

January 9, 1989

LB 112, 202-240
LR 3

LBs 202-240 for the first time by title. See pages 100-108 of the Legislative Journal.)

Mr. President, I have a notice of hearing by Senator Rod Johnson who is Chair of the Agriculture Committee for Tuesday, January 17.

Mr. President, Senator Hannibal would like to announce that Senator Conway has been selected as Vice-Chair of the Intergovernmental Cooperation Committee.

Mr. President, a new resolution, LR 3. It is offered by Senator Baack and a number of the members. (Read brief explanation. See pages 108-109 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, I have a request from Senator Smith to withdraw LB 112. That will be laid over. I believe that is all that I have, Mr. President.

PRESIDENT: Senator Lynch, are you ready to go back to work now? We will return back to adopting of permanent rules. Senator Lynch.

SENATOR LYNCH: Mr. President and members, I have one more proposed committee amendment, simple little amendment. It has to do with cloture. This change would adopt a cloture rule that would become effective after 12 hours debate at each stage of debate on any appropriation bill, and after 8 hours at each stage of debate on all other bills. To briefly explain it, and then Senator Moore will take it from there, let me give you a scenario. Some of you may be familiar with 428, the motorcycle helmet bill. It was my bill. An amendment, say, was offered under this rule by Senator Moore to the bill. As you know, sometimes amendments can take and need more time for discussion and debate than the bill, itself. After 8 hours of debate on Select File, I would move for cloture, or if that bill happened to be a committee bill, the chairman of the committee would move for cloture. The presiding officer then, under this proposal, would immediately recognize the motion and orders debate to cease on Moore's amendment. The vote on the Moore amendment would be taken without further debate. After that, a vote on the cloture motion without debate, 33 votes would be needed for that motion on cloture would be successful. If the cloture motion were successful, a vote on the advancement of the bill,

requires that all vaccinated domestic animals which bite people, or cause a raise in the skin, be confined for a period of 10 days. This bill then will exempt those dogs that are employed by police or military agencies from confinement requirements of these state rabies laws if this dog bites someone during the course of its activity, training or its duties. Need for the bill was brought to us by local police authorities. They pointed out that dogs will sometimes bite a trainer through the sleeves, the protective sleeves that the trainers are using at the time of the training and/or even may bite the perpetrator during some of its duties. Technically, the dog must then immediately be confined for 10 days, and this really isn't necessary. These animals are all rabies vaccinated and they are all under supervision at all times anyway. So what we are asking is that we eliminate that part of the rabies law to allow these police dogs to continue in their normal course of duty. It is important to note that this exemption only applies to bites related to duties or training. An agency may still confine the dog, if they deem it necessary. Also there is an examination requirement if the dog dies within 15 days of the bite. I would urge your passing this bill along to Select File. Thank you.

SPEAKER BARRETT: Thank you, Senator Dierks. Any discussion on the bill offered by Senator Dierks? Any final comment, Senator Dierks? There are no lights on.

SENATOR DIERKS: Just pass.

SPEAKER BARRETT: Thank you. We'll proceed then to the question which is the advancement of LB 51 to E & R. Those in favor of that motion vote aye, opposed nay. Record, please.

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB 51.

SPEAKER BARRETT: LB 51 is advanced. That concludes General File discussion this morning. Any announcements, messages on the President's desk?

CLERK: Mr. President, yes, sir, there are. Your Committee on Judiciary, whose Chair is Senator Chizek, to whom was referred LB 229, instructs me to report the same back to the Legislature with the recommendation it be placed on General File; LB 230 to General File; LB 232 to General File; LB 233, General File with

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LB 230, 232

SPEAKER BARRETT: The gentleman from the 31st District, Senator Chizek.

SENATOR CHIZEK: Mr. Speaker, colleagues, LB 230 concerns the procedure for summons and answering in forcible entry and detainer actions. Once again, this bill was introduced at the request of the Court Administrator's Office for the county judges. LB 230 makes the same procedure for issuance of summons and answers the same in forcible entry and detainer actions as it is in landlord-tenant actions. Both type of actions involve the same general topic. Testimony indicated there was no rational basis for a distinction between the two and I would urge your advancement of the bill.

SPEAKER BARRETT: Thank you. Discussion on the advancement of the bill. Anything further, Senator Chizek? Shall LB 230 be advanced to E & R? Those in favor vote aye, opposed nay. Record, please.

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of LB 230.

SPEAKER BARRETT: The bill is advanced. LB 232.

CLERK: LB 232 by Senator Chizek. (Read title.) The bill was introduced on January 9, referred to Judiciary, advanced to General File. I have no amendments to the bill, Mr. President.

SPEAKER BARRETT: Senator Chizek, please.

SENATOR CHIZEK: Mr. Speaker and colleagues, LB 232 is a bill which concerns procedure of summons and answers in civil actions in county court. Once again, this was a bill that was brought to the committee by the Court Administrator's Office. Current law in county court requires a summons to be issued in 10 days, with answer date 10 days later. In district court, however, a summons must be served within 20 days, with the answer day 30 days following that. LB 232 makes the procedure uniform in both county and district courts by requiring county court to follow the district court procedure. With that, I would urge your advancement.

