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Judiciary Committee
January 18, 2007

[LB19 LB67 LB99 LB154 LB213]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 18, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB19, LB67, LB99, LB154, and LB213. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None. [LB19]

SENATOR ASHFORD: (Recorder malfunction)...a little late. I apologize for that. Good afternoon. This is the Judiciary Committee, so if you need to be in another committee, it's not here. But let me introduce my colleagues, Senator McDonald, Senator Pirsch, Senator Schimek, and Senator McGill. The staff members are Stacey Trout, who's here today, our counsel; and Jonathan Bradford is the committee clerk. We have a few very simple...and some of you were here yesterday. I see a few of you, at least. We have this light system, and we ask you to try to keep your testimony to around three minutes, and we'll flash on a red light when it's time to stop and a yellow light when it's time to wind down. But usually we don't need to do that. We ask you to sign in at the table in the back there, and spell your name when you come up to the witness chair so that we have a record of all of you properly recorded. Let's see, what else? How many are here to testify on the bills that are up today, other than the senators, whom I know? A couple? Great. Well, we should be able to get going. LB19, Senator Mines. Welcome again. [LB19]

SENATOR MINES: Thank you, Chairman Ashford, members of the committee. For the record, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District. LB19 is about abandoned mobile homes, and it amends Section 76-14,109 to authorize the disposition of an abandoned mobile home and its contents as personal property. Here's what happened, and this happened to a constituent...one of my constituents, who happens to live in a mobile home community. And the landlord of that mobile home park would evict people for not paying their lot rent, and then the individuals were forced to remove their mobile home from the rented space, or, if they were unable to move their unit, either financially or otherwise, they were forced to leave the mobile home there. So you can see where someone is living in a mobile home, can't afford to pay the lot rent, is evicted, and then they're told, move your mobile home from the space, and they don't have money to pay the lot rent, so they don't have money to pay to move the mobile home. And then, according to our constituent, rather than handle the abandoned property in a more proper manner, the landlord would instead rent out the abandoned mobile home, enabling them to collect the rent from the new tenants, and as these individuals would now be renting both the property and the home. So the home...the mobile home is abandoned...not abandoned, they're told to leave, can't pay the lot rent. The mobile home is then vacant, and the landlord is then renting out the mobile home to new tenants. Okay? This bill would clear up any potential confusion and require a

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mobile home community landlord to dispose of the abandoned mobile home as personal property, and would therefore be required to follow the process outlined in the Disposition of Personal Property Landlord and Tenant and Act. So we're treating this mobile home as personal property. It would require them to give notice to the tenant that the property had been left behind, and then the notice would let the former tenant know that if they didn't claim and remove the property, the property would be sold at public sale. Any profits from that sale, minus the cost of storage, advertising, etcetera, would be turned over to the State Treasurer, pursuant to the Uniform Distribution of Unclaimed Property Act, and the individual could then claim the money as provided in the act. So essentially, the legislation gives a process to the mobile home landlord...park landlords regarding the disposition of abandoned mobile homes. It protects the rights of the tenants of the mobile home communities, as well as the rights of the landlord. And because there is...this practice is happening now, I think this is a fair and reasonable compromise that would allow the landlord to recapture any unpaid rents, and would also protect the property owner that's been evicted. And any monies that are collected above and beyond the past due rent, storage, that kind of thing, would then be collected by that tenant. Mr. Chairman, I would entertain any questions. [LB19]

SENATOR ASHFORD: Thanks, Senator Mines. Senator Lathrop, the Vice Chair, has arrived, and Senator Pedersen. So any questions of...Senator McDonald. [LB19]

SENATOR McDONALD: So you're saying, in the way it is now, that if someone owns a mobile home, has it in a mobile home lot, and is not able to pay that lot rent and is asked to...the lot owner asks the tenant to move, and they have to vacate their trailer even though they can't afford to move the trailer, does that lot owner have the authority and the ability to rent property he doesn't own, just because it's sitting on his land? [LB19]

SENATOR MINES: He does. He does. And it's happening today. [LB19]

SENATOR McDONALD: He does have that? Hm, interesting. I didn't know that. [LB19]

SENATOR MINES: Doesn't sound right to me either. [LB19]

SENATOR ASHFORD: Yes, ma'am. Senator Schimek. [LB19]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Senator Mines, I'm not sure that this trailer owner is going to collect much money upon the disposal of this mobile home. How will that be sold? [LB19]

SENATOR MINES: Again, it will be sold as public property at an auction. [LB19]

SENATOR SCHIMEK: So, at an auction. [LB19]

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SENATOR MINES: And the first lienholder would be the park owner, for past rent, and/or storage, and/or whatever else happens. So, again, the mobile home may not be worth much. But at least we go through a process that's consistent with personal property. [LB19]

SENATOR SCHIMEK: Is the auction the most feasible way to sell one of these mobile homes, especially if the mobile home is, let's say, a newer model, nicer trailer than sometimes you would find? Are there any options there? [LB19]

SENATOR MINES: We follow and use the process of the Disposition of Personal Property Landlord and Tenant Act, so there's statute today that deals with this, only not with a mobile home. So that's the language we found. [LB19]

SENATOR SCHIMEK: But that is the one method that can be used? [LB19]

SENATOR MINES: Yes. That...yes. [LB19]

SENATOR SCHIMEK: Thank you. [LB19]

SENATOR ASHFORD: Senator McDonald. [LB19]

