

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

Judiciary Committee  
January 19, 2018

---

[LB696 LB697 LB710 LB847 LB848]

The Committee on Judiciary met at 1:30 p.m. on Friday, January 19, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB696, LB697, LB710, LB847, LB848, and gubernatorial appointments. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR PANSING BROOKS: (Recorder malfunction.) My name is Patty Pansing Brooks. I'm from Lincoln, representing District 28 right here in the heart of Lincoln, and I am Vice Chair of the Judiciary Committee. I'd like to start off by introducing the other members of our committee. On my left, could you introduce yourselves?

SENATOR HALLORAN: Thank you, Co-chair. Senator Steve Halloran, representing District 33, Adams County and part of Hall County.

SENATOR PANSING BROOKS: Senator Krist.

SENATOR KRIST: Bob Krist, District 10, Omaha and the city of Bennington.

SENATOR MORFELD: Adam Morfeld, District 46, northeast Lincoln.

SENATOR BAKER: Roy Baker, District 30, Gage County and part of Lancaster County.

SENATOR PANSING BROOKS: And assisting the committee today are Laurie Vollertsen, our committee clerk, Tim Hruza and Dick Clark, our two legal counsels, and the committee pages are Rebecca Daugherty and Sam Baird. On the table in front of you, you will find some yellow sheets. They're testifier sheets and if you're planning on testifying today, please fill out one and hand it to the page when you come up to testify. This helps us keep an accurate record of a hearing. And there's also a white sheet on the table so that if you don't want to testify but list the fact that you are present at the hearing and you would like to record your position on a bill, you may do so there. We will also begin testimony with the introducer's opening statement. And following the opening, we will hear from proponents of the bill, then opponents, followed by those speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by first giving us your first and last names, spell them for the record, and if you're going to testify, Senator Ebke has an on-deck chair, which people are currently sitting in, quite appropriately. And if you could keep that filled, it helps us know how many more testifiers we have and helps us keep track of how long this is

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

Judiciary Committee  
January 19, 2018

---

going to run, which can go quite long. If you have any handouts, please bring up at least 12 copies and give them to the page. If you don't have enough copies, the page will help you make some more. We will use the three-minute light system, and that's what we're doing this year for the short session. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning and then the red light will come on and you will have about 15 seconds to wrap up your thoughts, and then there will be an alarm telling you stop now. So as a matter of committee policy, I'd like to remind you that...to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings. Senators may be using them at various times to communicate with staff and their offices, but at this point I'd like everybody to take a peek at your cell phones and make sure that they are currently in the silent mode. Also, verbal outbursts and applause are not permitted in the hearing room and such behavior may cause you to be asked to leave. One more thing, you may notice the committee members coming and going and it has nothing to do with the importance of the bill being heard or whatever you are going to say, but we have bills in various committees or other meetings. So with that, we're going to begin the hearing. And we are going to go out of order because we have Justice Stacy here and she needs to get back to the court. So we are going to start with LB697 and then go in the regular order, LB696 after that, and then LB710, LB847, and then LB848. So welcome, Chair Ebke. We're glad you're here, and you're going to open on LB697. [LB696 LB697]

SENATOR EBKE: Thank you, Vice Chair Pansing Brooks and fellow members of the committee. For the record, my name is Laura Ebke. That's L-a-u-r-a E-b-k-e. I represent District 32. Because the first two bills are related, I'll provide opening remarks actually related to both LB697 and LB696, which will be heard next. LB696 and LB697 were brought per the recommendation of the Judicial Resources Commission. The commission was created by the Legislature in 1992 and is comprised of four judges appointed by the Nebraska Supreme Court, one district judge, one county judge, one from the separate juvenile courts and one from the Nebraska Supreme Court, a member of the Nebraska Bar Association from each of the six Supreme Court judicial districts prescribed in Article V-5 of the Nebraska Constitution, and one citizen from each of the six Supreme Court judicial districts and one additional at-large citizen representative. The commission is responsible for reviewing the state of our courts and determining such things as whether a judicial vacancy exists and whether it should be filled, whether a new judgeship should be created, whether a judgeship should be eliminated, whether the number of judicial districts should be changed or whether boundaries should be moved. The commission's determinations are based on an analysis of judicial workload statistics, whether litigants have adequate access to the courts, the judicial duties of the districts, and the travel time involved within a district, and other facts as determined by the Supreme Court that are necessary to ensure efficiency and maximum service across the state. After determination is made by the commission, an electronic report is submitted to the Legislature. This year, the commission brought forth the two recommendations reflected in LB696 and LB697. LB696 would add a new

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

Judiciary Committee  
January 19, 2018

---

judgeship to the judicial district that serves Douglas County. LB697 would adjust judicial district boundaries to a few districts by moving some counties to different districts. Representatives from the commission and the courts are in attendance to explain the process they went through in coming to these recommendations, and I will leave it to them to explain the basis for these recommendations but would be happy to try to answer any questions you might have at this time. [LB696 LB697]

SENATOR PANSING BROOKS: Thank you, Senator Ebke. Any questions for Senator Ebke? [LB696 LB697]

SENATOR EBKE: Okay. Well, with that, I would invite Justice Stephanie Stacy from the Nebraska Supreme Court and the chair of the Judicial Resources Commission to testify on behalf of the commission. [LB697]

SENATOR PANSING BROOKS: Well, welcome, Justice Stacy. These are...because of the cuts, we are down to one page (inaudible). [LB697]

STEPHANIE STACY: I can appreciate that. I appreciate that. [LB697]

SENATOR MORFELD: Times are tough. [LB697]

STEPHANIE STACY: Good afternoon. Senator Ebke, members of the Judiciary Committee, I'm Stephanie Stacy, S-t-e-p-h-a-n-i-e S-t-a-c-y. I'm one of the justices of the Nebraska Supreme Court and I'm the current chair of the Judicial Resources Commission for Nebraska. The Resources Commission held its annual public hearing on December 4 of this year...of last year, 2017, and, as you know, that hearing is where the commission is required by statute to consider several discrete issues, one of which is whether any new judgeship is appropriate, or a reduction in judgeships is appropriate; another is whether it is appropriate to move any judicial boundaries. And finally, we are charged by statute with examining the current caseload statistics and making any other recommendations that are appropriate to balance the use of existing judicial resources. So this year the commission examined the caseload statistics and the judicial workload statistics for all the courts in Nebraska. We also requested, and the State Court Administrator's Office provided, some supplemental information on caseload trends and population trends and judicial workload trends. That information was presented to the Resources Commission via PowerPoint and that PowerPoint, if you're interested, can be viewed in its entirety on the Supreme Court's Web site. We've attached it to the minutes of our annual meeting. Also attached are all the exhibits and letters that were received at that annual meeting. I've taken some of the more pertinent slides and made copies of them for you. Those were, or maybe are still, being distributed. I want to let you know that several of those attending the hearing were there to

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

Judiciary Committee  
January 19, 2018

---

address the issue of whether to recommend changing the judicial boundaries of the district courts by moving Otoe County from the 2nd Judicial District into the 1st and moving Clay and Nuckolls Counties from the 2nd Judicial District...from the 1st Judicial District into the 10th. The affected district court judges in the 1st and 2nd and 10th Judicial Districts had all been consulted. None were opposed to the recommended change and all understood the reason the change was being recommended or at least considered. Members of the bench and bar who appeared to testify on the issue were also in support. There was no one who appeared who testified in opposition. The Nebraska State Bar Association supported recommending the change in the judicial district boundaries as well. After considering all the information, the Resources Commission voted unanimously to recommend that the judicial district boundaries of the 1st, 2nd, and 10th Judicial Districts be changed for the district court only by moving Otoe County from the 2nd into the 1st Judicial District, and by moving Clay and Nuckolls Counties from the 1st into the 10th Judicial District. This recommendation was reported to the Governor and to the Speaker of the Legislature and it's now embodied in LB697. I want to let you know that the Resources Commission made this recommendation to ensure access to the courts and to better balance existing judicial workloads without adding any judges or moving any judges, at least to address this particular issue. I also want to emphasize that all our trial judges in Nebraska are busy, but the caseload statistics and the judicial workload statistics have illustrated significant growth in the population and in the case filings in some districts, and has indicated a decline in others, and that, in turn, has resulted in an imbalance in judicial workloads in certain areas of the state. You probably already know this, but we measure judicial workloads by tracking data on caseloads, on case filings, new case filings, and using a weighted calculation that is adapted to each judicial district to approximate the number of judges needed in those districts. In Douglas, Sarpy, and, to some extent, Lancaster Counties, the weighted caseload statistics have shown an increasing need for more district court judges than these districts currently have, and that trend has been steady for some time. I brought with me two maps. You should have them now. The second... [LB697]

SENATOR EBKE: Just keep going. [LB697]

SENATOR PANSING BROOKS: Please go ahead. [LB697]

SENATOR EBKE: Just go ahead. [LB697]

STEPHANIE STACY: Oh, okay. I don't have much more. [LB697]

SENATOR EBKE: That's okay. Go ahead. [LB697]

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

Judiciary Committee  
January 19, 2018

---

STEPHANIE STACY: Thank you. But the second map in...behind your staple is the most current weighted caseload statistics. I'm going to direct your attention to that for just a minute. You'll see that currently the 2nd Judicial District shows a need for 5.18 district court judges and it currently has 4. The map that is on the top is a map that would depict the change in the weighted caseloads if LB697 were to be adopted. So that map shows the impact from moving Otoe County into the 1st Judicial District. The need for district court judges in the 2nd District would be reduced to 4.57. That more closely approximates the existing number of judges in the 2nd District, which is four. Moreover, the current weighted caseload statistics in the 1st Judicial District--that's the bottom right-hand corner of your map--currently show what I will call capacity to take on some additional judicial workload. Currently there is a need in the 1st District for 2.57 district court judges and they have 3. So moving Otoe County from the 2nd into the 1st Judicial District, along with moving Clay and Nuckolls Counties back into the 10th, they were moved over into the 1st back in 2004 to I think adjust for workload then, and now it makes sense to move them back so that the 2nd District and the 1st District and the 10th District really will have caseloads, weighted caseloads that much more closely approximate the number of judges who we...existing who currently exist in those districts. It would result in the 1st District having a need for 2.95 district court judges; it currently has 3, so it's very close. In the 10th Judicial District, it would mean that they need 1.97 district court judges and they currently have 2. I want to let you know that the information on historic and predicted filing trends in the district courts for those districts, the 1st, 2nd, and 10th, suggest that changing these district boundaries, as recommended by the Resources Commission, would help better balance judicial workloads in all three of these districts. And the trends have been steady for long enough that we don't think anyone has pulled the trigger too quickly. And I am happy to answer any questions that you have about the process or the data behind it. [LB697]

SENATOR PANSING BROOKS: Yes, Senator Krist. [LB697]

SENATOR KRIST: Thanks for coming. Just quickly, of note, I spent a lot of time with Mr. Steel working with juvenile cases, juvenile justice, and I note that one of our sites was Sarpy, Cass, and Otoe in terms of juvenile justice. Will this impact JDAI and the efforts that have been made to try to keep those juvenile...our judicial districts aligned with those juvenile issues? [LB697]

STEPHANIE STACY: Two things I hear in your question. One is, will moving the district courts affect any juvenile justice initiatives and the progress that's being made there? And I think the answer to that question is, no, the separate juvenile courts are not being affected and the county courts are not being affected. To the extent there may be a juvenile in the adult system, that particular juvenile could be affected, but I don't believe, you know, I don't believe that the juvenile justice system will be affected by this change. To the extent your question is asking about what I'm going to call asymmetry in boundaries, it is a pretty minor deviation between the county and district courts, and we have other examples of those deviations in different districts

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

Judiciary Committee  
January 19, 2018

---

and it does not affect...it has not affected, for instance, probation services or anything like that. It's simply been managed quite easily in other areas. The need to equalize workloads in these three districts is significant. The more a particular district court judge is overworked, when they have significantly more cases than there are judges, it results in delays in trials, in hearings, and it really is an access-related issue. We keep track of these numbers so that we know when things get out of balance, and we have seen now for a while that this has been occurring. And the solution here, thankfully, we've got a solution that really just involves moving boundaries to equalize workloads and free things up, without any fiscal note attached. So that's why we proposed the solution. [LB697]

SENATOR KRIST: So in layman's term, I guess, I'm concerned that Judge O'Neal would not have the same potential cooperation dealing with Sarpy, Cass, and Otoe, and you're telling me in the juvenile area that that's not the case (inaudible). [LB697]

STEPHANIE STACY: That's my understanding, yes. [LB697]

SENATOR KRIST: Okay. [LB697]

STEPHANIE STACY: And Mr. Steel is here and he can speak to that probably more directly than I. [LB697]

SENATOR KRIST: Yeah. Okay. Thank you very much. [LB697]

STEPHANIE STACY: Thank you. Any other questions? [LB697]

SENATOR PANSING BROOKS: Anybody else have...I do. Thank you for coming, Justice Stacy. I'm glad you're here. I love hearing about access to justice and, you know, working on the imbalance of judicial workloads. As you know, one of the key things I'm working on is right to counsel, and we are having push back from the judges. And you, as one of the chief judges, I'd like to just talk to you about that. If part of the issue is workload of judges and they're wearing both hats of representing the child and judging the child, is that appropriate? [LB697]

STEPHANIE STACY: I am not prepared to talk or really to speak meaningfully on the issue. I know you and I spoke briefly in the hallway yesterday and so...and I am happy to talk with you. [LB697]

SENATOR PANSING BROOKS: I'm not sure we spoke. I spoke to you and (inaudible)... [LB697]

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

Judiciary Committee  
January 19, 2018

---

STEPHANIE STACY: That may be fair. I listened. [LB697]

SENATOR PANSING BROOKS: You did listen. [LB697]

STEPHANIE STACY: And I am willing to listen again, but I'm not prepared today to offer any testimony or any remarks on the legislation because I've not looked at it. [LB697]

SENATOR PANSING BROOKS: Okay. Do you agree that In re Gault gives children a right to counsel if they're going to be detained? [LB697]

STEPHANIE STACY: I cannot give you any legal advice and I'm really not prepared... [LB697]

SENATOR PANSING BROOKS: (Inaudible) you're a Supreme Court... [LB697]

STEPHANIE STACY: I'm not...I'm just not prepared to talk about it, Senator. [LB697]

SENATOR PANSING BROOKS: Okay. But clearly we have...so that's aggravating me again on the part of the courts because the U.S. Supreme Court has ruled 51 years ago that children have the right to counsel, so to have a Supreme Court justice up here saying that you don't know whether or not that's true... [LB697]

STEPHANIE STACY: I didn't say I didn't know what the law was. I said I'm not prepared to discuss it in the context of this hearing on this bill. [LB697]

SENATOR PANSING BROOKS: Okay. [LB697]

STEPHANIE STACY: I'm happy to talk with you about it on another occasion. [LB697]

SENATOR PANSING BROOKS: But, see, what I'm worried about though is the extension of judges across the state, and what I'm hearing is there's not enough time or enough ability to work on things. So is this going to cause a greater burden on those judges in the western part of the state that are saying that they can't handle everything? Like I am... [LB697]