SPEAKER BARRETT: Discussion? Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, members, I rise in opposition to this bill. I will just restate my reasons from the committee hearing. I believe the county court...the purpose of the county court is to handle some of the smaller matters that can be moved along a little more quickly...excuse me, a little more quickly. What this bill would do is to extend that time. Right now, in county court an answer date will come 20 days after the filing of the case. In district court the answer date comes 30 days after service of process. What effectively this bill does is to extend the answer date in county court from 20 days...it can extend it out as much as three weeks. County court, of course, does have a jurisdictional limit of \$10,000 and does not handle equity cases. I don't believe the real complex cases, that require the extreme amount of time necessary to formulate an answer is necessary in county court. For that reason, I would urge that the bill not be advanced.

SPEAKER BARRETT: Thank you, sir. Senator Kristensen, further discussion.

SENATOR KRISTENSEN: Thank you, Mr. President, members of the body, I appreciate Senator Lindsay's comments about wanting county court to move along quicker. What this really does is it makes two courts...makes the rules the same and so that you don't have two different sets of rules in two different sets of courts. And the small amount of time that this would extend, 10 days, is just minimal. It's very important, I think, that we have uniform rules among our courts so that people, when they come in, understand what the rules are and there aren't mistakes between two different courts. And I would urge that this bill be advanced.

SPEAKER BARRETT: Thank you. Senator Ashford.

SENATOR ASHFORD: Thank you, Mr. Speaker, and members, I was listening to the arguments on this bill and especially the argument given by John Lindsay in opposition to the bill and I concur with him. I think that we have to remember that the district court and the county courts are two separate entities. The county court has its own rules, the district court has its own rules, and I think that, as John has stated, the purpose of the county court is to give as expeditious as possible a hearing to a case which has a lesser dollar amount involved. And I think it really is unnecessary, at least in my experience, to extend that period beyond the 20 days. The county court does,

in my opinion, normally give an expeditious hearing because of the fact that some of the rules are a little different than the district court where we have more weighty matters discussed and determined. So I think that Senator Lindsay has an excellent point and I would concur with his logic on it. Thank you.

SPEAKER BARRETT: Thank you. Senator McFarland.

SENATOR MCFARLAND: Thank you, Mr. President. I guess the lawyers are speaking today so I will stand up and speak as well. I think the point of the bill is to get some kind of uniformity within the various courts and it simplifies the system. I think it makes it more uniform and understandable and, for that reason, I support it. As far as the contention that it might delay the trial process, I don't think any delay would be significant at all. It requires that the answer day is set back another 10 days to conform with the district court procedures. You might have that slight delay in those 10 days but, as far as setting the case for trial, the amount of time you have to wait for trial, I doubt if that would have any insignificant effect whatsoever. This bill was brought to us by the Court Administrator and it was...as I recall, Supreme Court Judge Fahrnbruch spoke in favor of it. I think one of the things Judge Fahrnbruch mentioned was in the present procedure you could have someone who had not responded to a petition, had not filed an answer but yet because of the time provisions you might not even know whether the petition had been served on that particular person or defendant. So, in effect, you come in for a default judgment because the defendant hasn't answered and yet the judge is confronted with the situation and says, well, we don't even know whether he has been served...the defendant has been served properly because we haven't had time for them to return the certified receipt to show that service had been accomplished. And that puts a...a kind of a...it just shows the problems and the inconsistencies that having a shorter answering period for county court makes as far as the comparison with the district court. So, in the interest of uniformity and consistency, I would urge that you support this bill. It would be much simpler for lawyers and lawyers are sometimes confused enough as they are. So I...Senator Korshoj agrees with me. So anything that will help lawyers, I would appreciate and I would urge you to support and pass this bill. Thank you.

SPEAKER BARRETT: Thank you. Senator Kristensen, followed by Senator Ashford.

SENATOR KRISTENSEN: Thank you, Mr. President. I'm not sure that that's what this bill is designed to do, Senator McFarland, at all. From a nonlegal point of view, what's important is that we've got a series of...well, the rule is one way for one thing and it's a rule...is another way for another thing, what this really does is make one set of rules for all the courts in the state. It also lengthens out this period of time so that people don't fall into that wary trap of, well, you're in the wrong court so it's a shorter period of time so you lose. If I want to lengthen out a trial, I've got a lot of other ways that I'm going to do that. And if I really want to drag my feet, I'm going to do it in a lot better way than just 10 days on an answer. And I think that this is a good bill and one that is something you explain to people is that it provides uniformity and it's just a lot simpler, smoother procedure. Senator Hannibal agrees that it is not...he was laughing that it's a lawyer's bill, it's not. So, thank you.

SPEAKER BARRETT: Senator Ashford.

SENATOR ASHFORD: Yes, if I might ask Senator Lindsay a question.

SPEAKER BARRETT: Senator Lindsay, would you respond?

SENATOR LINDSAY: Sure.

SENATOR ASHFORD: Would you explain again to the body your explanation because I think this is critical to the bill. Would you explain your explanation about the three weeks, how that the time limit can be extended three weeks? Because I think when you look to the date of service of summons rather than the date of the filing of the petition, you're not talking about 10 days but a much longer period. Isn't that correct?

