

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

[LB37 LB105 LB136 LB229]

The Committee on Judiciary met at 2:00 p.m. on Friday, January 20, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB105, LB229, LB136, and LB37. Senators present: Laura Ebke, Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: Patty Pansing Brooks, Vice Chairperson.

SENATOR EBKE: Good afternoon. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete, representing Legislative District 32, and I chair this committee. I'd like to start off by having my colleagues introduce themselves starting with Senator Baker.

SENATOR BAKER: Senator Roy Baker, District 30, southern Lancaster County and all of Gage County.

SENATOR MORFELD: Senator Adam Morfeld, northeast Lincoln.

SENATOR KRIST: Bob Krist, District 10.

SENATOR HALLORAN: Steve Halloran, District 33, Adams County and a good portion of Hall County.

SENATOR HANSEN: Matt Hansen, District 26.

SENATOR EBKE: Great. Senator Chambers will be joining us here in a few minutes I believe. Assisting the committee today are Laurie Vollertsen, our committee clerk, and Tim Hruza right now, our legal counsel, and I think Brent is here shortly. Brent Smoyer will be along shortly as well, our other committee counsel. The committee pages today are Toni Caudillo and Sam Baird. On the table over there you will find some yellow testifier sheets. If you are planning on testifying today, please fill one out and hand it to the page when you come up to testify. This helps us keep an accurate recording, record of the hearing. There's also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. We'll begin bill testimony with the introducer's opening statement followed...following the opening we'll hear from proponents of the bill, then opponents, followed by those speaking in the neutral capacity. We'll finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you're going to testify I ask that we keep the on-deck chair with the yellow tag there filled so that I have an idea of who, how many are intending to speak on a particular bill. So once the senator

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

introduces, if the first proponents could start filling, you know, first one to speak on the proponent side fills the chair, and then we'll keep...it'll give me a good idea of how many more will be coming. If you have any handouts please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can help you make more. We'll be using a five-minute light system. When you begin your testimony the light on the table will turn green, then yellow means that you've got one minute left, and when the red light comes on I would ask you to finish up your final thought and stop. As a matter of policy, just a reminder, no use of cell phones in the room. You may want to turn your phones off now or silence them so that they don't make a racket, and I would remind all senators to do the same. One more thing, you will notice senators probably coming and going. This has nothing to do with the importance of the bills being heard but senators may have bills to introduce in other committees or have other meetings. And so with that we will start with LB105. Senator Brasch. [LB105]

SENATOR BRASCH: Good afternoon and thank you, Madam Chair Ebke, and thank you to the members of the Judiciary Committee. My name is Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent the 16th District in the Nebraska Legislature. Today the bill I'm introducing is LB105. LB105 is an exact copy of LB757, a bill I introduced in 2016 that did advance to General File. Unfortunately, LB757 was not debated on the floor of the Legislature. We simply ran out of time. Both bills, LB105 and LB757, are a combination of two bills that I introduced in 2014; that was LB962 and LB963. I introduced them at the request of attorneys who practice bankruptcy law in Nebraska. Both of those bills were well received by this committee as well each time. And they've also advanced to General File with no dissenting votes, but again, time ran out in 2014 during that session. My hope is that LB105...is that with an early beginning it can get to the floor quickly enough to have full and fair debate. One of the biggest problems is that debtor...that debtors encounter is that bankruptcy exemptions in Nebraska are outdated. They have not been increased in 20 years. Exemptions were last updated in 1997. LB105 seeks to modernize the amount for the bankruptcy exemption commonly referred to as the wild-card exemption. The wild-card exemption allows debtors to exempt any type of property not exceeding the amount in statute. The wild-card exemption was created as a safety net for personal property that may not otherwise be exemptible. LB105 proposes that the wild-card exemption be increased from \$2,500 to \$5,000. Debtors should be able to exempt at least as much personal property today as they did in 1997. The longer the Legislature goes without updating the exemption amounts, the less that debtors will be allowed to keep due to inflationary causes. LB105 seeks to amend Statutes 25-1556 which also has not been updated in 20 years. Changes proposed to this section by LB105 are straightforward. First, it increases the household items exemption that is at \$1,500 to \$3,000. The household items exemption includes household furnishings and goods, computers, books, musical instruments, and other similar items. Second, it increases the tools of the trade exemption from \$2,400 to \$5,000. The tools of the trade exemptions applies to items used in the debtor's principal trade or business and this bill adds language prohibiting a motor vehicle exemption as a tool of the trade. Third, LB105 adds new language where debtors can

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

claim up to \$5,000 for a motor vehicle regardless of the intended use. The reason we added this new exemption is because generally it is sufficient for debtors to be granted the motor vehicle exemption if they use the car to get to and from work. But the protection does not apply for those who are unemployed, retired, or work as a stay-at-home parent. LB105 would have no fiscal impact and it has no effect on taxation. However, the changes made by this bill allows debtors to keep more household items and furnishings as well as those items they must have to continue their job or carry out their trade. With bankruptcy must come accountability but not destitution. The ultimate goal here is to allow debtors the wherewithal to put their lives back together and begin anew. There will be bankruptcy attorneys who will follow me in testimony. They are better able to answer questions about the details of the proposed increases. Thank you for your time and consideration. Can you hear me now? [LB105]

SENATOR EBKE: Thank you, Senator Brasch. Any questions? Okay. Thank you. Are you going to stick around for close? Maybe? [LB105]

SENATOR BRASCH: I'll probably waive... [LB105]

SENATOR EBKE: Okay. [LB105]

SENATOR BRASCH: ...unless there is something that needs to be addressed. [LB105]

SENATOR EBKE: Okay. Thank you. First proponent can come on up. And about how many of you are thinking of testifying on this particular bill in any capacity? Okay, about five or six. Okay, thank you. [LB105]

GREGG NEUHAUS: Senator Ebke and members of the committee, my name is Gregg Neuhaus, G-r-e-g-g N-e-u-h-a-u-s. I'm an attorney in Grand Island, Nebraska. I've practiced for about 36 years. I represent hundreds of people in bankruptcy and average over 100 per year. I'm here to give support to LB105. Section 25-1552 simply doubles the exemption which has been in place since 1997. In 1901, the wild-card exemption was put in place at \$500. It's gradually increased and until 1997 it was adjusted to \$2,500. But in the last 20 years, it has not been adjusted and I think it's time to rectify that. And although it's doubling, it's not truly a big increase because at a 5 percent inflation rate if you go from the \$2,500 in '97 to now it should be \$6,600. And if the original \$500 exemption in 1901 had been at a 3 percent inflation rate, it would be over \$15,000. I think every person has the right to protect a few possessions. Likewise, 25-1556(3) is a catch-up and 25-1556(4) is a catch-up. Costs and value have increased but the exemptions have not. What I really want to talk about though is the modification to the 25-1556(4) and the addition of 25-1556(5). There are many people in Nebraska that do not have access to public accommodations and transportation. They...you know, if you live in Lincoln or Omaha or Grand

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

Island, like I, you might have that opportunity. But if...there are many hundreds of towns in Nebraska where you don't have public transportation. A rural Nebraskan may have to drive 40 or 50 miles to get to the nearest doctor or hospital or even to the grocery store. (Statute) 25-1556(4) is a tool of the trade exemption and it should stay that way. But a vehicle is necessary for survival, not just for work, and this bill doesn't add another exemption; it just removes it from the tool of the trade and makes it its own exemption so that a person that isn't working--disabled, retired, for whatever reason can't work--will still be able to have an automobile and survive in rural Nebraska. And not to say that's only in rural Nebraska because it's tough to get around Lincoln or Omaha without a car. It's just a basic survival tool. So people that don't hold jobs now don't have that protection and so the very time when they need it, they lose their job, they now can't claim that exemption and that's when they're probably going to file bankruptcy. By the way, it's not just a bankruptcy exemption. This provides protection to anybody that it's being executed upon; it's not just through bankruptcy. So the change is about a basic right for every person to own a car, relatively little value, so they can get to the doctor, get to the hospital, go buy groceries, get their children to school, that sort of thing. And when you get down to it, it's about basic dignity of that person to own a vehicle and survive. Thank you. [LB105]

SENATOR EBKE: Senator Krist. [LB105]

SENATOR KRIST: I just want to put on the record a question that I asked you a few years ago when we went through this same drill. Thanks for coming, Mr. Neuhaus. [LB105]

GREGG NEUHAUS: Thank you. [LB105]

SENATOR KRIST: Because it's a concern, when you say a vehicle,... [LB105]

GREGG NEUHAUS: Yes. [LB105]

SENATOR KRIST: ...there's no restriction to the price of that vehicle or the value of that vehicle. [LB105]

GREGG NEUHAUS: No, you can have \$5,000 in equity in a vehicle. [LB105]

SENATOR KRIST: Only \$5,000. [LB105]

GREGG NEUHAUS: Yes. [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR KRIST: And the force, just again to put it back on the record, the forced value or the...trying to say...the action that would be taken to make sure that if I'm driving a Lexus that's worth \$50,000, I would be required to buy a vehicle or trade a vehicle to hit that maximum of \$5,000. [LB105]

GREGG NEUHAUS: Right, if you had a \$50,000 vehicle, you'd have to have a \$45,000 note on it to keep that vehicle. [LB105]

SENATOR KRIST: Okay. [LB105]

GREGG NEUHAUS: And that's very unusual. [LB105]

SENATOR KRIST: That's exactly what I'm getting to and I just want to put it on the record again this year. So thank you. [LB105]

GREGG NEUHAUS: You're welcome. Thank you. [LB105]

SENATOR EBKE: Are there any other questions? Thank you, Mr. Neuhaus. [LB105]

GREGG NEUHAUS: Thank you. [LB105]

SENATOR EBKE: Next up. [LB105]

BRAD EASLAND: (Exhibit 3) Good afternoon. My name is Brad, B-r-a-d, Easland, E-a-s-l-a-n-d, and I'm an attorney with Morland, Easland, and Lohrberg in Norfolk, Nebraska. I have been practicing law for 20 years and have been doing bankruptcy work for that amount of time as well. Approximately 40 percent of my practice is bankruptcy law, so I'm very familiar with the Nebraska exemption laws and how they work when dealing with ordinary people who find themselves having to file bankruptcy. It is my opinion that the changes proposed by LB105 are very necessary. The exemption limit amounts have not changed for close to 20 years and should be increased. Also, I fully support the law as written so that a person can claim a motor vehicle as exempt, period. Right now the motor vehicle exemption is tied to language that states that the motor vehicle must be used in your business or to commute to work. It states that it has to be used as a tool of the trade, which that's how courts have defined that is to say, well, then you have to be able to use it to drive to work. However, this leaves out a large segment of the population that also need to have a motor vehicle. For example, a person who is retired cannot claim the exemption because they do not work. Or, for example, if there is a person who is disabled and is unable to work and tries to claim a vehicle as exempt under the tool of the trade,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

it is denied. This is a decision...these are court decisions that have been made by the bankruptcy judges who have said, well, the statute says that it has to be used as a tool of the trade and you're disabled. And so you don't work, so you don't get the exemption, which is probably not the intent when this was passed back in 1997, but that's the way it has been interpreted. And it's really quite unfair. It is a fact of life in rural Nebraska that you need a vehicle to live. There is generally no public transportation. A retired person, a disabled person, a stay-at-home mom needs a vehicle to get to doctor's appointments, get groceries, any number of daily things. This bill would allow everyone to keep a vehicle to get around. And we are not talking about an expensive vehicle. The exemption calls for \$5,000, which is not much of a vehicle. Before...it's only \$2,400 right now, even if you do have a job, which is really not much of a vehicle. So another reason why these exemption amounts ought to be changed and increased just to keep up with inflation. The exemption limit amounts, again, have not been changed in 20 years and these are reasonable increases to them, and in particular, 25-1556(5) would add the motor vehicle exemption to address that issue. And I believe this is a reasonable situation and I would encourage it coming out of committee and hopefully being passed. Thank you. [LB105]