STEPHANIE STACY: I don't know what the judges in the western part of the state are saying. [LB697]

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

Judiciary Committee  
January 19, 2018

---

SENATOR PANSING BROOKS: Okay. [LB697]

STEPHANIE STACY: But I can tell you that moving these judicial boundaries should have no impact on the juvenile courts anywhere and should have no impact on the county courts anywhere. [LB697]

SENATOR PANSING BROOKS: That deal with the...okay. The county courts that deal with the juvenile cases, is that right? [LB697]

STEPHANIE STACY: Correct, in those districts where they do not have separate juvenile courts because of the population, correct. [LB697]

SENATOR PANSING BROOKS: Okay, thank you for coming today, appreciate it. [LB697]

STEPHANIE STACY: Does that help? [LB697]

SENATOR PANSING BROOKS: Somewhat, thank you. [LB697]

STEPHANIE STACY: Okay. And I know that there are a lot of times questions about the weighted caseloads. Some people worry that there's a little bit of magic behind it and I can assure you there is nothing but math behind it. But if you have questions about that, just how we arrive at the numbers, I'd be happy to do my best to explain it. [LB697]

SENATOR PANSING BROOKS: Well, I'd love to meet with you on that. Thank you, Justice Stacy. [LB697]

STEPHANIE STACY: On the weighted caseloads? [LB697]

SENATOR PANSING BROOKS: Any of that. Thank you. [LB697]

STEPHANIE STACY: Okay. I have a PowerPoint presentation if you'd like. [LB697]

SENATOR PANSING BROOKS: Wonderful. That would be great. [LB697]

STEPHANIE STACY: All right. Anyone else? [LB697]

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

Judiciary Committee  
January 19, 2018

---

SENATOR PANSING BROOKS: Nope. Thank you. [LB697]

STEPHANIE STACY: Thank you very much. [LB697]

SENATOR PANSING BROOKS: Thank you for coming. Next proponent. [LB697]

TIM ENGLER: Good afternoon, Senator Ebke, members of the committee. My name is Tim, T-i-m, Engler, E-n-g-l-e-r. I'm currently president of Nebraska State Bar Association and I'm here in support of this bill. Coincidentally, I also serve on Nebraska Judicial Resources Commission, having been appointed by the Supreme Court in 2010. I represent District 1. So I'm familiar with the process and the comments that I will make today relate really to two things: one, the process that is followed by both the Judicial Resources Commission and the Nebraska State Bar Association, as a companion committee that also meets, and I want to comment briefly on that; and then also the philosophy behind judicial resources and allocation of judicial resources. The process that is followed is a very careful process where we take testimony, both at the Nebraska Bar Association committee. They have a public hearing where we invite judges and members of the bar, especially those that are affected by this reallocation, to make comments. We try and get everyone's input on that. And then at the commission level hearing, we also hold public hearings and some of these hearings last very long. The last one in the annual meeting in December I think was in excess of two and a half, three hours. What we're doing is we're kind of taking that testimony to be able to...when we do present these bills to you, we've kind of done the legwork on what this means and how it will affect the constituents. So it's a very careful process that's followed with a lot of input from a lot of people. The second thing that is taken into account, and this is the philosophy behind it, is that allocating judicial resources is synonymous with access to justice in the sense that if you can't get to a courtroom, if you don't...if you're in a courtroom for three hours and your case isn't called, that really isn't the access to justice that we need. Now because of the demographics of the state of Nebraska and the geography of the state of Nebraska, access to justice is different depending where you are located. Access to justice in Lincoln, Omaha, Sarpy County depends primarily on how soon your case can be called. But access to justice in Chadron, Scottsbluff, or other parts of the state depends on how often the judge will come to your county, how long you have to see a judge. So all of these things are taken into account when we make decisions like this and we carefully try and tweak the system by sometimes changing boundaries rather than adding judges, because by doing these small boundary changes we can reallocate our resources so we're assuring access to justice. So I'm here today in support of that. If anyone has any questions, I'll be happy to try and answer them. [LB697]

SENATOR PANSING BROOKS: Thank you, Mr. Engler. Anybody have a question? Thank you. [LB697]

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

Judiciary Committee  
January 19, 2018

---

TIM ENGLER: Thank you. [LB697]

SENATOR PANSING BROOKS: Next proponent. [LB697]

COREY STEEL: Good afternoon, Senator Ebke, members of the Judiciary Committee. I'm Corey Steel, C-o-r-e-y S-t-e-e-l. I am the State Court Administrator for the state of Nebraska. I'll be very brief. I want to make two points, one to answer directly to Senator Krist's question. Judge O'Neal is on the Resources Commission and he made it a point, as well, to say this won't affect the counties that I...in District 2. So he will continue to do juvenile cases down in Otoe County, so he'll continue to travel there and do those cases. The second piece is there's two senators that we have here today that this affects. It affects some of your areas with Senator Halloran and then Senator Baker. One of the things is all of the judges that this boundary changes affect, the district court judges have...they are in agreement. They have been part of a process and they have been kept in the loop of where this...what this would mean as far as caseload and taking on those additional counties. So those district court judges in our Judicial District 1 and in Judicial District 10 and in Judicial District 2 have all been part of that process and been informed. So I wanted to answer any questions then that anybody may have or any comments that anybody may have. Thank you. [LB697]

SENATOR PANSING BROOKS: Yes, Senator Krist. [LB697]

SENATOR KRIST: Just very quickly I just want to thank you for putting that on the record. I know we've had a conversation offline, but I think it's important to put it into the legislative record that that has been considered, and particularly all the work that has been done in juvenile justice, and credit to you. And the second thing I would commend you, with all the judicial independence and discretion, you got them all to agree to one plan. That's pretty amazing. (Laughter) [LB697]

COREY STEEL: That was not I. That was Judge Samson, who is one of our district court judges in Blair, Nebraska, who was able to get that consensus. So I want to give credit where credit is due. [LB697]

SENATOR KRIST: Well, thank the judge, please. [LB697]

SENATOR PANSING BROOKS: Any other comments? I'll just hope that Judge Samson could come together and work with the judges on right to counsel for juveniles. There's my--across the state--my comment. Thank you for coming today. Any other questions? [LB697]

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

Judiciary Committee  
January 19, 2018

---

COREY STEEL: Thank you. [LB697]

SENATOR PANSING BROOKS: And next proponent. Okay, any opponents? Anybody in the neutral? Okay, do you have any... [LB697]

SENATOR EBKE: I'm going to waive close. [LB696 LB697]

SENATOR PANSING BROOKS: Waive? Okay, so Senator Ebke is going to waive close on both? [LB696 LB697]

SENATOR EBKE: I'm going to waive the close. And if there are additional...I'm going to waive the open on LB696, as well. [LB696 LB697]

SENATOR PANSING BROOKS: Okay, so now we're going to... [LB696]

SENATOR EBKE: LB696 proponents. [LB696]

SENATOR PANSING BROOKS: ...LB696 proponents because Senator Ebke gave hearing that should be replicated for both bills in the testimony, so if the record would show that she'll...that that testimony be repeated and then we can just move forward with proponents of LB696. Thank you. Welcome. [LB696]

GARY RANDALL: (Exhibit 3) Thank you. My name is Gary Randall. I'm a district court judge in Douglas County. I have served the citizens of the state of Nebraska proudly for 20 years, so I have watched the growth of the caseload within Douglas County for the last 20 years, which was the last time we asked for an additional judge. The primary difference in caseload, the caseload today and the caseload back in 1998, there is three major factors. One is that there's more...there are more criminal cases filed, felony criminal cases which have to take precedence under the law. And in Douglas County we have experienced a greater amount of serious crime and violence. Every judge in our district has at least two first-degree murder cases, depending on their docket, at any time, which take up a whole lot of time. In addition to that, the domestic caseload has grown exponentially over that period of time and a lot of it has to do with the unmarried people that are now litigants within the court. And it's a very important part of the caseload but many of them are self-represented litigants, as well, and that puts a judge in an interesting position: I can't represent them, I can't be their lawyer, I can't give them legal advice, but I have to make sure they understand the procedure and the process and I have to make them feel as if they've been given a fair shake, you know, before they leave my courtroom, and that takes a lot of time. The other additional thing that we noted that has changed a lot is civil cases. The primary issue with

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

Judiciary Committee  
January 19, 2018

---

regard to civil cases is that they have to go to the end of the line and they have to wait, but there are many significant, complicated civil cases. You may have...you've heard about some of them on the news: the assessment case that Judge Retelsdorf had. I had Jacobs v. ConAgra, which was a manufacturing explosion where there were multiple deaths and, you know, many, many burn injuries, and so forth. Those cases, just those two cases, each took five weeks and you can't do anything else during that period of time. So we are kind of hobbled, to a certain extent, by trying to keep up with everything that we're doing. And nobody is complaining--we all like our jobs--but it would really, really be helpful. And I think it's a huge access-to-justice issue for people in Douglas County. And I am...I apologize, Senator, but I wanted to thank you for introducing the bill. We appreciate it. And if you have any questions, I would be happy to discuss it with you. [LB696]

SENATOR PANSING BROOKS: Thank you. Any questions? Yes, Senator Hansen. [LB696]

SENATOR HANSEN: Thank you, Senator Pansing Brooks. And thank you for coming and presenting this. So just so I have the numbers correct, you, based on your projections, you have a judicial need of about 19.4? [LB696]

GARY RANDALL: That's correct. [LB696]

SENATOR HANSEN: And you have 16? [LB696]

GARY RANDALL: That's correct. [LB696]

SENATOR HANSEN: And this bill would take you to 17? [LB696]

GARY RANDALL: That's correct. [LB696]

SENATOR HANSEN: Would you like more than 17? [LB696]

GARY RANDALL: I think that we thought it would be even more unrealistic than potentially what we're asking for considering the present state of Nebraska's budget and the difficulties that you folks face in terms of trying to fund everything that you need to fund. And we have also been...we've not asked before. We knew we were "underjudged," but it has been the desire, and I think Mr. Steel will confirm this, of the Chief Justice to really have no more new judges in the state of Nebraska. He would like to reallocate some as they exist. That hasn't happened. We haven't been able to do that. So now we're kind of in a position where we need to ask for help and that's what we're doing. [LB696]

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

Judiciary Committee  
January 19, 2018

---

SENATOR HANSEN: Thank you. [LB696]

SENATOR PANSING BROOKS: Any other...yes, Senator Krist. [LB696]

SENATOR KRIST: Just to make a point, we tried to give them two juvenile judges, if you remember. They didn't want it because they didn't have room for it, so I think there's a capacity issue, as well as a number... [LB696]

GARY RANDALL: There is some, Senator, you're absolutely right, but I think that the county has recognized that they're going to have to make some changes. You've probably read the newspaper. They've been in negotiations with MUD to take over their building to make it possibly a juvenile justice center. There are a number of different options out there. There's nothing that says that every one of the courts has to be located at 17th and Farnam, you know. We might be able to find another option there as well. [LB696]

SENATOR KRIST: Well said. Well, I'm not...I'm trying not to be facetious about it, but at the same time it's...I applaud you for taking this step rather than going for more, because at this time in the budget this is probably the best we're going to do, again, to remind us all that we have responded in the last few years, I think appropriately, and want to caution that we may have gone over our number what we've been cautioned or brought back into the realm of reality. So thank you for bringing this. [LB696]

GARY RANDALL: Thank you. [LB696]

SENATOR PANSING BROOKS: Anybody else? And, Judge Randall, I want to thank you for your service and...to the bench and to justice, and I was remiss in not thanking Justice Stacy, as well. And I'm glad to hear you talking about the difficulty of explaining what their rights are when people come pro se or without lawyers and how much more time it takes you. And that's true in the juvenile cases, as well, when those kids don't have counsel. So I'm very grateful for your testimony. We understand clearly the needs that you have and I'm 100 percent behind you on all of that. Again, my comments now and before have to do with justice by geography across this state. So thank you very much for coming today. We appreciate it a lot. [LB696]

GARY RANDALL: Thank you for your attention. [LB696]

SENATOR PANSING BROOKS: Thank you. Next proponent. [LB696]

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

Judiciary Committee  
January 19, 2018

---

COREY STEEL: Senator Ebke, members of the Judiciary Committee, my name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I'm the State Court Administrator for the state of Nebraska for the Supreme Court. I'll be very brief again in the sense I just want to make a couple points. One of the things that Senator Krist was talking about is a new judge isn't just state funding. It also is a collaborative effort with the counties as they have the spacing issues, and then also in the district court they have staff. So for the...in the example of Judge Randall's courtroom in district court in Douglas County, the bailiff position within that court is actually a county-funded employee. And then the other employees, such as the court reporter, would be a state-funded position, so that's why you see that in our fiscal note, as well. So we would have the judicial officer position, we would have the equipment, IT infrastructure, and then we would have the training, what have you, but the other salary is that court reporter's salary. One of the things that I do want to note is--this was asked off mike or before the committee hearing--is if we could absorb this position, and it was asked of us last year with the Douglas County Juvenile Court position. Based on the budget and where we are, we're not able to absorb that new judicial position. Due to the budget cuts over the past year and ongoing, we've actually had to eliminate the use of retired judges. We had a \$250,000-a-year retired judges use fund that we would pay anytime a new judgeship would come open, a retired judge would come back and step in for that couple months during the process. We no longer are doing that. Our existing judges are having to finagle and change their docket around in order to do that. The other thing is the salary increase last year for judges which was--1 and 1.5 percent--in line with every other state employee. We absorbed that within the judicial branch budget, so that was roughly about \$700,000 that, over the next few years, that we absorbed in the branch budget. So I'm here basically to say we're in support of the new judgeship, but with that has to come the funds that we would not be able to absorb that. I wanted that on record as those conversations and questions have come my way, and I'd be happy to answer any questions that anybody has at this time. [LB696]

SENATOR PANSING BROOKS: Any questions for Mr. Steel? No. [LB696]

COREY STEEL: Thank you. [LB696]

SENATOR PANSING BROOKS: Thank you, Mr. Steel. [LB696]

TIM ENGLER: Senator Pansing Brooks, members of the committee, good afternoon. Again, my name is Tim Engler, T-i-m E-n-g-l-e-r. I'm here in my role as the current president of the Nebraska State Bar Association. I am a practicing attorney in Lincoln. And again, I serve on the Judicial Resources Commission as well. I'm not going to repeat the comments that I made in connection with LB697, although I do think they're applicable as well. Really no dispute as to the need that exists. The statistics are there, they're supportive, there's no question about that. The problem we have right now is that we aren't able to reallocate within the system. It's a