SENATOR LINDSAY: Right. We're talking about...the point that Senator Ashford was driving at is that the answer date in district court is 30 days after service, after the date that the defendant is served with summons. In county court, the answer date is 20 days after the issuance of the summons. In some cases, it may be 10 days before the defendant is served so that will add an additional 10 days onto the answer time and extend it out, like I say, as much as three weeks, the additional 10 days for the answer date, plus that 10-day period

for...during the time that the defendant may be getting served.

SENATOR ASHFORD: Thank you. I...this...Mr. Speaker and members, this really is an unnecessary elongation of this process. The county court proceedings are for a minimal amount of money relative to the district court. I have heard no objections, at least in my court, about...and my district about this, or the county court, about this problem. Well, my brother is a judge, he never told me there was a problem with it. This is...it's an unnecessary elongation of the process. I really think that with the matters that are being dealt with in county court it's best to have these things expedited and the process that we have now is...does support that. So I would oppose the bill. Thank you.

SPEAKER BARRETT: Thank you. Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I think...and members, I think I have to agree first with Senator McFarland and his statement regarding confusion of attorneys, but some of the other statements I am going to have to disagree. First of all, I think that...I don't think it's a matter of elongating the trial process. I think what happens here is because the trial process, as Senator Kristensen pointed out, sure, it can be elongated through some discovery mechanisms. What this will do though is expend the time on a lot of the default judgments. At least in Douglas County, the bulk of...I would guess, the bulk of the county court cases in Douglas County are decided by default judgments. Quite a bit of Douglas County's work is in collections and it will result in these cases just being on the books, active cases, for quite a bit longer. I think, regarding Senator McFarland's statement, one of the reasons given is that a green receipt card...and I will go into that, when service of process laws changed several years ago it allowed service by certified mail, and what happens...and I've run into it in my practice, is that the green card doesn't arrive...the green receipt card from the certified mail doesn't arrive back before the answer date. And if that doesn't occur then, no, you can't have a default judgment entered. But I don't believe that this change is going to correct that. If the green card is not going to be returned very quickly, chances are it's not going to be returned anyway and the certified mail is going to come back unclaimed. At least in my experience, that is what has happened. If the green card doesn't come back within the first few days, nine out of 10 times the whole envelope is going to

come back without ever having service. So I don't think that's going to correct the problem that it's attempting to correct. And I guess, lastly, I would point out that I don't believe uniformity is always the best reason to change something. As Senator Ashford pointed out, the differences are intentional, the differences between county court and district court, because they have two different purposes. I don't believe making the two courts uniform, and this will certainly not make the two courts uniform, the discover rules still differ between the two courts as do some of the other procedures, and I don't believe uniformity is always the best choice. And, again, I would urge that the bill not be advanced.

SPEAKER BARRETT: Thank you. Senator McFarland, further discussion.

SENATOR MCFARLAND: Thank you, Mr. President. Two points. If the idea is that you're going to get a default judgment in 20 days, I don't think that it makes very much difference of getting a default judgment in 30 days. If a defendant has not responded within the 20-day period, it's unlikely that he or she or it will respond within the 30-day period as well. So I don't think waiting an additional 10 days is a significant burden on a plaintiff bringing a cause of action in county court. The other point is that if, in fact, you're talking about expediting the legal procedures, I mean, it would make just as much sense to take the district court and make their answer period only 20 days instead of 30 days as it is. I think if we're going to have some consistency, it makes very good sense to have it consistent as far as the answer date period between the district court and the county court and, for that reason, I think it is a minor change. I don't think it would have any significant impact at all. We're really talking about matters of philosophy here rather than any matter of any practical effect. I think it's a fairly simple bill. It's more of a housekeeping bill and would be a good bill to pass. And as far as whether it's a lawyer's bill or not, I know some members get all concerned about that thinking, oh, this is a lawyer's bill and, therefore, they vote against it or for it or whatever. It's really neither one. As you can see, there are a number of lawyers on this floor, some of them are urging its passage, others are raising questions about it. I don't think it's...whether it's a lawyer's bill or not, I don't think you can categorize it one way or the other. It is simply a matter of whether you want to have a uniform provision in both...that would apply both to the

district court and the county court or whether you want to have a separate type of system in the county court as opposed to the district court. In my view, I think uniformity, consistency is the better way to go and I would ask that you approve the bill for that reason. Thanks.

SPEAKER BARRETT: Thank you. There are no other lights on, Senator Chizek, would you care to make a closing statement?

SENATOR CHIZEK: Yes, Mr. Speaker, colleagues, I should have pointed out earlier that at the hearing there were no judges, county judges appear in opposition. The only judges that appeared, appeared in favor of the legislation. There were no attorneys who practice either before the county court primarily or not appear as witnesses. I think that the cause for uniformity and the potential of the 10-day delay, I think that the uniformity more than compensates for that and I would ask your support for the advancement of the bill.

SPEAKER BARRETT: Thank you. The question is the advancement of LB 232 to E & R. Those in favor vote aye, opposed nay. Voting on the advancement of the bill. Have you all voted? Have you all voted?