SENATOR EBKE: Thank you, Mr. Easland. Any questions? Okay. Thank you for coming. [LB105]

BRAD EASLAND: Thank you. [LB105]

SENATOR EBKE: Next proponent. Okay, no proponents. First opponent. [LB105]

SARA BAUER: Senator Ebke, committee members, thank you. My name is Sara Bauer. I am a creditor's attorney currently practicing in Omaha with Gurstel Law Firm. My...the objection I'm here today to present on LB105, while the exemptions are reasonable for bankruptcy court, as the first speaker...first proponent pointed out, these are not limited to bankruptcy court and they have practical ramifications in...for creditors trying to collect a valid judgment in Nebraska, particularly the wild-card exemption, increasing the wild-card exemption to \$5,000 per member. So if you have a joint bank account you actually would get \$10,000 potentially of cash that can be exempted from any collection efforts. That does seem...when it's taken out of the bankruptcy realm it impacts creditors from being able to collect valid judgments. And that's the concern that we have outside the bankruptcy court. Protection...bankruptcy court is there to protect consumers and to let them have that fresh start. But the...LB105 and the exemption statutes aren't limited to that. And so while they seem reasonable for bankruptcy exemptions, when you're actually talking about trying to hold people accountable for debts that are old, for judgments, that's where particularly the wild-card exemption no longer makes...isn't practical when it's not restricted to bankruptcy. And that's the position. [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR EBKE: Thank you. Senator Chambers. [LB105]

SENATOR CHAMBERS: Just a little anecdote: When I was in law school many, many years ago, there was a course called creditor's rights. I thought it said predators. (Laughter) And I asked why is it that there is no course called debtor's rights. He said, Mr. Chambers--they called everybody mister then--he said, Mr. Chambers, people go to law school in order to make a living. Debtors don't have money, so there's no need to talk about debtors having any rights because the lawyers are going to go where the money is and that's with the creditors. So when you show me a university that has a law school attached to it which gives a course in debtor's rights, I'll give you whatever the amount was. And I never was able to collect it. I just thought I'd throw that out there. [LB105]

SARA BAUER: In fairness, I believe that when I was in law school at Creighton, 22 years ago now, it was called debtor/creditor relations. So they've renamed it at least at Creighton. [LB105]

SENATOR CHAMBERS: How long ago were you there? [LB105]

SARA BAUER: I was there from '94 to '97. [LB105]

SENATOR CHAMBERS: When? [LB105]

SARA BAUER: '94. [LB105]

SENATOR CHAMBERS: Oh, that's modern times. (Laughter) [LB105]

SARA BAUER: Seem like (inaudible), 20 years ago. And so I appreciate that. But I think that especially as creditors, when you're looking at creditors and collections, general collections, again, the bankruptcy has special protections. It is there for consumers to get their fresh start. But when you're actually talking about representing credit unions who have extended a small loan for a vehicle and are trying to get that vehicle back, they have certain rights. But after a certain time frame the vehicle depreciates. And I've yet to find vehicles that have...appreciate in value when they come up. And so when you're really trying to collect for the creditors on a valid judgment, that becomes a practical problem with LB105. [LB105]

SENATOR EBKE: Any other questions? Thank you, Ms. Bauer. [LB105]

SARA BAUER: Thank you for your time. [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

ANGELA BURMEISTER: Good afternoon. My name is Angela, A-n-g-e-l-a, Burmeister, B-u-r-m-e-i-s-t-e-r. I'm an attorney from Bellevue, Nebraska, and I'm here testifying in opposition to this bill on behalf of the Nebraska State Bar Association. And I think I need to point out that the opposition was really looked at by the Bar Association as the group of bills, so it's a little difficult that we started with this one but I'll do my best. The problem that the Bar Association has is we are looking at the group of bills as a whole. We do agree that the garnishment statute should be revised and we thank the committee for looking at that because we do think there are some revisions that need to be made here. The struggle that we're having is that we feel like there are some problems with the bills that are being presented and we want to make sure that they as a whole operate together and particularly in the situation of...that the other opposition were testifying about, less so in the bankruptcy because that situation is pretty automated as it is. But in a situation where you have debtors that are coming in and claiming exemptions in regular collections cases, it can be difficult for them to do so if the statutes aren't consistent and they don't work together in a way that's easy for the debtors to do that. There are forms involved with that. Most of those people are unrepresented because they don't have money to get representation at a hearing of that nature. And the way that the current statutes work together, the way that the bills are proposed, we are seeing a number of problems with those and so the Bar Association thinks that it would be best to...we're opposing them in hopes that there could be a study conducted. We have folks that are willing to give input to the committee in order to make sure that we get the fix correct to the statutes as a whole so that the process makes sense for everybody--debtors, the court, creditors, employers. There are a number of issues that I'll raise. Since we have this bill in front of us I don't want to beleaguer the committee with the other bills and I'll wait until that opportunity arises. But we were looking at them as a whole and taking this one bill out of that whole doesn't make sense to us because then the process is sort of disjointed. [LB105]

SENATOR EBKE: Okay. Senator Morfeld. [LB105]

SENATOR MORFELD: I guess I can kind of see where you're coming from, but I also don't see where you're coming from. We deal with individual bills that deal with individual parts of statutes that work together all the time. So as a member of the Bar Association, I would hope that you would take each bill, look at it on its merit and take a position based on that because I think there's some bills that have more merit based on their changes than others in some cases. And I would hope that the Bar Association would take a different approach in the future. In terms of...well, it's tough. So you're opposing all of the bills just simply because you want to have an interim study on the entire statutory framework of...? [LB105]

ANGELA BURMEISTER: Well, we are... [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR MORFELD: I don't know where to start because you're just opposed to everything. [LB105]

ANGELA BURMEISTER: I...yeah. [LB105]

SENATOR MORFELD: Okay. [LB105]

ANGELA BURMEISTER: Would it be better for the committee if I just gave the reasons as a whole? Would that be better? [LB105]

SENATOR EBKE: That's fine (inaudible). [LB105]

ANGELA BURMEISTER: So I think we looked first at LB37 and there were a number of concerns that we had with that bill. While we thought that the revision makes sense, there were a number of concerns. So the first concern with that bill is that the accounting is being taken away from the court and the accounting is being done by employers and by plaintiffs' attorneys. And we have a concern about that for debtors mostly because, you know, while I try to do a good job as a plaintiff's attorney of keeping track of things, not everybody does. And employers particularly have a very difficult time keeping track of what funds have been garnished. So if you're going to make the debtor get that information from the employer in order to prove whether they've paid the debt or not, we're seeing that as being a potential roadblock for the debtor and a problem for the court because we will have hearings trying to figure out what's owed with evidentiary information from the employer and the creditor and the debtor. So we're seeing that as a potential issue in particular that kind of affects everybody in that part of the area. I think that even the collections attorneys that I've spoken to agree that the 15 percent, 25 percent should be revised but there's some input on that particular issue that I think would be helpful to the committee from the people that practice in that area. And that was part of the discussion with the Bar Association is that the bills that are dealing with those particular parts of withholding, how the debtor's exemptions rights are enforced. You know, as I said, the debtors have to...they have to bring forward their exemption rights on their own and often they're not represented. So if we don't have a clear process and you have a couple of bills that say similar things but not exactly the same thing on the exemptions, when you have that, it's just confusion for the court and then it's difficult for the debtor to make...hit the claim for exemptions. So that's part of the issue that the Bar Association has is wanting to make sure that we're clear and that the process of the bills...and we don't usually look at bills as a package. I agree with you, Senator Morfeld. That's not how we typically do things. It's just that these all came together and they were talking about very similar things in terms of process from a collections standpoint, so we were looking at them in terms of can we have a consistent process that works together so that it's not confusing to everybody when we get in to try to do it. There are some substantive changes in the bills that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

are presented; one of them is adding things to the definition of wages. So that's going to result in a higher amount of money being garnished even if you change the percentage calculation. And we weren't 100 percent sure if that was the intent or...so again, you know, clarifying some of those things and making sure that there is a consistency was what the major concern was there. LB37 has some pretty hefty requirements for employers, so one of which is dividing the amounts garnished by every garnishment that they have. Well, you know, if you have a person that has lots of...owes lots of debts, that employer could be dividing...could be paying \$2 to 37 people. That's a pretty hefty burden on employers and a lot of them have difficulty right now, quite honestly. I practice in this area and I get calls from employers all the time. They can't understand how to fill out the form that we have in order to do it. They don't understand what their obligation is. So we feel like it's a pretty important area to be revised. We just want to make sure that some of these revisions...and the final thing also is that there are hefty penalties on the creditor side. And I understand that, you know, people think of the creditors as big companies that are out to hunt for people. But that's not every creditor. Some creditors are small mom-and-pop operations or an individual person who somebody has taken money from. So we have to make sure that the penalties are consistent and fair and reasonable to everybody. And so that's...that is the reason for the opposition. I think the concept is one that is supported by the Bar Association, but we don't feel like the way that the bills are proposed right now is either consistent or a process that's going to work overall without problems. [LB105]

SENATOR EBKE: Got another question? Go ahead. [LB105]

SENATOR MORFELD: Yeah, I guess I'll just respond in that I can understand that. But again, you can say that about every piece of legislation that's introduced. As an individual senator, I don't go around to my 48 colleagues before I introduce a bill and go, oh wait, are you introducing this bill, are you introducing this bill, we should come together make sure they're consistent. We introduce bills based on what we hear from our constituencies and what we see as a problem. I wish that we had a process where every time I had an idea that dealt with a broad array of statute that we would...or maybe I don't because quite frankly we may never get anything done. And so I...I'm interested to see the summary of all of your issues with each of the bills. I think we probably would want to stay on--I defer to the Chairwoman--on topic with the bill at hand for each one. But I would encourage the Bar Association in the future to address each bill as an individual bill because I don't feel like that's a very helpful...I don't think that's very helpful for me as a committee member. But thank you. [LB105]

SENATOR EBKE: And if you have something in writing...did you have a written statement?
[LB105]

ANGELA BURMEISTER: I don't. [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR EBKE: Okay. [LB105]

ANGELA BURMEISTER: I can prepare one for the committee if that would be helpful.
[LB105]

SENATOR EBKE: It might be helpful to get sort of a written synopsis, unless you're planning on testifying on each of the bills individually, just provide us with a written letter. Do you have a question, Senator Krist? [LB105]

SENATOR KRIST: Just a comment, Chair. This has happened in other committees that I've been on. And essentially in the interest of Friday afternoon and consolidation of your efforts, you could have that testimony presented to us in writing, it could be entered on each one of the bills to save you time and us time. I understand your concerns. Sometimes when we lump these things together on a day it seems convenient for us because in this area of law there might be different approaches. But I think just for everyone's understanding, the way that this happens is we have an idea or that's brought to us, we go to a lawyer who then confidentiality applies when we're drafting this. So none of these are shared until they're dropped in the bucket. And at that point, some senators have more pride in continuing on than others. But I understand where you're coming from, but that would be my suggestion. [LB105]

ANGELA BURMEISTER: Could I just respond briefly? [LB105]

SENATOR KRIST: Sure. [LB105]

ANGELA BURMEISTER: I understand that it's difficult this way and I'm not in front of...this is only the second time I've ever testified. The first time I testified... [LB105]

SENATOR MORFELD: You're doing a good job, I just...you know, I just...I won't belabor what I already said. [LB105]

