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Judiciary Committee  
January 29, 2015

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[LB194 LB297 LB301 LB314 LB338]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 29, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB338, LB314, LB301, LB194, and LB297. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: Laura Ebke; and Bob Krist.

SENATOR SEILER: The hour of the bewitching hour is here. We will get started. My name is Les Seiler. I'm Chairman of the Judiciary Committee. Starting on your right is Matt Williams from Gothenburg; Adam Morfeld from Lincoln. Bob Krist will not be joining us today. He's from Omaha. Senator Chambers will be here. He's from Omaha. Legal counsel is Josh Henningsen here on my right. And then we'll start...down on my left is Senator Ebke--I'm sure she'll be here; Senator Patty Pansing Brooks--almost said Guenzel--from Lincoln; and Senator Colby Coash from Lincoln. Our clerk is Oliver VanDervoort and our pages are Drew and Jonathan. Okay. We will be going through the bills as on the printed agenda. Pick up your testifier sheets outside the door and get them filled out so that you can give them to a page when you come up to testify. And if you have any handouts, you're supposed to have 15 copies to hand out to the committee. We'll be on the lights today. And I don't mean to be obnoxious, but when the red light comes on I'm going to tell you to stop. If you see the red light come on, please stop. And if you've got some real important testimony, normally, one of the committee people will ask you to finish your testimony and then it gets in. So you don't have to worry about that. We'll treat everybody fairly, so stop on the red light. Oh, one other thing, speak clearly into the microphone. That has nothing to do with the amplification; it has to do with the record. And if you and one of the members of the committee get into a discussion, one talk at a time; otherwise, the transcribers just go nuts trying to figure out who is talking and who is not. When you come up, state your name, spell your name for the record, and then proceed with your testimony. Silence your cell phones. I think I'd better do that. Okay, first bill is LB338. Senator Brasch, will you present. [LB338]

SENATOR BRASCH: Thank you, Chairman Seiler. And good afternoon, members of the Judiciary Committee. I am Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent the 16th District in the Nebraska Legislature. I am here to introduce LB338 which I have brought to you at the request of the State Court Administrator's Office, Nebraska judiciary branch. I believe this is a reasonable request and I hope that, following my introduction and testimony, others of you will also agree as well. This bill does not deal with trying to implement any new fee or increase a fee. It is simply a current fee that...and it will not add a monetary burden on those who are unable to contribute. Rather, as I will further explain in my opening statement, this bill concerns an equitable and fair application of a fee set to individuals who are also able to financially contribute for mediation services they have chosen to utilize. This bill would amend the section

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of statutes that assesses a docket fee of \$65 in dissolution of a marriage and related custody, support, and parenting modifications, of which \$50 is directed to the Parenting Act Fund and \$15 is directed to the Legal Aid and Services Fund. Currently, the statutory scheme assesses this fee only upon married parents filing for a dissolution of marriage but not upon unmarried parents filing for parenting time, custody, or other child-centered issues. For example, when a couple with children files for divorce and has a custody dispute, they're directed to mediation to develop a parenting plan, as required by Nebraska's Parenting Act. In mediation they discuss issues such as parenting, the time they need, custody, visitation, and other things important to the children. Upon filing of the complaint of dissolution, they pay a docket fee of \$65, of which \$50 goes into the Parenting Act Fund to help utilize and subsidize the cost of mediation for the indigent and low-income parents at the court-approved mediation centers. When there is a financial burden or an inability to pay, there are already avenues to petition the court to waive the fees. Based on 2012 Nebraska judicial branch statistics, there were 3,769 dissolutions of marriage filed by parents with parenting and custody issues. These married parents were assessed the Parenting Act Fund docket fee but nearly the same amount, 3,398, of unmarried parents filing similar actions were not assessed the docket fee because it's not specified under state law. This problem is due to a gap in the current statutory language which only addresses married parents going through divorce and not unmarried parents separating. It may possibly be that eight years ago, when the Legislature voted to enact the Parenting Act Fund docket fee, it simply overlooked the fact that in today's society there is almost an equal number of unmarried parents with custody concerns and disputes accessing...accessing our court who are unmarried as those who are married seeking a divorce. This bill would simply amend our statutes to fill this gap and to equalize the needs of these children, whether their parents are married or unmarried. This bill would enable the courts to collect a not-insignificant amount of potential revenue from individuals who are using these state resources. As a modest estimate based on 2012 numbers, this bill would result in an increase of nearly \$50,000 for the Parenting Act Fund to offset its mediation services to parents and their children who are otherwise not able to pay. This would provide a much better resource for revenue as opposed to coming and seeking funds needed that are necessary from the General Fund. This bill also continues to exempt county attorneys from being assessed this docket fee for paternity filings made pursuant to Title IV-D of the federal Social Security Act. Under this section of the Social Security Act, legal fees and these types of actions are funded by the federal government in order for county attorneys to pursue the determination of paternity of an unmarried father and to order appropriate child support. County attorneys would be exempted from paying the \$65 docket fee under LB338, similar to the existing exemption under the dissolution of marriage provision. I will briefly note that this legislation carries a positive fiscal impact. The Supreme Court estimates additional cash fund revenues of \$47,350 per year to the Parenting Act Fund basically that aren't being collected by able-to-pay, unmarried parents. The Commission on Public Advocacy estimates an increase in funds to the Legal Aid and Services Fund by \$90,000, but the fiscal note does note that the commission stated their estimate is too high. Overall, as is in the intention of this bill, the

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Parenting Act Fund would have an important source of revenue that has previously been uncollected. This revenue will assist in the important work of helping to subsidize the cost of mediation for the indigent and low-income parents at court-approved mediation centers by collecting this fee from the unmarried parents who are already using the court's resources. And ultimately, this bill will assist in funding a valuable service that helps protect the well-being of children during these very difficult times, physically and emotionally, as their parents are trying to come to an agreement concerning the best possible outcome with regard as to issues of the parenting time--visitation, support, and other child-centered needs. As I conclude, I want to thank you for your time. And I believe that Corey Steel of the State Court Administrator's Office, behind me today, will be happy to answer any questions you may have regarding the Parenting Act Fund and mediation services that are offered through the fund. And after he has shared his testimony with the committee, again, I hope you do believe this is a reasonable thing to ask of our courts, of the people of our state. Thank you for your time and I'm happy to answer any questions you may have. [LB338]

SENATOR COASH: Right here. [LB338]

SENATOR SEILER: Matt. [LB338]

SENATOR WILLIAMS: Thank you, Chairman Seiler. One quick question right on the front end: Is the work of the mediation group the same for an unmarried couple as it is for a married couple in going through this process? [LB338]

SENATOR BRASCH: That is a good question. It is, I mean, but the basis here is the children that will be affected by the parting of ways. It's difficult emotionally, socially. And parents today, we're finding that there's the same number coming to break up that are married as unmarried. [LB338]

SENATOR WILLIAMS: Right. [LB338]

SENATOR BRASCH: The services are the same. And if a couple, married or unmarried, does not have the funds, the court will waive those fees. They also have an option to get mediation before coming to the judge and the judge just needs to see that there has been a parenting plan written by an attorney or by the parents that they are prepared to part with the well-being of the affected children. [LB338]

SENATOR WILLIAMS: Thank you for clarifying that. [LB338]

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SENATOR SEILER: Senator Coash. [LB338]

SENATOR COASH: Thank you, Chairman Seiler. Senator Brasch, in your testimony you mentioned that, if the parties were unable to pay, that there is a...I think you...is there a waiver? [LB338]

SENATOR BRASCH: Title IV, Title IV, the judge waives the fees. There's other...you know, it's...if they are married or they're unmarried, let's say today, as the law is written that fee is waived by the judge because of they're in the poverty level, they cannot pay. [LB338]

SENATOR COASH: Right, and so the fee can still be waived for the unmarried couple. My question is, when the judge says, you can go but you don't have to pay this docket fee, does somebody still have to cut a check? I mean we always...we often hear about the counties being the payer of the last resort on certain things that are ordered by the courts. Would that be the case here where, if the judge waived it, the county still would have to pay? [LB338]

SENATOR BRASCH: I believe that the fund that this goes into, I read earlier and they can elaborate behind me, but there is a fund for the indigent, low-income, unable to pay. So whether that... [LB338]

SENATOR COASH: So if the judge would waive it, it would come from an indigent fund over to this fund? [LB338]

SENATOR BRASCH: There is a separate fund; there is a separate fund for those unable to pay... [LB338]

SENATOR COASH: Okay. I'll let... [LB338]

SENATOR BRASCH: ...that part of that goes into. And they do have the option before they go to the judge through their attorney. A plan can be written. If they have a solid, good, well-being, you know, everything is answered between, you know, what's going to happen, you know, day care, and a thorough plan, the judge may not have them go through this program. This is when the judge orders it because they came before him or her without anything ready for the next step in this child's life. [LB338]

