

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

Floor Debate  
February 13, 2008

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[LB39 LB395 LB723 LB744 LB747 LB750 LB752 LB782 LB821 LB823 LB856 LB857  
LB915 LB1058 LB1063 LB1089 LB1092]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-fourth day of the One Hundredth Legislature, Second Session. Our chaplain for the day is Reverend Jim Wooten, Federated Church, Columbus, Nebraska; Senator Stuthman's district. Please rise. []

PASTOR WOOTEN: (Prayer offered.) []

SENATOR LANGEMEIER: Thank you. I call to order the twenty-fourth day of the One Hundredth Legislative Session, Second Session. Senators, please record your presence. Mr. Clerk, please record. []

CLERK: I have a quorum present, Mr. President. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there any corrections to the Journal? []

CLERK: I have no corrections, Mr. President. []

SENATOR LANGEMEIER: Thank you. Are there any messages, reports, or announcements? []

CLERK: Mr. President, a communication from the Governor. (Read re LB39.) Mr. President, I have a priority bill designation: Senator Chambers, LB1063. And Enrollment and Review reports LB915, LB750, LB752, LB856, LB857, LB744, and LB747 to Select File, some of which have Enrollment and Review amendments. And that's all that I have, Mr. President. (Legislative Journal pages 583-584.) [LB39 LB1063 LB915 LB750 LB752 LB856 LB857 LB744 LB747]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, Select File, LB823. [LB823]

CLERK: Senator McGill, I have Enrollment and Review amendments pending to LB823. (ER8154, Legislative Journal page 523.) [LB823]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB823]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB823]

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SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. They are adopted. Mr. Clerk. [LB823]

CLERK: Mr. President, the next amendment, Senator Schimek, AM1735. I have a note you want to withdraw AM1735. [LB823]

SENATOR LANGEMEIER: It is withdrawn. [LB823]

CLERK: Senator Schimek would move to amend, Mr. President, with AM1786. (Legislative Journal page 551.) [LB823]

SENATOR LANGEMEIER: Senator Schimek, you are recognized to open on AM1786. [LB823]

SENATOR SCHIMEK: Thank you, Mr. President and members. This amendment, ER8154 (sic), is the amendment that was brought to us by the Office of Chief Information Officer. It is not a direct result of our audit but it will increase efficiency in the coordination of information technology resources. The amendment brings two information technology-related advisory committees under the NITC umbrella. First, the GIS Steering Committee, which currently advises the information management services division of the CIO's office, would become an advisory council to the NITC. Second, the Nebraska Intergovernmental Data Communications Advisory Council would be eliminated as a freestanding entity and become an advisory body also to NITC. The amendment makes no substantive changes to the responsibilities of either of these advisory bodies. It simply brings them closer to the workings of the NITC in order to eliminate unnecessary duplication and improve efficiency. The chief information officer discussed this amendment with members of the two bodies, who raised no objections to it. With that, Mr. President, I would simply ask for adoption of ER8154. Is that right, Mr. Clerk? [LB823]

CLERK: No, Senator, I think AM1786. [LB823]

SENATOR SCHIMEK: AM1786, I'm sorry. Thank you for the correction. [LB823]

SENATOR LANGEMEIER: Thank you, Senator Schimek. You have heard the opening on AM1786, offered to LB823. The floor is now open for discussion. Seeing no lights on, Senator Schimek is recognized to close. She waives closing. The question before the body is, shall AM1786 be adopted to LB823? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB823]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Schimek's amendment. [LB823]

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SENATOR LANGEMEIER: AM1786 is adopted. Mr. Clerk. [LB823]

CLERK: I have nothing further on the bill, Mr. President. [LB823]

SENATOR LANGEMEIER: Senator McGill. [LB823]

SENATOR MCGILL: Mr. President, I move LB823 to E&R for engrossing. [LB823]

SENATOR LANGEMEIER: You have heard the motion for the advancement of LB823. All those in favor say aye. All those opposed say nay. LB823 does advance. Mr. Clerk, LB395. [LB823 LB395]

CLERK: Mr. President, LB395 is on Final Reading. The bill was bracketed on Final Reading last year by Senator Johnson on May 29. I do have motions to return. The first, Senator Preister, AM893. I have a note from Senator Preister that he wishes to withdraw AM893. [LB395]

SENATOR LANGEMEIER: It is withdrawn. [LB395]

CLERK: Senator Johnson, AM939. I have a note you want to withdraw AM939, Senator. [LB395]

SENATOR JOHNSON: That is correct, sir. [LB395]

SENATOR LANGEMEIER: It is withdrawn. [LB395]

CLERK: Mr. President, I have an amendment from Senator Mines carried over from last year, AM1087. [LB395]

SENATOR LANGEMEIER: Is there anyone authorized to introduce on behalf of Senator Mines? Seeing none, it is withdrawn. [LB395]

CLERK: Mr. President, Senator Johnson, I now have AM1530. Again, a note from you, Senator, you wish to withdraw AM1530. [LB395]

SENATOR JOHNSON: That is correct. [LB395]

SENATOR LANGEMEIER: It is withdrawn. [LB395]

CLERK: Mr. President, Senator Johnson would move to return LB395 to Select File for a specific amendment, AM1736. (Legislative Journal page 567.) [LB395]

SENATOR LANGEMEIER: Senator Johnson, you are recognized to open on AM1736.

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[LB395]

SENATOR JOHNSON: Mr. President, if I might, before we start, a point of personal privilege. [LB395]

SENATOR LANGEMEIER: Please state your point. [LB395]

SENATOR JOHNSON: I'd just like to thank my fellow senators and some specific members of the legislative body for their kindnesses to me. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You are now recognized to open on your motion to return for a specific amendment. [LB395]

SENATOR JOHNSON: Thank you. Just wanted to make sure that people knew how appreciative that I was for their kindnesses while I had my personal health problems. And one of the people in the Legislature that I wanted to particularly thank is Senator Gay, who is the Vice Chair of the Health and Human Services Committee, has taken over and done such an excellent job. So with that, let's proceed to our discussion on LB395. Mr. President and members of the Legislature, last year the Legislature debated LB395 and advanced the bill to Final Reading. I am asking today for the Legislature's approval to return the bill to Select File for a specific amendment, AM1736. The amendment would simply remove the so-called opt-out provisions of the bill, delay the operative date of the bill for one year after it is signed by the Governor, and make some technical changes. I am committed to LB395 because I do firmly believe that the bill will improve the health of Nebraskans and save significant amounts of money in doing so. Clearly, cigarette smoking is the number one hazard to the health of people worldwide. Wars in the last century resulted in approximately 100 million people being killed worldwide. Recently, I saw an article by a World Health Organization official who estimated that, in this century, hundreds of millions will die from smoke-related illnesses--many times what were killed in the last century in all of the wars. In recent years we have also become increasingly aware of the detrimental effects and high cost of secondhand smoke. That concern is one of the most prominent driving forces behind the introduction of this bill, LB395. Many states and foreign countries have now adopted indoor smoking restrictions like those in LB395. LB395, you might recall, is basically the Lincoln city nonsmoking ordinance. Last year the Legislature advanced LB395 to Final Reading after significant discussion and debate. The bill now contains the so-called opt-out provision for municipalities and counties. The opt-out provision would provide...would permit the adoption of local ordinances and the resolution that the less stringent than...or more stringent than those in the statewide ban of LB395. I initially agreed to the adoption of those provisions because of my sincere desire to see this bill pass, even if it resulted in this statewide patchwork of inconsistent local resolutions and ordinances. However, later, on further reflection, as a matter of conscience, I came to deeply regret my decision that I had made to agree to this. I went to Senator Mines