ANGELA BURMEISTER: The reason I raise it is because the first time I testified it was on a bill about small claims court. And they pulled and changed the review of small claims court from de novo review on appeal to error on the record. A single statute was changed, all the statutes to undo a default judgment taken in small claims court when your client's father died, on the day of the hearing didn't address that so and it's because it was looked at singularly. And so a little bit I have a personal feeling about taking them in whole because if you don't, then you end up with a process that is kind of disjointed. I know it's not how this process works best and that on a regular basis it might not work that way, but in this particular instance we have a set of bills that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

has the opportunity to take advantage of that particular circumstance and so that's why we raise it. [LB105]

SENATOR EBKE: Okay. Thank you. Senator Chambers. [LB105]

SENATOR CHAMBERS: Does the Bar Association arrive at its positions based on a statistical analysis or members of the bar who are actually practicing in the area that the legislation addresses? [LB105]

ANGELA BURMEISTER: We typically don't have a statistical analysis just based on time. But our legislation committee is made up of members of the bar from a variety of different areas of practice. We try hard to not have a position that, you know, favors just one side or the other. So we try to take a position that affects the administration of justice. So it is input from members of the bar that practice in that area. [LB105]

SENATOR CHAMBERS: You were here when the first gentleman testified in favor of this bill? [LB105]

ANGELA BURMEISTER: I was. [LB105]

SENATOR CHAMBERS: Did you hear the word "dignity" spoken by him in the process or course of his discussion? [LB105]

ANGELA BURMEISTER: I don't recall at this point. [LB105]

SENATOR CHAMBERS: I listen carefully and I heard the word "dignity" and I have never heard the bar take any position on any bill and mention the word "dignity." As a policymaker, things such as dignity, self-respect are very important to me if not to anybody else. I think that word was used in connection with not stripping a person to such an extent that the human dignity to which we all are entitled will be taken away for a piddling sum to the creditor but it's much more significant to the person who I consider to be a victim. When people become creditors as a business, they are predators and the laws favor them. I do not hold to the Scrooge and Marley philosophy of the creditors. I'm always aware of Bob Cratchit and Tiny Tim. And no creditor is interested in Cratchit and Tiny Tim unless they find out that somebody gave a turkey to that poor family out of sympathy and they'll be ready to go there and snatch it. I think you were sent here on purpose and part of it is because I'm on this committee. I've heard other members of the Bar Association testify and they should not, in my opinion, send a relatively new person into a potential meat grinder. The Bar Association and its members are well aware of my attitude on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

bills such as this. But I am not going to be drawn into making you a victim because the Bar Association did so by sending you here. However, because of the things the Bar Association will do is why I cannot ever practice law in Nebraska because I would be compelled to join an organization which I think is totally unworthy, unfit, and should not be a requirement as far as membership. A law school cannot be accredited in this state unless it's approved by the Nebraska Supreme Court. And before approval, the Court reviews the curriculum, the quality of the instruction, the quality of the library, and other things that go into creating an environment where people who attend can be expected to procure an adequate education so that he or she can practice law competently and represent clients zealously. So it should not be required that a person join the Bar Association to practice law. But let the lawyers know that they're keeping me out of the profession, which I'm sure they're happy about. But my principles mean more to me than amount of money I could make. And I'll tell you why I'm saying this. People might wonder why I'm not taking out after you on these...the position of the bar on these bills. But if somebody sends an individual, to me anyway, where the contest is uneven I'm not going to take advantage of that. But I want you to understand why I'm backing off as far as dealing with you like I deal with one of those people. But it won't happen all the time. And, Madam Chair, I'm saying this because the message will get back to the Bar Association. There was a movie called The Fox and the Hound. And the fox was a friend to the little hound. They didn't know they were supposed to be enemies. And when the hound grew up, the man wanted the hound to hunt. And I'm shortening the whole story. The fox found itself at the mercy of the hound. And the hound knew what the hound was supposed to do. But the hound said: In view of all that we went through together, the kindnesses that we showed to each other, I'm going to let you go this time, but if I catch you again--and I'll just put as if I was writing it--dot, dot, dot, and leave it hanging. That's all I would have, Madam Chair. [LB105]

ANGELA BURMEISTER: Senator Chambers, nobody sent me here. Nobody even mentioned that you were on this committee. I was sent on behalf of the bar because I practice in the area of collections law and I had spoken to a number of people who both represent debtors, who represent creditors, who...so that's why I was sent here. I was sent here because I had the most knowledge about the bills. I had reviewed them. I had had some comments about them in the legislative committee. So nobody sent me to be either a fox or a hound. [LB105]

SENATOR CHAMBERS: I thought you said you were here representing the Bar Association. [LB105]

ANGELA BURMEISTER: I am, but I'm just saying they didn't send me... [LB105]

SENATOR CHAMBERS: Well, you were sent here... [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

ANGELA BURMEISTER: They didn't... [LB105]

SENATOR CHAMBERS: You were sent here by the Bar Association... [LB105]

ANGELA BURMEISTER: I was... [LB105]

SENATOR CHAMBERS: ...to state their position. [LB105]

ANGELA BURMEISTER: Yeah, correct. [LB105]

SENATOR CHAMBERS: And if you want to be combative, I can be combative. [LB105]

ANGELA BURMEISTER: I'm not trying to be combative. [LB105]

SENATOR CHAMBERS: If you want to be...if you're going to get in a battle... [LB105]

ANGELA BURMEISTER: I just want the committee to know why it wasn't a strategy. It was just a sending a person to give the position of the bar. [LB105]

SENATOR CHAMBERS: You don't know how the Bar Association operates. I know how they operate. [LB105]

ANGELA BURMEISTER: I know you don't have to be a member anymore. [LB105]

SENATOR CHAMBERS: Well, then you just tell them the kind of things I said and I bet you won't be sent to another committee meeting where I'm on the board. [LB105]

ANGELA BURMEISTER: I can choose not to. [LB105]

SENATOR EBKE: Are there any other questions? Thank you for coming today. Are there any other opponents? Anybody testifying in the neutral? Senator Brasch, would you like to close? [LB105]

SENATOR BRASCH: Just very briefly. [LB105]

SENATOR EBKE: Okay. [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR BRASCH: I had not intended to. And the reason I thought I wasn't going to close-- this is the first time--I've been here three times trying to introduce this bill. The Bar Association has never opposed in the past. That's disappointing. I've had a neutral before, last time, and it was basically the argument about the vehicle. But again, I just can't stress a dollar 20 years ago got a lot more than a dollar today. And I look across the room and I see all your districts-- Lincoln, elsewhere. And I know you've got constituents in Omaha that have experienced hardships and people trying to in earnest get back on their feet. I just humbly implore that you do look at this and I hope you'll see it favorably and we can get it to the floor and perhaps it will be time to pass. Thank you. [LB105]

SENATOR EBKE: Senator Chambers. [LB105]

SENATOR CHAMBERS: Senator Brasch, part of this is by choice, but I am a poor man who is the son of a poor man. I've never driven what is called a luxury car. I've always driven a small car. And I can tell you and anybody in this room with any experience knows that \$5,000 for a vehicle, you don't get much with that. So this is not unreasonable in my opinion,... [LB105]

SENATOR BRASCH: And I understand that. [LB105]

SENATOR CHAMBERS: ...except that it's not high enough, but that's a different story. (Laughter) Okay. [LB105]

SENATOR BRASCH: Okay. [LB105]

SENATOR CHAMBERS: Okay. [LB105]

SENATOR BRASCH: All right, thank you. [LB105]

SENATOR EBKE: Okay. Thank you, Senator Brasch. [LB105]

SENATOR BRASCH: Thank you. [LB105]

SENATOR EBKE: (Exhibits 1 and 2) This closes the hearing on LB105. We're going to switch legal counsel here. Oh, I'm sorry. There are, I'm sorry, there are a couple of letters. Rocky Weber of the Nebraska Cooperative Council opposes, and the Nebraska Collectors Association opposes. Okay, Senator Williams. Are you ready? Welcome back. [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR WILLIAMS: Absolutely. (Laugh) [LB229]

SENATOR CHAMBERS: Just one thing: He's known as "Gunslinger." I just thought I'd tell you. (Laughter) [LB229]

SENATOR WILLIAMS: I'm glad they changed legal counsel. Thank you, Chairman Ebke, and thank you to the Judiciary Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I represent Legislative District 36 and I'm here today to introduce LB229. And it feels like *deja vu* all over again for me because for the last two years I had the opportunity to sit where Senator Baker is sitting next to my much younger brother, Senator Morfeld. But it's also *deja vu* again because two years ago I brought this bill and most of you, except the new members of the committee, have heard this before. And before that, Senator Harr brought this same form of legislation. It's very simple. I will read the two-sentence introducer's statement of intent. "LB229 would allow financial institutions to collect a \$15 fee from the plaintiff for each garnishment. If the financial institution charges a fee to its customer for processing the garnishment, the \$15 fee will (*sic: is to*) be deducted from the fee charged to the customer." That's how simple this is. Under current law a judgment creditor is not required to pay any fee to a financial institution for the services rendered. Judgment creditors receive a significant benefit from the services provided by the bank and--what a novel idea--the bank would like to be compensated for the service and the time that is involved. This is not a new issue, as I mentioned. I brought this legislation before and it was voted out of committee with no dissenting votes; however, it lacked a priority last year so we did not hear it on General File. Two years ago I made an attempt to work with the bill collectors to find a workable solution. They were unwilling to consider any form of compromise. Let me tell you a little bit about what a bank does in a garnishment because I think people think this system is automated and very simple and it's simply not. Garnishment starts out by the bank receiving by mail a garnishment request and then whoever works in that department of the bank has to do a complete search of all of the various accounts that are available at the bank. So this would include checking accounts, savings accounts, money market accounts, time CDs, all the various forms, to see if there is an account. If an account is found, then the bank is required to do a look back on that account to determine if there are any amounts that are in that account that would derive from Social Security benefits because those would be exempt from the garnishment. The bank is also then required to look at the signature cards to determine the actual ownership of that account because oftentimes you can have individual ownership or joint ownership or different types like that. There are several forms then that the bank is required to fill out, sending those to the court and filling those out. The bank is also required to notify the customer and that gets a little dicey, as you might imagine, because the customer doesn't know this is all happening and now they find out that the amount in their account is frozen and, of course, that's when they claim the bank is trying to steal their money and the bank has nothing to do with this. It's the bill collector and the creditor that's trying to get ahold of those funds. Then the bank takes those funds, segregates them, and holds them to await further distribution or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

disposition of the funds based on what the court tells them to do, and these funds are oftentimes held for a number of days, even up to several weeks at cases. That whole process takes somewhere between 45 minutes and an hour to do. I don't want to try to convince anybody it's a huge task, but it is fairly significant. And in our bank, we have about 120 to 130 of those a year, costing about \$50 to \$75 each is what we determine our cost to be. So you can see that the \$15 fee proposed by LB229 is very modest. LB229 would give the bank this \$15 fee for helping the collectors. It would also incent the collectors to follow the current law. Under current law the judgment creditor has to have good reason to believe that the bank has an account of the debtor. It is evident to most bankers that they are skirting around this duty by shotgunning banks in geographical area. With the technology, it's just too easy not to and it only costs a postage stamp. Like I stated, in our bank about 40 percent of the garnishments that we receive have no account. Okay? Forty percent have no account. With that number it is hard for me to believe that they are meeting the good reason to believe test that is established by current law. I believe LB229 would help close the door on that practice. Banks provide a valuable service to the collectors. By the way, the bill collectors collect a significant fee for their service. When our bank uses a bill collector, they charge us 40 percent of the amount they collect. The small \$15 fee proposed by LB229 is justified compensation for the benefits received. Everyone in the chain of collection is paid some sort of fee by the judgment creditor except for the bank. It's time for that to be fixed. Thank you for your time and consideration. I urge you to advance LB229. [LB229]