SENATOR COASH: Okay. All right. I'll let...if anybody behind you can elaborate on that. My concern is I don't want to...last thing I want is some counties coming around and saying, oh,

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here's another thing that you've asked...the Legislature has asked us to do and if it can't be done, we're...we have to pick it up, like jails and all that stuff, so. [LB338]

SENATOR BRASCH: I understand. [LB338]

SENATOR COASH: Just want to make sure, if that's not the case, we get it on the record. [LB338]

SENATOR BRASCH: I appreciate that. [LB338]

SENATOR COASH: Thank you. [LB338]

SENATOR BRASCH: Thank you. [LB338]

SENATOR SEILER: Any further questions? Thank you, Lydia. [LB338]

SENATOR BRASCH: Okay, thank you. [LB338]

SENATOR SEILER: Testimony for the proponent. [LB338]

COREY STEEL: (Exhibit 2) Good afternoon, Senator and Chairman Seiler and members of the Judiciary Committee. I am Corey Steel, C-o-r-e-y S-t-e-e-l, and I am the State Court Administrator for the Nebraska judicial branch under the Supreme Court. I'm here to testify in support of LB338. I want to thank Senator Lydia Brasch for introducing the bill on our behalf and thank Senator Coash, Campbell, Howard, and Kuehn for signing onto this bill. At the outset, I want to note that LB338 amends the court cost and docket fee provisions for Nebraska Revised Statute pertaining to a \$65 docket fee collected by the clerk of the district court for filing of dissolution of marriage and modified of custody and support. My testimony will solely address the \$50 portion which is to be credited to the Parenting Act Fund. LB338 will achieve equity in the application of Parenting Act Fund docket fee by assessing this fee upon unmarried parents filing court complaints for custody and parenting time. Currently, only married parents seeking dissolution of marriages are assessed the Parenting Act docket fee, as well as individuals modifying their custody and support decrees. As noted by Senator Brasch in her opening comments, nearly the same number of unmarried parents are now filing civil custody and support actions in the Nebraska courts. Conservatively, revenues generated from LB338 would provide an estimated additional \$50,000 to the annual Parenting Act Fund which the Administrative Office of the Courts administers. The Parenting Act Fund is used to subsidize the seven statewide mediation centers providing fee-free or sliding-fee scale parenting mediation to

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indigent and low-income families. There is an ever-increasing demand upon the mediation centers to provide these services to unmarried parents. Last year, 45 percent of the parenting mediation conducted by these centers were for unmarried parents seeking custody. And a parenting plan is required by statute. Currently, these mediation services were provided completely by General Fund appropriations. LB338 is a bill to meet the three important justice interests: equity for both married and unmarried parents involving with custody proceedings in our court system; access to less adversarial mediation processes for parents during separation and divorce; and fiscal constraints and allocation to the cost of court-connected mediation services through fair and equitably created Parenting Act Fund. I urge the committee to advance LB338 out of committee. Again, thank you for your time and I'd be happy to answer any questions. [LB338]

SENATOR SEILER: I have one. [LB338]

COREY STEEL: Yes, Senator Seiler. [LB338]

SENATOR SEILER: Currently, I think my memory is correct, when you file a civil action in the district court, you have to pay an \$82 fee. Is this in lieu of the \$65? Are you lowering it? [LB338]

COREY STEEL: Correct, it's in addition to, correct. These...this \$65 fee is particular for these funds and \$15 of that, as Senator Brasch had talked about, goes to Legal Aid and... [LB338]

SENATOR SEILER: Do you still have to file the \$82 besides the \$600 (sic)? [LB338]

COREY STEEL: Correct, correct. [LB338]

SENATOR SEILER: So it is an increase in filing fees then. [LB338]

COREY STEEL: That fee currently is assessed for married parents right now. [LB338]

SENATOR SEILER: Oh, okay. [LB338]

COREY STEEL: It's there. It's not in addition to. [LB338]

SENATOR SEILER: You're saying this only applies to... [LB338]

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COREY STEEL: We want it equitable for those that... [LB338]

SENATOR SEILER: Okay. [LB338]

COREY STEEL: ...don't come in for a divorce that are unmarried. [LB338]

SENATOR SEILER: I understand now. I didn't know where the \$82 fit in. Okay. Any further questions? Thank you very much. [LB338]

COREY STEEL: Thank you. [LB338]

SENATOR SEILER: Any further proponents? [LB338]

CASEY KARGES: (Exhibit 1) Good afternoon, Chairman Seiler, and good afternoon, members of the Judiciary Committee. I am Casey Karges, C-a-s-e-y, last name Karges, K-a-r-g-e-s. I'm the executive director of The Mediation Center located here in Lincoln. I'm here to testify in support of LB338. The Mediation Center is located in Lincoln, is one of six court-approved mediation centers across the state of Nebraska. LB338 would generate needed funds to help subsidize mediation centers' fees and reduced-rate parenting mediation services to indigent and low-income parents. In 2007, I had the privilege to sit before you as the Parenting Act was being passed. At that time, we did not know of the growing trend of parents who were never married but were developing parenting plans and also those who were coming to the courts to modify existing parenting plans. I'll give you an example of why we're here today. In the last fiscal year, July 1, 2013, to June 30, 2014, The Mediation Center just in Lincoln worked on 95 cases of parents who came to the table for mediation of parents who had never been married. Of those 95 cases, 95 percent of them fit on our sliding-fee scale. Also, at the same time we had parents who were modifying their existing plan. We had 67 cases come to the table of parents who were modifying their existing plan, 90 percent of those fit on our sliding-fee scale, and in both those cases either had no cost or their fee was placed at the low end of a sliding-fee scale. So when the act was passed we had no idea of this growing trend and we're seeing more and more parents come to us who have never been married who are...been court ordered or asked to mediate. The Mediation Center receives about \$70,000 a year to work on parenting plans of people who would fit on that sliding-fee scale or who would not be charged and LB338 would help offset. What we're seeing is, is we're working on more and more cases. An example would be we worked on over 500 cases last year for parents in parenting plan cases and that begins to grow. A large number of those are parents who have never been married. So we'd ask in some way that as we see our costs are going up, that this would meet that need. As the yellow light is on, we work with an awful lot of parents who don't make a lot of money. For the importance of their kids they're trying to come to a more peaceful decision and a lot of them want to come to do it in a

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mediated way. This is one great way, through the mediation centers, or through their attorneys who also mediate for them to come to a more peaceful decision. So we would ask that you would support LB338 to get it out of committee. And I would take any questions if people have questions. [LB338]

SENATOR SEILER: We'll start with Patty Pansing Brooks. [LB338]

SENATOR PANSING BROOKS: Thank you, Mr. Chair. I was just wondering, are you familiar with the previous law, Mr. Karges? And thank you for coming today. [LB338]

CASEY KARGES: A little bit, yes. [LB338]

SENATOR PANSING BROOKS: Okay, well, I guess what I was wondering is that I don't see language where we've crossed out just saying the parents, so is there...is that language, wherever it is...is it under 43-1401? Anyway, is that language then going to be seen...I mean could it be that somebody would say, oh, well, the parents owe this and they owe this other part, so...or has something been crossed out to clarify this section, wherever it is, where it says parents only? [LB338]

CASEY KARGES: I'm not sure of the answer to that question, no. I will have to look into that concern. [LB338]

SENATOR PANSING BROOKS: Okay, thank you. [LB338]

CASEY KARGES: Um-hum. [LB338]

SENATOR SEILER: Senator Coash. [LB338]

SENATOR COASH: Thank you. You heard my question to Senator Brasch. So what's...when a judge orders mediation and the married or unmarried couple...well, in this case it would just be married who are subject to that fee. [LB338]

CASEY KARGES: Yeah. [LB338]

SENATOR COASH: When mediation is ordered and they are unable to pay and the judge waives that, do you still get money to provide that mediation service? [LB338]



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CASEY KARGES: We don't. And I appreciate your question, the question, does someone have to pay for that? [LB338]

SENATOR COASH: Right. [LB338]

CASEY KARGES: We would not get any more funds. We do not get funds from the county to do that. I think there was in forma pauperis, understanding of the county might get subsidized for that, but it does not...we do not have a stream at the current time from the county to make up for that. [LB338]

SENATOR COASH: You're totally funded by this fee. [LB338]

CASEY KARGES: And...yes, yes, we don't...for people who come in, we get monies from...and do know it doesn't pay for all of it. We also...this works well. We also go get grants to help subsidize this. We ask the parents to pay for what they can pay. I think it's a good system to make everyone have the ability to pay, so. [LB338]

SENATOR COASH: Okay. [LB338]

CASEY KARGES: But we don't get any other funds from the county or anybody else to do these mediations. [LB338]

SENATOR COASH: Okay, I think I understand. Thank you. [LB338]

SENATOR SEILER: Seeing no further questions, thank you for your testimony. [LB338]

CASEY KARGES: All right, thank you. [LB338]

SENATOR PANSING BROOKS: Thank you. [LB338]