SENATOR McDONALD: In the case that the mobile home is not paid for and a bank or a mortgage company has first lien on it, how can the lot owner get first when the lot owner has nothing to do with who owns the trailer? How does that work then? [LB19]

SENATOR MINES: I misspoke, you're exactly right. I misspoke. Yeah, you would have other lienholders in...if there are other lienholders in place, certainly the landlord would fall second to them. Yeah, good point. Good catch. Thanks. [LB19]

SENATOR PIRSCH: Just out of interest, if you know, under this current...the current scheme as it exists with landlord-tenant, what time period must transpire before such an action can take place? [LB19]

SENATOR MINES: I'm sorry, I don't know. But I can get that information. [LB19]

SENATOR PIRSCH: That's okay. Yeah, just... [LB19]

SENATOR MINES: I will get it. There is a time frame established. [LB19]

SENATOR ASHFORD: Thank you, Senator Mines. [LB19]

SENATOR MINES: Thank you. [LB19]

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SENATOR ASHFORD: Anyone else testifying on this particular bill? Senator Mines, do you wish to close? [LB19]

SENATOR MINES: I'll waive closing, thank you. [LB19]

SENATOR ASHFORD: Okay. LB67, Senator Stuthman. Welcome back. Senator Lathrop, would you handle this for a minute? I have to... [LB67]

SENATOR LATHROP: Sure. [LB67]

SENATOR ASHFORD: Be right back. [LB67]

SENATOR LATHROP: Good afternoon. [LB67]

SENATOR STUTHMAN: Vice Chair Lathrop and members of the honorable Judiciary Committee, for the record, I am Senator Arnie Stuthman, S-t-u-t-h-m-a-n, serving District 22 in the Nebraska Legislature. LB67 is a bill that I introduced, and it's intended to...for the jury commissioners, another option to serve jury summons. Under the existing law, the jury summons must be made by certified, registered, or personal service. That is realistically what it is in the bill at the present time. What I'm trying to do is to put first-class mail also as a method to summon potential juries for jury duty. Sometimes what has happened in the past is that potential juries...jurors, fail to pick up the mail, and then they could be in contempt of court. So I'm trying to simplify this. And there are going to be some clerks of the district court that will follow me that will give you some information as to how many dollars that could be saved for the county. Those are my opening comments, and if there are any questions, I will attempt to answer them. [LB67]

SENATOR LATHROP: I do have a question. [LB67]

SENATOR STUTHMAN: Yes. [LB67]

SENATOR LATHROP: If a juror doesn't show up for jury duty, generally they can be held in contempt. Is there a provision in another section that would require that before a juror can be held in contempt for failing to show up, that they in that event have been served by certified mail, maybe in a subsequent jury panel? [LB67]

SENATOR STUTHMAN: I do not have that information currently with me, but I can get that for you. [LB67]

SENATOR LATHROP: Okay. [LB67]

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SENATOR STUTHMAN: And I am sure that some of the district court people can give you that answer, so I would... [LB67]

SENATOR LATHROP: Somebody behind you is nodding your head, so maybe the answer is coming. Okay. [LB67]

SENATOR STUTHMAN: Yes, yes. Yes, yes, so. [LB67]

SENATOR LATHROP: Any other questions? Okay, thank you. [LB67]

SENATOR STUTHMAN: Thank you. [LB67]

SENATOR LATHROP: Those in support. How many people are in support? Two? Okay. Please. [LB67]

MARLENE VETICK: Good afternoon, Senators. My name is Marlene Vetick. I'm a clerk of the district court from Platte County, Nebraska. I spell my name M-a-r-l-e-n-e M. Vetick, V-e-t-i-c-k. I'm from Columbus, Nebraska. I'm also the jury commissioner for Platte County. And I'm here today, of course, in support of LB67. And the reason that we're asking for first class is...mailing of a jury summons is it's an alternative to certified mail. I can give you an example, just a quick example. Certified mail usually runs about \$4 to \$5 per letter. We send out, in Platte County, for one jury term, we send out about 75 to 80 different summonses per jury trial. That's about \$400 to \$500 per trial. So it's a huge cost burden to the county. Also, the concern about the contempt, if we would send these out by first-class, I think there's been the fear that someone who did not receive their summons would be served with a contempt warrant, or something like that. Every clerk...it varies between the counties, the procedures that they follow for someone who fails to appear for jury service. And I've spoken with both Douglas County, Sarpy County, and Lancaster County, because I was concerned how they interpret and what they do when someone fails to appear for jury duty. And they have various ways of enforcing their means of people appearing for jury service, and they either call, contact, or have follow-up letters. I can tell you what my procedure is in my offices. If someone fails to appear even though we've sent them out their jury summons, we make a telephone call to them, either to them personally or to their employer, to try and locate them. Never once has there been a contempt warrant issued for someone who just forgot about the jury trial, which, that happens. But we have had an individual who failed to appear even though he was warned to come and told to come, and he failed to appear twice after that. So, you know, therefore we did have a warrant for his arrest. But that's the only time in the 24 years that I've been in office that we've ever had a warrant issued for someone in jury term. So I...if there's any other questions that I can answer for you, I'd be happy to do so. [LB67]