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personally and apologized and that I could no longer support the bill with the opt-out provision. I then asked that the bill be laid over and I filed an amendment to remove the opt-out provisions. I might say that I went to Senator Mines and not only apologized for the problems that I had caused him in the Legislature, but also gave him time to take whatever steps he cared to take to delay any action on the bill. And that is why we are at the situation that we are here today. What this motion does is return LB395 to Select File for the amendment, AM1736. I am grateful for the indulgence of my colleagues to give us the chance for an up or down vote on this motion and the amendment. And one of the things with this illness and not being here, that I have learned to appreciate this body's wishes far more than I have in the past. We will obviously abide by the decision of this body. I do, again, apologize for any inconvenience and concern that I have caused by this decision. I strongly and sincerely support the passage of LB395 with consistent statewide application. I firmly believe that it is a bill that will save more lives and provide better health for more Nebraskans than I did in a practice of medicine lasting over 35 years in the state of Nebraska. That is why this is so important. Thank you, Mr. President. [LB395]

SENATOR FRIEND PRESIDING [LB395]

SENATOR FRIEND: Thank you, Senator Johnson. Members of the Legislature, you've heard the opening on AM1736...excuse me, the return to Select File for a specific amendment. There are senators wishing to speak. Senator Erdman, you are recognized. [LB395]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. Senator Johnson, welcome back. It's good to see you. Those of us on the Health Committee appreciate you being back, as well. Senator Gay wasn't listening. (Laughter) I do have an observation about the underlying bill before I get to the amendment. And I will say that the way that the underlying bill is written, based on my understanding of where we were at the end of last year's process, may provide more flexibility than Senator Johnson would like. And in fact, the opt-out provision itself may be problematic, as I had pointed out previously on the floor of the Legislature. I think, from the standpoint of appropriate public policy, you have to make some decision at some point about what you'd like to see your bill, what form it would like to be in. And Senator Johnson has provided that. Candidly, I think it's problematic. I actually think the way that AM1736 is written is problematic from a technical standpoint, and that's why I have filed an amendment. If AM1736 is adopted and LB395 goes to a vote on Final Reading sometime later this legislative session and there are not 33 votes to enact LB395, then you're looking at sometime next July before the bill becomes operative. My amendment would simply clarify that if the intent is that the effective date be beyond one year, that you could simply state in the law that it's April of next year, which would effectively be what would be if you had passed the bill without the E clause but at a later effective date. Again, this process has been interesting to me because we've had a lot of time to

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try to think through these ideas. But in our zeal to pass something, we don't think about the practicalities. And so I could not offer my amendment and not be helpful--and maybe I'm not being helpful anyway, Senator Stuthman, I don't know--but regardless of whether it was Senator Schimek's attempt to provide casino gambling in Nebraska or Senator Johnson's attempt to restrict businesses' operations under this bill, I have generally not opposed them outright from the standpoint of doing devious things to prevent them from becoming law. I vehemently disagree with Senator Schimek's previous attempts and I can agree in the theory about what Senator Johnson is proposing. I can't agree that this is the way to solve it. So I'm interested in the debate on this amendment. I think there will be some healthy discussion. I have a hard time thinking that we should simply adopt what Lincoln did as a standard statewide when that's what we're doing in LB395. If I lived in Omaha, based on my elected officials there that voted for the ridiculous proposal you have, I would probably be inclined to vote for this, too, because I don't see how it's any healthier to smoke while you're doing keno gambling than it is to smoke while you're eating. That's lost on me. But again, those are the elected officials in Omaha and they have their own issues to think about. But I'm interested. Senator Johnson, welcome back. The amendment that I have filed is not intended to be delaying or devious; it's designed to help accomplish what I believe you want to accomplish in a cleaner way, which may give you a better opportunity of getting your bill passed. And ultimately, I won't vote for LB395, but I don't think that surprises you. And I will look forward to additional debate. Thank you, Mr. President. [LB395]

SENATOR FRIEND: Thank you, Senator Erdman. Senators wishing to speak: Senator Fischer, Karpisek, Gay, and McDonald. Senator Fischer, you are recognized. [LB395]

SENATOR FISCHER: Thank you, Mr. President and members of the body. Welcome back, Senator Johnson. I'm happy to see you here and that you're doing fairly well. I know it's hard for you to stand, and so we'll try and talk as much as possible so you won't need to. I am deeply distressed by this amendment. When we're elected, the 49 of us, when we're elected to this body, we're elected to represent the people in our district. We're elected to represent the people in the state. And we have given our word to our constituents and we've given our word to the people in this state that we will work hard and we will do our best to represent them. I believe we're at a point here today that we shouldn't even be at. This bill should not be on Final Reading if this amendment is adopted. As Senator Johnson said, there were a number of individuals who worked last session, agreements were made, and that is the reason the bill advanced. The proponents of LB395 did not have 33 votes to stop a filibuster. They did not have 33 votes to end it. That is the only reason that they agreed to negotiate. The opponents of the bill negotiated in good faith. The proponents of the bill, I believe, negotiated in good faith at the time. So the bill was advanced. There was no more filibuster. Agreements were made. Senators gave their word. That's how we operate in here. We operate by giving our word, even though we may not agree with something totally, in order to move the process forward. Senator Johnson is a dear friend of mine, so this is difficult for me

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to say, but I believe that he should have reintroduced this bill this year and it should have gone through the entire process again. I believe if we are going back to the green copy on this bill, that's what should have been introduced this session. That's where we should have started once again on General File. And we would all understand the position of each other on this then. We should not be on Final Reading. Agreements were made. We gave our word. That's not the rule in many bodies across this state. We are so fortunate to be nonpartisan here because we don't have parties telling us what to do. We don't have majority leaders, majority whips, minority leaders, minority whips telling us what to do. The only people we answer to are our constituents. The only people we answer to are the people of Nebraska. And the only people we answer to are each other. And if we don't have that trust with our constituents and with the people of the state and with each other, then we have lost one of the most beautiful things about our system. [LB395]

SENATOR FRIEND: One minute. [LB395]

SENATOR FISCHER: So I am deeply, deeply disturbed by this. We have a rule that says in order to invoke cloture, you have to have full and fair debate. Within this body, it's been interpreted that full and fair debate on General File is eight hours. We trust in that. We know that that's the way it is. It's not written, but we trust in that and we give our word to that. This bill should not be on Final Reading. I urge you not to send it back to Select File for the amendment. Thank you. [LB395]

SENATOR FRIEND: Thank you, Senator Fischer. Senator Karpisek, you're recognized. [LB395]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I was hoping to get my light on before Senator Fischer, but she's a little quicker than I am. And I just have to echo her words. Being a new senator, I've heard a lot about how we do things here. And once you give your word, you better not go back on it because that will be the last time anybody will take you at your word. I did not vote for the bill, I did not vote for the amendment. But I could live with the local opt out. Getting the bill to Final Reading was, we went through the opt-out amendment to get it to Final Reading. I agree with Senator Fischer. It would have never made it past General File if an agreement had not been made. I'd like to ask Senator Chambers a question, please. [LB395]

SENATOR FRIEND: Senator Chambers, will you yield to a question? [LB395]

SENATOR CHAMBERS: Yes, I will. [LB395]