SENATOR SEILER: Any further proponents? Seeing nobody scrambling to their feet, any opponents? Again, seeing no one coming forward, anybody to testify in the neutral? This...Senator, you may close. [LB338]

SENATOR BRASCH: Thank you, members of the Judiciary Committee. And, Senator Coash, if you need more information, my staff explained it... [LB338]

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SENATOR COASH: He answered my question. [LB338]

SENATOR BRASCH: He did, okay, very good. This is important to have children feel confidence moving forward. It's a very confusing and difficult time for anyone and everyone involved, grandparents, parents, the kids. And when the question comes up on who pays, I believe this service...and I spared you some time. I had examples to read of their success stories, and they have many, if you are interested. They can tell you of some positive outcomes of situations which would have definitely impacted children over a long period of time had it not been for their services. We're not asking for anything more than what's already in place there. We're just looking at the social trend perhaps where kids may have three or more different scenarios of parenting relationships. And they do have the option to go to other services prior to coming to the judge. If the judge sees a well-thought plan laid out and in place, ready to go, then the judge will not require this service. We believe it's very fair, very equitable, and the money does go directly to this program, the two described. Thank you for your time and I ask you for a vote, yes, out of committee. Thank you. [LB338]

SENATOR PANSING BROOKS: Could I just ask one more question? [LB338]

SENATOR SEILER: Yes, Senator. [LB338]

SENATOR PANSING BROOKS: Senator Brasch, I was just wanting to say that...I just wanted to clarify and make sure that they just don't conflict with each other because I don't...I'm presuming you don't want them to conflict. And I do appreciate the fact that you've specifically put something in for those who are in poverty and really have difficulty making this...any payment work. [LB338]

SENATOR BRASCH: Thank you. We will be happy to come directly to you and look at that statute and... [LB338]

SENATOR PANSING BROOKS: Okay. Well, it's probably covered. I just wanted to make sure that there wasn't some conflict there. [LB338]

SENATOR BRASCH: We want to make sure too. [LB338]

SENATOR PANSING BROOKS: Yeah, yeah. [LB338]

SENATOR BRASCH: So we'll definitely look into that. Thank you. [LB338]

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SENATOR PANSING BROOKS: Okay, thank you. [LB338]

SENATOR SEILER: You may step down. [LB338]

SENATOR BRASCH: Thank you. [LB338]

SENATOR SEILER: Thank you. That concludes the hearing on LB338. (See also Exhibit 3.) We will now open on LB314. Senator Hansen. [LB338 LB314]

JOEY ADLER: He's on his way. [LB314]

SENATOR SEILER: Okay. Senator Hansen, you may...right to the table and proceed to open. [LB314]

SENATOR HANSEN: (Exhibit 1) Thank you. Good afternoon, Chairman Seiler and members of the Judiciary Committee. I'm Senator Matt Hansen, M-a-t-t H-a-n-s-e-n, representing Legislative District 26 in northeast Lincoln. Today I am introducing LB314. This bill is intended to streamline the county court jurisdiction statutes and provide a clear list of where the county court has jurisdiction. The county court in Nebraska is a court of limited jurisdiction, meaning that it only has the jurisdiction granted to it by the Legislature. Nebraska Revised Statutes Section 24-517 currently lists the jurisdiction of the county court. However, as new legislation has been passed, this section has not always been changed accordingly. For example, when Nebraska adopted the Nebraska Uniform Power of Attorney Act, Section 24-517 was not amended to specify the county court's new jurisdiction over actions created by that act. LB314 remedies this. That is just one example. The bill would also denote the county court's jurisdiction in matters arising under the Nebraska Uniform Custodial Trust Act; any action arising under statutes pertaining to the healthcare power of attorney; matters that arise under the Nebraska Uniform Transfers to Minors Act; matters arising under the Uniform Principal and Income Act; and matters arising under the uniform customary additions to trust acts. This amendment that I will make sure to pass out also reflects further consideration, input, and I believe most accurately clarifies that the jurisdiction is not changing but only becoming clearly stated. In closing, LB314 does not change the jurisdiction of any court. Under current law, all of these acts are currently within the county courts' jurisdiction. What this bill does is clearly list the matters where the county court has jurisdiction in a single, organized statutory section. With that, I'd be happy to answer any questions. [LB314]

SENATOR SEILER: Seeing none, you may step down. [LB314]

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SENATOR HANSEN: Great. [LB314]

SENATOR SEILER: Are you going to stay for the hearing? [LB314]

SENATOR HANSEN: Yes, I plan to. [LB314]

SENATOR SEILER: Okay. Testimony of the proponents. [LB314]

THOMAS FITCHETT: Good afternoon, Chairman Seiler, members of the committee. My name is Tom Fitchett. I'm appearing on behalf of the Nebraska State Bar Association in support of LB314. The...my comments will relate to the bill, including the amendments that have been proposed. There are two types of jurisdiction described in the statute: exclusive original jurisdiction and concurrent original jurisdiction. The word "original" as it appears in the statute means the place where you start a particular proceeding. If a certain type of case can only be started in one court, it's called exclusive original jurisdiction; if it can be started in two courts, then it's called concurrent original jurisdiction. The...an example of exclusive original jurisdiction would be probate proceedings. Those can only be started, commenced in the county courts. That type of case can certainly evolve into other courts. You may start in the county court, but it can then move to a district court or the Supreme Court. That's important to understand because the word "original" is the key to that, where can you start a court. So that's the reason the word "original" comes in. An example of a concurrent original jurisdiction would be domestic relation matters which are presently described in the statute. Those can start either in the county court or district court, so the jurisdiction is concurrent. The real estate, probate, and trust section of the bar association was reviewing the Uniform Power of Attorney Act and realized that there was a gap that it wasn't clear where the jurisdiction lied. County court can pick up its jurisdiction by statute but it doesn't have inherent jurisdiction, so as the result of that and finding some other gaps in the statutes, they proposed LB314. The changes that are taking place are not changes but making it clear where the jurisdiction lies is that exclusive original jurisdiction is going to be in the county court for matters pertaining to healthcare powers of attorney, Nebraska Uniform Custodial Trust Act, and the Nebraska Uniform Transfers to Minors Act. Concurrent original jurisdiction through the bill will lie with...for powers of attorney, Uniform Principal and Income Act, and the Uniform Testamentary Additions to Trusts Act. These are a lot of words and each one of those little sections has different things that... [LB314]

SENATOR SEILER: Tom, your red light is on. [LB314]

THOMAS FITCHETT: Then I will conclude by saying the bar association supports this legislation, thinks it is good, and believes it can eliminate litigation. Sometimes jurisdiction has to be litigated. [LB314]

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SENATOR SEILER: Any questions? Yes, Senator. [LB314]

SENATOR PANSING BROOKS: Mr. Fitchett, thank you for coming. We have periodically allowed people to...if you...do you have something that you wanted to get in that you didn't get...is there a specific point that you cared to still let us know about? [LB314]

THOMAS FITCHETT: No, I think that does it. [LB314]

SENATOR PANSING BROOKS: You got it mostly in? [LB314]

THOMAS FITCHETT: Yep. [LB314]

SENATOR PANSING BROOKS: Okay. [LB314]

THOMAS FITCHETT: Thank you, Senator. [LB314]

SENATOR SEILER: Any other questions? Seeing none, Tom, you may step down. [LB314]

SENATOR PANSING BROOKS: Thank you. [LB314]

SENATOR SEILER: Any other proponents? Any opponents? Anyone testifying in the neutral? Senator Hansen, you may close. [LB314]

SENATOR COASH: Or waive. [LB314]

SENATOR HANSEN: Thank you. I would only close in thanking the Judiciary Committee for allowing me to get my first bill introduction in and I would yield to any questions. Otherwise, I will conclude. [LB314]

SENATOR SEILER: So you're asking us for...to move this bill and the amendment, right? [LB314]

SENATOR HANSEN: Yes, I am. [LB314]

SENATOR SEILER: Okay, thank you. [LB314]

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SENATOR HANSEN: Thank you. [LB314]

SENATOR SEILER: This concludes the testimony on LB314. Senator Chambers, you're up with LB301. [LB314 LB301]

SENATOR CHAMBERS: Mr. Chairman, members of the committee, I'm Ernie Chambers. I represent the 11th Legislative District. I'm presenting a bill that I would describe as a peewee, not into indicate the importance or lack thereof but the fact that it's very simple, uncomplicated and, such being the case, I'm just going to read the statement of intent because it says everything that I believe needs to be said. In response to declining requests for print subscriptions to the Advance Sheets and bound volumes of the Opinions of the Nebraska Supreme Court and Nebraska Court of Appeals, the Supreme Court electronic publications committee was formed. This committee is determining the feasibility of electronic publications of judicial Opinions. LB301 allows for implementation of the committee's decisions by providing authority for electronic publication of judicial Opinions as designated by the Supreme Court either as an alternative or in addition to print format. I think most people here know what the Advance Sheets are. Periodically, as a few Opinions are presented by the Supreme Court in their decisions, they are printed in small paper pamphlets, you can call them. And then when enough have been gathered and enough time has passed, these are all compiled into bound volumes. And when you go into a law library or you're looking at television and you see the fake bookshelves, you see all these thick books. Those are the bound volumes of the Supreme Court Opinions. And I'm saying this for the record, not the edification of the members of the committee. What is happening is that institutions that use or subscribe to the bound volumes have also passed me by, as so many others have, and the books are not feasible as they used to be. They are taking a lot of space. Electronically, you have much faster, reliable in some cases, access to the information in those books. So I'll give you an example. And I'm going to obey what we're told in terms of time. I might go over a few seconds. [LB301]