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

Judiciary Committee  
January 19, 2018

---

difficult thing to do and it brings to mind...the only comment I want to make is it brings to mind...not to mind, it brings to bear the tension we have between the urban and rural parts of the state. Douglas County certainly needs it, but where do you take it? And if you take it from a rural part of the state, what have you done to access to justice there? That's that tension that will always exist that we will always have to address. It's being addressed. It's being carefully looked at. But sometimes you just don't have the ability to reallocate. You can't change the boundaries of Douglas County, for example, as you can with...like we did with the 1st and 2nd District. So we are also mindful, very much, of the budget and the concern that everyone has for that. We also want to reiterate that it needs to be properly funded and, if now isn't the time to do that, we at least want to get it on the radar screen so that in the future that you know that this is an issue that does need to be addressed. So that's the position of the bar. Does anyone have any questions?  
[LB696]

SENATOR PANSING BROOKS: Thank you, Mr. Engler. [LB696]

TIM ENGLER: Thank you. [LB696]

SENATOR PANSING BROOKS: Welcome. [LB696]

JOE HOWARD: Well, thank you. [LB696]

SENATOR PANSING BROOKS: Further proponents. Are you another proponent? [LB696]

JOE HOWARD: I am another proponent. [LB696]

SENATOR PANSING BROOKS: Thank you. [LB696]

JOE HOWARD: Hi. My name is Joe Howard. Senator Pansing Brooks, ladies and gentlemen of the committee, Joseph Howard, J-o-s-e-p-h H-o-w-a-r-d. I am the secretary of the Nebraska Criminal Defense Attorneys Association. And when we saw that this bill was up for review, we thought it was important to speak on this. In terms of equal access to justice, this bill is quite important. I don't want to rehash what Judge Randall has already said, but these judges are very hardworking judges. They and their staff want to process these cases. And like Judge Randall said, criminal cases take precedent over civil cases, and naturally so. But in terms of getting cases in front of judges, what we've seen--and this again goes to the urban versus the rural dynamics that we see in the state of Nebraska--a lot of our clients can't post bond because they don't have the financial resources. And so in terms of equal access to justice, that means that they sit incarcerated until they can get into court, and the longer they sit, obviously, the more that they

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

Judiciary Committee  
January 19, 2018

---

suffer, and those are our citizens. So oftentimes we will win motion hearings but it's somewhat of a sour victory if the defendant has been sitting in jail for months on end. It's a sad state when we can't get our citizens into the courts as quickly as possible. And again, we're not pointing fingers at anyone, because we really have a great group up in Douglas County, but we need help and I...when the previous speaker said that, well, maybe we don't need, we don't want to bite off more than we can chew, I ask him for just one...I tell you we need more than one. But I agree, if the budget only holds one, please, consider one. In terms of the budget, having a judge is going to probably save money, and this is completely off the cuff. But in terms of housing inmates, how much is it going to cost to continue housing inmates? When we can get them into court, we can resolve the cases. Oftentimes we see with the postrelease violations we have people sitting who don't need to sit in jail but we can't get them into court because we're so full. And so please consider this. This is a great bill. I appreciate your time. [LB696]

SENATOR PANSING BROOKS: Thank you, Mr. Howard. Anybody have a question? I have one question. [LB696]

JOE HOWARD: Yes. [LB696]

SENATOR PANSING BROOKS: So both you and Judge Randall spoke about a priority, of course I've heard about, but just that criminal cases get a priority over civil. Where would you put juvenile cases then in that priority when they are...when we aren't speaking specifically about criminal court...or about juvenile court? [LB696]

JOE HOWARD: Well, as you know, we do have a separate juvenile court... [LB696]

SENATOR PANSING BROOKS: Right, in Omaha,... [LB696]

JOE HOWARD: ...in Nebraska,... [LB696]

SENATOR PANSING BROOKS: ...in Douglas County. [LB696]

JOE HOWARD: ...in Douglas County, so those judges specifically deal with...so we don't have...we don't have... [LB696]

SENATOR PANSING BROOKS: And you only practice in Douglas County? [LB696]

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

Judiciary Committee  
January 19, 2018

---

JOE HOWARD: No, I practice statewide. I'm actually licensed in a couple states, but Nebraska is my home and my focus. [LB696]

SENATOR PANSING BROOKS: Okay. [LB696]

JOE HOWARD: But I think to better answer your question, when civil cases are filed, they're filed in the district court, not necessarily...not in front of the juvenile court judges. [LB696]

SENATOR PANSING BROOKS: Right, but some...but out in the western part of the state where they don't have juvenile courts,... [LB696]

JOE HOWARD: Right. [LB696]

SENATOR PANSING BROOKS: ...what is the priority from criminal, civil, juvenile? [LB696]

JOE HOWARD: It's my understanding that criminal cases, whether they're juvenile or adult, have to take precedence over civil cases simply because we have a statutory right to a speedy trial which is codified in the constitution but also in our State Constitution. [LB696]

SENATOR PANSING BROOKS: Um-hum. And so would the 3A cases be included in those or is it just the cases that are going off on the juvenile justice track, do you know? [LB696]

JOE HOWARD: Senator, I don't know. I would hope, I would hope that they take precedence over the civil cases, though, because if you've ever had a relative or a friend who's been falsely accused who's incarcerated, you really hope that that case would take precedence over a civil case. [LB696]

SENATOR PANSING BROOKS: Okay, well, I appreciate your answering that and you can tell my passion about access to counsel for juveniles and the studies that are going on. And we don't get the judges here very often to hear this and we've been talking about it. And the counties came in the first year and stood back and said, we're not going to fight this because we don't think we should balance the budgets on the backs of juveniles, and the next year the judges came in and said, oh, we can handle this ourselves without attorneys. So that's why I'm hot, that's why I'm upset, and I will continue to fight this battle and I will continue to talk to everybody I need to talk to. And I really care about justice in our state, justice for all people, justice for children. And I know that our judges do, too, but I don't think that all the judges are hearing this. So I will bring this loud and clear. And I'm sorry if it seems rude. I don't intend to be rude. But I do intend to be

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

Judiciary Committee  
January 19, 2018

---

passionate and care about our most vulnerable in our communities, and that is children. So thank you for your time. [LB696]

JOE HOWARD: God bless you. Thank you, Senator. [LB696]

SENATOR PANSING BROOKS: Thank you for your efforts. Thank you very much. [LB696]

JOE HOWARD: Thank you. [LB696]

SENATOR PANSING BROOKS: Okay, next proponent, if you dare. (Laughter) Any opponents? And anybody in the neutral? Okay, do you have...you want to waive? Senator Ebke waives this hearing and so that closes both LB676 (sic) and LB678 (sic)? [LB696]

SENATOR EBKE: LB696 and LB697. [LB696]

SENATOR PANSING BROOKS: Okay, thank you. Thank you all for coming. [LB696]

SENATOR EBKE: Thank you. Thank you for coming. [LB696]

SENATOR PANSING BROOKS: We appreciate it. [LB696]

SENATOR EBKE: Are any of the gubernatorial appointments here from the Crime Victim's Reparations Committee? Okay, we're going to go ahead and skip over those and we'll hit them when they come back. I think they had a meeting and they thought it might not...they might not be done until almost 3:00. So, Senator Baker, LB710. [LB710]

SENATOR BAKER: (Exhibit 1) Chairwoman Ebke, fellow members of the Judiciary Committee, my name is Roy Baker, R-o-y B-a-k-e-r. I represent District 30. I am introducing LB710 today. LB710 would clarify Nebraska Statute 25-1801, a statute allowing plaintiffs who bring lawsuits for \$4,000 or less to seek costs, interest, and fees in accordance with the statute. The purpose of LB710 is not to substantively change those terms but is simply declaring to which plaintiffs the statute applies and to establish a uniform base of action. LB710 is needed to counter the action of some who are using this statute, the statute's vagaries, as a mechanism to bootstrap violations of federal law and file class action lawsuits against businesses, attorneys, and individuals in Nebraska. LB710 will return the use and practice under this statute to the way it was before as it had been applied since the statute came into existence. You might benefit from reading our committee legal counsel Tim Hruza's summary, particularly the second page. I'm not

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

Judiciary Committee  
January 19, 2018

---

going to read that in the record but it is there for your edification. There are some proponents who will follow me to further explain the climate surrounding federal lawsuits which are prompting this piece of legislation and people who have dealt with the lawsuits directly. Thank you for your time and attention. [LB710]

SENATOR EBKE: Senator Baker. Are there any questions? Senator Chambers. [LB710]

SENATOR CHAMBERS: Senator Baker, this says \$4,000 or less. Why stop at that point? What is the basis for that cutoff point? [LB710]

SENATOR BAKER: You know, I think it was the way it was before and so it's not changing. [LB710]

SENATOR CHAMBERS: This would basically hit poor people, wouldn't it? [LB710]

SENATOR BAKER: Pardon me? [LB710]

SENATOR CHAMBERS: This would basically affect poor people who might get these small debts and debt collectors can take it because somebody to whom this debt is assigned can add all these costs to the judgment that they're seeking based on the way I read the language. [LB710]

SENATOR BAKER: Well, that is...that is the way that you might look at it, but it also could be that people are not...they're escaping through the use of this mechanism from paying anything at all and... [LB710]

SENATOR CHAMBERS: Then why do you cut it off at \$4,000? Who asked you to bring the bill? Some collection group outfit did. Isn't that the case? [LB710]

SENATOR BAKER: The reason that I'm doing this is because of a constituent in District 30 came to me. I didn't do it just as a favor. I became convinced there was something wrong and that I was...I believed in and willing to bring it forward. [LB710]

SENATOR CHAMBERS: But your constituent...does your constituent operate a business? [LB710]

SENATOR BAKER: Yes. [LB710]

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

Judiciary Committee  
January 19, 2018

---

SENATOR CHAMBERS: Does your constituent have debts owed to others assigned to this constituent? [LB710]

SENATOR BAKER: Correct. Correct. [LB710]

SENATOR CHAMBERS: And all of these fees, charges, lawyer fees and so forth will go to the one to whom the debt was assigned even if the one to whom it was assigned did not go to any trouble to get it other than to buy it. [LB710]

SENATOR BAKER: Yeah. I'm going to let the people who are more directly involved in it answer those specific questions. [LB710]

SENATOR CHAMBERS: Is your constituent Siamese twins? [LB710]

SENATOR BAKER: My Siamese twin? [LB710]

SENATOR CHAMBERS: Yeah, is it a Siamese twin? [LB710]

SENATOR BAKER: No, it is not. [LB710]

SENATOR CHAMBERS: Oh. At first you said a constituent. Then you said these, and "these," "these" is a pronoun that would not apply to one. [LB710]

SENATOR BAKER: Well, I'm talking... [LB710]

SENATOR CHAMBERS: So there's more than one involved in this racket...I mean in this activity. [LB710]

SENATOR BAKER: Well, you know, where I come from, people should pay what they owe. [LB710]

SENATOR CHAMBERS: I'm just messing with you. But here's a serious question. Are you going to prioritize this bill? [LB710]

SENATOR BAKER: I might. [LB710]

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

Judiciary Committee  
January 19, 2018

---

SENATOR CHAMBERS: I want you to look me in my eye because I know you're not going to prioritize this bill. [LB710]

SENATOR BAKER: No, you don't know that. [LB710]

SENATOR CHAMBERS: You want to wait, make a wager? [LB710]

SENATOR BAKER: You might lose. [LB710]

SENATOR CHAMBERS: See, if I bet you \$10, I can make you prioritize a bill. In other words, \$10 will cause you to prioritize this bill. [LB710]

SENATOR BAKER: No, thank you. [LB710]

SENATOR CHAMBERS: (Inaudible) okay. That's all I have for you. [LB710]

SENATOR PANSING BROOKS: Any questions? [LB710]

SENATOR EBKE: Anything else? Okay. [LB710]

SENATOR BAKER: Chairman Ebke, may I sit in my chair if I don't ask any questions? [LB710]

SENATOR EBKE: Yes, you may sit if you don't ask any questions or, you know, the precedent is whatever. [LB710]

SENATOR BAKER: All right. (Laughter) [LB710]

SENATOR EBKE: Okay. First proponent. [LB710]

JOSH DICKINSON: Good afternoon, Chairman Ebke and members of the Judiciary Committee. My name is Josh Dickinson, J-o-s-h D-i-c-k-i-n-s-o-n. I am with the...I'm an attorney with the law firm of Spencer Fane LLP in Omaha, Nebraska. I have the privilege to be here today on behalf of the Nebraska Collectors Association and on behalf of numerous of my small business clients who this matter has a direct effect upon. By way of background, I am not a debt collector myself. I am a defense attorney who represents law firms, agencies, and debt collectors in generally federal court litigation under the Fair Debt Collection Practices Act. My focus in my

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

Judiciary Committee  
January 19, 2018

---

testimony today will be on two primary issues. One is what is LB710; and number two, why is it needed? The "what" is rather simple. LB710 seems to add clarifying language to an existing Nebraska Statute 25-1801. It wants to...it is intended to make clear the meaning of the statute that's been on the books for near 100 years now and to avoid unnecessary and wasteful federal court litigation that is ongoing. It does not intend to substantively change this bill. It is primarily designed to clarify the bill so that all litigants and judges know what the bill means and know how to apply it. As a quick refresher regarding 25-1801, the existing statute, the statute is intended to provide parties who seek to collect relatively small amounts in court, prejudgment interest, reasonable attorney's fees, which are roughly 10 percent of whatever the debt is, and the filing of the court costs. And to emphasize, \$4,000 is the maximum that this statute applies to. Ten percent of that would mean that a maximum attorney fee would be \$400 that could be extended under this statute. Actually, most debts that are sued upon under this statute are even less than that. Just so we understand the debt collection process, again, the Unicameral, when it passed this statute near 100 years ago, believed it prudent to award parties who are forced to go to court to try to make themselves whole to be awarded a small amount of costs, interest, and legal fees in having to do so. Now the "why." Why is LB710 needed? Well, in short, over the last five years there have been a number of class action lawsuits filed in federal court over this particular statute. And it puts the federal judges--and, in fact, it's really just one federal judge who's interpreting the statute in a way that suggests that what debt collection attorneys are doing with respect to the statute are wrong--at odds with all of the state court judges in Nebraska who apply this statute on a daily basis and have applied it consistently to award the attorney's fees, costs, and interest in all manner of debt. And unfortunately, because of the ambiguities that are in the statute, there's costly litigation. Class action litigation is very expensive for small businesses and, therefore, we believe that the statute needs to be clarified in order to put the federal judges and the state court judges in line with one another. [LB710]

SENATOR EBKE: Okay. Questions? Senator Krist. [LB710]

SENATOR KRIST: So boiling this down, there is a group of people called collectors who will go out and assist a business or someone who is owed a debt to collect that debt. You have fees involved with doing that and you have a relationship potentially with the banks and the courts to help you collect the debt, the fair debt. The interpretation of the statute that was passed 100 years ago has been interpreted this way by judges, most judges, okay? Is that fair to say? [LB710]

JOSH DICKINSON: I believe up until five years ago it's been uniformly interpreted to allow for interest, attorney's fees, and costs to be awarded on all manner of debts that have been collected as enumerated in the statute. [LB710]

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

Judiciary Committee  
January 19, 2018

---

SENATOR KRIST: And you made your point that that threshold was \$4,000, which means that the debt at 10 percent would be about \$400 in legal fees. Is that correct? [LB710]