SENATOR EBKE: Thank you, Senator Williams. Senator Krist. [LB229]

SENATOR KRIST: Don't tell Stinner, but you're my favorite banker. [LB229]

SENATOR EBKE: That was it? [LB229]

SENATOR KRIST: That's it. [LB229]

SENATOR EBKE: Okay. Senator Chambers, do you have a question? [LB229]

SENATOR KRIST: It's "no question" Friday. [LB229]

SENATOR EBKE: Okay. [LB229]

SENATOR WILLIAMS: I won't tell Stinner anything. [LB229]

SENATOR MORFELD: I'll wait until I see my A bills. [LB229]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR EBKE: Senator Chambers. [LB229]

SENATOR WILLIAMS: Yes, Senator Chambers. [LB229]

SENATOR CHAMBERS: Senator Williams, bankers are people too. Are you a real banker?
[LB229]

SENATOR WILLIAMS: Yes, I am. [LB229]

SENATOR CHAMBERS: And you're a human being and here's what gets me. I don't know why actors and actresses don't file some kind of action because I see a commercial put on by automobile sellers who say real people, not actors. Well, actors are people. But here's what I'm going to get to. You know that nobody who knows me could say that I am beholden to the banks for anything or kowtowing to them. But to me, I don't understand how this system as it exists now ever could have occurred, especially in a capitalist system where fees are charged for services rendered and banks are essential to the community regardless of what experiences people may have had that may have been negative. And I think it is a grossly unfair situation because even a rich person could be treated unfairly, even a bank could be treated unfairly. And my comments may be giving away what my view is, but it's nothing new because this has been my view all the time. If you had told me prior to my being aware that this is what actually happens, I'd say, get away from here, banks wouldn't even allow that to happen. And then if you said it's in the law, I'd say, you mean the Legislature down there in Lincoln got a law? Get away from here! I might have been born at night but not last night. I didn't fall off the turnip truck yesterday. Then you show me the paperwork. I'd say something has to be done. And I'm going to have the opportunity to help you get it done this time and I hope that those who manage this bill will manage it in such a way that we don't have to continue to do this thing. [LB229]

SENATOR WILLIAMS: You have my absolute promise and commitment I will manage this bill in that manner. [LB229]

SENATOR CHAMBERS: Why did you think I (inaudible). [LB229]

SENATOR WILLIAMS: And beyond that I have no other comments to Senator Chambers.
[LB229]

SENATOR CHAMBERS: Okay, then I'm through. Thank you. [LB229]

SENATOR EBKE: Any other questions? Senator Halloran. [LB229]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR HALLORAN: More a comment than a question. I enjoy fishing. I enjoy fishing as a sport. But what you're describing strikes me as fishing on the part of the creditors without paying the fishing license, if you will, to do it. So, yes, I... [LB229]

SENATOR WILLIAMS: Thank you for that comment. And since you are a fisherman, you know... [LB229]

SENATOR HALLORAN: I'm not...no, no, don't challenge my credentials on fishing. [LB229]

SENATOR WILLIAMS: Well, no, you do one thing well then. You go fishing where the fish are. [LB229]

SENATOR HALLORAN: Right. [LB229]

SENATOR WILLIAMS: Okay? That's what's happening here. They fish where the fish are. [LB229]

SENATOR HALLORAN: I haven't had the best luck at that either but that's okay. [LB229]

SENATOR EBKE: Any other questions? Thank you, Senator Williams. Are you going to hang around? [LB229]

SENATOR WILLIAMS: Yes, I will. [LB229]

SENATOR EBKE: Okay. First proponent. [LB229]

BOB HALLSTROM: (Exhibit 1) Chairman Ebke, members of the Judiciary Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB229. From a review of my written statement that I've submitted to the committee, Senator Williams has done a nice job of stealing most of my thunder. But I do just want to fill in some of the gaps. As Senator Williams alluded to, this issue came to our attention from banks who saw an ever-increasing system of garnishment requests that resulted in no-account status, the so-called "shotgun" garnishments or, Senator Halloran, fishing expeditions that we see where the bank ends up doing a lot of work, still having to answer the interrogatories and yet those that are receiving the benefit of those services when there are accounts and funds to be applied towards the judgment paying nothing, at least directly, to the banks for that purpose. And as Senator Williams also suggested, the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

impetus behind this bill is not necessarily fee or revenue driven but simply trying to put something up that will encourage the law to be filed, or to be followed, excuse me, and that being that there is a reasonable belief that the financial institution has funds of the judgment debtor. And we believe that an entry fee, a modest entry fee if you will, will serve that very purpose. One of the other aspects that we have is banks may have that garnishment processing fee that we've referred to but what happens in probably about 75 to 80 percent of our cases, as you can see from the 2012 survey that we conducted with our membership, is that the law also says that when the garnishment is issued by the bank, the bank is to freeze that account at that time. So if you have a situation, which is in most cases, that the judgment is greater than the amount of funds that are actually in the account when there are an account relationship, you don't get to take your fee off the top. You have to send all the funds in. And it may come as no surprise to you that once somebody has their account zeroed out, they are not long to keep that customer relationship with the bank. So your customer is upset. He or she leaves the bank. You've lost the customer relationship on top of everything else. With regard to the issue of what the bill does, we think we've responded in part to some of the concerns that some committee members expressed last year which is the debtor is not always at fault when they have a situation where somebody has to garnish their account to recover a judgment. And as a result, some of the members of the committee last session had suggested, is there a way to avoid the debtor feeling the full brunt of this new \$15 up-front garnishment fee, if you will? And what we have put together in LB229 is an attempt to keep the judgment debtor harmless, if you will, because the system is set up so that if the bank receives a \$15 fee from the judgment creditor on the front end and let's say they have a \$25 garnishment processing fee that would otherwise be paid by the customer or taken out of their account, the \$15 up-front fee is required under LB229 to be deducted from or credited back against that \$25 garnishment processing fee. So just a quick example, current law, no fee up-front, \$25 processing fee, the judgment debtor has incurred \$25 in cost. Under LB229 a \$15 up-front fee, the garnishment processing fee is reduced to \$10 and the same \$25 effect as under current law will impact the judgment debtor. So we hope that is a positive improvement in the bill. I don't want to presuppose that the Bar Association is going to come up and oppose this bill as well. I don't think this bill is deserving of being laid off any further for a committee study. I think anybody in the Bar Association and practitioners can figure out that there either is or is not a \$15 fee that applies when you garnish a financial institution if LB229 is adopted. And we would encourage the committee to advance the bill and I'd be happy to address any questions that the committee may have. [LB229]

SENATOR EBKE: Any questions? Thank you, Mr. Hallstrom. [LB229]

BOB HALLSTROM: Thank you. [LB229]

SENATOR EBKE: Are there any other proponents? Okay, first opponent. Anybody else going to be testifying as an opponent in this? Okay. [LB229]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SARA BAUER: I apologize. In my haste last time... [LB229]

SENATOR EBKE: That's okay. [LB229]

SARA BAUER: ...I didn't follow your protocol, Senator. I apologize. [LB229]

SENATOR EBKE: That's okay. [LB229]

SARA BAUER: Again, I am Sara Bauer, S-a-r-a B-a-u-e-r. I am a creditor's attorney in the state of Nebraska and have been for 19 years and I am here today to oppose LB229. The...as a creditor's attorney for 19 years, I have practiced across the entire state of Nebraska, every county, before every county court. I have represented both actually in my history, both consumers and creditors, both large and small. Creditor's attorneys are mindful and I personally take issue with the belief that there is a shotgun or fishing approach to bank garnishments that are issued on behalf of creditors and judgment creditors. The bill before the committee does not make the process easier or cheaper for the judgment debtor, or the consumer in this case. Every cost is passed through as a cost recoverable in the judgment. So any...as the gentleman just indicated, the offset occurs. The bank still gets paid. If they have a \$25 fee, they get \$15 up-front, they still charge \$10 to the consumer. The \$15 fee would still be passed on as a court cost to the consumer as part...and collected as part of the judgment. So this fee does not benefit the consumer or the judgment creditor in any...or judgment debtor in any way. And so I wanted to lay that out there because I'm sure that that has been a concern throughout the past. This adds a fee that's unrelated really to a discernible cost. It only pays bankers a fee up-front. It doesn't preclude them from charging their consumers or customers their same fee. I often hear from consumers at the hearings, my bank charged me \$100. It's not \$25. It's \$75. It's \$100. They're still going to get that fee. That's not going to change with this bill. The electronic records that are available in the banks today make this a negligible time constraint on the banks. The cost, there's actually more of a cost for the courts and we pay a filing fee to issue a bank garnishment to the courts for that processing \$5. We also pay, as judgment creditors, to serve the garnishment to all the banks. But the...we have to provide to anyone we issue a garnishment to, we have to provide them with the information so that they can find whether their consumer is in their system efficiently. Generally that's by providing specific information that's not public information so they can identify them quickly. It is a negligible time constraint on the bank to get that information. But at the bottom line, this is simply the bank wants to be compensated. The fee is ultimately paid by the consumer, automated systems search the accounts, the name information is provided, the creditor provides the information, and it does not, again, help or assist small Nebraska creditors who are trying to collect and it does not help a judgment debtor in any way at the end of the day. So for those reasons, as a creditor's attorney, I'm here before you today to oppose this bill. Thank you. [LB229]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR EBKE: Senator Chambers. [LB229]

SENATOR CHAMBERS: Given your testimony on the previous bill where the collectors did not want to see a debtor retain a pittance, what I consider a pittance, are you now saying that between that bill and this one the collectors have a change of heart and now you're interested and concerned about the debtor? [LB229]

SARA BAUER: Well, I am interested in consumers. And as part of my job, I try to treat everyone fairly and equally, with dignity, quite honestly. [LB229]

SENATOR CHAMBERS: Are you representing the collectors? You're representing them? [LB229]

SARA BAUER: I generally represent creditors, yes. And in fact, you gave Ms. Burmeister a hard time. I will at least let you know, recently I represented a creditor and she was representing the consumer, so she does represent both sides, but that's aside. [LB229]

SENATOR CHAMBERS: But that's not what I'm asking you. Are you here today representing the...on this bill, representing the collectors or the debtor? [LB229]

SARA BAUER: Yes, sir. Sir, I represent creditor's rights but, however, that doesn't...isn't preclusive to harming consumers in my opinion. [LB229]

SENATOR CHAMBERS: So this money did...this bill deals with a fee on the creditors. Correct? [LB229]

SARA BAUER: It's a court cost that's advanced by the creditors but it is passed through to the judgment debtor. [LB229]

SENATOR CHAMBERS: Let me see if I can phrase the question correctly. This bill that you're telling me that would set this fee is collecting money for the court. Is that what you're saying? [LB229]

SARA BAUER: This is collecting money for the bank. [LB229]

SENATOR CHAMBERS: Then it's...don't tell me about a court cost. We're talking about the fee that the bank is charging. Now let me ask you this, and I hope you'll answer the question that I'm

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

asking you. Are the collectors receiving a service from the bank when they get this garnishment information? Is that a service that the bank is providing? [LB229]

SARA BAUER: It is not a customer service but it is a service. [LB229]

SENATOR CHAMBERS: Is it a service? [LB229]

SARA BAUER: It is a duty. [LB229]

SENATOR CHAMBERS: Lawyers don't understand me when I speak English so I'm going to speak more slowly. When a bank has employees and those employees do work in the bank and through that work they obtain information that somebody comes to receive, is the recipient of that information receiving a service from the bank? [LB229]