SENATOR LATHROP: I do want to take up...pardon me. I do want to take up the

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holding a juror in contempt for not showing up. I can see that this is going to save money for the counties. That's fine. For the people that show up, there's no problem. The people that do not show up, if they've been given first-class mail, you run into, the kids took the mail, a lot of different reasons why someone may not get first-class mail when they would get certified or registered mail. Can it...can the bill that you've offered be amended to take care of a situation so that they're called in the next jury panel, and then if they didn't respond to the first-class mail the first time, then the next time you'd draw a jury panel, that that person is summoned by certified mail? [LB67]

MARLENE VETICK: Sure, I think, without speaking to the association as a whole, I believe we would be willing to negotiate with that, you know, after due diligence that we've searched and had contact with them, and made record of that contact. I think that's very important, too. I don't see why we wouldn't be able to negotiate that. [LB67]

SENATOR LATHROP: Okay. Senator Chambers. [LB67]

SENATOR CHAMBERS: Excuse me, Mr. Chairman. This doesn't just apply in your county. This is a general statute that applies all over the state. [LB67]

MARLENE VETICK: Right. Correct. [LB67]

SENATOR CHAMBERS: So in Omaha, Lincoln, and every other city, they could say that they sent something by first-class mail, and we don't know whether they sent it or not. [LB67]

MARLENE VETICK: Right. I think it is always up to the jury commissioner how they can interpret it. If they would actually be, I want to say, diligent about contacting that juror, I don't know. I know Lancaster, Sarpy, and Douglas County, like I said, I have spoken with them. I don't know how diligent they are about searching them out and making sure that they appear for next. Some counties may just disregard their appearance and go on with life. [LB67]

SENATOR CHAMBERS: Here's what I'm working my way up to. Whenever a citizen is going to be contacted by the government and that contact imposes a responsibility on the citizen, the government should bear the burden of making sure that there is indisputable evidence, to the extent that can be achieved, that the citizen received the notice. And first-class mail can go astray because the address is not correct. I've had mail delivered to my address when my address is not even on the envelope. So it could go to somebody else's house, being misdelivered by the postal person. And the individual who receives it may intend to put it in a mailbox again or whatever, but just neglect to do so. Because there are so many ways that first-class mail can go astray, I have never supported this kind of language that you're offering, when a duty is going to be imposed on the citizen just by virtue of receiving that correspondence. So I, at this

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point, am not of a mind to support this, and I wanted you to have an idea of why it troubles me to do this. Counties constantly come in and talk about how much various things cost. They constantly say the state should pay the full cost of their holding state prisoners. But they become state prisoners because of the arrests made by their officers, the handling of the cases by their prosecutors and their judges. And sometimes those who have been convicted will wind up having their sentences overturned. So many things that counties wind up having an expense for are the doings of the county. So regarding jury duty as being as serious as I regard it to be--and the Chairman has already mentioned consequences--I haven't been persuaded that there's any compelling reason to say that this should be done by first-class rather than certified or registered. So if you have something that you're holding back as that knockout punch, lay it on me. (Laughter) [LB67]

MARLENE VETICK: Well, I don't really have a knockout punch, but I do have...we have had problems with people who don't pick up their certified mail because they're intimidated by certified mail. If you get a first-class letter, a lot of times they'll look at it. They may throw it away, but they'll read it at least; whereas certified, we can't even get it to their hands because they won't pick it up. [LB67]

SENATOR CHAMBERS: Well, you can...the court can approve of somebody serving these summonses. [LB67]

MARLENE VETICK: Yeah. Another added expense that would...to have a deputy run out and do that. We just really don't want to do that if we don't have to. [LB67]

SENATOR CHAMBERS: Is there a price or a cost we should put on justice, so that, like Oscar Wilde said, some people know the cost of everything and the value of nothing? Should there be a cost? Should we say that justice can go...can be served as long as it doesn't cost more than \$1.82? [LB67]

MARLENE VETICK: No. No, not at all. [LB67]

SENATOR CHAMBERS: Okay. And that's all I would have. Thank you. [LB67]

MARLENE VETICK: Thank you. [LB67]

SENATOR LATHROP: Yes, Senator McDonald. [LB67]

SENATOR McDONALD: Do you...once you send out the first notice, do you send continuing notices after that to those same people, letting them know other information? [LB67]

MARLENE VETICK: Right. Right. We send out...my procedure--what I can tell you is

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what I do, and I'm uniform with the other clerks--we send out the jury summons, and then if there's a change in the dates, possibly one of the jury trials is settled or such, we send out a letter to that effect. We also have a web site that we update, and an answering machine. But subsequent letters about postponing a trial, or maybe their jury term has been extended. So yes, there is more information. [LB67]

SENATOR McDONALD: And do those have to go registered and certified also? [LB67]

MARLENE VETICK: No. [LB67]

SENATOR McDONALD: No. Okay, so it's just that very first letter that has to go? [LB67]

MARLENE VETICK: Right. [LB67]

SENATOR LATHROP: Any other questions? Okay, thank you. [LB67]

MARLENE VETICK: Thank you. [LB67]

BETH FERRELL: Good afternoon, Senator Lathrop, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. I'm just here to say on the record that NACO supports this bill. Senator Stuthman introduced it on our behalf, and we appreciate that. We'd be happy to work with the committee to come up with any kind of due diligence language that would be helpful. [LB67]

SENATOR LATHROP: Okay. Any questions? All right, thank you. Anybody here in opposition or neutral? Okay, that concludes our hearing. Oh, I'm sorry. Pardon me. Senator Stuthman. [LB67]

