

**ONE HUNDRED SIXTH LEGISLATURE - SECOND SESSION - 2020**  
**COMMITTEE STATEMENT (CORRECTED)**  
**LB912**

---

**Hearing Date:** Thursday January 23, 2020  
**Committee On:** Judiciary  
**Introducer:** Brandt  
**One Liner:** Change provisions relating to examination of witnesses by telephonic, videoconferencing, and similar methods

---

**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

---

**Vote Results:**

<b>Aye:</b>	7	Senators Slama, Morfeld, Pansing Brooks, Lathrop, DeBoer, Chambers, Brandt
<b>Nay:</b>		
<b>Absent:</b>	1	Senator Wayne
<b>Present Not Voting:</b>		

---

**Oral Testimony:**

**Proponents:**

Senator Tom Brandt  
Jason Ausman

**Representing:**

Introducer  
National Association of Trial Attorneys

**Opponents:**

Tim Hruza

**Representing:**

Nebraska State Bar Association

**Neutral:**

**Representing:**

---

**Summary of purpose and/or changes:**

Under current law, a judge has the authority to permit a witness to appear by telephone or video conference with the consent of the parties.

LB912 would amend Sec. 24-734 to allow judges in civil cases to allow a witness to appear by telephone or video conference over the objection of a party, unless the objecting party proves by a preponderance of the evidence that the testimony would be unreliable or unfair.

---

**Explanation of amendments:**

The committee vote to adopt Committee Amendment 2620

7 Yes - Senators Brandt, Chambers, DeBoer, Lathrop, Morfeld, Pansing Brooks & Slama

0 No

1 Absent - Senator Wayne

AM 2620 makes a change to LB 912 and adds the provisions of LB's 271, 1027, 868, and 869. The descriptions of these bills are provided below.

---

## LB 1027 (Sections 1 to 7 of AM 2620)

### Overview

LB 1027 creates a new judicial process to expedite certain civil actions. In order to qualify for this process, the action must be for monetary damages only and with damages, costs, and attorney's fees totaling less than \$53,000. The Act provides for limitations on interrogatories (10 per side), requests for productions (10 per side) and requests for admissions (10 per side). Depositions are also limited to one per party, to two depositions of non parties and each side is limited to one expert. Time frames are also reduced as discovery must be completed sixty days prior to trial, summary judgement filed ninety days before trial, and each side is limited to six hours for jury selection, opening statements, evidence submission, witness examination and cross examination and closing arguments.

### Section by section (Section numbers refer to AM 2620)

Section 1 Title: County court Special Proceeding Act.

Section 2 The Act covers civil actions in County Court where the action is for monetary damages only and the total amounts (including penalties, prefiling interest and attorney's fees) are less than the court's jurisdictional amount (currently \$53,000). The Act does not apply to Small Claims Court actions.

Section 3 A plaintiff may elect to make use of the process by certifying the requested relief is within the limitations in subsection (2) on a form, signed by all plaintiffs, submitted along with the complaint. Subsection (3) provides that a judgement in the action cannot exceed the jurisdictional amount. The court can remove the action from the process of the Act if there is a showing of substantially changed circumstances, or compulsory counterclaims in excess of the amount limitation.

Section 4 Provides that discovery must be completed within sixty days prior to trial and discovery is limited. The limitations: no more than ten interrogatories served on the other side, no more than ten request for production by either side, no more than ten requests for admission, one deposition of each party, two depositions of non parties (per side), as well as one expert to side.

Section 5 Pre answer motions are permitted, but a motion to dismiss does not eliminate other discovery requirements. A summary judgement motion must be filed at least 90 days prior to trial.

Section 6 Each side is allowed six hours for jury selection, opening statements, evidences submission, witness examination and cross examination, and closing arguments.

Section 7 This section provides a process to expedite authenticity and hearsay objections to documents by providing advance notice to other parties, but documents that contain hearsay within hearsay are not permitted. Allows treating health care provider reports to be used instead a deposition or court testimony. The reports are provided to all parties at least 90 days prior to trial. A party who the report is used against may at their own expense depose the provider signing the health care provider's report.