SARA BAUER: Under your definition, yes. [LB229]

SENATOR CHAMBERS: Say it again? [LB229]

SARA BAUER: Under your definition, yes. [LB229]

SENATOR CHAMBERS: Oh, so under what I said but you don't say that that's a service from the bank. [LB229]

SARA BAUER: I say it's a duty. I say it's a duty of the bank. [LB229]

SENATOR CHAMBERS: I don't have any more questions. [LB229]

SENATOR EBKE: Senator Hansen. [LB229]

SENATOR HANSEN: Thank you, Senator Ebke. Ms. Bauer, just for my own clarity's sake, are you here yourself as an individual who practices in the area or are you representing an industry organization? [LB229]

SARA BAUER: I am representing myself. I have met with the other...with several other creditor's attorneys, but I am here on behalf of myself, practicing for 19 years in the state of Nebraska. [LB229]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR HANSEN: Perfect. Perfect. Thank you. [LB229]

SENATOR EBKE: Senator Baker. [LB229]

SENATOR BAKER: Thank you, Chairman Ebke. Ma'am, you (inaudible) in your testimony that about 40 percent of the time that this information requested there's not even any accounts at all in the bank and you disputed that. [LB229]

SARA BAUER: I have not seen the reference. I would challenge that that, if that's accurate, the way that it was phrased that I heard, it could be that they simply are exempt from attachment. [LB229]

SENATOR BAKER: What I think the testimony was is there's no accounts, period, about 40 percent of the time. So I mean that sort of looks like flock shooting to me if that's true. [LB229]

SARA BAUER: I would need numbers to know. I guess I believe that's the perception that is played into it but I know as someone who represents creditors in the field, I do not take and simply issue bank garnishments. We...I spend time looking at accounts and trying to discern where people may be having their assets. [LB229]

SENATOR BAKER: But apparently others don't do as you do. [LB229]

SARA BAUER: I don't know that that's correct. I think today in the world that we live in, accounts are portable. We do have situations where individuals, to protect their own assets, makes sense, they use several different financial institutions or they change financial institutions. I've had several times instances where people will make payments over many times, many months, and then they stop making payments on a judgment. So then you send them, you request that they resume making payments. They don't respond to your request. So then you issue a garnishment where they sent the payments from--no account. I had a good-faith (inaudible). I wasn't taking a shotgun approach. They closed their account. They moved on so that it wasn't attachable. So that's where I think that there's just a...there's a perception that there's a fishing expedition, for Mr. Halloran, but I don't believe that that's reality as a practicing attorney. And again, I can't stress that the cost is still collectible as part of the judgment against the consumer. It's not... [LB229]

SENATOR BAKER: Thank you for your answer. [LB229]

SARA BAUER: Thank you. [LB229]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR CHAMBERS: I'm going to try again to communicate with you. If we have two individuals presenting information, if we were in court it would be called evidence. The first side presents data which have been collected, and I know I said data "have"--"data" is a plural word-- data which have been collected. And then the other person speaks and the rebuttal is, I don't accept that. That's not enough. Are you suggesting, and I'm asking for your opinion, are you suggesting that the information that we received from an earlier testifier is untrue? [LB229]

SARA BAUER: Absolutely not. I believe I, and if I didn't I apologize, I believe I prefaced it with I did not see that information. [LB229]

SENATOR CHAMBERS: You're speaking from your personal experience. [LB229]

SARA BAUER: I am speaking from my experience. [LB229]

SENATOR CHAMBERS: Okay. But you...you can, but I'm going to say as a policymaker I cannot extrapolate from your personal experience to say that what has happened with you happens with all these collectors whose practices have led to this bill. Do you fish at all? [LB229]

SARA BAUER: I have, yes, catfish actually. [LB229]

SENATOR CHAMBERS: Do you have a fishing license? [LB229]

SARA BAUER: Not this year. Two years ago I had one. [LB229]

SENATOR CHAMBERS: Say it again? [LB229]

SARA BAUER: Two years ago I got a fishing license. [LB229]

SENATOR CHAMBERS: Okay, but you had a fishing license. [LB229]

SARA BAUER: Sure. [LB229]

SENATOR CHAMBERS: Do you pay for that license only if you catch fish or do you have to pay for it whether you catch any fish or not? [LB229]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SARA BAUER: I pay for the fishing license when I go out fishing, correct. [LB229]

SENATOR CHAMBERS: So if these people are going to go fishing, then they have to pay that \$15 fee whether they land any fish or not from now on, these collectors, these bill collectors. That's all that I have. [LB229]

SARA BAUER: I can see what you're saying, however,... [LB229]

SENATOR CHAMBERS: I'm trying to create a situation where you and I leave each other on a more collegial... [LB229]

SARA BAUER: I think we understand. [LB229]

SENATOR CHAMBERS: ...basis. [LB229]

SARA BAUER: I understand then, yes, the bank has a duty in this situation, they provide a service. The creditor is paying the filing fee to issue the garnishment, the court is issuing the garnishment. The fee that is going...that is being proposed to be paid to the banks is still going to be recovered from the judgment debtor at the end of the day, not the creditor. It's going to be up-fronted by the creditor but it's going to be a court cost. It's still going to be assessed to the consumer, to the client of the bank, and the bank... [LB229]

SENATOR CHAMBERS: You're not...excuse me. [LB229]

SARA BAUER: ...is still going to collect their additional fee. [LB229]

SENATOR CHAMBERS: I don't fly a lot but when I do I park my car in a parking facility which is on the airport's property and they don't deduct the price that I pay for parking from the airline ticket. [LB229]

SARA BAUER: Sure wish they would. [LB229]

SENATOR CHAMBERS: So there are fees and there are fees. But that's all that I have, so thank you. [LB229]

SARA BAUER: Chairman, thank you. [LB229]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR CHAMBERS: That's all I have. [LB229]

SENATOR EBKE: Thank you, Senator Chambers. Anybody else? Thank you for being here today. [LB229]

SARA BAUER: Thank you very much. [LB229]

SENATOR EBKE: Do we have any other opponents? [LB229]

JOHN ROGERS: Good afternoon. My name is John Rogers; that's J-o-h-n R-o-g-e-r-s. I don't want to waste this committee's time and belabor a lot of the points that have already been raised. I just wanted to...as I was sitting there I was noticing that it seemed like there may be some confusion about the effect of this bill. Maybe there's not. Maybe I'm incorrect. First of all I should introduce myself. I'm an attorney in Nebraska. I've been practicing for 23 years. About 21 of those years I've been practicing in the realm of debtor/creditor law. I represent...for many years I've represented both sides, both debtors and creditors. Most lately I'm representing mostly creditors, and I would say throughout my career I've represented mostly creditors, but I have a significant amount of experience representing debtors as well. The thing I wanted to clarify on is that this \$15 fee, it seems to me, is going to raise the cost of a judgment, raise the amount that a debtor owes every time a creditor files a garnishment. So if a creditor files three garnishments, let's say they try, you know, they have reason to believe that this bank holds funds and so they file the garnishment on bank A and that comes back with nothing. So they have...and they're looking at their credit report and they see there's another bank that has...that may have funds and so they file it again. Each time they file, under this bill, as it's proposed, each time it's filed, the amount that the creditor pays is added to the total of the judgment. Like I said, maybe we all understood that, but I wasn't sure that that was entirely clear. So in other words, every time a garnishment is filed, right now what it is, is there's a \$5 filing fee that creditors pay and then there's service of process cost for serving notice on the judgment debtor and serving notice on the garnishee bank. Those costs are also added on. So we've got cost for the service on the judgment debtor, cost for the service on the garnishee, cost for the filing fee, and now we're adding another \$15 filing fee basically. I shouldn't call it a filing fee because it's not really a filing fee but it has the same character as a filing fee because it then gets tacked on, on top of the total amount of the judgment. And so that's what I wanted to clarify, that's what I... [LB229]

SENATOR EBKE: Senator Chambers. [LB229]

SENATOR CHAMBERS: It seems to me that you're using the debtor as a human shield. You're interested in protecting your interest or the interest of your client and you don't want your client to pay that \$15. And in order to keep the Legislature from doing that, you want to try to generate

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

sympathy for the debtor for whom you have no sympathy or mercy. I just wanted that clear, too, in case I hadn't made it clear earlier. I don't think you have any interest in the debtor at all, because that's not who you're representing. You are a lawyer and you are to represent your client zealously and you cannot at the same time ride two horses, especially when they're going in opposite directions. And you give that impression from what you said but, being much older than you, sonny, I saw through it. Or would you rather I call you junior? You're just a kid under me, whichever way, so whichever you'd prefer, that's what I'll let you have. Let me say youngster. [LB229]

JOHN ROGERS: I do have experience representing debtors and I have represented debtors in the past. [LB229]

SENATOR CHAMBERS: I look at what you're doing right now. See, a lot of embezzlers were honest before they were embezzlers. So when they fall into the hands of the law, the law will say, well, you couldn't have been an embezzler if you hadn't been an honest person in the first place. So you were doing honest work at one point, then you decided that you needed to make some money. And under the laws of this state, you are not behaving in an unethical way to represent the gougers, the creditors, and so forth. So I'm not faulting you for what you're doing, but I don't want you to get the impression that I think you're representing or concerned about the interests of the one from who those you represent now are trying to squeeze the last ounce of dignity. That's all I have. [LB229]

SENATOR EBKE: Okay. Any other questions? Senator Halloran. [LB229]

SENATOR HALLORAN: Madam Chair, I don't know this gentleman from Adam. I heard what his testimony was and I take it on face value. But I think the...I would suggest that for the decorum of the hearing that we work as hard as we can to respect the people that are testifying and not defame them in any fashion. [LB229]

SENATOR EBKE: Thank you, Senator. Any other questions? Thank you for being here today, Mr. Rogers. [LB229]

JOHN ROGERS: Thank you. [LB229]

SENATOR EBKE: Do we have anybody testifying in the neutral today? Senator Williams, would you like to close? [LB229]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR WILLIAMS: Thank you, committee, and very quickly. These situations are relatively simple. There's four parties involved. You've got the debtor, the creditor, and the collector, and then the financial institution. Everyone except for the financial institution which has had nothing to do with the transaction itself that caused the situation to occur, everyone else receives some benefit in this. The bank is the one that was not involved with creating the situation and currently they are not compensated in any form. We're simply asking for a small \$15 fee that would be paid. Each bank, whether they have an account or not, has to go through the process of the work involved. It was clear the testifier before last has never been in the back room of a bank and had to go through the process of physically doing this, because it's not just simple like this. With that, I ask for your support to advance LB229. Thank you. [LB229]

SENATOR EBKE: Thank you, Senator. [LB229]

SENATOR CHAMBERS: My only comment,... [LB229]

SENATOR EBKE: Certainly. [LB229]

SENATOR CHAMBERS: ...since you were in the room the whole time, there are some people who have very tender sensibilities and they jump to the defense because they don't like the way a certain senator may behave, but that person ought to take issue with that senator instead of trying to tell the witness you haven't been treated a certain way or whatever you're saying. I can't half the time understand what he's saying. But when a comment is addressed toward me, I'm going to respond to it. But I don't want the witness to be there in the middle of something, so I used you for a sounding board. [LB229]

SENATOR WILLIAMS: Thank you, Senator. [LB229]

SENATOR EBKE: Thank you, Senator Chambers. Thank you, Senator Williams. We have no letters so this concludes the hearing on LB229. And because I have to be here anyhow, I am pulling a...what? There are no letters, right? There are not? That's fine. I am calling an audible and I am going to invite Senator Harr to come up and present his bill first. [LB37]

