

ONE HUNDRED FIFTH LEGISLATURE - FIRST SESSION - 2017
COMMITTEE STATEMENT
LB509

Hearing Date: Friday February 10, 2017
Committee On: Judiciary
Introducer: Ebke
One Liner: Change provisions relating to the issuance of subpoenas

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

Vote Results:
Aye: 8 Senators Baker, Chambers, Ebke, Halloran, Hansen, Krist, Morfeld, Pansing Brooks
Nay:
Absent:
Present Not Voting:

Verbal Testimony:

Proponents:
Senator Laura Ebke
Amie Martinez
John Lenich

Representing:
Introducer
Nebraska State Bar Association
self

Opponents:

Representing:

Neutral:
Greg Coffey

Representing:
Nebraska Association of Trial Attorneys

Summary of purpose and/or changes:

LB 509 updates provisions related to the service of subpoenas for witnesses who are summoned to appear at trial and testify on behalf of a party.

Section 1 makes adjustments to Neb. Rev. Stat. Sec. 25-1223. The bill revises the statute to eliminate the uncertainty about whether a district court judge can issue a subpoena and also makes it explicit that the court that can issue the subpoena is the one in which the action or proceeding is pending. Additionally, the bill allows an attorney to issue a subpoena. The bill moves the contents of Sec. 25-1125 into Sec. 25-1123. The bill provides additional language about fees and mileage for witnesses and how to obtain such compensation by providing a witness with a statement informing them of their right to receive compensation and instructing them to ask the lawyer or the clerk of the court or how to obtain such compensation. The bill provides that a subpoena may be served by a non-party. The bill sets the minimum age for service of a subpoena at 21.

Section 2 revises Neb. Rev. Stat. Sec. 25-1224. The bill modernizes this provision regarding documents, electronically stored information, or other things in an individual's possession. The bill provides that the Supreme Court may promulgate a rule of discovery.

Section 3 updates the language of Neb. Rev. Stat. Sec. 25-1126. The first subsection addresses the methods of service and the second subsection addresses the time for service. The bill also provides that a court can shorten the time period

for service "for good cause shown."

Section 4 revises Neb. Rev. Stat. Sec. 25-1228. The bill would require witness fees to be tendered with the subpoena.

Section 5 updates Neb. Rev. Stat. Sec. 29-1901. The bill contemplates approaching subpoenas in criminal cases the same way the statutes currently approach depositions in criminal cases. The one exception would be fees, which are governed by Neb. Rev. Stat. Sec. 29-1903.

Section 6 addresses Neb. Rev. Stat. Sec. 29-1903 regarding the payment of witness fees in criminal and juvenile cases. The bill adds subsection (1) because the words "witness fee" and "mileage" are used elsewhere in the statute. Subsection (2) moves language from the original version of Sec. 29-1901. The bill adds "a misdemeanor or" at the beginning of subsection (3) to account for changes in Nebraska case law, and it eliminates the "provided" clause.

Explanation of amendments:

The Amendment becomes the bill.

Changes made by AM 357 work to accommodate all of the attorney interest groups involved in crafting the legislation. With the amendment, some minor changes to language are updated to reflect the most modern use of terms regarding the issuance of subpoenas. The Amendment adds a requirement that the attorney issuing a subpoena must file a copy of the subpoena with the court on the day the subpoena is issued. The Amendment further clarifies that the scope of a subpoena issued commanding the production of documents, electronically stored information, or other tangible things is governed by the rules of discovery in civil cases. The Amendment also adjusts the time period for service of a subpoena to appear at trial and requires that the subpoena be served at least two days before the day on which the individual is commanded to appear and testify.

Laura Ebke, Chairperson