SENATOR COASH: Give him the green light. [LB301]

SENATOR CHAMBERS: I'm like the guy who is chained beside a thoroughfare that was not busy when he first was chained. As time went on, it was covered with crushed rock, then asphalt, then concrete, then the number of lanes increased, and all he could do was sit there and watch. And he watched and from people trudging, from people in stagecoaches, from people in other types of vehicles becoming increasingly modernized, moving at a much faster pace, watched this take place. He couldn't drive a stagecoach. He couldn't handle any of those conveyances. But he could watch. Well, to update that example, if he had ever stepped in front of these vehicles to try to stop them, they would run over him. Some people in this advanced age are high tech; some are low tech; those dinosaurs, such as myself, are no tech. In the same way that changes that were

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occurring passed that individual chained beside the road, passed him by, this modern, technological world has passed me by. I do what I can with books. I read the Advance Sheets. But I cannot expect everybody to be bound and stagnated in one place, as I am, so this bill is designed to get the Supreme Court into a position to accommodate its operations to the advancements of technology and the types of needs that people have and the way they meet those needs. So the court kind of, as maybe consideration for old-timers such as myself, knowing we're going to die out pretty soon and there are fewer and fewer of us, are not saying we will take either a paper format or an electronic. There can be the electronic in place of or in conjunction with. So they can present some things with paper but also they have authorization to go electronic. And the reason you might need to get rid of these Advance Sheets is because there was a fellow who had gotten to be a judge by way of political appointment. So he's sitting up on the bench--and it was a very recent Supreme Court decision that had come out--and the lawyer arguing the case was going to make reference to that case by way of the Advance Sheet because it had not been published in a bound volume. So the judge was sitting up there, and he didn't understand the law anyway, and he didn't like this particular lawyer because he was too smart, he could answer every question. So the judge's only response to that, in order to maintain his position as head and king of the courtroom, said, you're a very smart fellow, you think you're smart, but ain't nobody going to tell me what the law is out of no comic book. So that was his attitude toward Advance Sheets. If we get rid of the Advance Sheets, you won't have judges thinking they're comic books; you will have the orderly progress of the court system. And although I had in the past resisted this, it's appropriate that I be the one to offer this bill. We all know who have been involved with the legal profession either by observing or by participating, are aware that, compared to the way that some things in the judiciary move, a glacier is moving with the speed of jet propulsion. So we want to give them the wherewithal to somewhat keep up. And that's all that I have to say. If you have any questions, I'd be pleased to answer them.  
[LB301]

SENATOR SEILER: I have one question. Senator Chambers,... [LB301]

SENATOR CHAMBERS: Yes. [LB301]

SENATOR SEILER: ...I have one question. Is that what you call "gadgets" on the floor?  
[LB301]

SENATOR CHAMBERS: Those are gadgets, right, and now I know...I...there are gadgets that people carry in their pockets, too, so. [LB301]

SENATOR SEILER: Senator Pansing Brooks. [LB301]

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SENATOR PANSING BROOKS: Thank you. So, Senator Chambers,... [LB301]

SENATOR CHAMBERS: Hello. [LB301]

SENATOR PANSING BROOKS: Hello. The dinosaur has seen the advent of the rise of the mammal, is that correct? [LB301]

SENATOR CHAMBERS: Say it again, please. [LB301]

SENATOR PANSING BROOKS: The dinosaur has seen the advent of the rise of the mammal, pretty much. [LB301]

SENATOR CHAMBERS: I still...I don't know what she said. [LB301]

SENATOR PANSING BROOKS: (Laugh) You...we can understand you all the time with your... [LB301]

SENATOR CHAMBERS: I speak clearly because I take into consideration the fact that people need to have me speak clearly. No, but...(laugh) go ahead. [LB301]

SENATOR PANSING BROOKS: Anyway, the dinosaur has seen the advent of the mammal, the birth of the mammal. You're...the changes of the time have come, so. [LB301]

SENATOR CHAMBERS: Should I answer that, yes or no? [LB301]

SENATOR PANSING BROOKS: No, you don't need to answer it. [LB301]

SENATOR CHAMBERS: Okay. Whatever the... [LB301]

SENATOR PANSING BROOKS: I'm just so impressed. I'm so impressed with this. [LB301]

SENATOR CHAMBERS: Whatever the appropriate answer is, that's the one that I would give. [LB301]

SENATOR PANSING BROOKS: I'm really impressed. That's good. [LB301]



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SENATOR CHAMBERS: Oh, you're nice. Thank you. [LB301]

SENATOR SEILER: Senator Coash has a question. [LB301]

SENATOR COASH: Thank you, Chairman Seiler. Senator Chambers, in your statement of intent, as you read, these Advance Sheets could be alternatively presented in an electronic format. In a practical sense, is the court just going to do this and will the actual papers go away? Your bill provides for them to do both, but what will they actually do? [LB301]

SENATOR CHAMBERS: Probably both for a period of time, because I explained when I was opposing it that there are people who don't have access to the gadgets, everything that they do is based on use of paper, so they should not be totally, all of a sudden, deprived of that means of getting this information. But it is reasonable to say that this can be phased out and it's up to the court to decide what the rate of speed would be of which this is done. But since Mr. Corey (Steel) is hired and paid to give information, then some questions should be left for him to answer. And I'm sure his answers will be far more thorough and far more authoritative than anything that I could offer here in my capacity as a poor, impoverished servant of the people who seem to be intent on making sure that I remain poor and impoverished as long as I'm in the Legislature. [LB301]

SENATOR SEILER: Any further questions? Thank you, Senator Chambers. [LB301]

SENATOR CHAMBERS: Thank you. [LB301]

SENATOR SEILER: Testimony for the opponent...or proponent, excuse me. (Laughter) Get my tongue tied (laughter). [LB301]

WILLIAM CASSEL: (Exhibit 1) Mr. Chairman and members of the Judiciary Committee, I am William B. Cassel, W-i-l-l-i-a-m C-a-s-s-e-l, one of the judges of the Nebraska Supreme Court and the chair of the court's electronic publications committee. I appear with the approval of the court in support of LB301. First, I express our thanks to Senator Chambers for introducing this legislation. We are grateful for his help and support. I also want to thank the Chair for the courtesies of his office in scheduling this legislation and helping us be prepared. The proposed amendments change provisions relating to the format and distribution of appellate judicial Opinions, specifically those of the Supreme Court and the Nebraska Court of Appeals. They are currently required by statute to be published in print format. These amendments would allow the official reports to be published in electronic format either in the alternative or in addition to print format as designated by the court. Although the court has not taken any formal action to make

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the decision contemplated by the proposed amendments, changing technology and financial imperatives support giving serious consideration to electronic publication. In my written testimony, which I'm not going to read, first of all, I wouldn't have time to, but I have outlined that since 1999 the Opinions of both of the appellate courts have been available electronically on the court's Web site on the respective mornings of their release: Friday for the Supreme Court, Tuesdays for the Court of Appeals. And so the electronic world is already out there. In my written testimony I also summarize what the effect of that has been on our print sales. They have declined dramatically and I'm not going to repeat that. Electronic publishing is a reality and the reporting of our decisions must adapt to the evolving needs and expectations of the legal community and the public. We actually anticipate, as I explain in detail in my written testimony, that providing electronic permanent reports will expand the availability particularly to the general public. The general public, you see all of the kids nowadays with tablets, smart phones, all of those devices, and the electronic Opinions would be available through all of our public libraries, as opposed to the few law libraries in the state which have the printed materials and are concentrated in our metropolitan areas. The red light came on. [LB301]

SENATOR SEILER: Senator Coash. [LB301]

WILLIAM CASSEL: Senator Coash. [LB301]

SENATOR COASH: Thank you, Chairman. Thank you, Judge. As the law sits now, is there a charge if somebody wants the paper Advance Sheets? [LB301]

WILLIAM CASSEL: Yes. [LB301]

SENATOR COASH: What is that charge? [LB301]

WILLIAM CASSEL: It's roughly \$200 a year for the mailing of...printing and mailing of a subscription annually for each of the courts. And then for each of the bound volumes it's roughly \$75 plus some shipping cost. [LB301]

SENATOR COASH: Okay. And if these were transferred to an electronic format, would there be a cost to the person who wants to see them, as well? [LB301]