SENATOR STUTHMAN: Thank you. In closing, I would just ask that you seriously take a look at this. This does give another option to the clerks of the district court. They do...you know, they can still do the registered or the certified mail. But there is an option that they could do the first-class mail. And I think we should...I would hope that you would look at this favorably. It just gives another option that they can do. And if they feel that, you know, in their counties they feel that they can do that and save the taxpayers some money, I think that's very, very important. So I'd ask that you favorably look at this bill. Thank you. [LB67]

SENATOR LATHROP: Very good. Thank you. Oh, I'm sorry. [LB67]

SENATOR CHAMBERS: That's all right. [LB67]

SENATOR LATHROP: I'm new at this. [LB67]

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SENATOR CHAMBERS: No, you're doing very well. [LB67]

SENATOR LATHROP: (Laugh) Thank you. [LB67]

SENATOR CHAMBERS: Senator Stuthman, it would be even cheaper if, when there was a trial, they could just go out on the street and the first 12 people they see, bring them in and require them to serve as jurors, and it wouldn't cost anything. [LB67]

SENATOR STUTHMAN: That could be very true. You know, you could go out to the highways and byways and bring them in. [LB67]

SENATOR CHAMBERS: Right, and that would be very cheap. [LB67]

SENATOR STUTHMAN: Yes. [LB67]

SENATOR CHAMBERS: But you wouldn't go for...or would you go for that? [LB67]

SENATOR STUTHMAN: I think that would be a little bit far-fetched, but I don't think...in due process, with all of the attorneys and everything, I think we'd probably get into more of a problem doing that than if we just go with a simple thing like first-class mail. [LB67]

SENATOR CHAMBERS: Thank you, Senator Stuthman. [LB67]

SENATOR STUTHMAN: You're welcome. [LB67]

SENATOR LATHROP: I think there is a statutory provision that allows the judge to go out on the street and grab jurors if they need to. But that's an emergency kind of a provision. Thank you. [LB67]

SENATOR STUTHMAN: Thank you. [LB67]

SENATOR ASHFORD: LB99. Senator Wightman. [LB99]

SENATOR WIGHTMAN: Chairman Ashford, members of the Judiciary Committee, my name is John Wightman, spelled W-i-g-h-t-m-a-n. I represent District 36. I'm here before you to introduce LB99. LB99 proposes to extend the statutory provisions of N Revised Statute 25-1081, relating to the appointment of a receiver in order to clarify that they are applicable to loan transactions involving trust deeds, applying both to actions in which a trust deed is being foreclosed as a mortgage, and to cases involving the exercise of the power of sale following the filing of the required notice of default, pursuant to the Nebraska Trust Deeds Act. As some of you may know, trust deeds have been in effect for some 20 to 25 years. Probably now it's become almost the sole method of financing

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for banks and financial institutions. You maybe can find a mortgage over at the courthouse somewhere if you check at the register of deeds, but they're going to be few and far between. And those of you who are practicing attorneys know that to be the case. Additionally, LB99 clarifies that the appointment of a receiver may be obtained in an action brought pursuant to Nebraska Revised Statute 52-1705 to enforce a written assignment of rents provision contained in the agreement that provides for the appointment of a receiver. As well, LB99 expands conditions for which the appointment of a receiver may be obtained, to include any case in which the borrower, the borrower being called the mortgagor or trustor, has agreed in writing to the appointment of a receiver. Under current law, the appointment of a receiver may be obtained in an action from the foreclosure of a mortgage if the mortgaged property is in danger of being lost, removed, or materially injured, or is probably insufficient to discharge the mortgage debt. Secured creditors, particularly with regard to commercial transactions, may find themselves in need of the appointment of a receiver to collect rent, pay operating expenses, rent property in cases where the debtor has failed to do so, or to take actions to maintain or prevent the waste of property that is subject to the lien of a mortgage or trust deed. In such cases, the potential for waste or damage to the property, or the fact that there is no equity in the property, necessitates the appointment of a disinterested third party to protect the interest of the secured party. So LB99 proposes to extend these statutory provisions to include trust deeds. Prior Nebraska Supreme Court decisions in other areas of the law have confirmed that the absence of any reference to trust deeds in the statute pertaining to mortgages does not preclude its applicability to trust deeds, due to their similarity to mortgages and their utilization in Nebraska subsequent to adoption of the statute relating solely to mortgages. Now, there will be more people from the banking--I think--bankers group that will probably be more informed than I am as to the necessity for this, although as an attorney, I certainly am aware of the situation. I would urge you to vote for the advancement of LB99 to the floor. I'll be glad to answer any questions you have. Thank you. [LB99]

SENATOR ASHFORD: Any questions of Senator Wightman? Thank you, Senator. Do you wish to close, or...? [LB99]

SENATOR WIGHTMAN: I would waive closing. [LB99]

SENATOR ASHFORD: Thank you. Bob. [LB99]

BOB HALLSTROM: (Exhibit 1) Chairman Ashford, members of the committee, my name is Robert J. Hallstrom. I appear before you today on behalf of the Nebraska Bankers Association to testify in support of LB99. There's only so many ways to describe the bill, and Senator Wightman has done an outstanding job of giving you all the background and details. I think, just simply put, there are a few areas in the current statute that do not address some logical issues, one being clearly specifying on the face of the statute that trust deeds in fact are covered with regard to the ability to obtain the appointment of