JOSH DICKINSON: I believe that's the maximum that would be available under both the current form of the statute and the amendment that's being proffered. [LB710]

SENATOR KRIST: So you're only given three minutes to tell us what the..."why you're here" part of it, and I think why you're here is to tell us that there's a group of people--one, two, three, four, ten--that are now taking more money out of people's pockets by taking an additional court action that they feel is...that they have interpreted this statute to allow them to take. [LB710]

JOSH DICKINSON: The primary impetus for this bill is that because of, I believe, purposeful ambiguity being read into the statute by a small group of plaintiff's attorneys who are filing class action lawsuits in federal court in Nebraska. Small business collectors in Nebraska are being hit with a wave of lawsuits that they have to defend against and our purpose here is not to change the statute, at least as to what's available for attorney's fees and costs and interest. That's always been available. It's to clear up the ambiguity so that those lawsuits, they're wasteful, unnecessary lawsuits, and to have those lawsuits be a thing of the past so that the few people that benefit from those lawsuits, you know, discontinue filing them. [LB710]

SENATOR KRIST: So by "benefit," you mean that other than the normal collection process there are people who are potentially gouging those that can least afford to be gouged. [LB710]

JOSH DICKINSON: I wouldn't...I wouldn't interpret it that way with respect to the federal litigation. The federal litigation...the Fair Debt Collection Practices Act allows attorney's fees to be collected against the collector upon whom they're being sued. But what I would say is that typically those lawsuits aren't a particular benefit. A class action lawsuit isn't a particular benefit to any of the individual members of the class. They most primarily benefit the attorneys that are filing them. [LB710]

SENATOR KRIST: Maybe somebody can answer the question or define it a little better for me, but I thought this whole thing, in reading it and talking to the lobby, was about the definition of the debt and changing the definition of the debt in terms of morphing it into something else. [LB710]

JOSH DICKINSON: Well,... [LB710]

SENATOR KRIST: Can you answer that? [LB710]

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

Judiciary Committee  
January 19, 2018

---

JOSH DICKINSON: Sure. One of the ambiguities or alleged ambiguities that's being litigated in the federal court is an allegation that once a debt is assigned to a collector that the statute no longer applies to that. That's contrary to the way the Nebraska state courts have been applying this statute for longer than I've been practicing law. So that's one thing that we'd like to clear up. Another issue we'd like to clear up is what debts apply to this particular statute and one of the changes we've made is to remove the sort of listing of broad categories such that that can be interpreted as excluding, you know, things that aren't expressly named there. I will point out that I understand that there is going to be someone speaking in opposition to the statute on behalf of the Nebraska Defense Counsel Association with a concern about whether this would ultimately apply to personal injury actions. And that isn't something that we considered. It's sort of an unintended consequence of the proposed amendment that, you know, we'll get with Senator Baker's office to try to address, because we're certainly not looking to expand litigation. We're not looking to try to encourage more litigation. To the contrary, we want all the litigation or we would like the litigation to be productive and, you know, frankly, this bill is meant to lessen wasteful litigation, especially in our federal court systems. [LB710]

SENATOR KRIST: So one more question, Madam Chair, if I might. What we're talking about in...just in layman's terms again, is that I owe money to a plumber or whoever it might be and once that claim has been assigned to you, somehow it's not a claim, a services claim anymore? [LB710]

JOSH DICKINSON: That's the legal theory that's being advanced in federal courts and at least has been partially adopted by one federal judge in the district of Nebraska. We don't think that's an appropriate reading of the statute, the current statute, but a judicial fix. You know, one of the questions that the committee may be asking itself is, well, can't we let the courts just sort this out; why do we need to get involved? These matters are in federal court. It takes years and hundreds of thousands of dollars for all these things to get up and ultimately get decided. And they would have to be decided by the Eighth Circuit Court of Appeals. Ultimately, these are questions of Nebraska state law and so we just think it's...we think it's appropriate for this body and for the Unicameral to address these issues and to clarify what the statute means so that the parties don't have to spend so much money litigating about this in federal court. [LB710]

SENATOR KRIST: Okay. Thank you. [LB710]

SENATOR EBKE: Senator Chambers. Senator Hansen. [LB710]

SENATOR HANSEN: Thank you, Chair Ebke. So Senator Chambers already brought up the \$4,000, so this applies to \$4,000 or less. [LB710]

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

Judiciary Committee  
January 19, 2018

---

JOSH DICKINSON: That was the...and just to clarify, that is the original 25-1801 limitation and we are not suggesting any changes be made to that in our clarification bill. [LB710]

SENATOR HANSEN: Right, and just here I might be wrong but it looked like it was \$2,000 up to 2009. In 2009 it switched to \$4,000. But my question is, if we have the \$4,000 limit currently in statute, what happens for debts above \$4,000? [LB710]

JOSH DICKINSON: The statute doesn't apply. So you would not be able to seek interest and attorney's fees and costs under this particular statute. There's certainly ways to recover costs in other settings, generally speaking. Otherwise, Nebraska follows the American rule which is each party bears their own attorney's fees. [LB710]

SENATOR HANSEN: Okay. So under the current law, are you more likely or less likely to get attorney fees for debts under \$4,000? [LB710]

JOSH DICKINSON: More likely. [LB710]

SENATOR HANSEN: Okay. Thank you. [LB710]

JOSH DICKINSON: You're welcome. [LB710]

SENATOR EBKE: Senator Chambers. [LB710]

SENATOR CHAMBERS: Because what we say at these hearings is recorded and transcribed, and there may be people not trained in the law who would read what is involved, I want to try, if I can, to simplify it. So I'm not one of those people who will contract debts. So a lot of the things that people talk about, I don't know from experience, so let me learn something. What amount is typically involved? Is it this \$4,000 limit or might there be other...a larger amount but only \$4,000 of that debt is subject to the law? [LB710]

JOSH DICKINSON: No. I think there's two questions there, Senator Chambers. Let me try to answer each of them. I would say on behalf of the organization, typically the amount sought in a typical debt collection lawsuit is well under \$4,000. It might be more in the \$1,500 range just on average. But to answer your question, if you file the lawsuit seeking more than \$4,000, then the statute doesn't apply. In other words, it doesn't just apply to the bottom \$4,000 on a \$10,000 claim. If you want the statute to apply, you can only seek \$4,000 or less. [LB710]

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

Judiciary Committee  
January 19, 2018

---

SENATOR CHAMBERS: Okay. And I think that would be clear to anybody who read what you just said. Now let me be the debtor. I owe you \$1,500. I owe it you. Then you are going to assign that debt to somebody else based on what we're talking about. Is that true? [LB710]

JOSH DICKINSON: Senator Chambers, one of two things can happen. I can...when you...assign can mean one of two things. One is I can hire you as my agent to collect on my behalf. That's one form of assignment. [LB710]

SENATOR CHAMBERS: Let's use names. Chambers is the debtor; Jones is the creditor. [LB710]

JOSH DICKINSON: Okay. [LB710]

SENATOR CHAMBERS: Now Chambers is dealing with Jones. Jones is the one, if the debt is going to be assigned, who would do the assigning, not Chambers. Chambers, the debtor, is always dealing with Jones and will deal only with Jones before we get other people involved. In order to involve a third party, it would be up to Jones, who is the holder of the debt, to involve a third party. [LB710]

JOSH DICKINSON: That's correct. [LB710]

SENATOR CHAMBERS: He could sell that debt to a third party or, as you said, hire somebody to collect it for you. [LB710]

JOSH DICKINSON: Yes. [LB710]

SENATOR CHAMBERS: So let's make it simple. Which way is the customary way of doing this? [LB710]

JOSH DICKINSON: Those two methods are both customary and I couldn't give you a percentage as to which is more... [LB710]

SENATOR CHAMBERS: Well, would the same issues obtain regardless of which of those methods is used? [LB710]

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

Judiciary Committee  
January 19, 2018

---

JOSH DICKINSON: Fair enough. I would say with respect to the legal theories that are being advanced in federal court, I don't believe that the plaintiffs' attorneys are differentiating between those two circumstances. [LB710]

SENATOR CHAMBERS: So before we get into court, you are the creditor. Let's say you...when you...when this says assign the debt, does that mean that the creditor is selling the debt to somebody else, maybe at a discount, and then the one to whom you sell it is going to make his or her money by add-ons in dealing with the debtor? [LB710]

JOSH DICKINSON: And, Senator, assignment means two things, two possibilities, either one of what we just discussed. I can assign a debt by hiring somebody to collect on my behalf. I still own the debt. They are working for me trying to collect the debt. It could be a debt collection attorney or any attorney files a suit, but at all times I still own the debt. The other way a debt can be assigned is it can be sold. It can be sold to what is known as a debt buyer. They buy the debt from the original creditor and then they own the debt and then they are responsible for collecting on the debt. [LB710]

SENATOR CHAMBERS: So to try to keep it simple, which of those two is your business or your association concerned about, where you actually sell the debt to somebody else or you hire somebody to collect it for you? [LB710]

JOSH DICKINSON: I believe the Nebraska Collectors Association has both types of membership, but I will say that I think primarily most members of Nebraska Collectors Association are retained by the debt owners to collect on their behalf. [LB710]

SENATOR CHAMBERS: Okay. Then that's the way I'm going to understand it so I don't have to keep jumping back and forth. [LB710]

JOSH DICKINSON: Fair enough. [LB710]

SENATOR CHAMBERS: If there are differences, you can point that out. [LB710]

JOSH DICKINSON: Sure. [LB710]

SENATOR CHAMBERS: So a layperson reads our discussion, Chambers owes Jones \$1,500, if that's what I said, and now Jones is going to not be the one doing the direct collecting but, rather, Smith. Now when...we've got that, I think, pretty firmly established. When you talk about a class

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

Judiciary Committee  
January 19, 2018

---

action lawsuit, who would be the ones comprising the class for whom the lawsuit is filed? Who would that be? Who would those persons be? [LB710]

JOSH DICKINSON: That would be the Chamberses. [LB710]

SENATOR CHAMBERS: Well, that...I'm a class. I'm just an individual. [LB710]

JOSH DICKINSON: Right, and the class actions that are being filed in federal court are being filed by plaintiffs' attorneys on behalf of, in your example, the Chamberses. [LB710]

SENATOR CHAMBERS: One guy. [LB710]

JOSH DICKINSON: They find one guy, they file a lawsuit, and they ask a federal judge to certify it as a class action so that that one guy can represent all the other Chamberses that are out there. [LB710]

SENATOR CHAMBERS: Oh, so for anybody who is similarly situated. [LB710]

JOSH DICKINSON: Correct. [LB710]

SENATOR CHAMBERS: And are those people who are part of the class notified that they are part of a class that is being...having litigation done in its behalf so they can either buy in or buy out? If I allow myself to remain a member of the class, then I'm bound by whatever is decided in that lawsuit. But if I'm a member of the class, I don't have to involuntarily remain a member, do I? I can find a way to retain my right as an individual apart from what is going on in that class action lawsuit. Isn't that true? [LB710]

JOSH DICKINSON: Correct. Under Federal Rule 23, if a class is certified by a federal judge to be treated as a class action, every member of the class is given notice of the lawsuit and they are given the ability to opt out of the lawsuit and, if they so choose, they can pursue their own individual claims. But typically in most class actions, if they do nothing, they are bound by the terms of the class action, including all class action settlements have a release of all claims so that they are, if they stay in the class, they are typically releasing any claims they might have against the defendant. [LB710]

SENATOR CHAMBERS: Apart from what would be decided in that class action suit. [LB710]

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

Judiciary Committee  
January 19, 2018

---

JOSH DICKINSON: Correct. [LB710]

SENATOR CHAMBERS: Okay. [LB710]

JOSH DICKINSON: They are settling for what the class... [LB710]

SENATOR CHAMBERS: Right. [LB710]

JOSH DICKINSON: ...what they get in the class and that's all they can ever get. [LB710]

SENATOR CHAMBERS: Okay. So now we've got the debtor, who is Chambers, and there are others similarly situated so we'd have a class. Chambers owes the money to Jones. Jones involves Smith. Now when a lawyer is going to get involved, is the lawyer going to sue Smith or Jones? [LB710]

JOSH DICKINSON: Smith, typically. [LB710]

SENATOR CHAMBERS: Okay. So now we know that it's the lawyer suing Smith on behalf of Chambers and others similarly situated. That comprises the class. [LB710]

JOSH DICKINSON: Correct. [LB710]

SENATOR CHAMBERS: And we're going to, to keep it simple, nobody opts out, everybody similarly situated. Now when this case is filed, you're telling me it will be filed in federal court. [LB710]

JOSH DICKINSON: Typically, yes, because it's...they're filed under the Fair Debt Collection Practices Act, which is a federal statute which provides federal courts with jurisdiction. [LB710]

SENATOR CHAMBERS: But the law that is applied would be the law of the state where the debt is involved? Then how does the state law interact with the federal law? That's what I'm trying to get to, step by step. [LB710]

JOSH DICKINSON: Sure. Sure. Very fair question. So the Fair Debt Collection Practices Act is a federal statute that broadly regulates the actions the debt collectors can take vis-a-vis consumers. And there are a number of provisions. It's a pretty thick statute, as you can imagine.