SENATOR HARR: (Exhibit 2) Thank you, Chair Ebke. My name is Burke Harr, H-a-r-r. I represent Legislative District 8 in Douglas County. I want to thank you for squeezing me in. I know I was originally scheduled at one point and you've moved me because I had two other hearings and now you've moved me again and I want to thank you for accommodating, especially on a Friday, so thank you. LB37 adopts the Uniform Wage Garnishment Act which I am introducing on behalf of the Uniform Law Commission. Representatives from the Uniform

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

Law Commission will follow to explain the specifics but in general the benefits of this bill include a streamlined wage garnishment process. The act makes the wage garnishment process more efficient by putting employers and creditors in direct contact with each other. When a garnishment begins, the employer responds directly to the creditor instead of the court and remits garnished amounts directly to the creditor. If an issue comes up during the garnishment process, an employer, employee, or a creditor may petition the court for a hearing at any time. The efficiency will reduce the administrative costs of the garnishment which are mostly borne by the debtor and the judicial system. The act ensures that employees are given a plain-language notice about the pending garnishment and time to consider their options before garnishment begins. An employee must be given a notice that explains in plain language what garnishment is, the amount that is owed, and what steps may be taken by an employee in response. Deductions from earnings may not begin until the first regular payday occurring 30 or more days after said notice is given. The act extends its protection to certain independent contractors as well. The act, like all garnishment statutes, protects the basic living standards of employees while they are paying off their debts and it extends this protection to individuals who are classified as independent contractors but who are virtually indistinguishable from ordinary employees--editorial--due to misclassification, but that's for another committee. I also have a letter of support to pass out from the American Payroll Association. Mr. Rogers, who was in here earlier, is a constituent of mine. He likes Senator Brasch. And he and I, I didn't get a chance to talk to him earlier, I know he's coming in opposition of this bill and I appreciate his opposition. Before I agreed to introduce this bill I talked to a number of attorneys I know in this area of law. They also extended some concerns with this bill and what I say about this bill this year is that we are introducing it to get feedback so that we can make a better law. We would be one of the first states when we adopt the Uniform Garnishment Act. And I appreciate everyone who has taken time to give input, whether they're here today or whether I spoke to them over the last couple of months. So with that I would entertain any questions you may have. [LB37]

SENATOR EBKE: Are there any questions for Senator Harr? It's Friday. [LB37]

SENATOR HARR: Thank you. [LB37]

SENATOR EBKE: Not yet. Are you going to stick around? [LB37]

SENATOR HALLORAN: Oh, come on. [LB37]

SENATOR HARR: I really want to waive closing but I will stick around. Thank you. [LB37]

SENATOR EBKE: Okay. Okay. First proponent. [LB37]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

LARRY RUTH: (Exhibit 3) Good afternoon, Senator Ebke and members of the committee. My name is Larry Ruth, spelled L-a-r-r-y R-u-t-h, and I am appearing on behalf of the Nebraska Uniform Law Commission in support of LB37 and recommending passage. At the outset I would say this is a bill that we need to go slow on. You've already heard others talk about the need to review this carefully and if there is an area where we want to have it right for all the parties involved, this is certainly one of them. We're dealing with a very precious commodity and that is a person's wages. And if there's anything that's more important to most people, it's how much they get paid and how they get paid, so we want to get it right, so I do appreciate those who are suggesting the go slow approach. The Uniform Wage Garnishment Act was a result of a committee of the Uniform Law Commission--this is in Chicago--that had 13 members from 12 different states representing a number of different specialties and as well as general practitioners. Their consensus was in looking at this that our states' laws--states' laws, that's plural--states' laws on wage garnishment are very old generally, they have great variety. They affect millions of workers and in Nebraska I think it's suggested we may have as many as 80,000 garnishments. The reporter of this committee, that is the person that was putting all this together and helping do the drafting, was Steve Willborn and he is one of our Uniform Law Commissioners. He couldn't be here today. He had reservations out of state for another meeting so I'm here in his place. But he would say, if he was here, that the state of Nebraska's garnishment law, as well as most states' garnishment laws, are very old and very in need of updating if for no other reason than to take advantage of some of the technology of the day. If you look in your packet, on the left-hand side, I've got a copy of the bill, or the law. It's Section 25-1056 which is one of the very significant sections of law in the garnishment statutes. And if you just turn to that second page, it's kind of revealing. This is the first handout on the left side of the packet and it's the section of law 25-1056. And right below that section it shows source. This is all the laws that were passed over the years affecting this section of law. And if you notice, this law goes back to 1867. You ever heard of that before? So we have a very old section of law. Obviously it's been amended over the years from time to time, but it's had a lot of tinkering, too, and it cries out I think, the regime, the garnishment areas cry out for some significant study. Now what the bill does is follow the act that we had drafted and Senator Harr talked about that. I know the time and in interest of the time, but I don't have the background to do it anyway, to give you a great deal of understanding about how the law, how this bill proceeds. But it does work under this assumption that if we streamline the process, allow for some of the cost to be gotten rid of through some efficiencies, that we can perhaps make this cheaper and in end analysis be a benefit to the debtor...well, actually, all concerned. Most of the cost of garnishment that are the inefficiencies are eventually borne by the debtor in one form or another, so that's one of the overarching issues that we were looking at. There are a number of issues that we don't attempt to completely resolve and discuss here today. That is the question of fees. This, understand, is the garnishment of wages. The senator before had a bill not on the garnishment of wages but on the garnishment of accounts, checking accounts. So what we're talking about here is making it a streamlined process with safeguards. I noticed the attorney for the Bar Association was suggesting that if you don't run

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

this through the courts, that you may not have the correct accounting of the...that's a legitimate concern and we want to have folks look at that and be sure that we have the proper recordkeeping procedures. But all this really needs to be done through some folks sitting down and trying to put it together. Red light. [LB37]

SENATOR EBKE: Okay. Thank you, sir. Senator Chambers. [LB37]

SENATOR CHAMBERS: Mr. Ruth, this is very technical. I wouldn't pretend that I could even read it one time and get it all. [LB37]

LARRY RUTH: Um-hum. [LB37]

SENATOR CHAMBERS: One thing I like. It has erased that ruse of saying that people call independent contractors who are really employees are, in fact, employees, and the protections are given to them as it would be to ordinary employees rather than so-called contractors. And I'm glad that that is...at least it would be covered here. But that doesn't mean that I'm...I've read it all or can understand just (inaudible)... [LB37]

LARRY RUTH: I can't say that you're supporting the bill now is what you're trying to tell me? I agree, I understand. Well, the...who is an independent contractor and how you define of course is...has ramifications in many areas. But in this particular area, if the person is being paid a periodic amount and is providing what's called a personal service, generally that's going to put them into the protected group here and they would not necessarily be an independent contractor for other reasons but they would be for this particular reason. There is one other...there is a third requirement but the big one is personal service, doing a personal service, and that doesn't pick up all independent contractors but it does pick up the ones that are being almost indistinguishable from employees. Anyway, at least we're approaching the subject. [LB37]

SENATOR EBKE: Senator Baker. [LB37]

SENATOR BAKER: Thank you. Mr. Ruth, walk through some of this with me here. You know, as a chief executive officer of a school district, we'd from time to time get garnishment notices. [LB37]

LARRY RUTH: Sure. [LB37]

SENATOR BAKER: And it appears now that a notice has to go to the person whose wages are to be garnished. [LB37]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

LARRY RUTH: Right. [LB37]

SENATOR BAKER: It apparently was not always that way. Is that true? I mean we...it seems to me that we... [LB37]

LARRY RUTH: Correct. [LB37]

SENATOR BAKER: ...people would be surprised if we'd get it, tell them we've received this notice from the court, we have to withhold this amount of money. [LB37]

LARRY RUTH: Yeah. [LB37]

SENATOR BAKER: And they did not know that ahead of time. This takes care of that, correct? [LB37]

LARRY RUTH: This kind of a garnishment is what you call after judgment, if we want to (inaudible) term. [LB37]

SENATOR BAKER: Yes. [LB37]

LARRY RUTH: There is judgment somewhere that this individual who is an employee of your school district owes money to someone else. [LB37]

SENATOR BAKER: Right. [LB37]

LARRY RUTH: And that then, as a part of that court proceeding, they initiate garnishment proceedings. [LB37]

SENATOR BAKER: And so the only notice that they would receive would generally be from the court says... [LB37]

LARRY RUTH: Well, the court is involved with doing the initial notice. But what we're trying to do, part of this is to make sure that the employee receives a clear statement... [LB37]

SENATOR BAKER: Exactly. [LB37]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

LARRY RUTH: ...of what...the basis upon which their wages are going to be garnished and the procedure for it and then also to make also certain, which I think is important, standardizing the process among the states that you don't start the actual garnishment of the wages until I think it's the first pay period after 30 days after notification... [LB37]

SENATOR BAKER: Right. [LB37]

LARRY RUTH: ...so that the employee has a chance to say, gosh, I'm going to get this big nick out of my wages, I better plan for that in some way if I can. [LB37]

SENATOR BAKER: So then, you know, what would happen sometime if the employee would say, well, I've paid that so you don't need to garnish it? Is it, we're sorry,... [LB37]

LARRY RUTH: Yeah. [LB37]

SENATOR BAKER: ...until we hear from the courts, I assume it's built in here, there's going to be timely notice from the court to the employer if it has been paid? [LB37]

LARRY RUTH: Yeah. There is a part of this that is just between the employer...I mean between the debtor and the creditor. But there is an opportunity to get into court with a hearing as to whether or not something should be done that's attempted to be done, and that would be I think what you're talking about... [LB37]

SENATOR BAKER: Yes. [LB37]

LARRY RUTH: ...where the employee actually challenges whether or not they owe the debt. Now typically speaking they may have forgotten they owe it or they don't know it, but there...it's going to be the basis of a court action which establishes the debt. [LB37]

SENATOR BAKER: Thank you. [LB37]

LARRY RUTH: Yeah. [LB37]

SENATOR EBKE: Senator Krist. [LB37]

SENATOR KRIST: Just very quickly, I heard you mention that I think, just paraphrasing now, that there could be some efficiencies and less... [LB37]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

LARRY RUTH: What? I'm sorry. [LB37]

SENATOR KRIST: There could be some efficiencies and lessening the cost ultimately to the debtor. [LB37]

LARRY RUTH: Yeah. [LB37]

SENATOR KRIST: How do you see that happening? [LB37]

LARRY RUTH: Well, and this is where I think...this is where the fiscal note is I think incomplete. And there may have been a reference in that that it's incomplete but here's the reason why. Every time you run through the court, you're slowing it down and you're also...I think you're causing some additional work on the part of the courts. And to the extent we can do this without going through the court, it's a more efficient process, and that is saving money for the courts in not having to do these rather ministerial functions. I don't know if they're ministerial, but they're certainly not heavy judicial in nature, and that's where I think some of the inefficiencies can be taken care of. And the fiscal note does not account for that. The fiscal note says, gee, we're going to have these additional costs because we have employees whose wages are going to be garnished, and that might be true. But the state has not yet accounted for in the fiscal note the fact that it will not be as involved in the garnishment process and that will be less work on the part of court employees. [LB37]

SENATOR KRIST: Thank you. [LB37]

LARRY RUTH: Yes, sir. [LB37]

SENATOR EBKE: Any other questions? Thank you for being here today, Mr. Ruth. [LB37]

LARRY RUTH: Thank you. [LB37]

SENATOR EBKE: Other proponents? [LB37]

BOB HALLSTROM: Chairman Ebke, members of the Judiciary Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you on this bill on behalf of the National Federation of Independent Business in support. I would just say we are taking our first look at this, as many folks are. I think it's a good idea to take it slow. We want to do it and we want to do it right but we are encouraged by the fact that the legislation appears to streamline the process