SENATOR CHIZEK: As much as I...

SPEAKER BARRETT: Senator Chizek.

SENATOR CHIZEK: ...I hate to, Mr. Speaker, I would ask for a call and accept call ins.

SPEAKER BARRETT: Thank you. The board is cleared. Members will vote on placing themselves under call. Those in favor of the house going under call please vote aye, opposed nay. Record.

CLERK: 17 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: Motion prevails, the house is under call. Members, please return to your seats. Those outside the Legislative Chambers, please report. Record your presence, please. Members will please return to their seats. The house is under call. Call in votes will be accepted. Unauthorized personnel will please the legislative floor. Members, please return to your seats, the house is under call. Call in votes

will be accepted on the advancement of LB 232. Senator Hartnett, please check in. Thank you. Senator Morrissey, please record your presence. Senators Ashford, Chambers, Labedz, Lamb, please report to the Chamber. Senator Coordsen, record your presence, please. Call in votes are acceptable on the advancement of the bill.

CLERK: Senator Moore voting yes. Senator Hall voting yes. Senator Landis voting yes.

SPEAKER BARRETT: Record, please.

CLERK: 25 ayes, 9 nays, Mr. President, on the advancement of LB 232.

SPEAKER BARRETT: LB 232 is advanced. The call is raised. LB 233.

CLERK: Mr. President, 233 is a bill introduced by Senator Chizek (Read title.) The bill was introduced on January 9, referred to Judiciary. I do have committee amendments by the Judiciary Committee, Mr. President.

SPEAKER BARRETT: On the committee amendments, Senator Chizek.

SENATOR CHIZEK: Mr. Speaker and colleagues, the committee amendment is on page 373 of the Journal. The committee adopted this amendment at the request of the court administrator. And the purpose of the amendment is to continue...and it was omitted in the bill, is to continue the current practice of not waiving the judges' retirement fees in cases of dismissal in county court. And I would urge the body's adoption of that amendment.

SPEAKER BARRETT: Discussion on the Judiciary Committee amendments. Seeing none, those in favor of the adoption of the committee amendments please vote aye, opposed nay. Record, please.

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of the Judiciary Committee amendments.

SPEAKER BARRETT: The amendments are adopted. To the bill as amended, Senator Chizek.

SENATOR CHIZEK: Mr. Speaker, colleagues, LB 233 is a bill

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LB 45, 97, 168, 169, 229, 230, 232
233, 341

have it thoroughly considered, that all three bills should be considered at once since they deal with the same section. So I'll ask you for your vote to rerefer LB 341.

SPEAKER BARRETT: Thank you, Senator Pirsch. Discussion. Any discussion on the motion to rerefer LB 341? If not, Senator Pirsch, anything further?

SENATOR PIRSCH: Oh, I move for the adoption of the motion.

SPEAKER BARRETT: Thank you. The question is the rereferencing of LB 341 from Judiciary to Government. Those in favor of that motion please vote aye, opposed nay. Record, please.

CLERK: 32 ayes, 0 nays, Mr. President, on the motion to rerefer the bill.

SPEAKER BARRETT: LB 341 is rereferred. To General File, Mr. Clerk, LB 97.

CLERK: Mr. President, if I might right before that, some items for the record?

SPEAKER BARRETT: Certainly.

CLERK: Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 45 and recommend that same be placed on Select File with E & R amendments; LB 168 to Select File with E & R attached; LB 169 Select File, LB 229 Select File; LB 230 Select File; LB 232 Select File; LB 233 Select File, all signed by Senator Lindsay as Enrollment and Review Chair. (See page 412 of the Legislative Journal.)

Mr. President, the first bill for consideration this morning is LB 97. It was a bill introduced by Senator Landis. (Title read.) The bill was introduced on January 5, referred to the Banking Committee, advanced to General File. I have no amendments to the bill, Mr. President.

SPEAKER BARRETT: The Chair recognizes the Chairman of the Banking Committee, Senator Landis.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature, I promised that I'd try to do a little better job

CLERK: LB 230, Senator, I have no amendments to the bill.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 230 be advanced.

SPEAKER BARRETT: Shall LB 230 be advanced? All in favor say aye. Opposed no. Carried, the bill is advanced. LB 232.

CLERK: Senator, I have no E & R. I do have an amendment to the bill by yourself. (Lindsay amendment is printed on pages 462-64 of the Legislative Journal.)

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: I'm having distributed now my proposed amendment to LB 232. The purpose of this amendment, what this amendment states is that...I guess I should back up. LB 232 provides that the answer date in county court be amended to be uniform with the answer date in district court. This amendment provides that same uniformity in Small Claims Court. If we're going to have the uniformity between the courts and that's going to be the only reason for having that uniformity, I think we should be extending that further. As I mentioned on the floor the other day when we were debating this, I don't think that we need that uniformity. I think there are different purposes for the different courts, and I think that the procedure is designed to effectuate those purposes. For that reason, I would urge that you adopt the amendment.

SPEAKER BARRETT: Thank you. Discussion on the amendment to LB 232? Senator McFarland.