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

Judiciary Committee  
January 19, 2018

---

There's a number of provisions that, for instance, prohibit, you know, making miscommunications,... [LB710]

SENATOR CHAMBERS: Uh-huh. [LB710]

JOSH DICKINSON: ...using unfair collection practices, that sort of thing. Germane to this particular issue is that you're prohibited from trying to collect matters...trying to collect money in a state court proceeding to which you don't have a legal right. That's expressly written into the Fair Debt Collection Practices Act. So the lawsuit, the class action lawsuit that's being filed in federal court is alleging that under their interpretation of 25-1801, Smith isn't allowed to collect attorney's fees, interest, and court costs and, therefore, they violated the Fair Debt Collection Practices Act and the case should be certified to go forward in federal court. [LB710]

SENATOR CHAMBERS: But Smith can attempt to collect the debt that was owed to Jones. [LB710]

JOSH DICKINSON: In state court, not in federal court. [LB710]

SENATOR CHAMBERS: Well, then what is Smith going to argue once he or she is sued in federal court? [LB710]

JOSH DICKINSON: And, Senator Chambers, I can just tell you that I am representing Smith in several lawsuits in federal court, as are a number of my colleagues. Our primary argument is that the plaintiff's attorney's legal theory is simply an incorrect interpretation of 25-1801. [LB710]

SENATOR CHAMBERS: So what we're dealing with, and now we're coming to where maybe a layperson can understand the legalese, we're looking at the interpretation of language that exists in the state law and the lawyers on the side that you're opposed to are construing the words of the state law one way; you're construing the words of the state law in a different way. [LB710]

JOSH DICKINSON: Yes, Judge...or, yes, Mr. Chambers, that's fair. [LB710]

SENATOR CHAMBERS: Yes. That's how you join the issue. You have to have a genuine dispute. How does the federal law get involved in this state matter? Does the federal law lift something like that into the realm of an issue that falls under state...federal court jurisdiction? [LB710]

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

Judiciary Committee  
January 19, 2018

---

JOSH DICKINSON: The federal judge in this particular case has to interpret the meaning of the state law to determine if, in your example, Smith is seeking to collect types of recovery that he is not entitled to. And if he is, that would be considered a violation of the Fair Debt Collection Practices Act. The problem is, in our view, that the interpretation of the statute is wrong and at a minimum it's inconsistent with the way that the Nebraska state court judges have been applying this statute since its enactment 100 years ago. [LB710]

SENATOR CHAMBERS: So you're saying there's a federal judge. Is it a federal district court judge? [LB710]

JOSH DICKINSON: Correct. [LB710]

SENATOR CHAMBERS: Can you appeal a federal district court's...a district court judge, you can appeal that to the Eighth Circuit. [LB710]

JOSH DICKINSON: Correct. [LB710]

SENATOR CHAMBERS: Has such an appeal been taken before? [LB710]

JOSH DICKINSON: It has. [LB710]

SENATOR CHAMBERS: And what has the Eighth Circuit said? [LB710]

JOSH DICKINSON: The Eighth Circuit in one case, it's called the Powers case, reversed the district court judge and sent it back to the district court judge for further proceedings. And unfortunately, from our industry's perspective, the federal judge essentially still found that there was a violation. [LB710]

SENATOR CHAMBERS: And that then became a final judgment? [LB710]

JOSH DICKINSON: It was. And to my understanding, the case was settled and I believe that there will be another person who will be testifying that can speak more directly to that because it was her agency. [LB710]

SENATOR CHAMBERS: But I want to see what's available. [LB710]

JOSH DICKINSON: Sure. [LB710]

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

Judiciary Committee  
January 19, 2018

---

SENATOR CHAMBERS: If the lower court gave further consideration and arrived at the same decision, would that then be ripe for appeal to the Eighth Circuit? [LB710]

JOSH DICKINSON: It would. [LB710]

SENATOR CHAMBERS: And has such a situation arisen? That's what I'm trying to find out. Let me ask you directly. Has the Eighth Circuit made a ruling on what it is we're talking about? [LB710]

JOSH DICKINSON: Not on all of the issues that we're talking about because, unfortunately, there's four fixes that we have presented in our amendment and the Eighth Circuit... [LB710]

SENATOR CHAMBERS: Well, let's forget the amendment right now because the court's decision would not be on the basis of what you're asking us to amend the statute to say. Has the Eighth Circuit rendered a decision on a case that had been appealed to the Eighth Circuit by the collectors? Was the Eighth Circuit ruling against the collectors, because the collectors are bringing this bill? [LB710]

JOSH DICKINSON: It was not. The Eighth Circuit's decision in the Powers case was a reversal of the trial court's decision, but it was reversed and remanded for further proceedings and the district court judge entered a subsequent ruling, ruling against the collector again. [LB710]

SENATOR CHAMBERS: And could the... [LB710]

JOSH DICKINSON: And that wasn't...that...well, that could have been appealed again. It ultimately, as you can imagine, Senator Chambers, it's incredibly expensive to defend class action lawsuits. Ultimately, to my understanding, that case was settled before it could be appealed again. [LB710]

SENATOR CHAMBERS: But I think the ones who'd want to settle are the collectors because they can read the writing on the wall. And if the remand was for the lower court to give further consideration and the court gave further consideration, when it entered its judgment, it's going to have to explain why it was entered. And the collectors, not being naive, would have read what was involved and could conclude that if this went to the Eighth Circuit they'd be worse off because the Eighth Circuit would also rule against them. Then it would be a mid-level federal court that had ruled against them, not just a district court. And if the Eighth Circuit ruled against them, their only alternative is to appeal to the U.S. Supreme Court, which wouldn't be likely to take the case, in my opinion. But even if it would, the collectors could see that they would lose.

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

Judiciary Committee  
January 19, 2018

---

And that brought us to where we are today, where the collectors want the law changed so that what the federal district court ruled, which went to the Eighth Circuit, which remanded and the district court reaffirmed--if I can use that term for ease of reference--its first decision, then the collectors knew that the only way they could get out from under that is to get the Legislature to change the law. I'm saying the way the posture of this bill appears to me and I'm trying to use language that laypeople might understand. In other words, the collectors lost the game that they were playing and now they want to change the rules of the game so that they can win. If the rules of the game are not changed, if they're foolish enough to play that game again, they're going to lose again and again and again. So that's why we're being asked to change the rule. We're being asked to alter what a federal court can say if a case is filed. [LB710]

JOSH DICKINSON: Senator Chambers, I'd respectfully disagree with some of the broader characterizations, but let me just be clear on a couple points. [LB710]

SENATOR CHAMBERS: Okay. [LB710]

JOSH DICKINSON: One is it's one federal judge in the district of Nebraska that's made this ruling, one. There are a number of other cases that are pending before other federal judges and we have requested, because this is, I think we all agree, this is an issue of state court law, not an issue of federal law. Ultimately, this is an interpretation of a state law. The industry has requested that that federal judge certify the question to the Nebraska Supreme Court and just ask the Nebraska Supreme Court to interpret its own state law, and the federal judge has refused to do so. We're left with options that are not appealing, and I use that term purposely because all of this is incredibly expensive and we ultimately believe we are right. We believe that the amendments that we are offering in this particular statute are already the law. But because one federal judge is interpreting the statute in a way that we think is contrary to the statute, we believe it is absolutely appropriate for this body and for the Unicameral as a whole to clarify the statute so that parties could spend less time litigating in federal court and more time getting on with their business. [LB710]

SENATOR CHAMBERS: Here's where I disagree with you. You still have an appeal that you could make in the federal system. Now when the Eighth Circuit ruled, was that an en banc ruling or was it by one judge? [LB710]

JOSH DICKINSON: I wasn't...I wasn't involved in the appeal but I don't believe it was en banc. It would have been at the Eighth Circuit, sits in three-judge panels. [LB710]

SENATOR CHAMBERS: Could they ask for that, the entire circuit to hear it? Or request...  
[LB710]

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

Judiciary Committee  
January 19, 2018

---

JOSH DICKINSON: Not now. [LB710]

SENATOR CHAMBERS: No, no. Could they have asked for that? [LB710]

JOSH DICKINSON: Oh. And they may...the answer is, yes, they could have and they may very well have. I wasn't involved in that particular case. I'm sorry. [LB710]

SENATOR CHAMBERS: But you're a lawyer. [LB710]

JOSH DICKINSON: I am. [LB710]

SENATOR CHAMBERS: And that's why I'm talking to you like this. You know what I'm talking about. [LB710]

JOSH DICKINSON: I do. [LB710]

SENATOR CHAMBERS: And you know we could use much more technical language but I don't want to do that. I want to keep it where ordinary people can understand. And we're presuming that everybody who's at this table is representing ordinary people and we want to be able to explain to our constituents what we're talking about. We could not make them understand if we used technical legalese. So the collectors lost the game under the rules that are in place. A part of the game, whether the collectors like it or not, is that the federal courts can become involved because of an existing federal law that is in the same area, even though state court would be...state law will be involved, and you and your clients or those in the industry have read the tea leaves. They read the writing on the wall. They're never going to win what they want as long as the law remains this way. And what they want is to be able to collect some fees, lawyer fees or whatever. They aren't doing this for nothing, just to get a clarification of the law. They want to collect some money, don't they? [LB710]

JOSH DICKINSON: Yes. [LB710]

SENATOR CHAMBERS: And from whom ultimately will that money be collected? [LB710]

JOSH DICKINSON: The person that didn't...that went to stores, made purchases with their credit cards, and then didn't pay the debt back. [LB710]

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

Judiciary Committee  
January 19, 2018

---

SENATOR CHAMBERS: Well, let's use the word "the debtor." So it's now the collectors against the debtor, and right now the debtor has a leg up because of the way the federal court interpreted it. You want that leg cut off so that the collectors can get more money from the debtor than they can right now. [LB710]

JOSH DICKINSON: I want the...we want the statute interpreted as it's been interpreted by the Nebraska state judicial system for 100 years. [LB710]

SENATOR CHAMBERS: And that's because you'd get more money under that. Isn't...be...I'm not naive. [LB710]

JOSH DICKINSON: Sure. [LB710]

SENATOR CHAMBERS: I went to law school. I could talk to you in a different way and it would be much harsher than I am now. You are representing people who want to get more money from a debtor than they can get right now. That's what it boils down to. You cannot do that so you want us to change the law on behalf of the collectors so that the debtor is the one who's going to be squeezed in a way that the debtor cannot be squeezed right now. That's the way I interpret it. [LB710]

JOSH DICKINSON: Sure. [LB710]

SENATOR CHAMBERS: And I'm not going to browbeat you. I was talking to you because you are a lawyer. You understand the issues. I feel that we've laid them out and a person might have to read the transcript closely to understand, but I'm not going to go through this with everybody. And since you are knowledgeable, you have had experience, I decided to take a person who knows it all to spare me asking a lot of piecemeal questions to several people, getting piecemeal answers, and then maybe they'll hang together. So I have utilized your expertise to facilitate a hearing and I've gotten all from you that I need. So, Madam Chair, I don't have any more questions. And I do feel that the witness has been helpful, by the way. [LB710]

SENATOR EBKE: Thank you, Senator Chambers. [LB710]

JOSH DICKINSON: Thank you, sir. [LB710]

SENATOR EBKE: Are there any other questions? Okay. Thank you. Next proponent. [LB710]

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

Judiciary Committee  
January 19, 2018

---

TESSA STEVENS: Good afternoon, Chair Ebke, members of the Judiciary Committee. My name is Tessa Stevens, T-e-s-s-a S-t-e-v-e-n-s. I'm an in-house attorney and I practice in the area of collection compliance. I'm here today on behalf of my client, Credit Management Services, as well as the Nebraska Collectors Association, testifying in support of LB710. I'm going to change my testimony a little bit today in line with Senator Chambers and try to really make this make sense to everyone here what we're doing. So I'm going to start from the beginning. Collectors...this bill has been in place for 100 years. Collectors, other plaintiffs, hospitals, first-party creditors can use this statute to file lawsuits for claims less than \$4,000. When they do so, they're able to ask the state court to award them interest, attorney's fees, and court costs if they meet the prerequisites of the statute. So we have been doing that over time. We will get, for years and years and years, have had judges award us for the principal balance plus the interest, attorney's fees, and court costs, and we've collected that for all of our clients, the businesses in Nebraska, hospitals, plumbers, retail establishments, and the like. What is happening now is consumer attorneys are using the Fair Debt Collection Practices Act and saying, federal court, these people weren't entitled to recover under this statute. They did not meet the prerequisites to be awarded these things, even though a state court judge has already awarded them, and asking this federal judge to take a look at this and saying, well, I'm going to argue the prerequisite that it has to be a claim for services, wasn't met. In our case, they're claiming that medical services is an account, not this service category that was currently enumerated in the statute. And that doesn't make any sense to me. You know, it's this play on words in efforts to bring these actions against us. So we've just asked let's take out those categories, let's make it clear that, yes, all lawsuits filed for under \$4,000 would fall into recovering under this statute. That's how the state courts have been interpreting it for this time, so nothing has changed. Senator Chambers, to address the appeal to the Eighth Circuit, the appeal was on the basis of whether or not it was a class action. The Eighth Circuit did side with us that it was not a class action until the federal court judge could look at further arguments in the case. So to your point that the consumers have a leg up and we're here asking for the change, that's not the situation. I haven't changed how I'm filing lawsuits in county court against consumers. I still believe I'm following the letter of the statute. I'm looking for...I don't want to keep defending these lawsuits. Let's set the parameters. Let's make it clear for both the consumers and the businesses what the rules are so we don't have to waste time and money to defend these claims. I think my time is up, so. [LB710]

SENATOR EBKE: Thank you. Questions? Senator Chambers. [LB710]

SENATOR CHAMBERS: I'm not going to go through everything with you that I did with the gentleman. But to try to keep simple, if I owe you a debt and I'm not paying the debt, you can sue me to get me to pay that debt. You can do that right now. [LB710]

TESSA STEVENS: Correct. [LB710]

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

Judiciary Committee  
January 19, 2018

---

SENATOR CHAMBERS: And the federal decision has nothing to do with that. That is between you and me in a state court, based on what the law says. [LB710]

TESSA STEVENS: That's correct. [LB710]

SENATOR CHAMBERS: Now with this law untouched, you can sue me right now to make me pay the debt. If you prevail, then a judgment is entered against me and you can use whatever methods are available to collect on a judgment. If I fail to show up, a default judgment is entered in your behalf. And let's say everything was legal--I was properly notified and just didn't come--so that you have got you a judgment. I'm not going to be able, under the example I give, to have it set aside because you didn't do anything fraudulent, first of all, to get the debt, you know, I got the debt. You didn't do anything fraudulent to get me to get the debt. You did not do anything that would violate the law in procuring a judgment. What more do you want than the right to procure the judgment from me? Now since you are not the holder of the debt, you have to make some money outside of that debt if the holder of the debt is going to recover the full amount. If you want to make money, you can say that person owes you \$50, I will give you \$30, and you'll have that. Then when I collect the \$50, then I get my money that way. What is it other than that which you all, as collectors, are trying to get from the debtor? [LB710]

TESSA STEVENS: Senator, maybe I'm not following your question. Get from the debtor by these changes? Nothing. We're not trying to get anything else from the consumer by offering these changes. We're trying to protect our businesses from having to deal with frivolous lawsuits in federal court. I spent five years...I was a named defendant in one of the suits and I spent five years defending it to have no answer from the federal court. And the consumers, who were members of the class, received less than \$20 for their claims when we settled it, and the consumer attorneys received \$315,000. And I would have kept fighting it because I do believe that we were doing it correctly, but insurance has a role in the settlement of claims and, you know, we have to protect our business interests as well. I'm not trying to get anything more from the consumer. [LB710]

SENATOR CHAMBERS: Well, okay. And I don't want to argue all of that. But I keep hearing frivolous lawsuit. Courts determine if an action is frivolous. Were the actions declared frivolous by the court? If so, they would have been thrown out. [LB710]

TESSA STEVENS: No, I understand what you're saying. [LB710]

SENATOR CHAMBERS: So you're saying they're frivolous because you lose. [LB710]

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

Judiciary Committee  
January 19, 2018

---

TESSA STEVENS: Yeah, and I can explain why I say that. I did not lose. I don't feel that way. [LB710]

SENATOR CHAMBERS: Then why did you call it frivolous? [LB710]

TESSA STEVENS: Because they're contrary to the state court's interpretation of an existing statute. Judge McArdle is here today. He's awarded us these judgments under this statute. He said we've met the statutory prerequisites and we're entitled to recover these interest, fees, and court costs. And just because consumer attorneys come up with odd legal theories that they can busy themselves with in federal court, that's really more what I mean by "frivolous." [LB710]

SENATOR CHAMBERS: Well, they're just smarter than you because that's what attorneys are supposed to do,... [LB710]

TESSA STEVENS: (Laugh) Maybe so. [LB710]