SENATOR KARPISEK: Thank you, Senator Chambers. Watching you for a little over a year now, there's been a lot of times where you don't care for a bill but you will work with the person to move it on. Is that correct? [LB395]

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SENATOR CHAMBERS: If at all possible, yes. [LB395]

SENATOR KARPISEK: And I watched on the safe haven bill this year and last year with Senator Stuthman, and I think that may have been one of the biggest trouble-causing bills for you. Is that correct? [LB395]

SENATOR CHAMBERS: That's correct. [LB395]

SENATOR KARPISEK: Now, Senator Chambers, what would have happened if Senator Stuthman would have gone all the way to Final Reading and then decided to try to pull it back and put the amendment on that took it back to the green copy? [LB395]

SENATOR CHAMBERS: Well, he stands about 5 feet, 4 now. If he'd done that, he'd be standing 4 foot, 5. (Laughter) [LB395]

SENATOR KARPISEK: And since Senator Johnson is already incapacitated, I don't know that that would be a very nice move of me (laughter), but I would feel like doing that this morning had he not been. Thank you, Senator Chambers. Senator Aguilar, would you yield? [LB395]

SENATOR FRIEND: Senator Aguilar, will you yield to a question? [LB395]

SENATOR AGUILAR: Oh, I'd be happy to. [LB395]

SENATOR KARPISEK: Senator Aguilar, we just had a bill, came out of Government Committee that Senator Chambers had a problem with. And you asked the body to move it on to the second round. Is that correct? [LB395]

SENATOR AGUILAR: Yes, it is. [LB395]

SENATOR KARPISEK: Now if you find out more about that bill and you get it to where Senator Chambers can live with it and move it to Final Reading, would you feel comfortable pulling it back to the green copy? [LB395]

SENATOR AGUILAR: The amendment we have on it now makes it a better bill, I believe. [LB395]

SENATOR KARPISEK: But if you got it to Final Reading and you didn't believe that that was a better amendment, would you try to pull it off Final Reading to change it? [LB395]

SENATOR AGUILAR: Absolutely, because, you know, situations change, support changes and, you know, you need to react to things that go on daily in the Legislature

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and in the state of Nebraska. So you always want to leave yourself that opportunity. That's why we have such a rule that allows you to pull it back. [LB395]

SENATOR KARPISEK: Okay. Thank you, Senator Aguilar. And I will remember that the next time I make an agreement with you. (Laughter) Again, I don't really believe what Senator Aguilar just told me, without him going around and trying to make it better. Senator Johnson has apologized and I accept his apology. But a real apology would have been to start the process all over again. I think we're going down the wrong path here. [LB395]

SENATOR FRIEND: One minute. [LB395]

SENATOR KARPISEK: Thank you, Mr. President. We have moved quite a few bills already this year off of General File to Select File and said we'll come back and take a look at it and if it's not what was agreed upon, I'll pull it. Well, this may be the last time that that will happen if we allow this to get pulled back and take off an amendment that was an agreement. I know Senator Chambers wouldn't go for anything like that, and I can't stand anywhere close to Senator Chambers but I'll do my best that it doesn't happen again. And I'm going to hold everyone to their word and they'd better hold me to my word. Thank you, Mr. President. [LB395]

SENATOR FRIEND: Thank you, Senator Karpisek. Members, we are discussing return to Select File for a specific amendment. Senator Gay, you are recognized. [LB395]

SENATOR GAY: Thank you, Mr. President. This is an important issue to the state of Nebraska, obviously. Last year, I remember Senator Johnson standing up, saying from his heart that I made a mistake, this should not be going ahead the way it is. Last year he said that. He talked about he had a discussion with Senator Mines before he had to leave us. But in sincerity, I think if you pull something back to improve it, we owe it to the citizens instead of just passing something out that either is not going to work or you don't believe in. And I respect the opponents of this bill. I know what you're saying. But I do believe if we return this to Select, there's opportunities to have full and fair discussion on this. And when it comes down to it, we're going to get to vote for our constituents. This bill is a better bill. If I wanted to speak for my constituency, this is a better bill. Every citizen, or every mayor in my county--which is Bellevue, Papillion, Gretna, Springfield, and La Vista--supports this concept of all...it's fairer. It's just a much fairer bill than opt out here and patchwork confusion. I think what we need to do is we will have a full discussion again. And I know there's some people just will not change their mind, and that's fine and we have firm commitments and views one way or another. But I don't see anything unusual with this. I see other people saying, well, let's just move it to Select, we'll fix it on Select File. We move things back and forth to try to make a better bill and do some compromise, and I think you'll get an opportunity to discuss your concerns on Select File and we will have other amendments, I'm sure, that could be

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placed on Select File if people want to do that. So I don't think we're doing anything wrong. In fact, I believe we're doing something to improve a bill. It's a big discussion. If we're going to have any leadership here on this issue, I think we should hash it through and get it done here. If we don't, it's going to be basically out of our hands and out there. Just Monday night, Bellevue City Council was talking about a smoking ban. And of course, what are they saying? Well, let's wait for the state and see what they do. Everyone is waiting for a little leadership here and, one way or another, we'd better get something done. By pulling it back and improving this bill, which I think it does do, it improves the bill. I think Senator Johnson is fully within his rights to do that. He sincerely apologized, but there's no sense to move forward on a bad bill. Bring it back, make it better, and let's see what happens. So I don't mind what he's doing and I think, you know, however you want to look at it, I think he's doing it for very sincere reasons. No one is questioning that. But I do think we will have a full and fair discussion when we do pull it back. So I'm in favor of returning this back to Select File. Thank you, Mr. President. [LB395]

SENATOR FRIEND: Thank you, Senator Gay. (Doctor of the day introduced.) On with the discussion of the motion to return to Select File for a specific amendment. Senator McDonald, you are recognized. [LB395]

SENATOR McDONALD: Mr. President, members of the body, welcome back, Joel. It's good to see you. You know, for those that say this bill shouldn't be on Final Reading, maybe it shouldn't be on Final Reading. That gives us the opportunity to bring it back to Select File. When I voted for this statewide smoking ban, I was concerned about the opt-out provision that was in there. I would like to see it a level playing field. I represent 5,000 square miles of rural Nebraska with many rural bars. Prior to the vote of the opt out, I heard many of my bar owners--e-mail, phone calls, letters--saying we've got to have the opt out; we need that opt out so that people can come to our community and smoke; people like to smoke in our bar. Over the summer and fall, I got e-mails back from those same bar owners saying, you know what, we have rethought our position; we had thought at that point in time that we would be the ones that opted out and our neighbors wouldn't and that would give all the smokers coming to our town. And then they realized, hmm, well, what if our community doesn't opt out and our neighboring bars opt out? That's going to be a problem for us. So we would rather see no opt out, make sure that everybody has the same opportunity for their business to move forward. And with the opt-out provision, we're not going to see that. Some towns will, some towns will not. Your town might be the one that doesn't opt out and the neighbors' town does, and that community, maybe that's the only place in town that people can eat, drink, and they will no longer be there. With no opt-out provision, it leaves everybody able to spend their money in either location and have the same opportunities. I'm thankful that Senator Johnson is bringing this bill back. I think that the reason that he has is not because he's trying to do anything wrong. It's because he has additional information from those communities that are saying, you know what, we supported the

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opt out before but we've changed our mind. This gives us the opportunity to take those constituents that are telling us that we thought we wanted to opt out, we want no opt out, back to the Legislature. So we can make that right decision, and I think now is the time for us to do that. If we don't get to vote to take it back to Select File, it's a done deal. But we certainly have that right to do it and those voters that want to do it, I think we have the right to change it and make this bill a better bill. Thank you. [LB395]