WILLIAM CASSEL: As long as I have anything to say about this, the answer is, absolutely, no, there would be no cost. They would be free, posted on the open Internet for all to see for now and for all time. [LB301]

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SENATOR COASH: Okay. You heard me ask Senator Chambers about, you know, this bill is giving an authorization to do this as an alternative. In a practical sense, are you just waiting for Senator Chambers to be gone before we go all electronic or what would the courts be... [LB301]

WILLIAM CASSEL: Well, we have some practical considerations that we're in the midst of a subscription year at the present time and we have, as I've outlined, a number of subscribers for each of the Advance Sheets that we presently have. So we can't literally stop tomorrow and we probably couldn't even if we wanted to. We've been developing...we haven't been sitting still. We're developing the electronic platform to be able to move these things to and we're contemplating not just going forward but all of the Nebraska reports and the Nebraska appellate reports from the beginning of the state. We expect to have all of those free and available to the public electronically, and that will take some time to get that done. Many of the older reports will have to be scanned and uploaded in portable document format and that will require some resources on the part of the court. [LB301]

SENATOR COASH: So you're...excuse me. So you're talking about not only making future Advance Sheets available electronically but archiving the past Advance Sheets so they'd be available there? [LB301]

WILLIAM CASSEL: All of the decisions of both of the appellate courts that have been preserved by the Reporter's Office back to the beginning of the courts. Of course, as you I'm sure are aware, the Nebraska Court of Appeals has basically been in existence since early 1992, so their reports don't go back as far as the Nebraska Supreme Court. But our intention is to put it all up there, all for free, permanently and safely maintained, backed up, secured, and so on. [LB301]

SENATOR COASH: Very good, thank you, Judge. [LB301]

WILLIAM CASSEL: And I would...to that I would add, one of the persons present here is Peggy Polacek, our Reporter of Decisions, and she would be certainly available for any questions that any members of the committee may have, as well as Corey Steel would be. [LB301]

SENATOR COASH: Very good. [LB301]

WILLIAM CASSEL: Senator Chambers. [LB301]

SENATOR SEILER: Senator Chambers. [LB301]

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SENATOR CHAMBERS: Judge, I think you just gave me a genuine reason to go ahead and learn how to operate that gadget. [LB301]

WILLIAM CASSEL: (Laugh) Well, thank you, Senator. I think we've made the commitment in the past that when members of the legislative branch want to have print, we will provide print; when members of the legislative branch are comfortable with electronics, we think they will come to love them. [LB301]

SENATOR CHAMBERS: You mean when we stop being dinosaurs and become... [LB301]

WILLIAM CASSEL: You know, I have dinosaurs in my family too. [LB301]

SENATOR CHAMBERS: (Laugh) Okay. [LB301]

WILLIAM CASSEL: And I'm understanding of that. Then we... [LB301]

SENATOR CHAMBERS: Thank you. [LB301]

WILLIAM CASSEL: ...sincerely appreciate your support of this legislation. [LB301]

SENATOR CHAMBERS: Okay. [LB301]

SENATOR SEILER: Senator Williams. [LB301]

SENATOR WILLIAMS: Chairman Seiler. I simply can't pass up this opportunity. [LB301]

WILLIAM CASSEL: Okay. [LB301]

SENATOR WILLIAMS: I come from Gothenburg. This Legislature declared Gothenburg to be the "Pony Express Capital of Nebraska" and we still occasionally have a stagecoach come into our town, driving by that person chained to the side of the road. The last stagecoach that came in, the person was wearing a purple tie and a green shirt. [LB301]

WILLIAM CASSEL: Okay. [LB301]

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SENATOR WILLIAMS: Or was it a green shirt and a purple tie? I'm not sure. And he was carrying a comic book that had "Nebraska Legislature" written on the front of it. The senator that I'm replacing, Senator John Wightman, member of the bar association, has argued in front of your court,... [LB301]

WILLIAM CASSEL: Yes. [LB301]

SENATOR WILLIAMS: ...refuses to recognize that there's any electronic means of communication. I want to be certain I'm going to be able to go home (laughter) and former Senator Wightman will be happy if we vote this bill out of committee. [LB301]

WILLIAM CASSEL: I have great respect for Senator Wightman and I'm confident that he would not want to stand in the way of progress. [LB301]

SENATOR WILLIAMS: Thank you. [LB301]

SENATOR SEILER: Any further questions? Thank you, Judge. [LB301]

WILLIAM CASSEL: Thank you. [LB301]

SENATOR SEILER: The next proponent of the LB301. Any opponents? Anybody in the neutral? Seeing none, Senator Chambers, you can close. [LB301]

SENATOR CHAMBERS: I waive it. [LB301]

SENATOR SEILER: Okay, senator waives. That concludes the hearing on LB301. Senator Coash, will you take the Chairmanship. [LB301]

SENATOR COASH: Okay, we are going to open the hearing on LB194, being introduced by Chairman Seiler. And you're recognized to open. [LB194]

SENATOR SEILER: Good afternoon, Vice Chairman Coash and members of the Judiciary Committee. My name is Senator Les Seiler, L-e-s S-e-i-l-e-r, and I represent District 33. And I am here today to introduce LB194 which...legislation that creates into statute the Supreme Court Attorney Services Cash Fund. And I believe it's now a court rule and is being changed to a statute following an administrative rule that you can only have a fund for so many years and then it has to be incorporated into the statutes. This is the mandatory continuing legal education cash

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fund, was established by the Supreme Court rule and created in an accounting system by the state accounting division of the Department of Administrative Services. This will now be in statute and that is the major purpose of this bill. The statute of Department of Administrative Services that says cash funds must lapse or be permanently established is 81-1111.04. I have nothing further in the opening and I'll take any questions. [LB194]

SENATOR COASH: Okay, Senator Seiler, I'll start. What is the source of the funds that are going to go into this cash fund? [LB194]

SENATOR SEILER: I believe this was the continuing legal education for lawyers and they paid the money in and then...to the fund to take courses and the funds were accumulated through that. [LB194]

SENATOR COASH: So it's part of the bar dues? [LB194]

SENATOR SEILER: I don't believe they were bar dues. I think they were the cost of the programs, but there will be witnesses to follow that can tell more about that. [LB194]

SENATOR COASH: So, well, like, as an attorney, you have to keep up your CLE. [LB194]

SENATOR SEILER: Yeah, we have to take continuing education until we get to be Senator Chambers' age and mine and then you don't have to do it anymore. [LB194]

SENATOR COASH: (Laugh) So when you do that, do you have to write a check to this fund? Is that how... [LB194]

SENATOR SEILER: You wrote a check to the bar association or the continuing legal education group. [LB194]

SENATOR COASH: Okay. I understand. Thank you. Any other questions for the Chairman? Seeing none, thank you. We'll start with the proponents of LB194. Welcome back, Corey. [LB194]

COREY STEEL: (Exhibit 1) Thank you. Thank you, Senator Coash. Good afternoon, Chairman Coash, as Senator Seiler sits back, and committee members. My name again is Corey Steel, C-o-r-e-y S-t-e-e-l, and I am the State Court Administrator for the Nebraska judicial branch. I am here to testify in support of LB194. I'd first like to thank Senator Seiler for introducing this bill

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on behalf of the Administrative Office of the Courts. The purpose of LB194 is to comply with the law by taking the Supreme Court attorney cash fund created by the Supreme Court in 2009 and establishing it in statute. Let me explain why this is necessary. Within the last year we were contacted by the state accounting division of the Department of Administrative Services, or DAS, who made us aware of statute 81-1111.04. This section states that the administratively created cash fund, such as attorney services cash fund, must lapse or be permanently established in statute. The attorney services cash fund was administratively created by DAS accounting; therefore, the decisions need to be made. The Supreme Court determined that the administrative services cash fund is an essential fund and, therefore, should be created in statute. The fund is necessary to fulfill the Supreme Court's mission and responsibility to regulating the practice of law in Nebraska, specifically, administration of mandatory continuing legal ed hours, CLEs, as was talked about by Senator Seiler, admission to the bar, and enforcement of unauthorized practice of law provisions. To conclude, the Supreme Court attorney cash fund already exists within DAS and we are asking for it to be in statute. LB194 creates no fiscal impact nor any changes in how the fund operates. LB194 only changes authorization for the attorney services cash fund from administratively created by the Supreme Court in 2009 to statutorily created in order to comply with statute 81-1111.04. Again, thank you for your time and I'd be happy to answer any questions. [LB194]

SENATOR COASH: All right. Thank you, Mr. Steel. I don't see any questions by the committee. Thanks...go ahead. [LB194]

COREY STEEL: Did that answer your question about what the... [LB194]

SENATOR COASH: Yes. [LB194]

COREY STEEL: Okay. [LB194]