SENATOR CHAMBERS: ...establish a theory which, under existing law, will allow the client to win. I'm not saying that against you personally. [LB710]

TESSA STEVENS: I understand. [LB710]

SENATOR CHAMBERS: But you are on the losing side. So you characterize the nature of the suit any way you choose but it's not frivolous just because you say so. [LB710]

TESSA STEVENS: No, I understand, Judge...or, Senator, I do understand. You know, and to your statement that attorneys are supposed to find a way to win for their clients, that is what we have done for our collection agency clients. Again, these state court judges have said, yes, you are right, the consumer owes this amount in a judgment, and has awarded it to us. [LB710]

SENATOR CHAMBERS: But here's what you all are not looking at or not acknowledging for the benefit of this committee. The state court is not the totality of the arena. You want to play the basketball game half court. The basketball game is full court. You might have a good back court game, but when it's full court you cannot win. Your players are too slow. There's a fast break and if it's a half court, their speed won't make that much difference because not much distance has to be covered. But when the full court has to be covered, then their speed makes a difference and they leave you all behind and they score more points. If you could persuade me that the federal court has no jurisdiction, that's different. But you wouldn't have to persuade me. That's what could be determined in a federal court. If a judge enters a decision in a case where the court has

no jurisdiction, that automatically nullifies whatever that court said because they did not have the authority. All "jurisdiction" means is the authority under the law to hear the case and render a decision that has legal weight. If the court has no jurisdiction, the parties cannot even bestow jurisdiction on the court. It's not something that the parties determine. It's the nature of the court itself and the powers that that court has. It cannot be divested of that jurisdiction by parties, nor can jurisdiction be bestowed if there is none. So here's where I'm lost. All I see is that the collectors have lost in a full-court game and they want the Legislature to say, make it a half-court game. The federal court is legitimately involved in this activity that we're talking about. [LB710]

TESSA STEVENS: Yes. And I disagree. We have not lost. We just haven't got to the end of the game yet. [LB710]

SENATOR CHAMBERS: Oh, then let's let the game be played out. [LB710]

TESSA STEVENS: Well, the problem with that is the changes that we're proposing, and again, not changes, the clarifications, not all of these issues are in front of the federal court. Pieces of them are being dealt with and it may come down on a whole different theory altogether. However, I'm just trying to prevent future games with these individuals. It just shouldn't...the game shouldn't have to be played if the Legislature can clarify it. [LB710]

SENATOR CHAMBERS: And I understand what you're saying, and I'm not going to argue with you either, but I wanted your side fully developed and I think my questions helped do that even though it reaches a conclusion different from yours. [LB710]

TESSA STEVENS: Sure. [LB710]

SENATOR CHAMBERS: And I tried to use a sports analogy because Nebraskans seem to, you know, grasp things when they're put in that kind of language. Or maybe I should have made it a football analogy. Right now the federal court said that when I throw this long bomb, as they call it, to my top wide receiver, Halloran--they call him short but fast, glue-fingered--I throw it to glue-fingered Halloran, and for some reason he doesn't catch it, but it hits his hands and he bobbles it. And then when he goes down, he cannot control it. What you want to do is say the fact that he did have contact with the ball, even though he didn't control it when he hit the ground and it bounced out and the referee says incomplete, you want us to change the rule so it says if the receiver is in contact with the ball when the receiver hits the ground, even though the receiver never had control of the ball, that should be considered a catch. That's what I think you all are asking for. [LB710]

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

Judiciary Committee  
January 19, 2018

---

TESSA STEVENS: Well, I disagree. I'm not...we're not trying to change the rules. Honestly, we're just trying to clarify what's been in place so that the consumer attorneys can't present another side to the federal court, that this is...it's just clear. You know, I feel confident we're complying. I feel that the state courts have told us that. I don't think the federal courts are going to say differently. The problem is the time that it takes to get to that end and especially in all these different little nuance clarifications that we're making. [LB710]

SENATOR CHAMBERS: Then settle more of these cases. I'll be frank. I'm for the debtor. I think products are overpriced and I see debtors being gouged all the time, even in grocery stores. I look at grocery stores in communities and the produce is not fresh, it is much more expensive. And the people in that neighborhood pay the price because they have no way to get to a store where they can get higher quality produce at a lower price. Many of these debtors who fall into problems with collection agencies are people who are poor. They've dealt with the merchant, who might be shaky. They don't understand interest rates. And then they get caught and they wind up owing and owing and owing. And because of the way the system is, there are ways for additional charges to be added. So these collection agencies, if I were advising it, I'd say settle more of these cases. You're dealing with peanuts anyway. If you've got one of these situations and you think somebody has got money, then you're going to have to be willing to play the game to the end and win it. But I'm looking at the generality of people and not taking anything from the creditors that they have. They want us to change the law to give them something that they don't have right now under the law. The last word is not the state judgment. The state court does not have the last word. If I'm sentenced to die by a state court, a federal court can overturn that decision and it doesn't have to be the U.S. Supreme Court. A district court can. And the state can decide how much time and money they want to spend appealing it further. But the avenue is open for them to go as far as they want to go if they think at the end they're going to win. And since this is an industry issue and not an individual company, they can ante up a pot and say, we're going to take this all the way and get a decision at the federal court, the highest level we need to go to, and then we've got it locked up. It doesn't matter what the state court says. It doesn't matter what this lower federal court judge said, even if that judge would make the same decision. Ultimately, we're going to win. And we would have precedent because a higher federal court ruled this way and that would bind the lower federal court. [LB710]

TESSA STEVENS: I do understand what you're saying, Senator, and I promise you there are several of us in the industry that are still fighting and that do intend to go up as far as we can, you know, as long as we can. [LB710]

SENATOR CHAMBERS: Okay. [LB710]

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

Judiciary Committee  
January 19, 2018

---

TESSA STEVENS: I think that will not solve all of the issues. It seems like once one is resolved, even if there's a decision on one specific issue, the consumer attorneys are back on another nuance, and that's what I'm trying to just get rid of here. [LB710]

SENATOR CHAMBERS: Well, as long as there's an avenue open, I don't think it's...I'm just one person. There are 48 people that usually disagree with me. But I want the transcript to show the things that I offered and to show that I tried to make the best case I could but other legislators disagreed. And that happens to me more times than it would ever happen to you. You couldn't practice law if you lost as many cases as I lose issues. So I'm just trying to create a record and that's why I was trying to make my questions as specific as possible. And I've asked all those I want to ask of you and appreciate your coming. [LB710]

TESSA STEVENS: Thank you. [LB710]

SENATOR EBKE: Any other questions? Thank you for being here. [LB710]

TESSA STEVENS: Thank you. [LB710]

SENATOR EBKE: Next proponent. [LB710]

SENATOR HALLORAN: Chairman Ebke, can I make a point of clarification? [LB710]

SENATOR EBKE: Sure. [LB710]

SENATOR HALLORAN: I'm not really a wide receiver. I'm more of a football placeholder. [LB710]

SENATOR EBKE: Okay. (Laugh) [LB710]

J. PATRICK McARDLE: Chairman Ebke, members of the committee, my name is J. Patrick, P-a-t-r-i-c-k, McArdle, M-c-A-r-d-l-e. I'm a retired county court judge, having served 31 years in the Judicial District 1 and 7 when we were merged. That, for your information, if you don't know, encompasses pretty much all of southeast Nebraska. I've been listening to the questions so I'm going to digress just a short period of time. Number one, I do not represent any collection agency. I have never represented any collection agency. And in my comments I'm going to point out that there are a number of collection agencies over the years that were not very happy with me because of the fact that I didn't think that they had proved what they needed to prove so I

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

Judiciary Committee  
January 19, 2018

---

threw their case out or I didn't allow interest or I didn't allow attorney fees. I also do not represent the County Judges Association because I am retired. So with that, I will say I'm here to support part of LB710, not the whole part. I'm not going to address, unless there's a question that I might be able to answer, about the federal lawsuit. That's not a problem as far as I'm concerned. I'm not being sued in federal district court. I'm here because when I was asked to look at the bill I saw some changes and some clarifications that were needed for several reasons, some of which have been enumerated by Senator Baker and the other proponents. I'm supporting the bill because the issues that occurred over the years in my court regarding the calculation of interest and when a lawsuit may be filed. Currently, the plaintiff must provide proof of the date of presentment of the bill in a typical collection case. I have on numerous occasions refused to allow interest because the plaintiffs have been unable to provide conclusive proof as to the date from which the interest begins to run. Further, the plaintiff must wait 90 days after presentment of the claim before filing a lawsuit. However--and here's one of the problems that I've always had--"presentment" is not actually defined. Even though it's used in this statute, it's not defined as far as current law is concerned in the state of Nebraska. So the court is faced with having to decide what constitutes presentment in an individual case if it's contested and what date to use. The passage of LB710...with the passage of LB710 there will be no longer an issue to the court to determine what constitutes presentment and the date to use to calculate interest or file a lawsuit. The bill, as it's been proposed to be amended, establishes the date that the claim accrues. Typical, that would be a sale of goods or services rendered, although I would note that the bill, as it reads and continues to be interpreted, would include more than just a arm's-length transaction, for instance,... [LB710]

SENATOR EBKE: Keep going. [LB710]

J. PATRICK McARDLE: ...Senator, the sale of vegetables or fruit or something like that. It also includes such things as car accidents up to \$4,000 and numerous other things. And because of the fact that the interpretation now simply says "claim accrued," they just have to show that people have a claim, as far as that's concerned. I feel that that portion of the bill needs to be clarified and needs to be changed. As far as the federal lawsuit is concerned, as I say, I am not being paid by anybody to be here. I'm here because of the fact that over the years I've always felt that it was my duty as a judge that if I saw something that needed to be clarified or changed in the law that I would come and talk to senators about that. With that, thank you. If you have any questions, I'd be happy to answer them. [LB710]

SENATOR EBKE: Thank you, Judge McArdle. Senator Chambers. [LB710]

SENATOR CHAMBERS: Judge, I've read a number of Nebraska Supreme Court cases where they talk about what the Legislature could do or this is a problem for the Legislature, not the

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

Judiciary Committee  
January 19, 2018

---

court. When you were rendering your judgments, did you ever, in rendering your decision, discuss the issues that you're talking to us about today so that whichever side lost would know why they lost, in other words,... [LB710]

J. PATRICK McARDLE: Yes. [LB710]

SENATOR CHAMBERS: ...that the language of the law was not clear? [LB710]

J. PATRICK McARDLE: Yes. And in fact, there's two collection agencies sitting behind me that have lost cases in my court and I've explained to them why they lost those cases. [LB710]

SENATOR CHAMBERS: And how long have you been retired? [LB710]

J. PATRICK McARDLE: Three years. [LB710]

SENATOR CHAMBERS: So they've had at least three years and haven't chosen to do anything? That's a rhetorical question to you. But if this... [LB710]

J. PATRICK McARDLE: Apparently not. [LB710]

SENATOR CHAMBERS: ...if this bill is not passed, for whom does a problem exist, the debtor or the collection agencies? In other words, who is holding the short end of the stick or lifting the heavy end of the log, the collection agencies or the debtor? [LB710]

J. PATRICK McARDLE: Actually, it's not always a collection agency. You have to understand that when you're talking about a lawsuit of \$4,000 or less, there's a plaintiff for a defendant and the plaintiffs are not always collection agencies. And so the plaintiff may be a merchant that's representing themselves or has retained counsel. It may be somebody that has been injured, maybe assaulted, in a car accident, something like that. So there's actually two sides to each case and each side has to prove their theory of the case. [LB710]

SENATOR CHAMBERS: Well, the reason I mention it, my understanding was that the collection agencies are the ones who brought this bill so their interests are what are at stake. I've been here a long time and I'm not aware that defense lawyers or those who would represent people in personal injury cases had sought a change like this in this law. And maybe they have and it just got by me. This is my first conscious connection with this particular statute. So with all due respect to you, you're no longer a judge, you're an ordinary citizen, and for my part I

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

Judiciary Committee  
January 19, 2018

---

think you're entitled to say anything that you want to whether you're hired by somebody or not. But as a judge, you probably feel there might be certain lines you don't want to cross or something like that. [LB710]

J. PATRICK McARDLE: Those people that know me know that I speak my mind, sir. If you have a question that you'd like me to ask about, I'd be happy to answer it. [LB710]

SENATOR CHAMBERS: Well, I don't have any of you, but I had made a number of assertions and if you disagreed with any of them or the questioning that occurred, the answers that were elicited, as I stated, I'm trying to have us compile a record which the legislators can look at who are not at this hearing and get an idea of what this was all about. [LB710]

J. PATRICK McARDLE: You're asking me to comment on anything that you may have said during any of the questioning of any of the people there? [LB710]

SENATOR CHAMBERS: That you disagree, that you think was erroneous or misleading. And I'm not going to be offended. I'm asking for it. [LB710]

J. PATRICK McARDLE: Well,... [LB710]

SENATOR CHAMBERS: Just let me put it like this... [LB710]

J. PATRICK McARDLE: You commented, Senator, you commented, Senator, you brought an example, for instance, of the bad fruit and vegetables in the area that you are serving, and I don't doubt that that's true. [LB710]

SENATOR CHAMBERS: Oh, that was for the purpose (inaudible). [LB710]

J. PATRICK McARDLE: But I also feel that you've probably got a lot of honest merchants that are doing business with the people in your area. [LB710]

SENATOR CHAMBERS: We don't have any merchants. That's the problem. There might be one store serving the whole area. [LB710]

J. PATRICK McARDLE: Do you have a pharmacy? [LB710]

SENATOR CHAMBERS: Have what? [LB710]

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

Judiciary Committee  
January 19, 2018

---

J. PATRICK McARDLE: A pharmacy. [LB710]

SENATOR CHAMBERS: I'm really not sure that there is one. [LB710]

J. PATRICK McARDLE: Because if you have a pharmacy, I'm presuming that the pharmacy is billing people based on what most pharmacies do. And if you feel if it's overcharged, so be it. I will tell you that I have thrown cases out when I felt that there was...that justice required it because of such things, for instance, as overcharging or I can remember throwing a lumber company's case out because of the abysmal way of...that they did the work. And so I allowed a defense that it was not merchantable and under the Uniform Commercial Code they're required to provide merchantable services and goods, and I threw the case out. [LB710]

SENATOR CHAMBERS: Uh-huh. [LB710]

J. PATRICK McARDLE: I think that's what judges are supposed to do. The only problem is that, unfortunately, some people don't defend the cases and they let it go to judgment, but that then creates a problem as far as the judge is concerned because then you still got to make sure that you've got proof in front of you to verify the claim, the proof that's required in civil court. [LB710]

SENATOR CHAMBERS: Now there might be people opposing this bill and I will question them, but debtors don't come before us generally. They don't know about cases...I meant bills. They don't feel it's going to make any difference. Some will be far away and would cost them too much to try to make it to the Legislature. So I ask questions, as I stated, to get answers from people who should know. And then when people call me--because I get calls from people, not just my district--if they raise questions on those issues, I will have some information that ordinarily I would not have gotten had I not asked the questions. And that's why I wanted the two people who testified already to have as much leeway and opportunity to answer the questions I asked any way they chose. [LB710]