SENATOR FRIEND: Thank you, Senator McDonald. Senator Lautenbaugh, you are recognized. [LB395]

SENATOR LAUTENBAUGH: Thank you, Mr. President and fellow members. I am, to a large extent, echoing Senators Karpisek and Fischer, although I was not here last year when the promises were made so I don't have the same level of disappointment, I guess, that I can sincerely voice. But I do understand there was a deal. And I may not have liked the deal. I think it might have been an improvement. But philosophically, I have a problem with this entire thing. I understand this is coming in late at the process, but it sounds like there's a lot of things late in the process here. And I'm hearing today, well, the opt out is such a mess we have to get rid of it. There's a good reason it's a mess, there's a good reason this is hard to work--because it's at least possible we're doing the wrong thing here. And the wrong thing should be hard to do. And maybe in the end people might think maybe we're doing the wrong thing and that's why we're struggling so hard to find a way to do it. I don't support this going back because there was a deal made. I've looked at what's there. I don't really prefer what's there but I prefer it to the green bill. And I would ask that we vote against this requested return to Select File for this amendment and proceed on the bill as it currently stands. [LB395]

PRESIDENT SHEEHY PRESIDING [LB395]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. We have Senator Chambers, followed by Senator Aguilar, Senator Erdman, and others. Senator Chambers. [LB395]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I was not a part of any deal, any arrangement. There are people who have told me things which they did not stick with and I simply said I was suckered this time but I won't be again. This process is a work in progress until we take a final vote on Final Reading. If Senator Karpisek was making sausage and he had gotten these items to what would be considered to be the finished product and he was about to wrap a package and sell it to a customer and his well-trained nose detects an aroma that ought not be in sausage because it indicates that something is wrong with that batch, so even though all of the sausage meat has been put in that little container that they put them in and wrap a string around both ends, he's not going to say, because I'm at this point I've got to go on and put this bad batch of sausage out there to the public. Some people have said, to the point where it's a cliché, you don't want to watch how sausage is made or how

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legislation is formulated. Those who make an agreement will have to battle between and among themselves, but the rest of us have an obligation to do what we think ought to be done with legislation to put it in the shape we believe it should be in if it's to become the law. I will support Senator Johnson's motion to bring the bill back. There have been times that things didn't go the way I thought they should, so I vote against it, I fight it. But how in the world am I going to say somebody on this floor has got to do one thing or another? I might say morally they're bound to do it. That...morality has no more to do with what we do here than it does with selling liquor. So regardless of the way perhaps things ought to be done, they are done in the way that they are done. When a matter is presented to us, we have an obligation to deal with that matter in a way that is deliberative, responsible, and in the best interest of the public. To say that the error I made yesterday must become the orthodoxy of today is a terrible mistake. Some churches do that, some courts do it, and the error of yesterday becomes the precedent or orthodoxy of today and that prohibits people from gaining more information and modifying their conduct to reflect it. Before there was DNA, blood tests, which were very inexact, were used, but that was the best that was available. When DNA came, the blood test went by the boards for the purposes of establishing certain things for medical purposes, as well as legal. When we see a better way, that is the way we ought to walk. Not every limb is amputated now which would have been amputated in earlier days. Some people will not be allowed to just be quarantined and languish because it's felt there is no effective way to treat them or prevent an infectious disease from spreading to others. As new knowledge and information develops... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR CHAMBERS: ...and is made available, if we are reasonable, rational people, we are bound to take that into consideration and modify conduct which may have been based on insufficient evidence. I can understand why people who feel that they had a deal may feel that they were stiffed and that things didn't go the way they thought they should. But in the Legislature things happen. And young Senator Lautenbaugh is going to learn a whole lot before he gets out of here, and things that he pops up like a kernel of popcorn and says now, he'll hit himself on the head and say, I could have had a V8. And he'll say, I should have had a V8 instead of opening my mouth and putting my big foot in it. You know why I say he's got big feet? He's a big man and he can walk without falling over. [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR CHAMBERS: So he's got to have some big feet to support him. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Aguilar. [LB395]

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SENATOR AGUILAR: Thank you, Mr. President and members. I rise in support of returning this to Select File for a specific amendment. And I, too, would like to welcome back Senator Johnson, Senator Johnson, a good man, an honest man, a righteous man. And to be here when he's not feeling anywhere near 100 percent kind of displays the passion he feels about getting this opportunity done. Some of the discussion today has been about the fact that a change in position...you know, we change our minds every day, and we have that right to do that. If we didn't have the right to do that, we wouldn't have our rules that allow us to do that. So to talk about that we're going against the system, that's ludicrous. Things change every day. For one thing, this year there's a higher percentage of support among the constituency where over 72 percent of people in the state of Nebraska surveyed want to see LB395 and they want to see it in its original form. The opt out was a gamble and, once it was there, people from all of the state, we heard from those people all over the state saying how bad that was. And if you really listen to some of the analogies that Senator Chambers just made, he hit the nail right on the head. It was bad and it needed to be corrected. And to indicate there's something wrong with pulling this back and trying to correct it is ludicrous. Senator Karpisek, people change their minds every day. I'd like to ask Senator Karpisek a question. [LB395]

PRESIDENT SHEEHY: Senator Karpisek, would you yield? [LB395]

SENATOR KARPISEK: Yes, I will. [LB395]

SENATOR AGUILAR: First of all, I was cut to the quick when you said you didn't believe me. That hurt, brother. Secondly, have you ever voted for a bill in committee and then when it came to the floor you voted against? [LB395]

SENATOR KARPISEK: Yes, I did. But in committee, I voiced my opinion about it to the senator and I tried to let it out so he could get it on the floor and told him that I would not support it. [LB395]

SENATOR AGUILAR: Did you ever do that last year? [LB395]

SENATOR KARPISEK: Yes, I did. [LB395]

SENATOR AGUILAR: And why did you do it? [LB395]

SENATOR KARPISEK: Last year I did it because I probably didn't know better, and you chastised me for it. [LB395]

SENATOR AGUILAR: I thought maybe you were going to say you changed your mind. [LB395]

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SENATOR KARPISEK: I found new evidence last year and I did. [LB395]

SENATOR AGUILAR: Bingo. Thank you, Senator Karpisek. [LB395]

SENATOR KARPISEK: Thank you, Senator Aguilar. [LB395]

SENATOR AGUILAR: Again, it's very important that we do this for the health of the state of Nebraska. If I have any time left, I'd like to give it to Senator Chambers. I don't think he was through talking. [LB395]

PRESIDENT SHEEHY: Senator Chambers, about 2 minutes. [LB395]

