyone here in a neutral capacity of LB812? [LB812]

SENATOR COUNCIL: Yeah. No, Family Feud. Good answer, good answer. (Laugh) [LB812]

SENATOR LATHROP: Seeing none, Senator Harr to close. [LB812]

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

Judiciary Committee  
February 01, 2012

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SENATOR COUNCIL: Okay, I'm having entirely too much fun. [LB812]

SENATOR LATHROP: Hey, I guess. On my time. [LB812]

SENATOR COUNCIL: Yes, sir. [LB812]

SENATOR LATHROP: Senator Harr to close. [LB812]

SENATOR HARR: Thank you, Senator Lathrop. I find it ironic that there's talk of justice and having to pay a fee for something you don't want from a certain association. How is that? Decent? [LB812]

SENATOR LAUTENBAUGH: I'm down with it. [LB812]

SENATOR HARR: Okay. That being said, seriously, the justice issue is an important one and it's one that's near and dear to my heart. And while it's fun to beat up on the bankers, and I get it and I sometimes do it, it is a justice issue. These people are providing a service and all they're asking for is, hey, if we're going to provide this service and we're required to provide this service, we should be "justfully" reimbursed. Now we can have a conversation about what the proper amount is. It sounds like if you have a problem with garnishment, you want to go to Five Points Bank because it's only \$30. And maybe that's where the conversation needs to be is, what is the proper amount? But these people, these banks are providing a service and all they're asking for is to be reimbursed for the services they're providing. And with that I would be open to any questions. [LB812]

SENATOR ASHFORD: Senator Council. [LB812]

SENATOR COUNCIL: I don't have a question, I just have a comment, Senator Harr. And I think the issue is justice in large respect. We wouldn't be here if there wasn't a judgment against someone for not satisfying their contractual obligations, and that someone is the debtor. And if the debtor has an account with a bank, in my opinion the bank should be perfectly entitled to charge that person a fee, withhold that fee before paying it on, and then that person is also subject to the judgment creditor for the amount withheld because the judgment creditor isn't getting all of their assets. But neither...the people who create all of this are the debtors. You know, rightfully or wrongfully. I mean a lot of debtors will tell you that it wasn't my debt. You know, I paid it, I don't owe it. I mean we've all been through that. But, you know, I guess I'm trying to say, you know, the bank is not at fault, the judgment creditor is not at fault. The issues you've got, you have a judgment against a debtor and people are trying to collect. So there's trying to find the fairest balance between the judgment creditor who clearly has an interest and the bankers who are really like custodians. So I just didn't want you to leave with the impression that it was one-sided in the scales of justice. [LB812]

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Transcriber's Office

Judiciary Committee  
February 01, 2012

---

SENATOR HARR: And I appreciate that comment. [LB812]

SENATOR COUNCIL: Thank you. [LB812]

SENATOR ASHFORD: (See also Exhibit 8) Thank you, Senator Council, Senator Harr. Senator Coash is next, LB1051. Any Academy Award winners here today? [LB812]

SENATOR COASH: (Exhibit 9) Good afternoon, Senator Ashford, members of the Judiciary Committee. For the record I am Colby Coash, C-o-l-b-y C-o-a-s-h, and I'm here to introduce LB1051. LB1051 is in large part a technical bill that makes some technical changes, and I'm going to pass out for you just kind of an outline of all the technical changes that this bill does, mainly to the Adult and Child Protective Services Central Registry Act. This is an act I'm fairly familiar with, and so I agreed to work and carry this on behalf of the Department of Health and Human Services. What I found is that there are parts of this act that our regulations have outpaced and vice versa, and this is a bill I believe to bring everything into a bit of harmony. Here's what this bill does. It updates the definitions contained in the APS Act in the following ways. It updates the statutory definition of sexual abuse to include sexual exploitation and unlawful intrusion. It adds a definition of sexual exploitation, a term that is currently found in a regulatory definition of sexual abuse but without a statutory or regulatory definition. It updates the definition of reasonable confinement to include false imprisonment and it changes the terminology from denial of essential services to the more commonly accepted term "neglect." It clarifies the content of the APS Central Registry to contain substantiated reports of people who allegedly abused a vulnerable adult through investigation rather than containing all reports of abuse of that vulnerable adult. It mandates that the department provide written notification of the investigation findings to the person who allegedly abused a vulnerable adult. It mandates that the person who allegedly abused a vulnerable adult has the right to receive information pertaining to his or her case contained in the registry. And finally, it makes two changes. Makes consistent updates to the APS Central Registry and to the CPS Central Registry by providing for a different content and different methods of notification of people reportedly to have allegedly abused a vulnerable adult or people who are the subject of a child abuse and neglect report depending on whether or not there is an entry in the registry. And finally, it clarifies that the person has the right to request to the department to amend or expunge identifying information from the report or to remove the substantiated report from the registry in accordance with Section 28-380 and/or from the child abuse register in accordance with Section 28-723 rather than the right to request a hearing and appeal. [LB1051]