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a receiver, and also, logically, that if the parties have agreed in a writing, that the court may also recognize that, and also authorize the obtaining of the appointment of a receiver in such cases. The appointment of a receiver is not done lightly. There's expenses associated with it. But when conditions are such that an appointment of a receiver is necessary to protect the interest of the parties, debtor or creditor, in a proceeding, they're important and we ought to have the field covered by adding these two components to the conditions under which a receiver may be appointed. With that, I'd be happy to address any questions of the committee. [LB99]

SENATOR ASHFORD: Any questions? Yes, Senator Chambers. [LB99]

SENATOR CHAMBERS: Just one, Mr. Chairman, I think. Mr. Hallstrom, you said that the appointment of a receiver is available to protect the rights of the creditor and the debtor. When would a debtor seek to have a receiver appointed? [LB99]

BOB HALLSTROM: I don't think, Senator, the debtor would seek to have a receiver appointed, but there are circumstances under which there may be competing interest, and while ultimately it isn't the debtor that's directly protected, there may be some interest of the debtor that receives some assistance in terms of sorting out if there are disputes over where money should go, whether they should go towards this lienholder or another lienholder, or issues of that nature, when there may be disputes regarding priorities between existing... [LB99]

SENATOR CHAMBERS: And when you started, I think you meant to say, although it's for the protection of the creditor, rather than the debtor, that this would be done. You said the debtor. [LB99]

BOB HALLSTROM: Directly for the creditor, but there may be interest...of interest to the debtor that are protected between competing lienholders and things of that nature, yes. [LB99]

SENATOR CHAMBERS: Well, I think you misspoke at first, saying, although it's for the protection of the creditor. But here's what I want to ask...the debtor. In all the years that you've been testifying before these committees, I've never asked you, are you an attorney? [LB99]

BOB HALLSTROM: Yes, I am, Senator. [LB99]

SENATOR CHAMBERS: Senator,...I mean, excuse me, Mr. Hallstrom, one of the courses you took, or could have taken, when you were in law school was creditors' rights. [LB99]

BOB HALLSTROM: Yes, sir. [LB99]

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SENATOR CHAMBERS: Have you ever seen any law school teach a course on debtors' rights? [LB99]

BOB HALLSTROM: I think we've actually had this discussion in this committee before, Senator, and the answer is, no, I do not believe so. [LB99]

SENATOR CHAMBERS: And probably because creditors have enough money to encourage law schools to look after their interests, although debtors are the ones who really might need the services of an attorney more than a creditor. But the debtors can't pay, so why should the law schools be concerned about any rights they may have, which, they probably don't have any anyway, in the minds of lawyers, huh? That's all I would ask you. Thank you, Mr. Hallstrom. [LB99]

BOB HALLSTROM: Thank you, Senator. [LB99]

SENATOR ASHFORD: Any other questions of Bob? Thank you, Bob. [LB99]

BOB HALLSTROM: Thank you, Senator. [LB99]

SENATOR ASHFORD: Anyone...any other testifiers? Senator Wightman. Any opponents? Neutral testifiers? I guess that's it. You waived closing. LB154 is next. Senator. [LB99 LB154]

SENATOR BURLING: Thank you, Mr. Chairman, members of the Judiciary Committee. My name is Carroll Burling. That's B-u-r-l-i-n-g. I represent District 33 in the Legislature. LB154 addresses a jury duty service. It's a fairly simple bill, but there's certainly a great deal of room for discussion. I've heard in recent years, as maybe some of you have, that the problems in some areas of finding qualified people to serve on juries. And so I took some time to kind of look up our statute and see what it said about it. And Section 25-1601, it talks about the obligation of United States citizens to serve on juries, and it talks about the exemptions that disqualify, you know, like if you're related, or you know something about the case, or if you're physically or mentally disabled, or a number of other reasons. A nursing mother can be allowed not to serve on a jury. And then we get down to section (3) in that law, and it says, no qualified prospective juror is exempt from jury service except that any person 65 years of age or older who shall make such request to the court at the time of the jury qualification form is filled...filed with the jury commissioner, shall be exempt from serving on grand and petit juries. I looked at that, and I thought, I believe in this day and age maybe we have some very qualified people over age 65 that could serve on jury duty. Now, the current law doesn't disqualify them, but it simply says, if you're over 65, you don't need any other reason not to serve on a jury. So it seems to me our state law discourages people over 65 from doing that service. My bill would strike that section out of the law, which would mean that if you're

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over 65, you still have the same demands on you to serve on a jury as under 65. You would have to show the same hardship cause, or same reason to be excused as anybody of a younger age. And so I think that it would be good to recognize that we ought to encourage our older citizens who are capable and meet all the other qualifications, we ought to encourage them to serve on juries. I think it would increase our pool of people available to serve. And so that is the reason I'm bringing this bill to you. Now, if the committee kind of likes the idea but they're not sure about striking the whole section, I would at least ask that, at minimum, that you might raise the age. I chose not to deal with age at all, just pull the whole section from the bill. But if you're uncomfortable with that, I would certainly be amenable to just raising the age. But I think either one would be a good thing to do for our judicial system and for our citizens of our state. So I would ask the committee to advance LB154 to the Legislature. Thank you. [LB154]

SENATOR ASHFORD: Thank you, Senator Burling. Any questions? I'm sorry, Senator McDonald. (Laugh) I don't know. I have a...I've always had a problem going to my left, so sorry. [LB154]

SENATOR McDONALD: Senator Burling, on page 2, line 25, 26, and 27, and then on the next page, you're removing the part about the nursing mother. But that same wording is on page 3 that's left in there. I don't understand why we're...is it just in the wrong...it was listed twice; now you're taking out once. But it really doesn't disqualify the nursing mother? [LB154]