SENATOR CHAMBERS: Thank you, Senator Aguilar. Thank you, Mr. President. Members of the Legislature, I'm not going to have to contend with all this after this session. What I have been trying to do is give an idea to these new senators about how they must learn how to be deliberative and not make a lot of statements that back them into a corner. You don't want the reputation of somebody who jumps up, makes half-baked statements--I don't know what's going on, I wasn't here, but nevertheless this is what I think it ought to be. Pretty soon people are not going to regard what you say. When you stand up it becomes, ho-hum, he doesn't know, he comes here with an agenda, he's an ideologue, he's going to make these kind of statements because they go along with his philosophy and they're totally off the beam based on the discussion we're having. Now if I thought I had an agreement with somebody and they didn't stick to it, I would make it clear how I feel about it. But you've never heard me say the Legislature doesn't have a right to do what it can do under the rules. I will always say you can do this under the rules,... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR CHAMBERS: ...I play by the rules. And I also will add, I may do this myself some day. I have never chastised the Legislature for doing what it can under the rules, even when they vote cloture and I think it's stupid and tell them that the cloture rule hurts what the Legislature is supposed to do. I never say they can't vote cloture. I start doing what I can in advance to prevent that from occurring. But I think there's going to have to become a level of maturity in here, a degree of understanding. And if you don't like what happens, know that this is the reality and either you cope with it or you leave the Chamber when it happens if it gives you too much heartburn. But what we're doing here is not inappropriate. It is within the rules and it is done here and in every legislative body wherever it exists, even in Britain where they have a parliament. And I wish one thing we could adopt that they do is to holler at people when they stand up and talk about... [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

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SENATOR CHAMBERS: ...what they don't know what they're...thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Erdman, followed by Senator Harms, Senator Fischer, Senator Karpisek, and others. Senator Erdman. [LB395]

SENATOR ERDMAN: Senator Fischer, we're not in Britain; please stop yelling. Members, I wanted to point out a couple things about the bill as it's written. And whether or not this is appropriate or not based on what agreements some people have is irrelevant to me because I wasn't a part of any of those agreements. So maybe, as Senator Chambers has pointed out, that between those who have the agreements there shall be gnashing of teeth and wailing and you can resolve that amongst yourselves. Whether or not this is the right public policy for the state or not is ultimately what we have to decide. And the motion to return will be for this specific amendment, and if this amendment...or if the motion is successful, we'll have a debate then on Senator Johnson's amendment. And then if that is successful, or even if it's not, then there will be a motion to readvance the bill. Then I will have an amendment that I believe fixes what Senator Johnson wants to do as far as the effective date and at least gives him a better chance of getting what he wants, again, trying to be helpful. Let me talk to you about what's in the bill. If you go to page 7 of the Final Reading copy of the bill, subsection (3), it refers to the time in which a community or a city, village or county may adopt an ordinance to opt out of the statewide smoking ban. And when this was offered on the floor on Select File, it was AM852. Within moments of reading the amendment, I pointed this out. And yet, in spite of my observation, which everybody agreed was accurate and needed to be fixed, we didn't fix it. So here's what you got on Final Reading. A city, village or county adopts an ordinance to opt out, because we have authorized both the electors or the citizens to do a petition or the elected body to opt out, either way. But in the event that the body, the elected body, votes to opt out, they'll have 90 days for the citizens in that area to circulate a petition to try to reverse the city, county or village's decision. And guess what happens if they get 5 percent of the people to sign that petition? I know logically you're thinking it would go to a vote of the people. No, it repeals the ordinance--5 percent. So you've got a law before you that says that we're going to have a statewide smoking ban, but there will be an opt out, and the opt out can be accomplished one of two ways. You can either do it directly as the people or you can do it through your elected body. And if the elected body decides that they're going to opt out, all you have to do is, if you're in favor of the smoking ban, is get 5 percent of the people to sign a petition. There is no vote, there is no discussion, you are under a smoking ban. It's a novel idea. I don't think that they could have actually thought to do that. But in our haste to try to get something up here on the floor during last year's legislative session, we just decided to adopt anything that would get the bill to Final Reading and we'll fix it later. So we're going to fix it. At least, we should fix it if we're

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going to pass this. So it's not unusual to fix something on Final Reading. It is somewhat unusual to go back to a green copy or a similar version of a bill once you're on Final Reading. Usually you're tinkering at this stage of the debate; you're not re-creating. With the exception of one time that I can remember as a member of the Legislature, we have never done that. That doesn't mean we can't do it, it doesn't mean we shouldn't do it. It's just that it's unusual. We had a bill one year sitting on General File to ban private prisons in the state of Nebraska. Select File came up on a different bill, that amendment was offered, adopted. We got to Final Reading, that became law. It's not unusual for people to change fundamentally the legislation before you in the underlying bill. [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR ERDMAN: The ultimate question we have to decide is whether it's right. Now 35 of you voted to send this bill to Final Reading in this form. Why is that? Is it to give an advantage to one side or the other? And I will tell you that if you have a bill on Final Reading, you have a substantial advantage over any other round of debate because of the process. You get to play defense instead of being required to play offense. But 35 of you voted for that section of law that I pointed out. I hope you fix it. It's not my responsibility to fix the bills that you have on Final Reading that are messed up, especially when some of us pointed out they were messed up when you tried to adopt the amendment. So I'm not concerned about the process. I think the process is fine. I think ultimately you decide whether this is the right public policy for the state of Nebraska. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Harms. [LB395]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Johnson, welcome back. Glad to see you. I absolutely know what it's like when you come back and not having quite the strength to take on some of the issues. So my heart goes out to you. That's a tough issue. Senator Karpisek, would you please yield? [LB395]

PRESIDENT SHEEHY: Senator Karpisek, would you yield? [LB395]

SENATOR KARPISEK: Yes, I will. [LB395]

SENATOR HARMS: Do you admit that smoking is harmful to you? [LB395]

SENATOR KARPISEK: Absolutely. [LB395]

SENATOR HARMS: Do you believe that it causes serious illnesses for children and adults? [LB395]

SENATOR KARPISEK: Yes. [LB395]

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SENATOR HARMS: Thank you very much. That's really what I wanted to hear from you. Thank you. [LB395]

SENATOR KARPISEK: Thank you. [LB395]

SENATOR HARMS: One of the things I wanted to point out to you is that secondhand smoke creates some real issues for people. Do you realize that when you have secondhand smoke from cigarettes and cigars and pipes that there's 250 different toxins that's released? And out of that 250, there are 50, people, that cause cancer. There are 50 that cause cancer. Do you tell me, when we know that the research is very clear that it is bad for the health, it causes cancer, it causes other illnesses, that we're not willing to say to the state of Nebraska that we're going to create the standards to make sure that our children and the public is safe? That, to me, is what this issue is about. I'm not arguing about whether you should bring it out of Final Reading. Yeah, I think it ought to be. I think you ought to have a right to do that, I think you ought to have the right to have fair discussion. This is a big issue for the state of Nebraska. You can't tell me that if we put a ban in the state of Nebraska that people are going to quit going to the restaurants and the bars; they're going to go across to Wyoming, where I live, to do it. No, they're not. It's just like it is when we put a ban at the college that I used to work on in smoking. They just went out and smoked; they weren't inside. Do you realize that smoke exposure creates heart illnesses, it creates cancer, and that 60 percent of our children who are in that environment between the ages of 3 and 11, that's almost 22 million children, that are exposed to secondhand smoke--and this comes from the U.S. Surgeon General report, 2006--creates respiratory issues that last their entire life? And in fact, it also has an issue on lung growth in small children. The research is showing us that the lungs do not fully develop and grow. And what they have found in the research that they have done here...and this is what I'm arguing about and these are the issues that I'm after. We can debate this amendment all we want. I think it's important to have fair amendment. But the places where they've had smoking bans they have found that, later in time, they found it's not socially accepted; that, in fact, less people start smoking, less people smoke. You know, what do we say to our teenagers, what do we say to the young men and women who are here helping us every day? We're saying to you, we don't have the courage here to say that it's okay for us to give you secondhand smoke. It's okay for you to get cancer, it's okay for you to breathe in some of those 50 different toxins that can create terrible health for you. This is bad for us. We know that it is, the research shows it. We just have to have the courage to say, you know what, we're going to correct this. We're not telling you to quit smoking. If you choose to do it, that's all right. I mean, that's your choice. Why should I be critical of your choice? I'm not. I'm just saying I don't want to have the opportunity to suck it in. I don't want to have the opportunity to breathe it. I think in a public workplace, quite frankly,... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