SENATOR MCFARLAND: It's my day to speak, Mr. Speaker. Senator Chizek is not here. He's on his way from Omaha. He's a little delayed this morning. So they asked that I address some of these bills as the Vice Chair of the Education Committee. This bill has been discussed before on General File. And, as you will note, Senator Lindsay, at that time, raised the concern about whether we absolutely need uniformity between the district court system and the county court system. I haven't had a chance to see the amendment, and I'll have to take a look at it. I will just say that my initial reaction is to oppose the amendment because the idea of the bill is for clarity, for consistency, for uniformity within the procedures. The

objection, as I recall from last...the debate on General File, was that this might not permit the expeditious trial of cases in the county court. My response to that is that delaying the answer date 10 days shouldn't have any significant impact, in my view, of any trial in county court and, in fact, those cases will come to trial just as expeditiously, except they might be 10 days later, and I don't consider that a significant delay. I think Senator Kristensen, who is also an attorney, made the point on General File that, if anyone wants to really delay a trial, they can even do so in county court, regardless of when the answer day is, because there are plenty of dilatory motions that can be filed and lots of discovery that can be requested to delay cases. I don't think that changing the answer date will have any impact whatsoever on the ability of county court judges to bring their cases to trial. So I would urge you to vote against the amendment and just advance the bill just as we did on General File. Thank you.

SPEAKER BARRETT: Thank you. Senator Landis, followed by Senator Kristensen.

SENATOR LANDIS: Could I ask Senator Lindsay a question, just to make sure that I...it's possible that you get to take a quick look at an amendment and you think you know what it says, but you want to make sure. Okay.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LANDIS: John, I'm looking at this thing and it says to me, well, the bill says we need uniformity, we're going to move to this 30-day time limit. If it's good enough in the bill to do it for county courts, well, we've still got the Small Claims Court hanging out there, let's make the Small Claims Court 30 days. If you want this uniformity stuff, we're going to have it all the way down the line. Fair characterization?

SENATOR LINDSAY: That is the characteriza...or that characterization is correct. And I might add that what the county court and the district court provide is they provide attorneys who are familiar with the legal procedures and everything 30 days, whereas in Small Claims Court they provide them 5 days.

SENATOR LANDIS: Thank you. So I'm looking at this amendment and it says we're going to use a 30-day time limit for the Small

Claims Court, thereby achieving uniformity at all three levels of courts of original jurisdiction, as it were. I'll tell you, I think John's objection to the bill is in the basic change from the county court to the district court, at least that is what we talked about in an informal conversation. And, frankly, I thought he made a good point. I was thinking about voting against the bill on this round. But, at this point, with this amendment, we are trying to match the Small Claims Court with the level of formality of the county and district court. Unfortunately, I think it has a tendency to undercut what the Small Claims Court is designed to do. A Small Claims Court does not have the presence of lawyers, does not have the exchange of a number of pretrial motions or heavily litigated lawyer-drafted forms. You walk up to your court office, they give you a form, you write out the nature of the thing that brings you to court, in your own handwriting, you pay them about six bucks to get the thing served, and it's meant to be a citizen-generated kind of lawsuit. Thirty days is common for the purpose of a more intricate lawyer represented case, because there may be some kind of filing of motion. There may be some kind of jurisdictional argument. Lawyers have schedules that are pretty difficult to accommodate and you need some time frame on that. You probably have to draft an intricate response, perhaps. Thirty days makes sense. I can go forward either with voting against the bill and leaving the county court where it is, or I can go forward by voting for the bill, as it currently now is, with 30 days for both those courts. But this amendment tries to throw into that boat the Small Claims Court which is a different fish. This is meant to be immediate, low cost and citizen-generated justice. It is not meant to be the same level of use of attorneys, the same level of exchange of legal documents and forms, the same level of deliberative process. For that reason, I think that 30 days gets in the way of the Small Claims Court, ritualizes it, formalizes it and makes the case less of what it is, sort of a problem-solving side of our court system. John, I understand your original argument. I would consider voting against the bill, but I'm going to vote no on the amendment.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. President. I would rise to oppose the amendment as well. I think Senator Landis has correctly characterized the Small Claims Court. And I believe that our citizens of this state would be extremely disappointed

if all of a sudden their only good system of quick justice would be subverted by another 30-day requirement. Senator Lindsay's original argument against the bill is the one that you ought to listen to right now and not his argument about adding the 30 days. He had an excellent argument about preserving the integrity of the swiftness of justice and so on. Thank goodness there aren't lawyers in Small Claims Court. Thank goodness that we can do this quickly. And, if we add in the 30 days, it is going to destroy the small claims system, it is going to add a lot of burden to that system. I would urge you to vote against this amendment. Thank you.

SPEAKER BARRETT: Thank you. Senator Elmer, followed by Senator Abboud.

SENATOR ELMER: Thank you, Mr. President, and members. As a small businessman, I've had opportunities to use the Small Claims Court. It's just exactly the way Senator Landis has described it. It's intended to be a citizens court for use by the citizens, and adding this 30 days would completely subvert the purposes of the Small Claims Court. I'd urge you all to vote no on this amendment. Thank you.

