

March 29, 1979

LB 510

bill as introduced here, Senator Hoagland is excused today and he asked me if I would cover the bill quickly. What the bill does simply is to take care of a problem the litigants sometimes have when they are up against a statute of limitations. As you well know our statutes prescribe a whole variety of statutes of limitations which basically set the time, the outside time limit for the commencement of legal actions. For example, in the libel and slander area and the assault and battery area, if one is going to commence an action one has to do it within one year after the cause of action arose. The general statute in this state is four years for a lot of other kinds of actions. Oftentimes what happens is that the litigant gives considerable thought as to whether or not he or she wants to file an action against the defendant and as a result of that thought a considerable amount of time elapses. He or she then approaches an attorney and the attorney has to research the issue and do some factual investigations and by that time the attorney is right up against the statutory time line for the filing of the action. Now our present statutes state that an action itself is not commenced until after the petition is filed and services obtained upon the defendant. So what can easily happen is that the attorney can file the petition in the waning days of the time period but service itself is not affected until after the time period has expired and for that reason a litigant with a proper claim loses that claim simply because the statute of limitations has passed. So what Senator Hoagland's bill does, what LB 510 does, is that it says, look, an action is deemed to be commenced when the petition is filed, so long as service is ultimately effected within six months after the petition is filed. That is the first part of his bill. The second part of his bill says this. Sometimes you file a case, sometimes a litigant files a lawsuit within the time period and then the court ultimately determines that the lawsuit as structured is not properly structured and the court dismisses the lawsuit. That doesn't mean a cause of action is a bad cause of action. It only meant that the lawsuit as it was framed by the petition was not adequately or well framed. What this bill does is it allows that litigant to reframe his lawsuit to come up with a second petition, to file it again and still be within the statutory statute of limitations. So he is not out of time so to speak. That basically is reflective of the federal rules or practice which continues to preserve a litigant's right while the attorney is attempting to perfect the pleadings in the case. Now there have been some instances in the legal practice when a matter is filed and then the