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SENATOR HARMS: ...we have the responsibility to...time? [LB395]

PRESIDENT SHEEHY: One minute, Senator. [LB395]

SENATOR HARMS: Oh, thank you. I don't hear well. Thank you very much. We have a responsibility to protect the people who are in public places, people who work, that they shouldn't suck in or smoke in or breathe in these toxins. To me, this is what the issue is about. We can argue all we want about procedure and process. But you know what it gets down to, folks? It just gets down to what's the right decision to make. That's what it's about. What's the right decision for this body to make in regard to the standards of health? How can we ignore the fact that this kills you? It stops growth in children's lungs. How can you argue about this? You know, we can argue about... [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR HARMS: Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Fischer. [LB395]

SENATOR FISCHER: Thank you, Mr. Lieutenant Governor and members of the body. I appreciated Senator Erdman's comments, that we bring bills back to tweak them usually, we don't bring bills back...I've only been here three years but I haven't seen a bill brought back that puts it to the green copy. Senator Gay mentioned that Senator Johnson last year during debate said that he had made a mistake in agreeing to this compromise, in agreeing to the deal that was made, and that he has apologized. And I appreciate that. If a mistake was made last year, I would offer to you that the bill should have been reintroduced this year. The green copy bill should have been reintroduced this year instead of pulling it off Final Reading to Select File because a mistake had been made with the compromise. The green copy bill should have been introduced again this year. It should have gone through the process. We should have had the hearings. Many of us in here have changed our minds on the bill. But we aren't talking about the bill right now. At least I'm not talking about the bill, I am not talking about the amendment; I'm talking about the process. Yes, we move things back and forth, we move things to get a better bill. That's not what happened here, in my opinion. What happened here was we went back to the green copy. It's that simple. There was no negotiation between anyone in trying to make the bill better. The negotiations took place last year. I appreciate Senator Gay's comments, I appreciate Senator Aguilar's comments, I appreciate Senator Harms's comments on this issue. But again, I am not addressing the issue; I am addressing where we are right now in this process. And where we are is we're going to take a vote on if we're going to move this bill back to Select File. I will not support that. As I said previously, in this Chamber your word is your bond. Senator Chambers commented, yes, we do this all the time. He basically

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said the means justify the end. You know, get a helmet, this is how we work in here. I don't agree with that. I don't think the Legislature is a group that we do whatever we want and gosh darn the consequences. I believe we operate in here with honor, and I can look around this Chamber and see that you do. I want that to continue. We're not operating under Machiavelli's The Prince. The means don't justify the end. Our word is our bond. Yes, this is a big issue for the state of Nebraska. Yes, it is very important. But this was not the way to handle it. I oppose sending this bill back to Select File for the amendment. Thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Karpisek, followed by Senator Stuthman, Senator Friend, Senator Wightman, and others. Senator Karpisek. [LB395]

SENATOR KARPISEK: Thank you, Mr. Lieutenant Governor, members of the body. Just like to answer a few questions that I didn't have time to before, and I appreciate Senator Gay's opinion. The mayors in his district are for the smoking ban. Fine, let them have their smoking ban. Lincoln and Omaha had their chance, they voted. Also, mayors do not vote unless it's in a tie. I'm not arguing LB395 today. I am arguing the way we're trying to get back there. And yes, Senator Aguilar, I did change on a vote last year and I got scolded pretty well for it. So what I'm doing today is scolding back. Senator Chambers says, well, get over it, that's the way it works in here. Sure it does, and I never said you can't pull this back. You have it within your rights and I have it within my rights to say we should not pull it back. Senator Chambers calls us all sorts of names, gets mad, gets upset. But when one of us, especially me, when I do it, I'm the bad guy. Well, I am upset because I don't think this is the right way. And Senator Fischer got ahead of me again on her button. If the mistake was made last year, then why couldn't it have gone through the process again? I feel that was the right way to do it. There was not enough votes last year to cloture. And maybe there are enough this year. I have to wonder if term limits play into this. This is Senator Johnson's last chance to get at this, and I don't blame him. I know it's his passion. But does that mean to go about it in this way? I don't think so. We talk about the level playing field. If your town opts out, the next town doesn't. If you own that bar, you can opt out by yourself right now. You don't have to allow smoking in your bar. So if the other town has no smoking and you think that's not fair, then you can say no smoking in your bar. And I know the argument is going to be back, well, they don't want to make their constituents mad. Well, if you own a business, you know what it's like. You got to do what you think is best for your business. If these businesses thought it would have been good for them a long time ago, they would have done it on their own. And there are many that do. Good for them. Again, I am not wanting to argue LB395 today. There will be plenty of time for that down the road and I guarantee there will be a lot of time taken to do it. What I am arguing today is the way that it got onto Final Reading. And Senator Erdman is correct. This is a huge advantage to have it on Final Reading. Would Senator White yield, please? [LB395]

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PRESIDENT SHEEHY: Senator White, would you yield? [LB395]

SENATOR WHITE: Yes. [LB395]

SENATOR KARPISEK: Thank you, Senator White. Last year I recall you and I both opposing the smoking ban, correct? [LB395]

SENATOR WHITE: Correct. [LB395]

SENATOR KARPISEK: Did someone ask you that if we would get a opt-out clause would you vote green to move it along? [LB395]

SENATOR WHITE: Yes. [LB395]

SENATOR KARPISEK: And did you? [LB395]

SENATOR WHITE: Yes. [LB395]

SENATOR KARPISEK: So you assumed that that would be the way it would come out on Final Reading and it would go that way? [LB395]

SENATOR WHITE: Yes. [LB395]

SENATOR KARPISEK: If they would not have asked for that deal, would you have voted to move it along? [LB395]

SENATOR WHITE: No. [LB395]

SENATOR KARPISEK: Thank you, Senator White. I think that is what I am trying to point out here. We knew there was not enough votes for cloture. If there's not enough votes, it falls off the agenda and the Speaker can bring it up, when he thinks that there may be enough votes, if he wants to. I feel that this is having an end run around that system. Again, you can do it, you can try to do it. But I'm going to try to play a little defense on you doing that. And if I get called some more names and told that I should just take it and not get mad, learn my lesson, I am learning a big lesson today and I'll continue learning lessons the whole time I'm here. Senator Lautenbaugh stood up... [LB395]

PRESIDENT SHEEHY: Time, Senator. Time, Senator. [LB395]

SENATOR KARPISEK: Thank you, Mr. Lieutenant Governor. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Stuthman. [LB395]

