

May 21, 1979

LB 363A, 597

CLERK: 31 ayes, 0 nays, Mr. President, on the motion to suspend the rules.

PRESIDENT: All right, the motion carries. The rules are suspended. We'll take up then the motion of Senator Nichol.

CLERK: Mr. President, Senator Nichol moves to amend LB 363A.

PRESIDENT: Senator Nichol.

SENATOR NICHOL: Mr. Chairman and members of the Legislature, for those who are interested if I could have your attention just a moment, I'll explain why this is necessary and why we should be doing it at this time. Immediate attention needs to be given to the Nebraska statutes governing prejudgment attachment. Some of you are more acquainted with garnishments. The prejudgment attachment is a civil remedy for a creditor to obtain property of a debtor before the conclusion of a law suit when the debtor has or is about to move or dispose of property with intent to deprive the creditor. The federal district court from the district of Nebraska has held that our prejudgment attachment statutes are unconstitutional in several aspects. The Supreme Court of Nebraska has a special committee on practice and procedure which was given the task late last year to review the prejudgment attachment statutes and to recommend to the court modifications to make the statutes constitutional. They have only very recently completed their work and the product is LB 597 which is the bill we're putting into 363A. LB 597 is needed at the present time for several reasons. First, there is considerable confusion among judges and lawyers as to the proper constitutional procedure to obtain a prejudgment attachment. They cannot rely on the statute because they are unconstitutional in part. What they must do is piece procedural safeguards outlined in Judge Denney's opinion into the general procedure outlined in the statute. This is cumbersome and essentially judicial patchwork of an area that the Legislature should correct. Second, the rights of the debtors are probably in some instance being deprived. Where the defendant is not represented by an attorney, or where the court is not very familiar with Judge Denney's opinion constitutionally guaranteed rights may not be protected. Third, the rights of the creditors are in some instance being deprived. There has been uncertainty on the proper way to obtain an attachment, for the creditors