SENATOR COASH: Thank you. We'll take the next testifier in support of LB194. Seeing none, is there anyone here to testify in opposition of LB194? Anybody here to testify in a neutral capacity? Seeing none, Senator Seiler, did...waives closing, so that will close the hearing on LB194. And we'll bring him back up to introduce the last bill of the day, LB297. [LB194 LB297]

SENATOR PANSING BROOKS: Wow. [LB297]

SENATOR SEILER: Good afternoon, Vice Chairman Coash and members of the Judiciary Committee. My name is Senator Les Seiler, L-e-s S-e-i-l-e-r, and I represent District 33 and I'm here today to introduce LB297. This is simple legislation that increases the salary of the Chief

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Justice of the Supreme Court and the other judges in Nebraska by 4.5 percent on July 1, 2015, and 4.5 percent on July 1, 2016. The current salary is set at \$160,540.25, and this legislation seeks to raise the judges' salary to \$175,313 by July 1, 2016. If you will remember that the Court of Appeals gets salaries based on 95 percent of the Chief Justice's and the Supreme Court judges' salary; the Workmen's Comp district judges and juvenile judges are based on 92.5 percent; and the county judges are fixed at 90 percent of the salary. Interesting fact that I just saw a little while ago when I was looking through here on the fiscal note, if I can find it quickly: The total comes to, for the July 1, 2015, the total for all the judges in the state is \$977,255, and on July 1, 2016, it's \$1 million...total would be \$1,999,187. If you added those two together, you wouldn't even get the starting football coaches' at the University of Nebraska single salary. So we get all these judges for the same or less salary than what we employ the Nebraska football coach for. This salary, as I've said before when I've talked about salaries for judges, really doesn't look at judges as they're sitting out there right now but would...this is a raise in salary for the people that are considering taking the appointment of a judge's position. The last judge that I am aware of was appointed out of Grand Island, Nebraska. They had to run the advertising twice to get enough lawyers to apply for the judgeship to even make an appointment. So I think anything we can do to induce on a long-term, regular-scheduled basis the increase in these salaries, the better judges we will get up on the bench. And Senator Chambers and I know, both, what's bad about a bad judge on the bench: It's a nightmare. It's a nightmare. So we'd like you to consider this not only for the judges that are sitting but, also, in the future, getting judges to come before this process and...or attorneys to come before the process and ask for the appointments to the court and bench. I'll take any questions at this time. [LB297]

SENATOR COASH: Senator Chambers. [LB297]

SENATOR CHAMBERS: Just for the record, for the purpose of making it clear what my philosophy of salaries for various officials is, there was a world-famous industrialist named Armand Hammer, and he always gave what were considered exceptionally high salaries to all of his employees at the various levels where they worked, high compared to what was paid in other types of industries or businesses that could be equated with the place...the work these kind of people were doing. And when he was asked why he paid so much money, he said, well, he wanted to get the best he could and, besides that, if you pay peanuts, you get monkeys, and he did not want that in his operation. Personally, I have come, and I've always felt this way, to believe that a position of responsibility has to be recognized as that. The judiciary is one of the three branches of government. You look at the types of responsibilities, the seriousness of the work to be done, the types of people you want to be doing that work. So regardless of who happens to be in one of those positions at the moment, there should be a salary annexed to that position that recognizes the importance of the position and what it does. So I believe that we must offer, provide a salary that indicates the dignity that we feel the office is clothed in and then try to get people to fill that office. If we say that we're going to punish some particular judge we



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don't like by giving a paltry salary, then we are contributing to that problem. And finishing it off, I just think, and it's regrettable in some instances, that in this society people at large reckon the value of anything, and even when it comes to a job, based on how much money is involved: a car by how much it costs; a job by the salary that it commands. So if there is to be some judgment made as to the value of these positions, the salary is going to have to reflect the value we place on that office. There were times in the past when I would resist salary increases for judges, and I cannot say that I'll never have that attitude again. But I did something this time which I'm not aware of having done. If I did it, then it probably pained me so much that I've completely erased it from my memory. But I cosigned and cosponsored a bill to increase the judges' salary. So if I have done it before, then I say there's been a long time between then and now. And in those days, I probably did it because I didn't know any better. Today, I'd do it because I have a very clear idea and understanding of why I'm doing it, and I wanted that in the record. [LB297]

SENATOR SEILER: Thank you for that record. It's exactly right. [LB297]

SENATOR CHAMBERS: And I want to thank you for giving me the opportunity to sign the bill that you are the chief sponsor of. [LB297]

SENATOR COASH: Thank you, Senator Chambers. Senator Pansing Brooks. [LB297]

SENATOR PANSING BROOKS: Thank you. I also got to sign that bill, so I am happy about that, this bill. And I was just...it looked like it's about a 20-percent increase--I don't know exactly, but that's what it looks like--over four years. So I'm wondering if there was ever any discussion about, rather than coming back every four years, whether you talked about doing a percentage increase so that it doesn't have to. Was there any kind of... [LB297]

SENATOR SEILER: Twenty percent doesn't ring right; 4.5 rings right. [LB297]

SENATOR PANSING BROOKS: Four point five? Oh, that...yeah, okay. So was there discussion about... [LB297]

SENATOR SEILER: And I'm sure the judges would take 20 percent. [LB297]

SENATOR PANSING BROOKS: Yeah, they'd take 20 percent, absolutely. [LB297]

SENATOR SEILER: I don't believe that's what the bill says. [LB297]

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SENATOR PANSING BROOKS: So would the...but was there any discussion about just, so that the specific amount doesn't have to be...you don't have to come back in. [LB297]

SENATOR COASH: Can't do that. [LB297]

SENATOR PANSING BROOKS: You can't do that? [LB297]

SENATOR SEILER: No. [LB297]

SENATOR PANSING BROOKS: Okay. [LB297]

SENATOR COASH: You're not allowed to. [LB297]

SENATOR PANSING BROOKS: All right. [LB297]

SENATOR COASH: Any other questions for Senator Seiler? Seeing none, thank you very much. [LB297]

SENATOR SEILER: Thank you. [LB297]

SENATOR COASH: We'll take the next testifier in support, or the first testifier in support. [LB297]

MIKE HEAVICAN: My name is Mike Heavican and I'm the Chief Justice at the Nebraska Supreme Court. And I would like to thank both Senators Seiler...Senator Seiler and Senator Chambers for what you have already said about judicial salaries. Much of what I will say is probably redundant, but I will say it anyway. Mr. Vice Chairman, Senators, thank you for your attention to today's judicial bills, especially the judges' salary bill, LB297. As Senator Seiler indicated, LB297 asks for a 4.5 percent raise for judges in fiscal year 2015-2016, and another 4.5 percent raise for judges in fiscal year 2016-2017. This request is based on the need to attract and retain good lawyers for Nebraska's judiciary. We need for judicial salaries to remain competitive, not only to public employees' salaries but also to private practice incomes, so that we can attract diverse and qualified individuals to serve on Nebraska's bench. Today, I gave the State of the Judiciary Address. I wanted to give you the impression that the judiciary is busy, innovative, and dynamic. That is because the judiciary is busy, innovative, and dynamic. We have taken on a number of new projects at the behest of this Legislature, including the Public Guardian program. All of these new projects involve judges and judicial caseloads either directly or indirectly. Much

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of the State of the Judiciary Address was devoted to criminal justice reform for both juveniles and adults. The success of reforms in Nebraska will lie significantly in the hands of Nebraska's judges. We have already asked our county and juvenile court judges to assume more responsibilities for the supervision of juvenile delinquents, and they have risen to the occasion. In adult criminal court, it is almost certain that judges will be asked to take on more of the up-front diversion and supervision of criminal defendants in order to save Nebraska taxpayers hundreds of millions of dollars and to make Nebraska's citizens safer at the same time. This will be accomplished by using drug courts and other innovative programs which exist in Nebraska largely because of judicial leadership. And, of course, Nebraska's judges will continue to solve Nebraskans' problems and disputes, both large and small, and to do so with patience and grace. Among other matters, our judges decide parental rights, multimillion-dollar lawsuits and, literally, life and death in some criminal sentencing. Many cases, of course, involve lesser amounts of money and, seemingly, less dramatic issues. Every case, however, is important to someone and every case is important to our judges. The impression many citizens have of state and local government is formed by an experience those citizens had in our state courts. There is no better investment you can make in the future of state and local government than competitive salaries for a judiciary who will be in place long after most of us in this room have left public life. I call your attention to a phenomenon which has occurred on at least four occasions in the last five years and that Senator Seiler already mentioned: Not enough qualified lawyers--that means a minimum of two--applied for an open judgeship for the Governor to make an appointment for a judicial vacancy. While several factors contributed to this previously unheard-of happening, competitive salaries is definitely one of those factors. I recommend the passage of LB297. I thank you for your time, and I will entertain any questions or comments. [LB297]

SENATOR COASH: Thank you, Chief. Looks like you covered it pretty well. Thanks for your testimony. [LB297]

MIKE HEAVICAN: Thank you very much. [LB297]

SENATOR COASH: Apologize for the feedback in the system. We're dealing with it. Next testifier in support, come on up. Welcome. [LB297]

AMIE MARTINEZ: Welcome. Good afternoon, Vice Chairperson. My name is Amie Martinez. It's A-m-i-e M-a-r-t-i-n-e-z, and my business address is 1630 "K" Street, Lincoln, Nebraska. I appear before you as the president of the Nebraska State Bar Association, in support of LB297. In addition to what Chairman Seiler and the Chief have told you, I want to let you know that we have been, thus far, blessed with a very, very strong bench. And over the years, although they've both commented on this, I want to tell you that the number of applicants for these judicial appointments has been declining, and I agree that it is, in large part, because of the salary issues.