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SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I do support the motion to return it back to Select File, and the reason I support this is I think it gives us a time to debate it, to hopefully bring it back to get it into the form that we want to get. I know there's been some discussion, a deal is a deal. But I think for a lot of you people, a lot of you legislators down here, we pass bills, we think they're perfect, we have the Governor sign them. The next year, a lobbyist will come and say, you know, we found something that affects my community in the bill that you passed last year; we need to change it, we need to change some words in the bill. So it is introduced and it probably does get changed. So this is something that, with the information that we have at the present time, we feel that a bill that is past Final Reading and the Governor signs it, it's the best thing with the information that we have at that present time. But we don't know the real effects of it in the communities. I'm not against smoking, I will tell everyone that. I'm not against smoking. That is your privilege. The thing that I am against is I do not want to breathe that smoke that you have exhaled. I don't want to have to breathe that. I think that is my stand on it and I think that people in the communities have told me, even people that are in bars that are working there, want to have a smoking ban. And I think the only way to address that is have a statewide smoking ban. I know small communities are afraid that it's going to hurt their business. It may, on the short term. But I've been in discussion with other bar owners, especially some of those that are in Lincoln that say, yes, it did affect me for several months, but now at the present time my business has never been better, especially if they have a little bit of a restaurant with it. And they've turned to that, they serve food. And to me, there is nothing better than a hamburger that's grilled in a bar, but we don't want to have any smoke there. That is very important. I just think that this is something that we have to make it so that it's a level playing field across the state of Nebraska. Other states have enacted such legislation and have found it to be very effective. The issue, to me, is the secondhand smoke part of it. People can smoke. You can go outside, you can smoke. Hopefully there's enough clean air out there that will filter out or will take care of the smoke that you exhale and will be into the atmosphere so that, you know, we don't have to inhale that smoke, that secondhand smoke. I just think we need to make this so that it's a level playing field, so that communities...four small communities in a county, one opt out, the rest have a smoking ban, the majority of the people will come to that one place. The smokers will go there. The nonsmokers will go to the other places. So I think this is something that we got to make it a level playing field and, as I've said before, I do support... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR STUTHMAN: ...the return to Select File. Thank you, Lieutenant Governor. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Friend. [LB395]

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SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Senator Karpisek, you lousy, sausage-grind...I'm just kidding, that's a joke. (Laughter) You know, (laugh) the interesting part of agreements...yeah, this bill came up last year and I remember the discussion and it's been going on for a while. I mean, I knew this was happening. It's like we're all surprised that this is occurring. I mean, I've known all summer and known all fall that this was going to be done. I talked to Senator Johnson about it last year. And the interesting part, and Senator Erdman brought this up, the interesting part about agreements is if you're not part of it, are you part of it? It's like a tree falling in the forest and nobody is there to hear it. I wasn't part of this agreement, so I have a little difficulty. I'm going to have to accept, you know, those...the dissenters, if you will, their idea here, and they feel a little jilted. I guess I understand that. But the interesting part...there's two aspects to this discussion right now. I think there are two aspects and I think it breaks down really simply. One is that this agreement that occurred...Senator Mines, Senator Fischer, Senator Johnson, I know Senator White was part of it, and things were happening really quick. Here's the problem with that. There is no book, there's no manual, there are no guidelines that tell you how to drive these type of agreements. We're not following a, you know, a Marine Blue Book. I mean, it's a simple matter of communication and it's a simple matter of respecting each other and moving on once you've frankly determined that that respect has been gained, I guess. I respect Senator Johnson's word on this. Like I said, I wasn't part of the agreement but I knew he was going to do it. The second aspect, the second key aspect of this whole situation, is whether or not a smoking ban, the way either we have it set up now or the way Senator Johnson wants to reset it, is a good idea for this state. I brought this up before. The interesting part about one of the early aspects of the growth of our nation is Alexander Hamilton as the Secretary of Treasury was tasked to try to find funding, to find revenue. You know what he did? He went out and got the distilleries. He went out and got the distilleries because he knew people drank and he knew he could drum up revenue. Here's what he did not do: he didn't say, by the way, I'm going to tax your distilleries but you can't make the stuff anymore. He wanted them making it and he wanted people drinking it. He knew it was bad for them and he knew if he taxed it high enough they might quit. He said that. But he didn't tell them not to do it. Here's the hypocrisy of a smoking ban. I've said it over and over again for about the last four years. The hypocrisy is that we're going to drum up all kinds of appropriation bucks for this, but we're telling everybody statewide don't do it. If you can live with that, live with it. I personally think we ought to go into the appropriations buckets and take all the money from the cities and then go like this: ha, ha, ha, ha, ha; nothing. Put it in the General Fund and we'll spend it wherever we want. The cities get nothing, if the amendment passes or the bill passes. That's what I think. That aside, the bill, as it sits right now, I can't accept. [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

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SENATOR FRIEND: Omaha has messed this up so bad, what you can do is either go into a keno parlor or just leave the city limits and smoke to your heart's delight. And Omaha says they messed it up so bad because we didn't take any action. Okay, let's take some action or not, but I'm telling you I think that if you can get past the hypocrisy...and honestly, I don't know that we have much other choice, until we go to the appropriations process and surprise Senator Heidemann and go take that money, until we do that we have an option here. Set those agreements aside; we have an option here to do something to make this halfway palatable. I think the palatable way is to go back to what we have close to a green copy, get this thing across the finish line, you're all going to make your own decisions, get this thing across the finish line and then go get the money. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Friend. (Visitors introduced.) Members wishing to speak are Senator Wightman, followed by Senator Wallman, Senator Nantkes, Senator Chambers, and others. Senator Wightman. [LB395]

SENATOR WIGHTMAN: Thank you, Mr. President, fellow members. I do support the motion to return to Select File for specific amendments. I know the argument has been made that a deal was made, a deal is a deal. And if we were dealing with contract law where one person entered into an agreement with another, I think that has a lot more validity than it does here in this body. I do not believe that we can be bound by an agreement that we made that would restrict the process. Everybody wants to say that the process is important, and I agree that it is. But the process includes the right to consider this bill at every stage of its reading. And we are considering it here, either on Final Reading or, as Senator Johnson is seeking to do, return it to Select File. And it seems to me that if we are going to conduct the business of this state, we have to honor the right of the legislators within this body to fully hear this, any bill, at every stage of the proceeding. Senator Carlson always says we're here to do the people's business, and we've had some debates on that. Senator Carlson even raised the issue of whether we're doing the people's business or doing the business to the people from time to time. But I think in this instance, this is a very important issue to the people, and we are, we are conducting the people's business. And I don't think that it would be right not to consider new issues as they've arisen, new thoughts of our constituents. And so I don't think it is anything like contract law where two parties are involved. This is a contract, if it's a contract at all, between 49 legislators and 1.8 million people, and all of them have the right to a full and impartial and fair hearing. So for that reason, I will be voting to return it to Select File. I supported this bill initially. I would have supported it, I did support it without the opt-out provision. It was agreeable with me that it pass with the opt-out provision. I still think it was better than nothing. Senator Johnson obviously has arrived at a different conclusion than that, and that he would prefer to take this last stand, and I applaud him for his position. So I don't think we can say that the process that we're doing today is unacceptable. As I look at this bill, I look at it a good deal like I look at the helmet law and, although I've never voted on it, the seat belt law. They are

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similar in that they restrict individual freedoms. But it seems to me that there is a lot more reason for passing this bill than probably either of the other two. And I did support the helmet law and opposed the attempt to repeal that law. But this is a totally different situation. We are talking here about people who have no protection, employees who work in places of business where smoking is allowed. We're talking about children who may be patrons of that business. It's a completely different issue as far as the balance of individual rights against the rights of the state to control a particular... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR WIGHTMAN: ...action. So that's what we're here about, is to make a decision as to whether or not that protection of these people who have no protection other than ourselves...they may have protection at the local level, but on a statewide basis they have no protection. We're here to determine whether that, in our opinion, overrides the individual right to smoke. And certainly Senator Harms gave an impassioned plea about the damage and the effects of secondhand smoke. So I think we do need to continue to debate the issue, but I fully support LB395 if it comes out with AM1736. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Wallman. [LB395]