SENATOR BURLING: It really doesn't change anything. The Bill Drafters made that switch, so that it wasn't mentioned twice in the bill. So now it's just mentioned once. So it doesn't really change anything as far as the disqualification of a nursing mother. [LB154]

SENATOR McDONALD: So a nursing mother can still be disqualified until... [LB154]

SENATOR BURLING: Yes. Yes. [LB154]

SENATOR McDONALD: ...(inaudible) she chooses to. Okay. [LB154]

SENATOR BURLING: It's just kind of a cleanup thing that the Bill Drafters did. [LB154]

SENATOR McDONALD: Okay. All right. [LB154]

SENATOR ASHFORD: Senator Chambers. [LB154]

SENATOR CHAMBERS: Senator Burling, turn to the right and cast your eyes on that young whippersnapper to your right. [LB154]

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SENATOR BURLING: Which one? (Laugh) [LB154]

SENATOR CHAMBERS: The young one with the necktie on. [LB154]

SENATOR BURLING: The young one. All right. [LB154]

SENATOR CHAMBERS: Would I or you be his peer? [LB154]

SENATOR BURLING: You would. (Laughter) [LB154]

SENATOR CHAMBERS: I would. [LB154]

SENATOR BURLING: And I would. We both would. [LB154]

SENATOR CHAMBERS: Then I'll get into my regular tone. What constitutes one person being the peer of another? Superior means above. So what is a peer of a person, or to a person? [LB154]

SENATOR BURLING: Well, it would be equal to, doing the same thing. [LB154]

SENATOR CHAMBERS: Does he look that old to you, as old as you or I? [LB154]

SENATOR BURLING: No. [LB154]

SENATOR CHAMBERS: How many people who are likely to be on trial would have somebody 65 or older as a peer? Or do we just remove that out of consideration, and say that anybody who's walking, talking, and breathing should be amenable to jury service...or for service, unless they can show why they ought not be? [LB154]

SENATOR BURLING: That's what I'm saying. This would do that. [LB154]

SENATOR CHAMBERS: Well, what about the concept of a jury of your peers? [LB154]

SENATOR BURLING: Well,... [LB154]

SENATOR CHAMBERS: We're not the peers of many people, are we? [LB154]

SENATOR BURLING: Well, we're the peers of some people, and in this case, "peers" would mean we're all citizens, we're all part of this society, and so members of the society serve on juries for cases. [LB154]

SENATOR CHAMBERS: Well it "peers" to me that we have a different view of what

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peers are. (Laughter) [LB154]

SENATOR BURLING: Well, I guess... [LB154]

SENATOR CHAMBERS: But I'll see what these people who follow you have to say on that score. [LB154]

SENATOR BURLING: I guess it's broad, I guess. [LB154]

SENATOR CHAMBERS: Suppose you have a person 65 years of older who lacks transportation. Would that be a sufficient basis to be excused? [LB154]

SENATOR BURLING: That would be...according to the law, that would be up to those selecting the jurors, to decide whether there's a disqualification on that basis or not. [LB154]

SENATOR CHAMBERS: But see, now there's a blanket basis for not having to serve if you're 65 or older. You're taking that away. So I want to get your thinking in terms of people that age who might have problems peculiar to people in that age category. If that person lacks transportation, is it your desire that that person be excused on that basis? [LB154]

SENATOR BURLING: It's my desire that a person over 65 should meet the same criteria as those under 65. You may have a person under 65 that has a transportation problem, too, and it should be addressed the same, regardless of age. [LB154]

SENATOR CHAMBERS: Who can motivate, meaning move from place to place, with less inconvenience--younger people, or older people such as yourself and me? Do older people have more difficulty getting around than younger people? [LB154]

SENATOR BURLING: Usually. [LB154]

SENATOR CHAMBERS: Do they have villages and other communal settings that are specifically for older people because of their peculiar needs and requirements? [LB154]

SENATOR BURLING: Yes. [LB154]

SENATOR CHAMBERS: Could any of that have gone into the original blanket exemption which could be available for people 65 and older? [LB154]

SENATOR BURLING: It could. [LB154]

SENATOR CHAMBERS: Do you dislike people...old people,... [LB154]

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SENATOR BURLING: I hope not, I'm one of them. (Laughter) [LB154]

SENATOR CHAMBERS: ...since you've become one? If this were left alone, what damage is being done to the jury system right now with this provision in the law, if you're aware of any damage or harm resulting from it? [LB154]

SENATOR BURLING: Well, the damage I see is that the law discourages people over 65 from doing jury service, because they don't need a reason not to. [LB154]

SENATOR CHAMBERS: And what's wrong with that? [LB154]

SENATOR BURLING: Not particularly, except if we would take that out, it would increase the pool of people available to serve. [LB154]

SENATOR CHAMBERS: Is that always a good thing to do? [LB154]

SENATOR BURLING: It seems to me it would be a good thing to do now, because I hear all these reports of problems finding qualified jurors to serve, and this would increase the pool of people available. [LB154]

SENATOR CHAMBERS: Well, should we require that incarcerated criminals be a part of the jury pool, because that would increase the jury pool? And who is on trial other than those who are accused of committing a crime, and who is more a criminal's peer than a fellow criminal? [LB154]