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

not only for employers but for the court system, for the employees, and those are all promising aspects of what we think could be a good, positive change to the wage garnishment laws in the state of Nebraska and we'd encourage the committee to continue to look at this diligently. Be happy to address any questions. [LB37]

SENATOR EBKE: Any questions? Thank you, Mr. Hallstrom. [LB37]

BOB HALLSTROM: Thank you. [LB37]

SENATOR EBKE: Are there any other proponents of LB37? If not, are there any opponents? Come on up. [LB37]

JOHN ROGERS: Once again, Chairman Ebke, members of the committee, thank you. My name is John Rogers; that's J-o-h-n R-o-g-e-r-s. I want to start out by saying I don't have anything against streamlining the process. And having done garnishments from both sides for 20-some years, I've certainly seen a lot of the ways in which, you know, the garnishment process, not only is it not, what I say in Nebraska, is it not perfect, but it certainly could use some tweaking and some adjustments. The one thing that I keep hearing about streamlining the process by having payment sent directly to creditors, while that may seem like that's streamlining the process, and I think it is at least initially, the problem that I see, and I see this from my experience in representing both creditors and have...and debtors, too, is that if there's ever an issue...I'll just do a quick scenario. Let's say that a debtor is garnished three years ago and say it's a \$1,000 judgment and over the course of 180 days that judgment is paid or mostly paid. Three years later, for whatever reason, let's say that the creditor that owned that judgment had sloppy bookkeeping or there's a mix-up somehow in the paperwork. That judgment then, let's say the judgment creditor again comes around. Let's say that they're even unscrupulous. That judgment creditor comes around again and starts to garnish wages again. The judgment debtor, unless they've got their records, unless they can somehow prove what has been taken from their wages, they're going to be forced to try and come up with some kind of recollection or reconciliation of what the payments have been. Under the current system where payments come to the court, right now I can't tell you how many times I have seen where a judgment debtor comes into court and says, I've paid all this judgment. It's very easy for the judge at that point to say, well, let's go to the court clerk, let's get our printout of the payments, just like child support, let's get a printout of the payments that have been made, and we'll see what payments have been made and what payments haven't been made. And by streamlining this process and taking the court out of the loop, I'm afraid it's going to cause more problems in the long run than it...and more problems, more cost in the long run than it saves. The other thing that I noticed, and again this is along the same line as streamlining, and again, streamlining not necessarily bad, but right now under the current system garnishments are initiated by a judgment creditor and they go for 90 days and if at the end of that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

90 days the judgment is not paid off, the judgment creditor can apply for a second 90-day period called extension. At the end of that extension the garnishment ends, no question, the garnishment ends and if there's still money due on the judgment, the judgment creditor needs to refile the garnishment. But I see...and I know that, again, we're trying to streamline, but there is...I think there is definitely a benefit to a judgment debtor receiving something at least every 90 days sort of with an update saying, yes, the garnishment is still going on. Under this system, the way I'm reading this bill right now is that this garnishment would just continue on until the debt is paid. And I don't know, I guess I'm trying to look at this from middle of the road here. I think that it's not necessarily a good thing to take away the periodic, at least, notifications to judgment debtors that this garnishment is still ongoing. The final thing that I would say about this bill that's troubling to me is that there is...it injects an issue of a bad-faith garnishment, which I wouldn't...I don't have any opposition to the state of Nebraska prohibiting creditors from garnishing people in bad faith. The problem is that bad faith under this bill, as far as I can tell, is not defined. And just out of fairness I think it would be better at the very least if bad faith is going to be a part of this new garnishment scheme, that at the very least that it be defined what is, what constitutes bad faith, or at least some examples of it. So I think I'm probably saying a little bit of what other folks have been saying is that I think that this bill maybe needs to be looked at, needs some people that know and practice law in Nebraska on both sides to look at how this is...how this bill will affect us going forward. One other thing I would mention is that although this is a uniform bill, my understanding from looking at the Web site for the Uniform Law Commissioners, Nebraska is the first state to introduce this bill and I'm not sure that we want to be the guinea pigs for this new system. So anyway, that's all of my statements. [LB37]

SENATOR EBKE: Thank you, Mr. Rogers. Any questions? [LB37]

JOHN ROGERS: Yes, sir. [LB37]

SENATOR EBKE: Senator Chambers. [LB37]

SENATOR CHAMBERS: You've just stated a principle that Alexander Pope, he's a poet that I like, stated: Don't be the first...I'm paraphrasing: Don't be the first to grab onto something nor the last to let it go, somewhere in between. And I'm going to state my general philosophy with reference to not only uniform laws but those brought from another state. One size does not fit all and I think whenever a law is going to be brought from another state, or a uniform law, it has to be tailored to fit the circumstances of the state. I stated when I was talking with Mr. Ruth that I haven't read it and I cannot say that I know everything that's in it. The one thing that jumped out to me was that it would not allow what I considered this ruse of calling people private contractors when they're employees, such as paperboys and papergirls. Now they call them deliverers. And some of the people who work in stores, there's really no distinction between

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

them and a regular employee. But that doesn't mean that everything in the bill I'm familiar with and I hope that was clear. Before I would agree with something like this, just as I examine very carefully a bill that somebody says came from another state, I would talk to people who have more knowledge in that area than I do. So here's what I'm going to ask of you since you took it upon yourself to testify and oppose this bill. There is a green copy I can see that you've got. So if there are some major areas that you see ought to be looked at, I'm going to ask, would you just highlight some of those and send them to me, Ernie Chambers, State Capitol Building, Lincoln, Nebraska, or if you can't remember that, just put "Chief Villain," Nebraska, and I'll get it, I assure you. I'd appreciate if you'd do that. And then I promise I'll get back with you and we'll discuss it. [LB37]

JOHN ROGERS: That would be great. [LB37]

SENATOR CHAMBERS: But I don't know enough to really talk about it at this point. [LB37]

JOHN ROGERS: I was actually...that was my intention was actually to offer my assistance in that regard because, for better or worse, I've been doing this for a long time and I've been doing it in the trenches and I think I have a good idea of at least how things will affect the law in the long run. I think it's ironic, to follow up on your comment, how so many uniform laws that are not uniform, every state takes them and they change them and so suddenly the greatest intentions that we have to make the laws uniform, they are suddenly almost uniform but not quite uniform which almost is more problematic I think at times. [LB37]

SENATOR CHAMBERS: Next time you testify I'm going to wait and see if you're going to offer your services, then I won't ask for them, then I'm not beholden to you and you'll thank me for accepting your offer. That's all that I have. [LB37]

JOHN ROGERS: I will always offer my services, Senator Chambers. [LB37]

SENATOR CHAMBERS: Okay. [LB37]

JOHN ROGERS: Thank you. [LB37]

SENATOR EBKE: Any other questions? Thank you, Mr. Rogers. [LB37]

JOHN ROGERS: Thank you. [LB37]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR EBKE: Next opponent. [LB37]

SARA BAUER: (Exhibit 4) Hello again. Thank you, Senators. Sara Bauer, S-a-r-a B-a-u-e-r. I'm here today to oppose the Uniform Wage Garnishment Act as proposed. Again, to echo a lot of what Mr. Rogers said, and so I won't...don't want to belabor it, it's not...the uniform act as proposed is proposing to change an act and change in Nebraska a process that works fairly smoothly and is fairly direct, giving judgment debtors notice when the garnishment is issued to their employer at the same time, and then it's reviewed every 90 days. As Mr. Rogers echoed, I think this is simply...to echo Mr. Rogers, this is simply premature to enact this sweeping overhaul of the wage garnishment. I think it needs more review. There's some concerning provisions. Again, the garnishment payments are sent directly to the creditors from the employer. The employer, if there are multiple garnishments in place, the employer can pay all of the...separates out the payments and so the garnishments actually last longer for the employee. Right now we have one in place at a time and so one gets paid and then they move on and there's a definitive end. Again, it's every six months, every 90 days it's reviewed and every six months the creditor has to go back and report this is the amount we're showed due and owing so that it's very clear, and against the employer's records that take precedence in the uniform act. So the employer is the one who is burdened at that point with keeping tabs, with calculating judgment interest, with calculating additional court costs, and they may not be able to do that because they simply, they're not necessarily...they'll get the information but they may not keep that judgment interest on an ongoing record, but their records are the ones that eliminate so the employer doesn't know...or the judgment creditor doesn't know. The employee himself or herself may not know, as it goes, and it doesn't end. Again, right now we have a system where every 90 days it's reviewed and the notices go out to the judgment debtor at each point. So, again, the notion of bad faith, as Mr. Rogers pointed out, there's an additional delay. While the proponents indicate that that gives people time to plan, it also gives more uncertainty to the end date and interest continues to accrue and waiting. It doesn't ever...it doesn't really behoove anyone because interest continues to accrue during that time and it's harder for the...any party to rely on what's going to happen as it goes forward. And again, the other thing that this law does, being the Uniform Wage Garnishment Act, we have both wage and bank that have been provisions here today. This completely would separate the two processes. Currently the processes are relatively parallel. With the initial start forms, the creditor files the action, sends the notice to the consumer. The garnishee answers within a very specific time frame. This would make the two processes almost completely divergent. And again, there's no end time, so there's no end time frame, so it could be very cumbersome for all parties involved. It just doesn't give the definitive. So I think it does need to be studied, but at this point it's too premature. [LB37]

SENATOR EBKE: Any questions? Okay, thank you, Ms. Bauer. [LB37]

SARA BAUER: Thank you very much for your time. [LB37]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR EBKE: (Exhibit 1) Do we have anybody else speaking in opposition? Any neutral testimony? Okay, Senator Harr, as you make your way up here, we have a couple of letters, one in support from Rocky Weber of the Nebraska Cooperative Council, one in opposition to this one, and actually all four of the bills, from the Nebraska Collectors Association. [LB37]

SENATOR HARR: Just quickly, I want to thank you for your time. I look forward to working with this committee and the Uniform Law Commission to see how we can make this proposed bill better. And thank you for letting me testify on "no questions" Friday. [LB37]

SENATOR EBKE: And this...got a question? [LB37]

SENATOR CHAMBERS: Yes. [LB37]

SENATOR EBKE: Okay. [LB37]

SENATOR CHAMBERS: I want to reassure... [LB37]

SENATOR EBKE: Make it hard. [LB37]

SENATOR HARR: Yeah. (Laughter) [LB37]

SENATOR CHAMBERS: (Inaudible) that if I have questions I will ask you also, but sometimes I like to get an opposing point of view and then we will be able to talk to each other anytime. But you favor it and at this point I don't know enough about it to frame questions. But we will discuss it. [LB37]

SENATOR HARR: Okay, great. Thank you. I appreciate it. Thank you. [LB37]

SENATOR EBKE: Very good. This concludes the hearing on LB37 and I will be moving here. Senator Krist is going to take the Chair. [LB37]

SENATOR KRIST: Thank you. [LB136]