## LB 1027 Testifiers heard on February 5, 2020

### Proponents:

Zach Pluhacek, Introducing for Sen. Steve Lathrop

Matt Knowles, Nebraska Association of Trial Attorneys

Opponents: None

## LB 912 (Section 8 of AM 2620)

The changes to LB 912 include providing a standard of "for good cause shown" when a judge may permit telephonic or videoconferencing testimony. AM2620 provides the conditions of good cause that the court may consider. The amendment also adds language to provide that the party requesting the telephonic or videoconferencing testimony shall provide and pay for the accommodations required.

## LB 869 (Sections 9 to 13 and 15 and 17 of AM 2620)

### Overview

LB 869 proposes adopting a uniform method for addressing deposition and discovery subpoenas for out of state civil lawsuits. Currently Clerks of District Courts address the subpoena requests in different methods. LB 869 allows the Supreme Court to adopt rules that would allow the District Court Clerk to issue the subpoenas in a uniform method across the state. The bill also corrects some oversights in a 2017 amendment addressing witness fees (state employees

and security guards) and in various places replaces "individual" with "person" to recognize that deposition and discovery subpoenas may involve organizations in addition to individuals.

Section by section (Section numbers refer to AM 2620)

Section 9 A new section that permits the Supreme Court to establish rules to allow Clerks of District Court to issue subpoenas for out of state civil lawsuits. The bill also allows the Court to establish a fee for such subpoenas.

Section 10 Amends section 25-1223 by inserting a new (6) that addresses state employees and private security guards receiving actual and necessary expenses if required to testify outside of their county of residence. Also replaces "individual" with "person" (subsection (1)) to reflect that a subpoena may be issued for an organization as well as an individual.

Section 11 Amends section 25-1224 regarding subpoenas to replace "individual" and "individual's" with "person" and "person's" to reflect that a subpoena may be issued for an organization as well as an individual.

Section 12 Amends section 25-1226 regarding subpoenas to replace "individual" with "person" to reflect that a subpoena may be issued for an organization as well as an individual.

Section 13 Amends section 25-1228 regarding subpoenas to replace "individual" with "person" to reflect that a subpoena may be issued for an organization as well as an individual.

Section 15 Amends section 33-106 regarding docket fees to reorganize the section with no substantive changes to the amounts or types of fees.

Section 17 Provides instructions to the Revisor to place section 9 of the bill in Chapter 25, article 12.

LB 869 Testifiers heard on January 24, 2020

Proponents:

Senator Steve Lathrop, Introducer

Dwyer Arce, Self

Larry Ruth, Nebraska Uniform Laws Commission

Opponents: None

LB 271 (Section 14 of AM 2620)

Overview

LB 271 seeks to provide that joint and several liability remains to liable parties even if one of the parties settles with or is released by the claimant.

Section by section (Section numbers refer to AM 2620)

Section 14 Amends 25-21,185.11 to provide that a settlement release, or covenant not to sue agreement with a liable party does not impact the joint and several liability of others not a party to the agreement.

LB 271 Testifiers heard on February 1, 2019

Proponents:

Senator Adam Morfeld, Introducer

Mark Richardson, Nebraska Association of Trial Attorneys

Opponents:

Melanie Whittamore-Mantzios, Nebraska Defense Council Association

Jack Cheloha, City of Omaha

LB 868 (Section 16 of AM 2620)

Overview

LB 868 harmonizes section 43-2939 (a Parenting Act provision) with changes made in 2019 by LB 595 to require a licensed attorney serving as a parenting plan mediator to provide an initial screening session to assess child abuse and neglect, parental conflict and domestic abuse as required from other mediators.

Section by section (Section numbers refer to AM 2620)

Section 16 Amends section 43-2939, to require a licensed attorney acting as a parenting plan mediator to conduct an initial screening to assess child abuse and neglect, parental conflict and domestic abuse prior to mediation sessions.

LB 868 Testifiers heard on January 24, 2020

Proponents:

Senator Steve Lathrop, Introducer

William Mueller, Nebraska State Bar Association

Opponents: None

Section 18 of AM 2620 repeals original sections.

---

Steve Lathrop, Chairperson