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When we ask judges or individuals to serve in a judicial capacity, it affects many things, not only their income, but it also affects their freedom of calendar, it affects their ability to be involved in community and civic activities, as well as a number of other things. And when we are trying to entice them to take on this role, one of the ways that we do that is to offer competitive salaries. We are looking for the best and the brightest. It's good for the public to have the best and the brightest of our lawyers, and that doesn't mean just from state and government positions. County attorneys frequently apply, but we'd also like to have other lawyers--private practice lawyers, in-house counsel, a variety of other types of people--be able to apply and have competitive compensation. I am pleased to tell you that we've been recognized, or this issue, I think, has been recognized by the Governor as an issue and he also supports an increase in judicial salaries. So on behalf of the bar association, we encourage your support of LB297. [LB297]

SENATOR COASH: Thank you, Ms. Martinez. Do I see any questions? I don't see any. Appreciate your testimony. [LB297]

AMIE MARTINEZ: Thank you. [LB297]

SENATOR COASH: Take the next testifier in support. Welcome, Judge. [LB297]

ROBERT OTTE: Senators, my name is Rob Otte. I'm a district court judge for the 3rd Judicial District, consisting of Lancaster County. Let me start with this: The right to a trial by jury, after all, is one of the fundamental freedoms that Americans have fought and died for since the founding of our republic. In a nation ruled by laws, not tyrants, jury duty ought to be considered a sacred obligation. Serving on a jury is one of the most important ways every American can serve his or her country. Our justice system depends on citizens who answer the call of jury service. When you're selected to serve, you become an active participant in ensuring fair and balanced justice in the community. Thomas Jefferson said, the jury is the only anchor yet imagined by man which the government can be held to the principles of its constitution. The American men and women we honor today that died safeguarding our civil rights, we dishonor their memory by not fulfilling our civil responsibilities. If you're called to serve on a jury this year, remember, it's far from the ultimate sacrifice. Step forward with pride and serve. It's a chance to participate in a democracy that most of the world's 6.3 billion people would love to have. That article appeared in the Omaha World-Herald, was written by a guy by the name of Phillip Bissett. And I read it to you today in support of the judges' salary bill primarily because there's something the Legislature's legislators can do to support the right to jury trials and the right to the public to access our court system, and that is by ensuring there is...are good judges that come before you. I echo the remarks made by the...Senator Seiler, the Chief Justice, and Amie Martinez. Attracting lawyers to come out of their private practices or their...what they're doing is really important, and we've seen that diminish over the course of time. It's important.

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And I think, Senator Chambers, you talk about an annex to the salaries. It's important to recognize that judges, when they come to the bench, do so for a variety of reasons. But there is certainly a nexus between what they could make in private practice as they look at whether they're going to make the jump, like I did after practicing law for 27 years. It's important that they be able to recognize that they're not going to be so diminished in their salary or retirement because these are people that aren't going to have another job. They're not going to go find another business or establish another company. These are people that are relying on the state to support them and to establish the best and the brightest to come before them as the judiciary. That looks like my time. I'll stand for any questions. [LB297]

SENATOR COASH: Okay. Thank you, Judge. Senator Chambers. [LB297]

SENATOR CHAMBERS: There are three branches of government. Some people say they're coequal but, and not just because I'm a member of the Legislature, I think the Legislature has paramountcy because we pass the laws, we control the purse strings, we formulate policy. But if you judge by salary, the public doesn't think very much of us. (Laughter) [LB297]

ROBERT OTTE: Well, I'm not sure about that. It just may mean you're willing to give back more than others. But thank you for that. Anything else? [LB297]

SENATOR COASH: I don't see any. Thanks, Judge. [LB297]

ROBERT OTTE: All right. Thank you so much. [LB297]

SENATOR COASH: Come on up, Judge. [LB297]

STEVEN BURNS: Good afternoon. I'm Steve Burns, S-t-e-v-e B-u-r-n-s. And for those of us getting older, I have to think about that every time. So when I heard people spelling their names, I thought, okay, can I remember how to do that? I'm here today in support of this bill, not so much as it's going to affect me, because I'm approaching retirement, so it's not a significant issue for me from that respect, but it is a significant issue for me from the standpoint of where our state is going to be in the future. You've heard about the attempts to appoint judges where there have not been sufficient applicants or the applicants who have submitted applications have been deemed by the screening committees not to be of the caliber desired for the bench. That ought to be ringing alarms all over this building in every corner of this building. It is a significant issue. Nobody comes to the bench for the pay, but the pay can be an impediment. And that's where we have to be careful, and that's where I think we are losing many qualified candidates for the judiciary that ought not be lost. We have...to have, in my view, to have a quality bench, we really

need three different aspects of lawyering represented: prosecution, criminal defense counsel, and civil lawyers, people who come from civil practice. We have very few from the criminal defense bar already on the bench, and I think now we are in the process of losing the capacity to bring those who are in civil practice to the bench. That should be ringing alarms to us that we are disengaging a significant portion of our legal community and not keeping a balance that we should have. I am in support of this bill because I think it does take some steps toward leveling that out and keeping the enticement there for people in civil practice to come to the bench. And I would encourage the passage of this bill. [LB297]

SENATOR COASH: Thank you, Judge. Senator Chambers. [LB297]

SENATOR CHAMBERS: Just an additional comment. I agree with everything that you said. And sometimes, when you read the paper and you see the type of practice or whatever it was somebody was in before they became a judge, you might wonder, why are not defense attorneys, why are not people who were members of the defense bar there? And you gave the reason. Some of us are aware of it, but the public is not. They might think judges make too much money because they look at their salary or they're upset with something a particular judge did. That's when it becomes our job as policymakers to ignore what the public, based on lack of knowledge, may feel about certain salaries. But since we know, we have a duty, in a way, to be instructive of the public by doing that which we know needs to be done. And this is what put me in the position of ceasing to think about maybe withholding a decent salary because I don't like the way the judiciary is being managed. I wanted to wait until we were practically through before I made my one continual cry, my complaint that's going to be ongoing until the cancer--I won't say that--until the annoyance is removed. There is a certain judge in Omaha, whose name I will not call, on the juvenile bench who has been a problem, not just where I'm concerned. But for some people, for some reason, I am the one to bring complaints about judges to, and I get so many complaints about this particular judge across the spectrum that it's not a situation where a small clique or group are dissatisfied with this particular judge. Lawyers, in giving their evaluations and assessments, come to a similar conclusion. And I don't think what lawyers say should ever be the deciding factor in how we view a judge. But as is the case when a case is before the court, you have differing types and amounts of evidence, and then you put it all together and see which way the scale is tipped. So when you have what could be called a great cloud of witnesses across the spectrum--in the profession, outside of the profession, people of means, people of no means--arriving at the same conclusion without having collaborated with or talked to each other, it's...it can be taken as reasonably certain that this judge is harmful to the bench. Judges, even though they will say, we don't make the law, in reality, do. They are very capable of filling gaps in the law to provide a remedy where one genuinely is due. So I think, collectively, they should be able to devise a methodology whereby this annoyance, this itch can be scratched, this annoyance can be removed. And maybe it would be based on whether or not a judge is adequately staying abreast of developments in the law, the movement of jurisprudence. And if there is evidence in