SPEAKER BARRETT: Thank you. Senator Abboud.

SENATOR ABOUD: Mr. President, colleagues, I'm a member of the committee that sent this bill out on the floor. I supported the bill in the interest of uniformity. My belief is that you have a different court system for different reasons. The Small Claims Court was established to deal with citizen complaints, problems that they have where they don't want to go to an attorney. I think it's been a good system, it's worked well. But you have to realize that when you're dealing with a Small Claims Court system you're still talking about monetary judgments. When one individual sues another one for \$750, if he gets a judgment against that individual, he has to pay that money. We're still talking about monetary payments here. So, in that sense, we are talking about apples to apples, we're talking about a similar situation. Now, if it's good to have uniformity between the district and the county courts, why wouldn't it be even better to have uniformity among all of the systems? It is not that difficult for an individual, if he gets sued by another individual in Small Claims Court and he says, well, listen, he's suing me for \$750, this is an awful lot of money, and he goes to an attorney and that attorney looks at the

case and he says, okay, we'll bump it up to county court. So he files the motion. For the most part, the answers that we're talking about and the intricacies that we're talking about will involve an attorney eventually. If the person doesn't get an attorney, fine, 5 days, 30 days, what difference does it make. But we are talking about creating a uniform system for the district and county court levels for the benefits, basically, of the people that are involved in running the court system, that being the attorneys. Senator Lindsay is saying, if it's good to make uniformity in this case, then why isn't it even better to make uniformity in all of the court cases? In that regard, I think it is commendable. Now I think one point that should be made clear as to why we're having a problem on this particular amendment and that is we have situations where someone is suing another person in county court for a collection, and that person has no intention of paying whatever that amount of debt should be, be it \$1,000, \$2,000, he's not going to get an attorney. He realizes that he owes the money and he just is refusing to make that payment. The reason why it works so well in the county system, to have 20 days, is that that individual can get a judgment faster, be it 10 days, it's still 10 days. It's a long process in getting a person either evicted from a home or an apartment complex or getting a judgment against them. This just speeds up the process. At a time when the citizens have a real problem with how slow justice moves, it is unimaginable to me as to why this Legislature would seek to slow down the legal process even more so. If that person goes out and gets an attorney in county court, he's going to extend this thing out. We're going to get into interrogatories, some forms of discovery, it's going to go on for quite a while. It will be months down the road before they even get to trial. We're not talking about those types of people that go out there and do that. We're talking about the person that has no intention, they realize that they owe the debt, they're getting sued for that particular debt, they're not going to get an attorney and you just want to get the system moving...

SPEAKER BARRETT: One minute.

SENATOR ABOUD: ...faster. That is the idea behind, I believe, or at least one good argument behind not adopting LB 232. But if the Legislature seeks, in their wisdom, to provide for a uniform system of answer dates, then let's make it uniform, let's make the system work as one. In that regard, I will be supporting Senator Lindsay's amendment. Thank you.

SPEAKER BARRETT: Thank you. The Chair is pleased to take just a moment to introduce a guest of Senator Langford, the Mayor of Kearney, Nebraska, Mr. Justus Dobesh, under the north balcony. Mayor Dobesh. Also, the Chair is pleased to announce that the cookies which are now being passed out in the Chamber are the result of Senator Stan Schellpeper's 39th birthday. Happy birthday, Senator Schellpeper. Also, Senator Roger Wehrbein would like to recognize the doctor of the day, Dr. Gary Rademacher of Nebraska City who is serving today as our doctor of the day. Thank you, Dr. Rademacher. Additional discussion on the amendment offered by Senator Lindsay to LB 232. Senator McFarland, followed by Senator Lindsay.

SENATOR MCFARLAND: I'd call the question, Mr. Speaker.

SPEAKER BARRETT: Question has been called. Are there five hands? There are. Those in favor of ceasing debate please vote aye, opposed nay. Record.

CLERK: 25 ayes, 0 nays, Mr. President, on the motion to cease debate.

SPEAKER BARRETT: Debate ceases. Senator Lindsay, would you care to close?

SENATOR LINDSAY: Mr. Speaker, members, when Senator Landis rose to speak about this amendment he made the point, that I was trying to make, for me. That point was he argued a Small Claims Court is different from the county court and different from the district court, so it should be handled differently. It's meant for a very quick problem resolving sort of system. That is the point I was trying to make on...when the bill was on General File, and it's the point I continue to make, the point that was reiterated by Senator Abboud, and that is that county court has a different purpose from district court. It should not be uniform simply for the purpose of uniformity. This amendment, I believe, shows that uniformity isn't the best reason, it's not always a good reason to pass a bill. If uniformity is a good reason, then this amendment must be fantastic because it continues that uniformity. The point that I'm trying to make is that difference between the courts, that there is a difference, that that difference is intended. I've got some figures from Douglas County Court to show exactly what we're talking about here. In Douglas County Court, 48 percent of the cases are

collection cases. We're not talking about extremely complex litigation, we're talking about a bulk of cases that may be the same size, or even smaller than some of these small claims cases. Of those collection cases, 53 percent of those result in default judgments, they never go to trial, they're never even answered. The reason for that is that there is no defense, it's just a matter of delaying payment of bills. What this will do is give an additional 10 to 21 days interest free extension of credit to those who do not have a meritorious defense. Since the point has been made by several senators, I don't believe the amendment is necessary, and I would withdraw the amendment.