J. PATRICK McARDLE: Okay. And I would comment that the only thing that I want changed is the clarification so that it works better as far as the court system is concerned. As far as your comments were concerned, I will tell you frankly that, for instance, in small claims I've got a...I used to--I'm retired, of course--I had a slumlord that came in and if the other people didn't show up or even if they did show up, he'd blatantly lie to me about it. I can think of one case where he came in and he sued and he claimed that the kitchen was dirty and he had to have this cost for repairs and this and this and this. Well, the defendant, who was a Guatemala immigrant, came in and brought a friend of his from church who proceeded to testify that he had cleaned this, this, this, and this. And I threw the whole case out on him... [LB710]

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

Judiciary Committee  
January 19, 2018

---

SENATOR CHAMBERS: Uh-huh. [LB710]

J. PATRICK McARDLE: ...and ordered that slumlord to give the deposit back to him. He appealed. He lost his appeal and was finally required to give that money back to those people. That's the way I ran my court system. [LB710]

SENATOR CHAMBERS: And, see, that's one judge who dealt with one person who was savvy enough, or somebody intervened to assist. We have to formulate policy that's going to cover the waterfront and have an equal or an even playing field for whoever gets in the game. And the way I see things going with this bill is that the collectors want to change the rules while the game is still going on. What they've said is they want to change the law to stymie a federal court, and that's not what I think the law ought to be for--when I say the law, I meant legislative enactments--from what I've heard so far. [LB710]

J. PATRICK McARDLE: Which is the reason why I clarified to start off with was I'm not addressing the federal lawsuits because... [LB710]

SENATOR CHAMBERS: Uh-huh. [LB710]

J. PATRICK McARDLE: ...that's not my problem. [LB710]

SENATOR CHAMBERS: Right. [LB710]

J. PATRICK McARDLE: My problem is I can see the changes that are proposed for the way the system works as far as the court is concerned that I think are good changes that make it, the system, work better. [LB710]

SENATOR CHAMBERS: But there's (inaudible)... [LB710]

J. PATRICK McARDLE: And that's all I'm asking for. As far as if there's other parts of the bill that you feel are directed to the federal courts system, I'm not involved in that part. [LB710]

SENATOR CHAMBERS: Okay. Now since maybe I've carried you far afield, would you have...do you have a copy of the bill before you? [LB710]

J. PATRICK McARDLE: Yes. [LB710]

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

Judiciary Committee  
January 19, 2018

---

SENATOR CHAMBERS: Okay. Could you...are you able with the concerns or interests you have to mention a page and the lines that would be involved because (inaudible) write enough notes to accurately reflect what you had touched on? [LB710]

J. PATRICK McARDLE: Well, if you look at...basically starting with line 3. [LB710]

SENATOR CHAMBERS: Which page? [LB710]

J. PATRICK McARDLE: That would be page 2, line 3. [LB710]

SENATOR CHAMBERS: Okay. [LB710]

J. PATRICK McARDLE: That particular section you'll notice that quite a bit is deleted, but then as you go down it talks about "claim accrued," which is 19 and...line 19 and 20. By changing it to "claim" and showing that what...using the terms "claim accrued," that gives the court something to hang their hat on to make the determination as far as the factual situation on when do you start the 90 days, when do you start the interest running. [LB710]

SENATOR CHAMBERS: So if I'm to understand you, on page 2, what you're interested in would be the two words in line 20, "claim accrued." Well, "accrued" is the new language, but "accrued." So what about all this other? [LB710]

J. PATRICK McARDLE: Above it, do you mean? [LB710]

SENATOR CHAMBERS: Is the word "accrued" the only thing you have interest in, as far as the changes on page 2, and anything that would follow logically from that? [LB710]

J. PATRICK McARDLE: I think the way that it's written on page 2 is the way it should be, with the deletions. [LB710]

SENATOR CHAMBERS: So all of page 2, the way it's written now. That doesn't mean I agree with it because I haven't looked at the bill in terms of that, but that you think that page 2 is desirable as a change. [LB710]

J. PATRICK McARDLE: Yes. [LB710]

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

Judiciary Committee  
January 19, 2018

---

SENATOR CHAMBERS: And not that it would tilt the playing field one way or the other. [LB710]

J. PATRICK McARDLE: I don't believe it would. [LB710]

SENATOR CHAMBERS: Okay. That doesn't mean I agree, but since you are giving something specific, it's easier for me to examine that later when we go (inaudible). [LB710]

J. PATRICK McARDLE: Understood. [LB710]

SENATOR CHAMBERS: Thank you. That's all I would have. [LB710]

SENATOR EBKE: Are there any other questions of Judge McArdle? Thank you for being here today. [LB710]

J. PATRICK McARDLE: Thank you. [LB710]

SENATOR EBKE: Next proponent. [LB710]

STEVE LAWS: Good afternoon, Chairman Ebke and the rest of the committee. Thank you very much for your time this afternoon. My name is Steve Laws, S-t-e-v-e L-a-w-s, and I'm the owner of Accelerated Receivables Solutions, and I'm here from Scottsbluff, Nebraska, to be able to talk with you today about LB710. Just to provide a little background on our company: We've been open since 1932, and it's been a part of my family since 1976 and I'm a second generation owner. We currently have 35 employees that are dedicated to the late stage recovery of legitimate unpaid debts that are owed to the creditors. And those kind of creditors that we do work for include plumbers and electricians, day cares, healthcare providers, and numerous other types of organizations that we work for. Like most of the creditors with balances under \$4,000, our organization has utilized the 25-1801 statute for years when a lawsuit is required to recover those legitimate owed debts to our clients. For decades, we've been awarded these judgments and through the state courts and without any concern or uncertainty. Creditors have been using the 25-1801 have now been put in a situation where we're questioning whether or not this statute should be used and how due to the different litigation that's been going on related to this statute. Unfortunately, my organization has also been a party to this litigation. Just the amount of money and resources this last year that it has taken up has been tremendous. Because of this litigation, we as an organization are now in a position where we're no longer clear if we can be charging interest, what type of accounts we should charge interest on, and whether or not we're eligible to be receiving attorney's fees because I have an in-house counsel. The same uncertainty is plaguing

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

Judiciary Committee  
January 19, 2018

---

each of the other agencies in our state and all the creditors which we represent. I would ask, Senators, that you please approve LB710 so this very important clarification can be put to an end and the uncertainty across our great state can be clarified. [LB710]

SENATOR EBKE: Thank you. [LB710]

STEVE LAWS: Thank you. [LB710]

SENATOR EBKE: Questions? Senator Chambers. [LB710]

SENATOR CHAMBERS: What is the uncertainty? From what I've heard, it's pretty certain. But the ones speaking for the industry have said they lose in federal court. So there's no uncertainty about that. [LB710]

STEVE LAWS: Well, they have not lost in federal court as the prior parties have mentioned. There's just not any clarification as to what we should be doing. And, therefore, as a business owner to know what we can do to make sure we're taking care of our clients, the creditors, we're put in a position that it's uncertain what the right approach should be. [LB710]

SENATOR CHAMBERS: That's all I have. I don't want you to be waiting for me to ask another question. Okay. [LB710]

STEVE LAWS: Okay. [LB710]

SENATOR CHAMBERS: Okay. [LB710]

SENATOR EBKE: Other questions? Okay. Thanks for being here. [LB710]

STEVE LAWS: Thank you for having me. [LB710]

SENATOR EBKE: Next proponent. Any other proponents? First opponent. [LB710]

EMILY BOTTORF: Good afternoon. My name is Emily Bottorf, B-o-t-t-o-r-f. I'm an attorney at Baylor Evnen Law Firm. I practice in the area of civil defense work. I'm here as a board member of the Nebraska Defense Counsel Association, which represents the interests of civil defense attorneys and in-house counsel so I'm not a paid lobbyist. I will keep my comments brief because as this hearing has developed it seems my concern has mostly been couched as an unintended

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

Judiciary Committee  
January 19, 2018

---

consequence. But we are objecting to LB710 as drafted simply because the removal of the categories of claims that this applied to and that it's been understood to apply to for a number of years, there was sort of a laundry list of claims. And, you know, I understand the interests of why those have been removed. But now that they have been removed, it appears that this may apply to a run-of-the-mill motor vehicle accident, a personal injury matter, a slip and fall case. And in that context, if this law were to now apply to those situations, I don't think this statutory framework is appropriate. And so to the extent that that's an unintended consequence, I think that's something that can be worked out. But if this language is advanced, I think it very much encourages litigation and disincentivizes settlement of those smaller personal injury claims for the purposes of collecting attorney fees. And the discussion about the presentation of claims language versus the claims accrual language, I very much again am receptive to the concern of what Judge McArdle was talking about with the presentation of claims problem. But if we have a statute that applies attorney fees and interest to personal injury actions on the date of the accrual, we may end up in a situation where a motor vehicle accident happens and four years later a lawsuit is brought and that defendant had no idea that somebody may have been injured; all along, attorney fees and interest have been accruing. And so I think that there's just some issues with being able to protect yourself as an individual when you didn't even know that this existed. So I just think this framework is not going to work if it's going to apply to those types of situations, and that is the reason that we object. Any questions? [LB710]

SENATOR EBKE: Thank you for being here. [LB710]

EMILY BOTTORF: Thank you very much for your time. [LB710]

SENATOR EBKE: Next opponent. [LB710]

BILL REINBRECHT: Good afternoon. My name is Bill Reinbrecht, B-i-l-l R-e-i-n-b-r-e-c-h-t. I'm an attorney in Omaha at the firm of Car and Reinbrecht. And I may be one of the reasons why LB710 was filed. I'm one of the consumer lawyers. The history of the Nebraska 25-1801, if you go back and look at it, is to assist a small business in the hiring of an attorney to collect a relatively modest debt. And they set up those categories so that each one of those would be satisfied and the merchant would have an opportunity to hire an individual attorney to go out and collect that debt. That's fine. But what's happened in Nebraska is that debt collection agencies have taken over this statute, turned it into what they've accused us of at times, is calling it a cottage industry and they're collecting additional attorney's fees and interest on top of the original amount. There's a lot of different directions I could go here to talk about this. But in large part, most of these accounts that they're collecting on are medical bills. They're left over after deductibles. They're left over after copays or people that don't have any insurance at all. And it disproportionately affects and impacts those people that are what I would have to call the

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

Judiciary Committee  
January 19, 2018

---

working poor. They don't have the income to cover their insurance. They don't have the income to cover their medical bills. So what's happening? They're receiving and on top of that most of these lawsuits are going to default judgments or if they would happen to have the presence of mind to file a summary...or an answer in the case, there's a summary judgment proceeding and there's no real trial. Most of these things are just all handled on paper in the county court. So they get the judgment against them. The way it's written now, the first \$50 of the judgment, there's a \$10 attorney fee that's added onto that. That's 20 percent. Then you take the rest of it and there's a 10 percent add-on up to \$4,000 so that's 400 bucks that these people don't already have. And then you look at the prejudgment interest part of this and that's the 6 percent per annum from the date of accrual the way they're setting it up. Well, if they don't sue them for three years or they don't take any action to collect for three years or whatever the reason is, that goes on and that gets to be a gigantic amount. So already you've got people that are desperate and they can't cover these expenses. They would have paid if they could. So you've got that problem. The other thing is in my experience in prosecuting these federal cases that we've worked on, the provider-- doctor, lawyer, whatever it is--they're not getting the money. The money stops with the collection agency. It's their profit. Thank you. [LB710]

SENATOR EBKE: Thank you. Any questions? Okay. Thank you. [LB710]

BILL REINBRECHT: Thank you. [LB710]

SENATOR EBKE: Any other opponents? Anybody who would like to speak in a neutral position? Senator Baker, would you like to close? [LB710]

SENATOR BAKER: Oh, yeah. Committee members, a lot of the conversations that's brought this to a point, it's debtors versus the collection agencies. And I do have some sympathy for debtors who incurred medical bills, things they couldn't control. You know, I do know that collection agencies work with these people and try to set up a plan rather than just immediately go to a lawsuit. It's a matter...I have sympathy there. And there are other ways, too, that I wouldn't recommend. But 1959 my father had cancer. And after it became clear to him that further treatment and further surgeries are not going to matter, he elected to come home and so he didn't leave my mother with bills that he knew she couldn't pay. So that's my makeup. My parents taught me if you incur bills, you should pay them. So leave aside those medical bills. But, you know, your neighbor who operates a repair garage or day-care center, an auto dealer, hospital, it's well and good to say, well, yeah, you have the means to go out right now and file a suit and probably collect. But that's not their business. And if there's multiples of those, if your business is large, there could be multiple occasions every month where you'd have to do that. Why not allow the long-established practice of utilizing someone else, a third party, to represent

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

Judiciary Committee  
January 19, 2018

---

you for the collection? I would agree to work with those who have objections to some of the clauses and be willing to do that. So with that, I close. [LB710]

SENATOR EBKE: Thank you, Senator Baker. [LB710]

SENATOR CHAMBERS: Senator Baker, I would like to see you defend this bill on the floor. I will bet you \$4 to \$1, I bet you \$20 against \$5 that you don't prioritize this bill. [LB710]

SENATOR BAKER: I'll tell you what. I'm not going to be drawn in to making a decision based on that. If I decide to prioritize, it won't be anything about taking a couple bucks off you, Senator. [LB710]

SENATOR CHAMBERS: Well, then I'll bet you \$100 against \$20. [LB710]

SENATOR BAKER: We've already established that money is not an issue. [LB710]

SENATOR CHAMBERS: I would love us to have the discussion on this bill on the floor. [LB710]

SENATOR BAKER: Well... [LB710]

SENATOR CHAMBERS: And we have six hours at the first stage. I would love it. And we could go into all of the issues that were only touched on lightly here, and I could go into much greater depth than I would during a hearing. I'll tell you what, no bet. I will give you \$20 if you will prioritize it. I will give it to you, no bet, just give it to you. [LB710]

SENATOR BAKER: I respectfully decline. (Laughter) [LB710]

SENATOR CHAMBERS: Coward. Don't talk to me. [LB710]

SENATOR BAKER: But if we do spend six hours on it, that will prevent us from doing some harm that we might be doing otherwise if we weren't such engaged so. [LB710]

SENATOR EBKE: Are there any other questions for Senator Baker? Okay. This closes the hearing on LB710. I know our gubernatorial appointments are here. I'm going to take five minutes, let the staff get up and take a quick break and then we will return. [LB710]

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

Judiciary Committee  
January 19, 2018

---

BREAK

SENATOR EBKE: Okay, thank you. We are returning to our gubernatorial appointments, first for the Crime Victim's Reparations Committee: Mr. Hansen. You want to tell us your name, spell it, and a little bit about yourself and... [CONFIRMATION]