SENATOR BURLING: Well, you could do that if you want, but I'm not addressing that. I'm addressing age. [LB154]

SENATOR CHAMBERS: Would you be in favor of expanding that for that purpose? [LB154]

SENATOR BURLING: One step at a time. I don't think I probably would, but... [LB154]

SENATOR CHAMBERS: So there are some people you don't think ought to be serving on juries. Is that true? [LB154]

SENATOR BURLING: I think all the disqualifications that are in the law now are probably okay, and I was just questioning the age one. [LB154]

SENATOR CHAMBERS: Were you asked to bring this bill, or you just were combing through the statutes and decided you should bring this? [LB154]

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SENATOR BURLING: Nobody asked me to bring it. I don't even know of anybody that might be testifying pro or con behind me. [LB154]

SENATOR CHAMBERS: Now, you're aware that you brought a bill that is causing considerable discussion. Were you asked to bring a bill to change the state song? (Laughter) [LB154]

SENATOR BURLING: Yes. [LB154]

SENATOR CHAMBERS: You were? [LB154]

SENATOR BURLING: Yes. [LB154]

SENATOR CHAMBERS: Okay, I'm not going to pursue it. I was just curious. Are you open to recommendations and suggestions? [LB154]

SENATOR BURLING: Sure. [LB154]

SENATOR CHAMBERS: Okay. Now, I wouldn't recommend "You Ain't Nothing but a Hound Dog," because that's been taken. But how about "You Ain't Nothing but a Ground Hog"? [LB154]

SENATOR BURLING: Are you going to sing it for us? [LB154]

SENATOR CHAMBERS: Not today. [LB154]

SENATOR BURLING: Oh, okay. [LB154]

SENATOR CHAMBERS: How about "You ain't nothing but a round frog, hopping all the time"? [LB154]

SENATOR BURLING: Okay. [LB154]

SENATOR CHAMBERS: "You ain't never caught a skeeter, so you ain't no friend of mine." [LB154]

SENATOR BURLING: That would... [LB154]

SENATOR CHAMBERS: Now I'm going to be very serious again, Senator Burling. I think I'm in good health, and I'm considerably older than the people you might have in mind. But if somebody is 65 and feels he or she does not want to serve on the jury for any reason, we can presume, I could, that that person has discharged the duties and responsibilities of citizenship by that time. So unless I can be shown that there really is

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a dearth of people to serve on juries, I haven't been persuaded yet that this is justifiable. But maybe some of those who will testify after you will be able to persuade me. Have you ever served on a jury? [LB154]

SENATOR BURLING: No. [LB154]

SENATOR CHAMBERS: I was just curious. I don't have anything else. Thank you. [LB154]

SENATOR BURLING: Thank you. [LB154]

SENATOR ASHFORD: Thank you, Senator Burling. Any other questions? Do you wish to...I'm sorry, Senator Schimek. [LB154]

SENATOR SCHIMEK: Yes, Mr. Chairman. I don't really have a question, but I have an observation to make, and that is, Senator Chambers, if I were on trial, I would very much like to have you on the jury, and I don't want you having any excuses to get out of that. So that's my observation. [LB154]

SENATOR ASHFORD: That's a wonderful reason for...to have this bill. (Laughter) Thank you, Senator. Do you wish to close, or waive closing? What would be your desire? [LB154]

SENATOR BURLING: I think I'll go back to my committee and waive closing. [LB154]

SENATOR ASHFORD: Thank you, Senator. [LB154]

SENATOR BURLING: Thank you. [LB154]

SENATOR ASHFORD: Any proponents of this bill? Any opponents? Opponents? Yes. I don't know how you're going to get around the logic that Senator Schimek has given us, but good luck. [LB154]

MARLENE VETICK: Good afternoon again, Senators. My name, again, is Marlene Vetick. I'm representing the Clerks of the District Courts Association, and also as a jury commissioner. I am here today in opposition to LB154. With all due respect, we simply disagree with this bill. We think it's very bad. To not allow or to disallow an individual, because they're 65 years old, not the ability to be excused or be exempt from jury duty is a terrible and undue burden to those people that are 65 years old. And quite honestly, I've had 65-year-olds come up and say, let somebody younger do it. I've done...I've paid my dues. I don't want to go...I don't want to be here. And so the way the legislation is right now, or the statutes I should say, gives them the ability to walk away from jury service no feelings hurt, no harm, no foul. And if we change this, it will be a terrible

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burden to the court, because they're going to have to...the individuals will have to come in and fill out an application to be excused, the judge will have to review that, which takes time. Then, of course, then if judge has more questions or doesn't feel that it's an undue hardship against that individual, then that individual will have to appear for jury duty, and of course, then you have hard feelings, and then we have the transportation issues, as Senator Chambers has brought up. If it's wintertime in western Nebraska, I don't like driving, and I know a lot of people that are 65 years old don't like driving on ice and snow. So those are some the issues. Also is the cost. The ability for someone to be excused from jury duty, if they have medical conditions, we have...they're required to submit a medical...a doctor's statement. And if we have a 65-year-old running to...having to go to the doctor to get a statement not to perform jury duty, I'm sure the doctors don't do this for no charge, so it's an additional cost to those individuals as well. So those are some of the reasons that we feel this is bad legislation. If you have any questions, I'd be happy to answer. [LB154]

SENATOR ASHFORD: Any questions? [LB154]

SENATOR CHAMBERS: Some of these young folks I just love so much, and you're one of them. Thank you. [LB154]

