



Ninety-Seventh Legislature - Second Session - 2002  
**Introducer's Statement of Intent**  
**LB 876**

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**Chairperson:** Senator Kermit A. Brashear  
**Committee:** Judiciary  
**Date of Hearing:** January 25, 2002

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

Legislative Bill 876 amends the civil procedure code of Nebraska from that of a code pleading system to a notice pleading system.

“Pleadings” are formal allegations by the parties to a lawsuit detailing their respective claims and defenses, with the primary purpose to provide the parties and the court with notice as to their cause of action or defense against such.

Code pleading systems were an initial effort by jurisdictions to simplify the complex and hyper-technical common law pleading system. Nebraska adopted a code pleading system of civil procedure in 1867. Under the code pleading system, a plaintiff to a civil lawsuit is required to file a petition with a statement of detailed facts constituting his or her cause of action. The defendant to such lawsuit is then entitled to contest such petition by filing a “demurrer”, which is an allegation of a defendant, which states that admitting the facts in the plaintiff’s statement to be true, the facts are insufficient for the plaintiff to proceed or to require the defendant to answer; a motion to strike material from the plaintiff’s petition, or a motion to make the allegations more definite and certain.

At the time the code pleading system was codified, the initial pleadings provided the parties with the only procedure for learning their opponents’ arguments before trial. Additionally the facts of the pleadings, as agreed upon by the parties or decided by the judge, set the parameters of the trial.

A notice pleading system of civil procedure eliminates the demurrer procedure and several defenses that a defendant can make at motion and requires the defendant to make his or her case by motion or answer. Such a system lessens the plaintiff’s requirement to initially plead his or her entire case at the time of filing petition, and instead requires the plaintiff to simply put the defendant “on notice” of their cause of action. As litigation has become increasingly complex and pretrial procedures have been created to accommodate such, parties often do not know of key facts or theories of their claims, or of the existence of additional parties.

In recent years Nebraska has modified its civil procedure code to incorporate some features of a notice pleading system. For instance, pretrial discovery procedures have been implemented; patterned jury instructions have been created that eliminates the impact of the pleadings on the jury instructions, and judges' control of the scope and extent of litigation has been increased.

As such, the current civil procedure code contains a hybrid system of code and notice pleading. This problem was exacerbated in 1998 when the Legislature changed the rules of civil procedures regarding joinder of causes of actions and parties by adopting provisions derived from the Federal Rules of Civil Procedure.

The statutes pertaining to the initial pleadings filed in lawsuits, the petition and demurrer, have remained the same. But the 19<sup>th</sup> century practice of determining the scope and extent of litigation at the time of initial pleadings is not appropriate for contemporary and complex litigation. Moreover, the effort to initially set the scope for trial, only to be followed by the discovery process of depositions, interrogatories, and records disclosure, often results in duplicative and wasteful efforts.

Legislative Bill 876, using the Federal Rules of Civil Procedure as a model, includes all the important statutory sections that need to be adopted, amended, or repealed to make the change in Nebraska pleading and joinder statutes. In addition, the bill amends a number of statutes to bring the labels for the pleadings into conformance with the changes to the civil procedure sections.

**Principal Introducer:**

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**Senator Kermit A. Brashear**