SENATOR ASHFORD: Okay, Senator Coash. Any questions? Seeing none. [LB1051]

SENATOR COASH: I think that...I've got the department coming to answer some of

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Transcriber's Office

Judiciary Committee  
February 01, 2012

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these. [LB1051]

SENATOR ASHFORD: Scot. Scot is here. He'll clarify this. It is clear but he'll further clarify it. [LB1051]

SCOT ADAMS: (Exhibit 10) Thank you. There's that and there's that. Thank you so much. Thank you. Good afternoon, Senators. I am happy to be here with regard to LB1051 and I appreciate very much, Senator Coash, your willingness to both introduce this bill and do an excellent job in providing an overview and summary of the bill. In fact, it is so good it's nearly my testimony. And so since you've heard that once and you have it in writing, let me simply say that this is an effort to try to bring the department into line with consistent efforts across the country with adult protective services to improve clarity around the definitions and to give us a firmer footing for the actions that we take to help protect vulnerable adults. Senator Coash did an excellent job with enumerating the specific changes and also to making sure about the link with the child protective services registry as well as the adult protective services. With that testimony, I would be open to questions that you may have. [LB1051]

SENATOR ASHFORD: Any questions of Scot Adams? What brought this on, Scot? What's... [LB1051]

SCOT ADAMS: Well, a couple of things have brought this on. One, as I have been in the interim position for the Division of Children and Family Services now for a few months, we have had a couple of federal reviews of our activities with regard to this area, and some federal folks have identified that the prior term for what we are now calling neglect was a bit vague and confusing, and so they brought that to our attention. There is no federal definition nationally, but they did give us encouragement and technical assistance to say other states are using this. So we thought we would come into compliance with some of those ideas. And as we got started down that road we found a few others that we thought would be helpful to us to establish our case, if you will, and making decisions to go in. [LB1051]

SENATOR ASHFORD: Okay, and who...what federal agency, department? Who does this? [LB1051]

SCOT ADAMS: We were working at this time in the conversation that I just spoke to with the Department of Justice and their discussions with the Division of Developmental Disabilities. [LB1051]

SENATOR ASHFORD: And, you know, we've dealt with this issue obviously on state law matters, as a state law context, a couple times in the last few years. [LB1051]

SCOT ADAMS: Yes, sir. [LB1051]

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Transcriber's Office

Judiciary Committee  
February 01, 2012

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SENATOR ASHFORD: And so that's all part of this awareness of... [LB1051]

SCOT ADAMS: Yeah. [LB1051]

SENATOR ASHFORD: ...elder abuse and...okay. Any questions of Scot? I think I see what you're doing. All right. Thank you. Good to see you. [LB1051]

SCOT ADAMS: Thank you very much. Appreciate it. Thank you, Senator. [LB1051]

SENATOR ASHFORD: Any other testifiers? Kerry is not going to...Kerry is opposed or...? (Laughter) Any other proponents of this bill? How about opponents? Neutral? Man. Okay, done. [LB1051]

SENATOR LATHROP: Can I ask a question though? [LB1051]

SENATOR ASHFORD: Yes. Sure. [LB1051]

SENATOR LATHROP: You're not going to close? [LB1051]

SENATOR COASH: I already did this. [LB1051]

SENATOR LATHROP: On page 4 where it says it looks like...I'm trying to follow it and I'm reading it while people are testifying. But in Section 8 we say a person who is allegedly abused, if they're going on the registry we send them a notice. In Section 3, which is page 4, line 11, "If the person who allegedly abused a vulnerable adult will not be entered in the registry, the notice..."--is that the notice to the accused? [LB1051]

SENATOR COASH: Yes. [LB1051]

SENATOR LATHROP: "...shall be sent by first-class mail and shall include" the nature and the classification. Does the classification tell them that they're not going on the registry? [LB1051]

SENATOR COASH: One of the classifications would be no record found. [LB1051]

SENATOR LATHROP: Okay. Okay. But we might want to clarify that that notice is going to the accused... [LB1051]

SENATOR COASH: Okay. [LB1051]

SENATOR LATHROP: ...because it doesn't say who the notice is sent to. [LB1051]

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Transcriber's Office

Judiciary Committee  
February 01, 2012

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SENATOR COASH: Thank you, Senator Lathrop. [LB1051]

SENATOR ASHFORD: (See also Exhibit 11) Okay. That concludes the hearings today.  
[LB1051]