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the record of that judge's performance that this standard is not being met, then maybe something can be done. If there were some complaint I could fashion in the time that I have to put on such things, I would go ahead and do it. But I really don't have the time, and it is above my pay grade, although I've done it in the past. But it seems, to me, this one is so obvious that somebody else is going to have to step in and help. I will not withhold salary increases that I think judges should get, but I'm very dismayed that the judiciary cannot find a way to police itself. If the judiciary does not, then it's going to have to become a legislative function. And the only way I, as a member of the Legislature, can try to remove a problem judge, without having to go through all the trouble of filing a complaint, is to craft a resolution of impeachment and offer it to the Legislature and in a very public forum give all the reasons that I have for feeling that this judge ought not remain on the bench. As you know, impeachment is not like a criminal trial. We are not doing this to punish anybody. It is for the purpose of removing an individual from office who ought not be there. The problem is that the Legislature can impeach, which is in the nature of an indictment, as you know. And I'm saying this for the record, for people who may not know, should I have to do this. The ultimate decision is made by the Supreme Court, and the Supreme Court has to make that decision by a supermajority of five of the seven. I don't know whether the judges would say, we all have to recuse ourselves for one reason or another, and every other judge would say that, and then we'd be unable to arrive at a resolution because there would be nobody to handle the case. And I'm not aware of judges being able to deputize temporary judges in the way that a sheriff can deputize deputy sheriffs. And, believe me, if I weren't at a point of desperation, I wouldn't say all of this. But, look, I cannot continue to get the calls and information that I'm getting. I even got a very extensive document that somebody went to great trouble to lay out. If it were filed in a court, you would say it's a combination petition/brief. It contains notarized statements. And you know what the aim of sending it to me was? So that I would not allow judges to get a salary increase because of this that I'm talking about and they won't do anything about it. So I make, when they break my salary down into an hourly basis, I make \$5.73 an hour. But because I come in here when we're not in session, weekends, holidays, I probably am paying the state to be able to do the job that I do because of what it costs me. I don't want to sound like a whiner, but I want this on the record somewhere because I'm seriously considering a resolution of impeachment. I haven't given a name but sometimes, with an adequate description, a determination can be made by those in the know of the person who is being discussed. If there are anybody, any people within the sound of my voice who will read a transcript and have any influence with the person, who may not want to be dragged through a political process, which is what, frankly speaking, impeachment is, because we're politicians, then maybe that person ought to take some action. I used you for a sounding board. I'm not asking for a response. But I had to say that. And the Chief has heard me on I don't know how many occasions say the same thing. And I cannot just keep saying it and indicate that somebody ought to do something. Maybe I am that somebody, and maybe I won't succeed in getting the result that I want. But I will at least, after that has been done, feel that I've done everything in my power to do and nothing is left. And I can't go on like this. I cannot let the court be damaged in

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the way that it is--the judiciary as a whole, the juvenile court--and the public get the opinion that the whole system is corrupt, that all of us are corrupt who should do something but won't do anything. And I'm not pushed into doing things just by what people think. But when I see them begin to lose confidence in the judiciary itself, not anymore just a bad judge, then I feel an obligation to do something. So maybe the Supreme Court judges need to get themselves some salapatica--that's that old stuff--or whatever it is they'd take for heartburn now and have a supply on hand because I may be trying to persuade my colleagues to help me send some business their way. And then they'll earn that salary that we're going to give them. (Laugh) [LB297]

SENATOR COASH: Thank you, Senator Chambers. [LB297]

STEVEN BURNS: We appreciate your support on the bill in spite of what we know of...all of you, I'm sure, have received comments such as that. We hope not as intense as what you've had though. [LB297]

SENATOR COASH: I have to add, if it's 10 percent of what I get reported, it's unacceptable with regard to the judge that Senator Chambers is talking about. With that, I don't see any other questions for you, Judge. [LB297]

STEVEN BURNS: All right. Thank you very much. [LB297]

SENATOR CHAMBERS: One thing: I want to get an affirmative response from a judge. Not talking about the merits of what I've said, but if what I've said is true, you are aware that the constitution makes impeachment methodology for trying to remove any civil officer, including judges. Are you aware of that? [LB297]

STEVEN BURNS: I'm aware of impeachment, yes. [LB297]

SENATOR CHAMBERS: And as a member of the Legislature, if I'm going to try to seek the removal of a judge, that is the only method under the law and constitution that I can use as a member of the Legislature. Would you agree? [LB297]

STEVEN BURNS: Senator, I've not researched that, so I can't...I don't know. I don't know if there... [LB297]

SENATOR CHAMBERS: Well, now I don't mean I'm going to go out and hire somebody from the mob, because that's not constitutional. (Laughter) But thank you. That's all that I will ask. [LB297]



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STEVEN BURNS: All right. [LB297]

SENATOR COASH: Thank you, Judge. [LB297]

STEVEN BURNS: Thank you. [LB297]

SENATOR COASH: We'll take the next testifier in support of LB297. Welcome. [LB297]

LAURIE YARDLEY: Vice Chairman Coash, my name is Laurie Yardley. It's L-a-u-r-i-e Y-a-r-d-l-e-y. I'm a Lancaster County Court judge here in Lincoln, Nebraska, for the 3rd Judicial District. I have been a county court judge for almost 20 years. And when I applied for the judgeship, there were 24 applicants. There were two openings. And the reason why I remember that there was 24 is at the public hearing they did it alphabetically and, my name being "Y" and no other people with the last name "Z," meant I went last. And I sat there all morning long and...but I'm quite sure there was 24 people. At the last opening that we had for Lancaster County, there were six names submitted to the Governor and, if I have this correctly, of the six or seven names, there was only one private attorney. The rest of them were all government attorneys. Again, there's...I'm not saying that government attorneys don't make good judges. I was a government attorney. But currently on our bench we have several judges from the private practices, as well as government, and I can't tell you what a benefit it is to the bench to have the judges from all areas that have practiced in all areas of the law. Being a county court judge or being a judge is not for the faint of heart. We make decisions affecting people's lives every day. In the county court, we see hundreds of people every day. And maybe the decisions don't seem to be that significant, but they are to those people, whether it's setting bonds on murder cases, DWI cases, you know, traffic cases that somebody doesn't get out of jail, they lose their job, it affects their family. I mean every day there's decisions affecting people's lives. You have to have qualified people, people who care, people who at night maybe wake up in the middle of the night worrying about the decisions they made that day. That's...you have to have people who have patience and will listen to people, and it's a very important job. I've been honored to do it for 20 years. I understand that the lives that I've affected, hopefully, I've done it to the best of my ability, I think. Hopefully, I've done it correctly. But I just...it's a very important job and our...through the last 20 years, I think, we have a lot more responsibility than we used to and I think there's a lot more accountability. I think people are more aware of what judges do, and I think that's also important. I've seen an increase in the number of people appear in front of me with significant drug problems, from methamphetamine to K2, to almost an epidemic, it seems like, with people with significant mental health problems. We need judges that can form sentences or ways to deal with these people that are innovative. And you do that when you get a...when you get quality judges. So with that, I urge you to pass the bill or send it on to the...out of the committee. [LB297]

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SENATOR COASH: Thank you, Judge. I don't see any questions from the committee. Appreciate your time. [LB297]

LAURIE YARDLEY: Thank you. [LB297]

SENATOR COASH: Is anybody else here to in testify in support? Come on up, Senator. Welcome. [LB297]

LORAN SCHMIT: Thank you, Mr. Chairman. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I appear here today, as I have several years in the past, in support of this bill. I would just like to...I would not attempt to offer advice to anyone. But as one who has known heartburn because of Senator Chambers, I would suggest that his...even suggests that we might spread that heartburn around ought to be taken with some degree of seriousness, because he has an innate ability to cause heartburn. But Senator Chambers and I have agreed on this issue for many years. My first attempt to help in this area occurred when I discovered that my county judge in Butler County was receiving \$500 a month. Even for a conservative group, that seemed to be a little bit over the top. And since that time, we've seen considerable improvement in county judges' and other judges' salaries. As has been expressed here today, it is not normal to consider that we would get the very best talent for the bench unless we pay decent salaries. I share with Senator Chambers some concern with what I have considered over the years to be inadequate performance by judges. It bothers me a great deal. I would offer this suggestion, that maybe some of the overcrowding at the penitentiary is due today because of legislative attempts to set minimum salaries...minimum sentences but also, perhaps, may be in some cases a tendency by members of the judiciary to send people to prison just to get rid of them, and I would hope that that practice is not really ongoing as of today. I hope that the Legislature will pass this bill that will make a meaningful increase, one which is commensurate with the responsibilities that are involved, and bear in mind that, unless we do that, none of the good work that's done by the Legislature is worth very much because the judicial system has the last word. And if we do not have competent judges, the entire system breaks down. Again, I want to thank you for the opportunity to testify. I hope that you will advance the bill. Thank you. [LB297]

SENATOR COASH: Thank you, Senator. Hold on one second. Senator Chambers. [LB297]

SENATOR CHAMBERS: Senator Schmit, it's so good to see you again. And I see you periodically, but also periodically I invoke what I call the "Schmit Rule" for describing legislation which will not draw my ire or even attention. And there are new senators who may not know who Senator Schmit is. This is the man who coined the "Schmit Rule." It goes, paraphrasing, if it doesn't help anybody, if it doesn't hurt anybody, if it doesn't cost anything, if it doesn't do anything, then we can let it go and have its way. And as long as I'm in the Legislature,

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that will live and you will live through that. But I hope you live longer than the time I spend in the Legislature. [LB297]

LORAN SCHMIT: Well, thank you, Senator. You're very generous. Have a good day. [LB297]

SENATOR CHAMBERS: All right. [LB297]

SENATOR COASH: Thank you, Senator. Is anyone else here to testify in support of LB297? I don't see any. Is anybody here to testify in opposition? Anybody neutral? Seeing none, Senator Seiler waives. That will close the hearing on LB297 and the hearings for today. [LB297]