

January 12, 1982

LB 192

an individual in the government will not be held liable. There are several limitations to this legislation that I think should be addressed at this time. This bill does not apply to criminal actions. It also does not apply to actions initiated against the state. An award is not mandatory. An award is made only when the state cannot show that its position was substantially justified, that is with a reasonable basis in fact of law. LB 192 also limits this legislation to small businesses. Large businesses with the resources to challenge the government are not eligible. A small business is defined as a business with 50 employees or fewer, and gross receipts up to a million dollars or less. LB 192 is legislation which is needed in Nebraska at this time. Currently if a state agency threatens an individual or a small business with a law suit, if the business or individual does not comply with the order, the individual or business often capitulates and agrees to the order. Even if they know they are right they will not pursue the action because it is economically unfeasible for them to pursue that action. Even if they win, their costs would be too great. If a small business is forced to do something by the state with all its resources and the business agrees to go along simply because they do not have the monetary resource to fight the order, even though they feel strongly that they are right, then justice is not being served. LB 192 would provide the small business and individuals with that access to justice. A question some Senators had deals with the current status of providing legal fees if a state agency has wrongly sued an individual or business. In other words, this legislation is necessary. There is a need for this legislation. LB 192 modifies the common law American rule which says attorney fees will not be shifted unless the specific statute provides for shifting. I move for the advancement of LB 192 to E & R Initial.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: Mr. President and colleagues, I have a question of Senator Remmers.

SENATOR REMMERS: Yes.

SENATOR DWORAK: Senator Remmers, the question I have is if the small business bringing suit, winning doesn't pay for their court costs and attorney's fees, who is going to pay for it? Where is the money going to come from? The attorney isn't going to work for nothing.

SENATOR REMMERS: It would come from the agency's fees