SPEAKER BARRETT: It is withdrawn.

CLERK: I have nothing further on the bill, Mr. President.

SPEAKER BARRETT: Senator Lindsay, on the advancement.

SENATOR LINDSAY: This is interesting. I move to advance LB 232 to E & R Final.

SPEAKER BARRETT: You've heard the motion to advance the bill.

SENATOR LANDIS: It's a debatable motion, isn't it, Mr. Speaker?

SPEAKER BARRETT: Yes, it is. Senator Landis, you are recognized.

SENATOR LANDIS: I don't know if you all noticed this or not, I've been here 11 years, that's the first time I've ever seen a freshman in the Legislature throw a really terrific sucker punch (laughter) in his first, maiden effort in the body. It was not the amendment John wanted. John wanted to call our attention to what 232 does, and he did it in a most effective way. I hope you listened to his argument. It was structured in the most interesting way because, of course, I fell into the trap, oh, no, no, no, Small Claims Courts are different. In fact, his point is well made, county courts are different from district courts. All I've heard for justifying the bill is the idea of uniformity. John's made a good argument. For once I've changed my mind, I'm going to vote against 232 based on what I think is a very convincing argument that John Lindsay just made. I hope you're all listening. Thank you.

SPEAKER BARRETT: Thank you. Senator Abboud.

SENATOR ABEOD: (Response inaudible.)

SPEAKER BARRETT: Thank you. Senator McFarland, discussion?

SENATOR MCFARLAND: Yes, thank you. My congratulations to Senator Lindsay as well for his sucker punch. He has learned well in the short time we've had here this session. I appreciate his motion to advance, too, begrudgingly done. County court is different from district court, but the primary difference is just in the amount of money that can be entered in a judgment in county court. If you have a claim for more than \$10,000, in a civil action, you do not file it in county court, you go to district court, because there is a jurisdictional limit in county court of \$10,000. That is the primary difference. Attorneys appear in county court, attorneys appear in district court. You can have jury trials in county court, and you can have jury trials in district court. The procedures are very similar in the county court and in the district court. The analogy to the Small Claims Court, in my view, is really inappropriate. In Small Claims Court there are major differences in procedures, major, major, major differences. No attorney can appear to represent anyone, other than himself or herself. But they cannot represent a client in Small Claims Court. Small Claims Court is for the purpose of resolving disputes in a very expeditious, very informal manner. You go before a judge, no lawyers are present. You do not have to be sworn in and asked questions and answers, you don't have a jury there to decide the question. The two parties come before a judge, present their evidence in an informal setting, make their case, make their arguments and the judge makes a decision. And, I might add, I think it's a very good procedure, because you've got so many small disputes that don't involve a lot of money, that don't involve major issues of law, but they do involve major issues of personality. And people get angry with their neighbor, or with a person they are doing business with in a small operation or something, they can come in, explain it to the judge, they get a speedy and effective resolution. It's completely different type of setting than county court. And, for that reason, I think that comparison is completely inappropriate. I would urge that we have uniformity within the county court and the district court because they are very similar in nature and they are very similar in function, they are very similar in procedure, and the primary difference is only the jurisdictional limit on the amount of judgment that can

be entered in county court. So I would respectfully ask that you vote to advance this bill to E & R for Final Reading.

SPEAKER BARRETT: Thank you. Motion on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Lindsay would move to indefinitely postpone LB 232. Senator Chizek, as introducer, would have the option to lay it over.

SPEAKER BARRETT: Senator Chizek, are you present? Is anyone prepared to respond for Senator Chizek? If not...excuse me, Senator McFarland.

SENATOR MCFARLAND: I'm just checking, I think I signed on this bill, maybe not. I guess it was just introduced by Senator Chizek. I would urge we...I would urge we just take it up, since I am acting in his stead today as the Vice Chairman of the committee, we just take up the motion to indefinitely postpone.

SPEAKER BARRETT: Senator Hannibal, you have a point?

SENATOR HANNIBAL: Just a question of the Chair. Is that proper within the rules?

SPEAKER BARRETT: The Chair recognizes Senator Lindsay.

SENATOR LINDSAY: Mr. Speaker, I didn't realize that Senator Chizek hadn't arrived yet, and I don't want to do that to Jerry, so I will withdraw the motion.

SPEAKER BARRETT: Thank you. It is withdrawn. We are then back to discussion on the advancement of the bill. Senator Ashford, you are next.

SENATOR ASHFORD: Mr. President, how many lights are there on this?

SPEAKER BARRETT: There are four lights following yours.