SENATOR ASHFORD: Thanks. Any other...anybody else? Thank you. Thank you. Any other opponents? Neutral testifiers? Okay, this ends the hearing on LB213...I'm sorry, not LB213, that's my bill. LB213 is mine. LB154. I'm easily confused. [LB154]

SENATOR PEDERSEN: Senator Ashford, we know how you are. [LB213]

SENATOR ASHFORD: Don't I have to write my name down, just for the record? [LB213]

SENATOR SCHIMEK: Not if you've got a good committee clerk. [LB213]

JONATHAN BRADFORD: I think I know who you are. I'm not sure, though. [LB213]

SENATOR ASHFORD: I'll do it anyway. I want to practice all aspects of this. Thank you. Thanks, Senator Pedersen. I'm Brad Ashford, Legislative District 20, appearing to introduce LB213. Very simply, the bill amends the statute on recording devices in civil and criminal cases, changing the wording to reflect the technology of the day, utilizing compact discs and multitrack recorders, as opposed to the tape recording language that was in prior law...current law. [LB213]

SENATOR LATHROP: Any questions? [LB213]

SENATOR ASHFORD: I'll waive closing, Senator. (Laughter) [LB213]

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SENATOR PEDERSEN: I don't know if I can support this. [LB213]

SENATOR ASHFORD: I know, it's bad. Bad legislation. (Laughter). [LB213]

SENATOR LATHROP: Any proponents here to testify today? Please come forward. [LB213]

JUDY BEUTLER: Chairman Ashford and members of the committee, my name is Judy Beutler, J-u-d-y B-e-u-t-l-e-r. I'm the deputy administrator in the Court Administrator's Office, and we're here just to support this...these amendments. We're just trying to get caught up with the technology, and I think Senator Ashford has explained it. It's very complicated, so I won't go any further. Any questions? [LB213]

SENATOR ASHFORD: Thanks, Judy. Yes, Senator Chambers. [LB213]

SENATOR CHAMBERS: I can't let my friend leave without a comment, since I've said something to everybody else. But this is...in seriousness, really, if this were a case before a court and one of these devices were being considered and it were not mentioned specifically, the court might expand the definition or what is in the statute to cover something like this. But since it's legislation, if we don't mention it, then it's not covered. Is that true? [LB213]

JUDY BEUTLER: Well, the way that it reads now, it reads "tape recorders." [LB213]

SENATOR CHAMBERS: Right. [LB213]

JUDY BEUTLER: And we are gradually changing the recording devices. We still have some cassette tape recording machines, and we're gradually adding digital machines, because the tape recording machines are going to be obsolete soon. [LB213]

SENATOR CHAMBERS: But the point I'm making, because it specifies tape,... [LB213]

JUDY BEUTLER: Yes. Yes. This broadens it. [LB213]

SENATOR CHAMBERS: ...it's restricted to that. If we're going to do something else, we must put it. [LB213]

JUDY BEUTLER: Yes. [LB213]

SENATOR CHAMBERS: Are there requirements that this kind of recording be done in district court? In other words, are recording machines mandated for use in district court? [LB213]

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JUDY BEUTLER: Four-track recording machines can be used, as you know. There are... [LB213]

SENATOR CHAMBERS: Well, I mean regardless of the type. Is recording required, or can there be only a stenographer? [LB213]

JUDY BEUTLER: There can be an official court reporter that can use the stenographic method, or an electronic recorder. [LB213]

SENATOR CHAMBERS: But it can be either/or? [LB213]

JUDY BEUTLER: Yes. [LB213]

SENATOR CHAMBERS: In county court, the recorders, are they mandated? [LB213]

JUDY BEUTLER: I believe the statute also says that a judge...than an official court reporter could be used also. [LB213]

SENATOR CHAMBERS: But it's not mandated? [LB213]

JUDY BEUTLER: No. [LB213]

SENATOR CHAMBERS: Okay. Thanks. That's what I really wanted to ask you, because I wasn't sure. Okay. [LB213]

SENATOR ASHFORD: Any other questions of Judy? Yes, Senator Schimek. [LB213]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Judy, why...what happens...I don't know what multitrack recorders are, but I'll just presume that's not important. What about when the technology changes again, then we have to come back and change this again? Would it not be better to just say, recorders, microphones, and playback units used...blah blah blah? Is it necessary to describe them? And I'll ask one further question so you can see what I'm getting at. Later in this, it does say, such standards shall require that the equipment be capable of multitrack recording. [LB213]

JUDY BEUTLER: That's because there are four...usually four microphones in a courtroom--one for the judge's bench, one for both counsel benches, and one for...tables, and one for the witness. And that allows, when a person is transcribing that hearing, to isolate that sound. So we're pretty confident that it will always be multitrack, because of that technical need, that capability to isolate that. So we looked at that, too. [LB213]

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SENATOR SCHIMEK: Thank you. [LB213]

SENATOR ASHFORD: Thank you, Judy. Any other questions? Thanks. [LB213]

JUDY BEUTLER: Thank you. [LB213]

SENATOR ASHFORD: Any other testifiers on this bill? I've waived closing, so that concludes the hearing, and concludes all the hearings for the day. [LB213]

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Disposition of Bills:

LB19 - Indefinitely postponed.
LB67 - Advanced to General File, as amended.
LB99 - Advanced to General File.
LB154 - Indefinitely postponed.
LB213 - Advanced to General File.

Chairperson

Committee Clerk