SENATOR EBKE: Good afternoon, colleagues. I am Laura Ebke, L-a-u-r-a E-b-k-e. I represent Legislative District 32. Thank you to all my fellow members for hanging on and remembering that this is "no question" Friday. (Laughter) LB136 is a simple bill dealing with changes in garnishment proceedings. It was brought to me by First National Bank and others to address a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

few specific issues. I will defer to their representative, sitting behind me, to address those issues in detail. Basically what LB136 seeks to do is to provide protection for garnishees involved in a garnishment action by providing that a garnishee may release funds, credit, or debt that has been attached as a result of an order of garnishment if no order to pay is provided within 60 days of the creditor receiving the garnishee's answer. Further, a garnishment summons shall apply only to the debtor, not the garnishee or employer, if that debtor is an employee of a Nebraska financial institution that receives deposits. There is a small fiscal note on this. State Accounting says provisions of the bill could be incorporated into current procedures, so they don't expect a fiscal impact. The Supreme Court states that it would require changes to the JUSTICE program, that is, the court's electronic case management system, and that cost is what's reflected in the note for a total of \$12,500 from cash funds. However, the court is still reviewing the bill and may submit an amended fiscal note if there are additional costs or maybe even lesser costs; after that, no cost for fiscal year 2018 or 2019. There is an expert on garnishment issues following me, representing First National Bank, who will be better able to answer any questions that you might have. And given the number of garnishment-related bills that we've heard today and those that we'll be hearing in the next few weeks, it will be interesting to see what we might come up with. So I will stand for...sit for any questions you might have, or not. [LB136]

SENATOR KRIST: Any questions for Senator Ebke? Thank you, ma'am. First proponent. Welcome. [LB136]

PATRICK ICKES: Thank you. My name is Patrick, P-a-t-r-i-c-k; last name is Ickes, I-c-k-e-s. I'm an employee of First National Bank of Omaha and one of the hats that I wear is to manage our legal attachments unit which is composed of six people who perform garnishments, levies, any form of legal attachment related either to bank accounts or with respect to employees' wages. I'm here to speak in support of LB136. I won't belabor you with a lot of history. The bank receives more than 8,600 garnishments a year, 3,600 of which come from Nebraska. Unlike our sister states--Colorado, South Dakota, Iowa, and Kansas--Nebraska does not have a provision in the statutes that permits a garnishee to...well, does not have a provision in statutes which automatically terminates a garnishment received by a garnishee in the absence of either receiving a pay-over order or a release, court release. So our provision or our proposal would be to correct that deficiency and put us in line with our sister states. And we typically out of that 3,600 end up having between 70 and 125 garnishments that we have to call about that are not...that we're not informed either have been satisfied via other means, that is a garnishment to another financial institution, the judgment creditor obtained the entirety of the amount that was found against the judgment debtor, and so we're left having to go back to the law firm and find out whether or not, in fact, it's been satisfied, whether it's been released. And so that requires my staff to call each of these firms, and they may or may not be willing to go back after the fact and obtain a release from the court. And as those continue to get later and later in time, I continue to have to hold the funds of our customers in perpetuity potentially. Right now I have 36 garnishments that I'm

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

holding from 2016 that have not yet been released which that's tying up our customers' money. And we'd like to be able to return those funds back to the customer if we can. And so this is really pointed at trying to do that. Not to be altruistic entirely, it will also free my staff from having to make follow-up calls with respect to the various firms and collection companies. So that's really the thrust behind the first portion of the bill. I will say this, the states surrounding us vary in the period of time by which one of these garnishments is automatic released under their statutes. It varies from 60 days in Kansas to 180 days in South Dakota. Typically in Iowa it's 120. In Colorado it's 180 but it also has a de minimis dollar amount that is automatically permitted for us to release. So all we're trying to do is propose a way to be in line with others, help our customers, and, honestly, help my employees. With respect to the second portion, which is essentially when an employee is garnished at the bank who also banks with the bank, we are required under state law to attach to both the money that goes into their bank account as well as their current wages. Our difficulty then becomes our employee may be depositing wages right into our bank accounts and they're banking with us. So now I'm attaching both pieces which is a double whammy to the employees. And so this would alleviate the attachment to the bank account and only in those instances where we have an employee allow the wage garnishment to proceed. So that is, again, of benefit to our customer and our employee. So we think that, again, that's a good thing from our standpoint. Overall the desire is to free up funds back to the garnishee unless those funds are absolutely needed to satisfy a judgment. That's really all I have to say. I'll take any questions however. [LB136]

SENATOR KRIST: Any questions? I have one. [LB136]

PATRICK ICKES: Sure. [LB136]

SENATOR KRIST: The same paragraph I'll start on. Do you have a copy of the bill? [LB136]

PATRICK ICKES: I have a prior version printed from...but yes. [LB136]

SENATOR KRIST: Okay. So let's just start the first time that the paragraph goes in. It's on page 2, begins halfway through line 15: "The garnishee may release the funds..." Did you find it? Thank you, Senator Ebke. "The garnishee may release the funds, credits, or indebtedness that have been attached pursuant to the order of garnishment if no order to pay the judgment creditor has been received by the garnishee within sixty days following the receipt, by the judgment creditor, of the garnishee's answer." Could you give me that in English? [LB136]

PATRICK ICKES: Sure, sure. The garnishment process is essentially a two-step process. We're first served with interrogatories which ask, provide information regarding any property or wages that you hold in the debtor's name. So we get that document, that interrogatory set of questions

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

asking us to identify, say, the account, how much is in it, the wages, have to do the calculation as required by statute. We have to send that back to the court. And then we have to sit holding the funds, not yet either paying wages over or paying the bank account. So we sit and wait until the court sends us a follow-up order and that follow-up order is generated typically by the creditor. They go back to court and say, yes, we want First National to actually pay over funds or to withhold wages. [LB136]

SENATOR KRIST: So the change here is that you're saying that should happen in 60 days? [LB136]

PATRICK ICKES: No, the change here is to say if we don't get that pay-over order, or we don't get a court release, we actually, the garnishment terminates by itself automatically. [LB136]

SENATOR KRIST: Okay, got it, got it. [LB136]

PATRICK ICKES: That's the whole gist of that. [LB136]

SENATOR KRIST: Got it. Thank you. [LB136]

PATRICK ICKES: Sure. [LB136]

SENATOR KRIST: I appreciate that. Any other questions? Senator Halloran. [LB136]

SENATOR HALLORAN: Can we word it that way? [LB136]

PATRICK ICKES: I'm sure we can. I'm sure we can work on that. [LB136]

SENATOR HALLORAN: All right, thanks. [LB136]

PATRICK ICKES: And I will say on the second portion of the bill we may have to do some wordsmithing on that as well. The... [LB136]

SENATOR KRIST: Well, that's actually...I'm sorry. [LB136]

PATRICK ICKES: Go ahead, sir. [LB136]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

SENATOR KRIST: That's actually pretty clear... [LB136]

PATRICK ICKES: Okay. [LB136]

SENATOR KRIST: ...in terms of the way it is. You could always wordsmith it but I think you're saying you don't want to hit them on both ends because you...yeah, I got it. [LB136]

PATRICK ICKES: Right. And only one last point I guess I would add. The bank, we're not purely a garnishee. We're also in some cases a garnisher. And so we were trying to propose a provision or several provisions that were reasonable that we, too, could apply when we're on the judgment creditor side. So that's why we formulated it as we did, or proposed it. [LB136]

SENATOR KRIST: You have a bank in Texas, too, don't you? [LB136]

PATRICK ICKES: We do, actually, across seven states. [LB136]

SENATOR KRIST: So of all those seven states, is this indicative of the average of what is done or did you take a template from someplace? [LB136]

PATRICK ICKES: I can't speak to Texas. I can speak to we're in the four sister states here as well and each of them have that provision essentially, an automatic termination provision in their statute. So we're trying to parallel that. I can't say what Texas' practice is off the top of my head. [LB136]

SENATOR KRIST: Okay. Any other questions, comments? Thank you, sir, appreciate you coming. [LB136]

PATRICK ICKES: Thank you. [LB136]

SENATOR KRIST: Next proponent. Welcome back, Mr. Hallstrom. [LB136]

BOB HALLSTROM: Thank you, Senator Krist. Members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB136, particularly with regard to the issue of the first part of the bill where you've got a situation where you don't receive an order to pay within 60 days. Certainly, as you might expect, I think it would be very unusual that you wouldn't get an order to pay if there were still monies that needed to be paid towards that judgment, so something has

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

happened that they're not pursuing collection and I think it's inherently reasonable for the law to provide that that inconvenience to the bank, but not only that, the inconvenience to the customer of having their funds frozen, which the bank is obligated to do until they get that order or release, should be the law of the land. With regard to the issue of the employee's garnishment, again, we have a situation where the employee of the financial institution may be treated differently than others that have wage garnishments because the garnishment structure is not such that you get a garnishment and it says just do the wages. When the bank gets the garnishment, it's all property that they hold of that particular, in this case, employee, but judgment debtor in general. So we would support the bill and encourage the committee to kick it out for consideration by the full Legislature. Be happy to address any questions. [LB136]

SENATOR KRIST: Thank you, sir. Any questions? Thanks again. [LB136]

BOB HALLSTROM: Thank you. [LB136]

SENATOR KRIST: Next proponent. Seeing none, first opponent. Don't you get tired of coming up as an opponent? [LB136]

SARA BAUER: Promise this is the last time. [LB136]

SENATOR KRIST: What are you for? [LB136]

SARA BAUER: This is the last time for (inaudible). [LB136]

SENATOR KRIST: Any other opponents or neutral today on this one? Okay, you have the honor of being last. [LB136]

SARA BAUER: Thank you. Again, thank you very much, Senator Krist, Senators. Sara Bauer, S-a-r-a B-a-u-e-r, here to oppose the bill. And that position that I would have as a creditor's attorney is really how it's phrased as the...as you (inaudible). When you actually read the language, it is the receipt. The bank is wanting an out for receipt of an order, not whether the court enters the order. While what I, again, since I'm here as a person, as an attorney, I think it makes sense to have a...potentially have a time limit on entering that order currently for wage garnishments because, as I indicated earlier, they're very parallel. Currently for wage garnishments, if you don't get an order for continuing lien within 90 days, then the continuing lien is done. The employer has no obligation. We currently don't have that in the bank, in the bank execution. So while that adding a deadline or a parameter to that does make sense to me as just a practicing attorney, because I don't like getting that random phone call that says, hey, you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 20, 2017

joined this firm in 2014 but we have some funds from 2013 that were overlooked, no one wants to get that phone call because it just...you have to re-create the past. There should be some definitives. But this, the way it's phrased and the way it's drafted for this bill, it says the garnishee may release the funds that have been attached to the order of garnishment if no order to pay the judgment creditor has been received by the garnishee within 60 days, not whether the court has entered the order. I would indicate that that gives too much leeway to that general error because I think most of the times they are...it's a very quick process in Nebraska. The good thing about Nebraska's bank executions is that it's finite, it's one time when they get served with the bank. It's not ongoing like...you referenced Iowa. I'm an attorney in Iowa as well. Iowa goes for a period of time where the bank is frozen for that whole time. In Nebraska we don't have that. So it is, it's once those funds get held that order should be entered after a certain time frame. That makes sense. But as this is drafted, it's whether the bank receives it. If it's on file and it's been filed at the court, there should be a protection to that judgment creditor. And again, one other thing, at all times the consumer has a right to object. So if they have an issue with the funds being held, they will request the hearing with the court. [LB136]

SENATOR KRIST: So if I could ask you to talk with Mr. Smoyer, maybe, and suggest some wording that would be more agreeable, and then we can work on it, that would be great. [LB136]

SARA BAUER: Sure. [LB136]

SENATOR KRIST: (Exhibits 1 and 2) Anything else? Any other questions? Great. Let me...any neutral testimony? Any other further opposition or neutral? Okay. So let me say that there are letters for the record to read in from Rocky Weber, Nebraska Cooperative Council, support; Brandon Luetkenhaus from the Nebraska Credit Union, also in support; and the Nebraska Collectors Association, opposed. Those will be read into the record and be part of the permanent record. Would you like to close, Senator? Senator waives. That concludes our hearings for the day. You don't have to go home but you can't stay here. [LB136]