SENATOR ASHFORD: Okay. I don't want to belabor this either, but I think that Senator McFarland has made exactly the point that Senator Landis has made and that also Senator Lindsay made, and that is that there is a significant difference between Small Claims Court and county court, and that there is also a difference between...and, of course, we aren't voting on the

amendment on small claims, because that was withdrawn. But the point is that there is a significant difference between county court and district court. As Senator Lindsay indicated, 48 percent of the cases in Douglas County are small claims cases. Those are primarily cases that are handled in a very summary fashion. It is very rare, in Douglas County, that there are jury trials. And there is a significant difference, there is a good reason for expediting the process. I don't see any good reason, again, other than uniformity which in and of itself is not a reason, in my opinion, to change court rules to alter the system as it now exists. So I would...I support Senator Lindsay, I think he's absolutely correct and will not vote to advance the bill.

SPEAKER BARRETT: Thank you. Senator Lynch. Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. President. I would renew my request to move this bill along. This really is a housekeeping bill. What really happens so many times is that when you're in the court system in Nebraska there is enough confusing rules in this state. And when people come and practice before the courts there are often mistakes made saying, well, I don't know if I've got 20 days or 30 days. It is just a confusion that we don't need in this state. We've talked about this long enough, Mr. President, I move to advance the bill and would offer my support to do so.

SPEAKER BARRETT: Senator Abboud. Senator Abboud, please.

SENATOR ABOUD: Question.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. Shall debate now cease? Those in favor vote aye, opposed nay. Shall debate cease? Record, please.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

SPEAKER BARRETT: Senator McFarland, would you care to act as the closer?

SENATOR MCFARLAND: Yes, I would, Mr. Speaker. Thank you. If you happen to turn to your bill books to 232 and look at the committee statement, you will see that this bill was advanced out of committee on a seven to one vote. Senator Lindsay raised

his objections then. They were respectfully noted. He was certainly entitled to vote no in committee. But the other seven members of the committee, who heard the testimony on this bill, thought it was a good bill, thought it was consistent with the intent of making things uniform between the district court and the county court. I will just read briefly the purpose of the bill which says that LB 232 makes the summons and answer procedure the same in county court as in district court. Currently, in county court summons must be returned in ten days, with answer date ten days after that. In district court the summons must be returned within 20 days, and answer day is 30 days after service. They are very similar courts, similar procedures are used in both courts, except for this type of answer date provision. The only difference is the jurisdictional limit, which is really the only real primary difference I should say. And you will note that the proponents of the bill, Senator Chizek appeared, of course, in support of the bill, it was provided to him through the court administrators office. You'll note that Judge Rehmeier, who is a county judge on the county court, I might add, appeared in behalf and in support of the bill. You'll note that Judge Fahrnbruch, who is the...on the Supreme Court Committee, he's also a Nebraska Supreme Court judge, appeared representing the committee and spoke in favor of the bill. There were no opponents whatsoever, no one from the Bar Association came in to oppose the bill, no lawyer came in to oppose the bill. There are plenty of lawyers who handle collection type of cases, plenty of lawyers who practice in county court, not one lawyer, one organization appeared to oppose this bill. Senator Lindsay has a perfectly legitimate right to express his opposition to it, but, frankly, I think that is a...he is in the minority in that position. I think for purposes of uniformity and consistency we should advance this bill and I think Senator Chizek would urge you to advance it as well, if he were here. Thank you.

SPEAKER BARRETT: Thank you, Senator McFarland. The question is the advancement of LB 232 to E & R Engrossing. A machine vote has been requested. Those in favor of the advancement of the bill vote aye, opposed nay. Voting on the advancement of the bill. Senator McFarland.

SENATOR MCFARLAND: I'd ask for a call of the house on the vote. We just don't have enough people here.

SPEAKER BARRETT: Thank you. Call of the house has been requested. Clear the board, Mr. Clerk. Members will vote on placing themselves under call. Those in favor vote aye, opposed nay. Record.

CLERK: 12 ayes, 6 nays to go under call.

SPEAKER BARRETT: The house is under call. Members, please return to your seats. Record your presence. Unauthorized personnel, please leave the floor. Senator Bernard-Stevens, please. Senators Chambers and Conway, Goodrich. Senator Kristensen, record your presence. Senator Rod Johnson, please report to the Chamber. Senator Smith, please, the house is under call. Senator Schmit, please return to the Chamber. While we are waiting, the Chair announces that we have a group of Cub Scouts in the north balcony as guests of Senator Ashford, from Den 8, Pack 365 in Omaha. Would you folks please stand and be recognized by the Legislature. Thank you. Glad to have you. Senator Schmit, the house is under call. Members will please return to their seats for the purpose of a roll call vote. Senator Chambers, please check in. Mr. Clerk, please proceed with the roll call vote on the advancement of LB 232 to E & R Engrossing.

CLERK: (Roll call vote taken. See pages 464-65 of the Legislative Journal.)

SPEAKER BARRETT: A reminder that the house is still under call. The vote has not been announced.

CLERK: 18 ayes, 20 nays, Mr. President, on the motion to advance the bill.

SPEAKER BARRETT: Motion fails. The house is not under call. Thank you. Mr. Clerk.

CLERK: Senator Lindsay, Senator, LB 233, I have no amendments to the bill.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 233 be advanced.

SPEAKER BARRETT: Shall LB 233 be advanced? Those in favor say aye. Opposed no. Carried, the bill is advanced. LB 97.