

COMMITTEE STATEMENT

LB 921

HEARING DATE: 1/19/2000

COMMITTEE ON: Judiciary

TITLE: (Brashear) Change and eliminate provisions relating to new trials, judgments, discovery, motions, and appeals

ROLL CALL VOTE – FINAL COMMITTEE ACTION

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

6 Yes Senators Baker, Bourne, Brashear, Chambers, Connealy, Pedersen

No

Present, not voting

2 Absent Senators Hilgert and Robak

PROPONENTS

Senator Kermit Brashear

Lindsey Miller-Lerman

Roger Kirst

Bill Mueller

REPRESENTING

Introducer

Nebraska Supreme Court

Reporter, Nebraska Supreme Court Committee on Practice and Procedure

Nebraska State Bar Association

OPPONENTS

REPRESENTING

NEUTRAL

REPRESENTING

SUMMARY OF PURPOSE AND/OR CHANGES:

LB 921 relates to various issues in **civil procedure**, and can be divided up into **six topics**.

The first topic relates to the **use of depositions**, and **resolves an inconsistency between Nebraska's discovery rules and hearsay statutes** on the issue of the use of a deposition **when the witness is at a distance greater than 100 miles from the place of**

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trial or hearing. The problem lies in the **variation between Discovery Rule 32 (a)(3)(B), and Neb. Rev. Stat. §27-804 (2)(a).** The **Discovery rule** allows for the use of depositions at the time of trial **even when the witness is available** and within the subpoena power of the court, **so long as the witness is at a greater distance than one hundred miles** from the place of trial or hearing. **Nebraska hearsay statutes, however, allow for the use of depositions only if the declarant is unavailable as a witness.**

Consequently, the Nebraska Supreme Court held in *Maresh v. State*, 241 Neb. 496 (1992), **that a stipulation that the witness was more than 100 miles from the trial, even though sufficient under Discovery Rule 32 (a)(3)(B), would not always establish that the witness was unavailable under the statutory hearsay exception** for prior testimony. **This bill would clear up the inconsistency by specifically referring to the Discovery Rules as a source for hearsay exceptions.** (Sections 7 and 27)

The second topic completes the process of **defining the entry of the judgment as the relevant time for the start of the time to appeal, not the date of rendition.** These changes would conform these sections to changes already made by LB 43 in 1999. (Sections 1, 2, 10-13, 19-23, 26, and 29-32)

The third topic corrects a mistake made in the passage of LB 43, and **changes the defining time for appeal which applies to a petition in error. LB 43 changed the defining time for appeal from the date of rendition to the date of entry. LB 921 would change it back.** The reason for this change is that the start of the time to appeal should be different for a petition in error from other appeals, because **judgments and final orders reviewed by a petition in error will not have been entered by a court. Instead, they will be entered by an entity such as a board or commission, which may not have a clerk performing the regular kind of entry** defined for a court. (Sections 15 and 28)

The fourth topic **conforms the time for all post-trial review** with the changes already made by LB 43 in 1999, **by making entry of the judgment the uniform point for measuring time.** The other changes are intended to clarify related issues. (Sections 4-6, 8, 14, 16-18, 25, 34)

The fifth topic **clarifies statutory language** as it relates to **appeals from the county court in domestic relations cases, so that all appeals clearly proceed to the Court of Appeals,** making clear that the district court is not an option for appellate review in domestic relations cases. (Section 24)

The sixth topic is **technical cleanup,** which moves Neb. Rev. Stat. §25-705 (6) and (7) to a separate and new section, in order to more appropriately place these sections. In 1998, LB 234 adopted a number of amendments to various joinder statutes, including a residual section. **The residual section was codified as §25-705, because the dominant topic of the residual section was joinder.** However, this residual section addressed

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several subjects, including judgment in a multiparty case. **The placement of these subsections on judgments in §25-705 is awkward and misplaced, and would be more appropriate in a separate and new section.** (Sections 3, 9, and 34)

EXPLANATION OF AMENDMENTS, IF ANY:

The committee amendment is simply to clarify and clean up language in the bill. It does not change or add substance to the bill.

Senator