RANDALL HANSEN: Yes. My name is Randall Hansen, R-a-n-d-a-l-l H-a-n-s-e-n. I am a CPA in Omaha in public practice, have been for almost 40 years. This is the hearing for confirmation of my appointment to my third tour of duty on the Crime Victim's Reparations Committee, on which I currently serve as vice chairman. [CONFIRMATION]

SENATOR EBKE: Okay. Questions for Mr. Hansen? [CONFIRMATION]

RANDALL HANSEN: Yes. [CONFIRMATION]

SENATOR EBKE: Senator Chambers. [CONFIRMATION]

SENATOR CHAMBERS: Do you think you've done a tolerably competent job so far?  
[CONFIRMATION]

RANDALL HANSEN: I do. [CONFIRMATION]

SENATOR CHAMBERS: That's what I need to hear. Okay, that's all I have.  
[CONFIRMATION]

SENATOR EBKE: Any other questions for Mr. Hansen? Okay, thank you. [CONFIRMATION]

RANDALL HANSEN: Thank you. [CONFIRMATION]

SENATOR EBKE: That closes the hearing on Mr. Hansen. [CONFIRMATION]

SENATOR MORFELD: Thank you. It's Friday. [CONFIRMATION]

SENATOR HALLORAN: We all thank you. [CONFIRMATION]

SENATOR EBKE: (Laugh) Mr. Parker, Thomas Parker. [CONFIRMATION]

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

Judiciary Committee  
January 19, 2018

---

THOMAS PARKER: Madam Chair, members of the committee, good afternoon. My name is Thomas Parker, T-h-o-m-a-s P-a-r-k-e-r, and I have been nominated for appointment to the Nebraska Crime Victim's Reparations Committee, a subcommittee of the State Crime Commission. My background includes 37 years as a sworn law enforcement officer with the Nebraska State Patrol. I am retired from the State Patrol as a captain in 2009. During my service with the Patrol, I served in field operations as a corporal and sergeant, in the administration as a troop area lieutenant, an investigative lieutenant and captain. When I retired I was the troop commander of the 11 Panhandle counties. After my retirement from the State Patrol, I was employed by State Farm Insurance as an auto adjuster for approximately six years. I am currently fully retired; 2017, I was appointed to the Crime Commission by Governor Ricketts. I serve on the board of directors of our local senior citizens center. My education, I hold a bachelor of science degree. In addition, I have completed hours towards a master's degree in police administration. My specialized law enforcement training includes first-line supervision school, Nebraska management training. I'm a graduate of the Northwestern University School of Police Staff and Command. I look forward to being a member of the Crime Victim's Reparations Committee. Thirty-seven years of law enforcement, one sees the damage and the cost to victims of crime. It would be a very positive experience to be able to assist those victims through the Reparations Committee. Thank you very much, and I would be happy to answer any questions you may have. [CONFIRMATION]

SENATOR EBKE: Senator Chambers. [CONFIRMATION]

SENATOR CHAMBERS: Mr. Parker, I listen to people. You said you'd be happy to answer any question that we may ask. Do you stick by that? [CONFIRMATION]

THOMAS PARKER: I stick by that. [CONFIRMATION]

SENATOR CHAMBERS: Mr. Parker, where does the term "Parker House rolls" come from, if you know? [CONFIRMATION]

THOMAS PARKER: Sir, I... [CONFIRMATION]

SENATOR CHAMBERS: Have you ever heard of Parker House rolls? [CONFIRMATION]

THOMAS PARKER: I have, sir. [CONFIRMATION]

SENATOR CHAMBERS: Okay, do you know where that came from? [CONFIRMATION]

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

Judiciary Committee  
January 19, 2018

---

THOMAS PARKER: I do. [CONFIRMATION]

SENATOR CHAMBERS: Okay, will you tell us? [CONFIRMATION]

THOMAS PARKER: In fact, I have stayed in the hotel that invented Parker House rolls in Boston on the Boston Common. [CONFIRMATION]

SENATOR CHAMBERS: Okay, smart aleck. (Laughter) I thought I had him. [CONFIRMATION]

THOMAS PARKER: I feel pretty good. I don't think... [CONFIRMATION]

SENATOR EBKE: That's pretty good. [CONFIRMATION]

THOMAS PARKER: ...too many people get one up on Senator Chambers (inaudible). [CONFIRMATION]

SENATOR MORFELD: This is like a...I think this is a...I don't know. It's a moment in history. [CONFIRMATION]

SENATOR EBKE: It is. We could have...I hope we got that on...recorded. Senator Baker. [CONFIRMATION]

SENATOR BAKER: Yes. Mr. Parker, at any point during your law enforcement career were you a colonel? [CONFIRMATION]

THOMAS PARKER: I'm sorry, sir. I didn't understand your question. [CONFIRMATION]

SENATOR BAKER: At any point in your law enforcement career were you a colonel? [CONFIRMATION]

THOMAS PARKER: No. I really wish I had and I really wish my father had been so that I would have had a little bit of a trickle down. Thank you. [CONFIRMATION]

SENATOR BAKER: Thank you. [CONFIRMATION]

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

Judiciary Committee  
January 19, 2018

---

SENATOR EBKE: Senator Halloran. [CONFIRMATION]

SENATOR HALLORAN: So you have some tenure with State Farm? [CONFIRMATION]

THOMAS PARKER: Yes, six years. [CONFIRMATION]

SENATOR HALLORAN: So you're like a good neighbor? [CONFIRMATION]

THOMAS PARKER: I'm sorry, sir. I can't hear you. [CONFIRMATION]

SENATOR HALLORAN: So you're like a good neighbor? [CONFIRMATION]

THOMAS PARKER: I am like a good neighbor. [CONFIRMATION]

SENATOR HALLORAN: Okay. Thank you. [CONFIRMATION]

SENATOR EBKE: (Laugh) Any other questions? Thank you, Mr. Parker. This concludes our gubernatorial appointments hearings and I am going to turn the chair over to Senator Morfeld. [CONFIRMATION]

SENATOR MORFELD: Okay. We'll begin the hearing on LB847, Senator Ebke introducing. [LB847]

SENATOR EBKE: Thank you, Senator Morfeld. Members of the committee, for the record, my name is Laura Ebke, L-a-u-r-a E-b-k-e. I represent District 32. And the good news is there appear not to be many people left in the room. LB847 responds to the Nebraska Supreme Court's decision In re Estate of Psota which interpreted Section 30-2316 related to a surviving spouse's waiver of rights to the property or estate of a decedent spouse. In its decision, the Supreme Court focused on the language you see added in the bill on page 2, line 10, the absence of the word "or" between subsection (b)(1) and subsection (b)(2). The court held that because "or," the word "or," was omitted, a surviving spouse must prove the facts in both (b)(1) and (b)(2); that is, the surviving spouse must prove that his or her waiver was both not voluntarily executed and unconscionable at the time of execution. The bill responds to the Opinion and adds "or" between subsection (b)(1) and (b)(2) so that a surviving spouse only has to prove that his or her waiver was not voluntary or was unconscionable. The Supreme Court's decision was focused on similar statutory language in a separate statutory section, Section 42-1006, related to premarital agreements generally. I understand that Nebraska State Bar Association researched the

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

Judiciary Committee  
January 19, 2018

---

legislative history of these provisions, which they can discuss in detail, but the bill is meant to align the two sections and respond to the Supreme Court's decision. This is one of two bills like this, which we will deal with the second one shortly, where the omission of the word "or" could have significant consequences. This one arose from the Supreme Court's Opinion and that's what we're addressing here. We are proposing it now to clarify the requirements under the law. I'm happy to answer any questions you have, but I do know that there are some others present who intend to testify and may have more readily available answers to your questions. [LB847]

SENATOR MORFELD: Thank you, Senator Ebke. Any questions for Senator Ebke? Okay, seeing none, we'll move to proponents. Welcome, Mr. Windle. You have 15 seconds. (Laughter) [LB847]

SENATOR CHAMBERS: Time's up. [LB847]

BUB WINDLE: (Exhibit 1) No questions if I don't say anything, right? Senator Morfeld, members of the committee, my name is Bub Windle, B-u-b W-i-n-d-l-e, here on behalf of the Nebraska State Bar Association in support of LB847. Thank you to Senator Ebke for introducing the bill and for opening on it, describing the case law that led to it. As she mentioned, I just hope to get a little more into the legal and statutory history that led to this bill. As Senator Ebke said, this is...the bill responds to In re Estate of Psota, a case from the Supreme Court. They basically looked at the absence of the word "or," compared the language in Section 30-2316, which we're amending, to almost identical language in 42-1006 related to the enforceability of premarital agreements generally. It does use the word "or." So that's the first handout that I just circulated. It has the two statutory sections and highlights what is basically the identical language. Both sections were passed as part of the same bill, LB202 in 1994, the Uniform Premarital Agreement Act. And the court basically said, hey, the Legislature used "or" in one place; if they wanted to have "or" in Section 30-2316, they could have done it. This got some attorneys interested and they thought this was...maybe seemed more like an inadvertent omission than it did something intentional, and so we actually did pull the legislative history. We thought it might be silent on it but, in fact, it actually does suggest that this was just a drafting error. And so the second handout I had was LB202 from 1994 and it shows the two sections. Section 6, I think, is what has become 42-1006 and Section 12 on page 2 incorporated similar requirements into Section 30-2316. But what we found is actually Senator Landis, who introduced the bill, stated explicitly that these requirements were meant to be "the same" and that the changes to Section 30-2316 are meant to make sure that the probate code is consistent with the requirements of the uniform act. So it does appear that the Supreme Court decision was actually in conflict with this legislative history. This wasn't before them. We looked at the briefs. This actually wasn't an issue that was submitted to them, so we don't mean to be disagreeing with the Supreme Court; we're just kind of adding to the record and correcting what appears to have been an inadvertent omission in 1994. With that, I hope my 15 seconds are up and I'll take any questions. [LB847]

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

Judiciary Committee  
January 19, 2018

---

SENATOR MORFELD: They are definitely up. Thank you, Mr. Windle. Any questions? Okay. [LB847]

BUB WINDLE: Thank you. [LB847]

SENATOR MORFELD: Any other proponent testimony? Any opponent testimony? Anybody in the neutral capacity? Okay, seeing none, Senator Ebke...she waives and we are moving on to LB848. Senator Ebke, would you like to open? [LB847]

SENATOR EBKE: Thank you, Senator Morfeld. Members of the committee, for the record, my name is Laura Ebke; that's L-a-u-r-a E-b-k-e. I represent Legislative District 32. LB848 makes a minor technical adjustment to Nebraska Revised Statute 28-1206. The bill inserts the word "or" between subsections (1)(a)(ii) and (1)(a)(iii) and corrects a drafting error from changes to the statute that were approved last year. That was in LB178, which had been rolled into LB289, which was our Judiciary Committee priority bill. The bill was brought to the committee by the Revisor's Office this summer after they realized that the word "or" had been unintentionally eliminated in last year's bill when reorganizing and cleaning up the section. This bill simply seeks to fix the error from last year and ensure the intent of the statute is effective moving forward. And so with that... [LB848]

SENATOR MORFELD: Thank you, Senator Ebke. Questions? Senator Baker. [LB848]

SENATOR BAKER: Yes. Senator Ebke, looking on page 2, line 8,... [LB848]

SENATOR EBKE: I don't have a copy in front of me, but go ahead and read it to me. [LB848]

SENATOR BAKER: All right. Are you sure you have the "or" in the right spot? And reading from line 5, it says, "Possesses a firearm, a knife, or brass or iron knuckles and he or she: (i) Has previously been convicted of a felony; (ii) Is a fugitive from justice; or...Is the subject of a currently and validly issued domestic violence protection order," da-da-da. Why is the "or" ...I mean just...you've probably thought of this, but why is the "or" not after (i), or another "or"? [LB848]

SENATOR EBKE: Well, I don't know. The Drafters brought us that. Maybe they...what do you think? [LB848]

SENATOR MORFELD: Legal Counsel Tim Hruza? [LB848]

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

Judiciary Committee  
January 19, 2018

---

SENATOR EBKE: Yes, I do. (Laugh) Yeah, come up and talk about this, Tim. The legal counsel, Tim Hruza, is going to explain because he has talked to the Drafters. [LB848]

SENATOR MORFELD: Mr. Hruza. [LB848]

TIM HRUZA: Members of the committee, Tim Hruza, for the record, T-i-m H-r-u-z-a, legal counsel to the Judiciary Committee. This bill was brought to us from the Revisor's Office over the summer. 28-1206 is a provision of statute that deals with possession of a firearm by a prohibited person. The statute was opened up in LB178 that was proposed by Senator Bolz last year. Revisor's has been taking...or Bill Drafting has been taking the opportunity to reorganize statutes as they get an opportunity to. What they did in this particular statute, if you looked at the original provision before LB178 was passed, it was all one long sentence, so it was commas: "Has previously been convicted of a felony," comma, "Is a fugitive from justice," comma, or "Is the subject of a current and validly issued domestic violence protection order." They broke that out into subparts so that you could look at it differently. That "or" was deleted and then the "or" was added after (iii) because there's two ways that you can demonstrate this if you're a prosecutor. You can demonstrate that they've committed the offense under Section (a) if you had provided (1)(i), (ii), or (iii) under sub (a); or you could demonstrate that they had committed the offense under subsection (b). The original language of the bill would have allowed you to demonstrate a violation of the law under (a)(i), (a)(ii), or (a)(iii). Okay? When that "or" was omitted, it may have had a substantive impact on the way the law is provided when somebody commits this offense. Does that make sense? [LB848]

SENATOR BAKER: Well, yes, it would make more sense if it were not broken down into part (i), (ii), and (iii), and it was read continuously. It would probably be...make more sense to me. [LB848]

TIM HRUZA: I think... [LB848]

SENATOR BAKER: When you've broke it down to three separate parts, it looks like one is a given and then the other two or three in addition to number (i). [LB848]

TIM HRUZA: Sure. I think...and maybe it's just kind of the way with the semicolons it kind of makes it a little bit awkward. But I think, again, the intent of it is to break it down for the understanding but... [LB848]

SENATOR BAKER: I'm not going to nitpick it. [LB848]

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

Judiciary Committee  
January 19, 2018

---

TIM HRUZA: Right. I just want to make sure that the committee understands we're not trying to trick anybody with it or... [LB848]

SENATOR BAKER: I know you're not. I'm just... [LB848]

TIM HRUZA: Yeah. [LB848]

SENATOR BAKER: I'm just nitpicking. [LB848]

TIM HRUZA: Sure. [LB848]

SENATOR MORFELD: Any other questions for Mr. Hruza? [LB848]

TIM HRUZA: All right. [LB848]

SENATOR MORFELD: Thank you. [LB848]

TIM HRUZA: Thank you. [LB848]

SENATOR MORFELD: Senator Ebke, are you finished as well? [LB848]

SENATOR EBKE: (Inaudible). [LB848]

SENATOR MORFELD: Okay. Proponents? Any proponent testimony? Opponent testimony, any opponent testimony? Neutral? No neutral. Senator Ebke, would you like to close? Senator Ebke waives closing. This ends the hearing on LB848 and the hearings for the rest of the week. Thank you. [LB848]