SENATOR WALLMAN: Thank you, Mr. President. And I appreciate Senator Wightman's comments. We're giving people the business. We're taking away their freedom, a choice. Why do people come to America? Freedom of choice. We have freedom of choice. If I have a business, I can put up a no-smoking sign. We used to could smoke in our church. The ladies finally could vote and, guess what, we had to quit smoking in our church, in our parish hall. So it's freedom of choice. And Senator Harms said about secondhand smoke with children. Secondhand smoke is in the household, not in the business places. I can choose not to go into John's place if he chooses to have a smoking establishment. That's freedom of choice. There's choices we make in our society that we want to do everything...there was choices made prior to World War II. One person says I can teach your children better than you can teach yourself. His first name was Adolf. So if we want to make this country for choices, we're going to make some bad choices. And that's up to us, our grandparents. But secondhand smoke kills children in the house, not in the business places. Even if you have a fireplace or a wood-burning stove, you're turning out tremendous poisonous gases. And so it's not just smoking; it's cigars, pipes. So I'm not a smoker myself and my wife isn't either and we go to nonsmoking places, but also to smoking places. And so if I'm going to take away Senator Karpisek's business so that he can't smoke in there or if I can't smoke in my house, you know, if I have a public...like an accounting outfit in there or something, and that really bothers me that we've taken away choices. So I had tremendous reservations of supporting this bill with the opt-out clause, but I did. So I can't support this amendment. Thank you. [LB395]

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PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Nantkes. [LB395]

SENATOR NANTKES: Thank you, Mr. President. Good morning, colleagues. I rise in opposition to the motion to return this legislation to Select File. I think that my opposition to the underlying legislation is well-documented. But I also rise to echo some of the comments that have already been made this morning. Colleagues, process does matter, and not just for process itself but, as Senator Erdman mentioned and in the dialogue that occurred between Senator Karpisek and Senator White, votes were given in the last go-round of this debate in the context of an understanding. Those 35 votes, it's hard to decide what their inherent meaning was in terms of advancing the legislation when there was, in fact, a context in place about how this bill and this debate would move forward. And so I guess I agree with Senator Fischer, that in light of these dramatic changes we should see a reintroduction and we should see another public hearing and we should rework through this legislation, the existing process, rather than kind of taking this clumsy approach within the process. Additionally, I wanted to just say a little bit about the opt-out provisions that we've been debating here this morning. As you know, I represent north Lincoln, the city of Lincoln, and we've had a smoking ban here in our community for some time. I would never dream of trying to take any action to interfere with that prohibition. And let me tell you why. We as a community had the opportunity to have a dialogue about that issue within the context of our city. I think it's important that other communities be given a chance to have that dialogue and to come up with a conclusion that best meets their needs, rather than instituting a kind of blanket, one-size-fits-all approach from Omaha to Scottsbluff. And so for those reasons I oppose the motion to return to Select File, I oppose the underlying legislation, and I look forward to the debate. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Nantkes. Senator Chambers, followed by Senator Erdman, Senator Aguilar, Senator Dubas, and others. Senator Chambers. [LB395]

SENATOR CHAMBERS: Mr. President, members of the Legislature, one of the most formal settings in which decisions are made in this society is a courtroom. It would seem that after a trial before a jury and the jury made a decision and the judge had even sentenced, or if the trial is conducted before a judge, that it should be final. Both sides had the opportunity to present all of their evidence, to make their strongest arguments and try to persuade the fact-finder, whether it was the jury or the judge. But despite all of those things, there is provided specifically in the statute a motion for a new trial, even though everything had been done. And one of the bases for the new trial--new evidence. When new evidence can be presented, a court is willing to set aside all of those earlier proceedings, no matter how appropriate they appear to be. They may not have violated a rule, a statute or anything as far as process, but evidence that was not available at that time is discovered and it's presented. And if indeed it is new evidence,

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then a new trial will be granted. If a court will grant a new trial...and a trial is not a legislative proceeding which often, as far as the legislative proceeding, is like a debating society. If after a trial there can be a new trial, based on newly discovered evidence, it would be preposterous to say that a legislative body whose primary responsibility is to enact legislation after considering the factors that bear upon it, it would be preposterous to say that the Legislature cannot behave in that manner. My reason for being so opposed to cloture is that it shuts down the process completely as far as the issue which would be a particular bill. It shuts it down completely. Some of my colleagues who are naive and don't understand the legislative process will argue, if it only takes 30 votes to override the Governor, why should it take 33 to invoke cloture? Well, the cloture motion, if successful, shuts down the legislative process. When you say it takes 30 votes to override a Governor's veto, you're saying the Governor's single vote is the equivalent of 29 votes of the Legislature. So the Governor is getting more than what the Governor ought to have, in my opinion. The Governor has been put in the role a super legislator, and Governors often exercise the veto power in the way that a legislator will do, not in a way that is deliberative, that is wise, that is prudent, but that is vindictive, unsupported by the arguments given by the particular Governor for casting a veto. So what we as a Legislature have to do is be mindful of what our prerogatives are, what our standards should be, but what our job is. We need thorough discussion. When new information or evidence, if you will, is available, it will be presented. [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR CHAMBERS: You've seen handouts on this floor where people, on one side or the other of an issue, will offer it because it wasn't available before and they have some new information that they think bears on the issue and they want to present it to the senators. I am going to support returning the bill. And whenever I think the process is going to be discussed in a way that will restrict what the Legislature can do, I will speak against that. I never vote for cloture. I never vote to call the question. My job is to see that debate continues, and if I have to do it on my own, I will. But we have one of the most important issues confronting us. In a relatively few years, over 2 billion year...people a year will die from smoking worldwide. [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Erdman, please. [LB395]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I think we should have a new trial. Here's a motion to recommit LB395 to the HHS Committee. That would be a new trial. There would be new evidence that has been presented. It

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would then go back before the appropriate jurisdiction to review the information, and then the committee would have the opportunity to work through the amendments and present a bill back before the Legislature for their consideration. That's also in our rules. It's here. I mean, I don't know if there's a disturbance in the force here that Senator Chambers and I are on a similar wavelength as far as an analogy, but the reality is that there are other ways of addressing this issue. We're not going to do it today, but I just thought I would share that. The discussion is twofold. One, should the state respond or should the state adopt policy; and two, what should that response be? Senator Friend is right, we tax about \$64 million...we generate about \$64 million in taxes annually from cigarettes. That's a good number. The Appropriations Committee, in their wisdom, decided to send out a bill that I had last year that would have done similar to what Senator Friend spoke of, and redirected that money to other areas that don't ban smoking in their community. But instead, what the committee did was decide to try to raise the cigarette tax on my bill, and let me just tell you that's not going to happen. There's another bill in front of the Appropriations Committee that addresses this issue, that I've introduced this year, that doesn't have anything to do with the subject that Senator Friend or the rationale Senator Friend brought up, but there are vehicles out there. That's assuming we've answered the question that the state has the responsibility to respond. As I read the vote, two-thirds of the communities that have tried, have been successful; 70 percent of the restaurants in Buffalo County are smoke free. Does the state need to respond? Does the state need to drive a wedge between communities that may not necessarily need to be there? That's a fundamental part of this discussion. I have no idea why anyone in their right mind would smoke? I've never smoked. I've watched family members die of lung cancer from smoking. I have no use for it. But I think there has to be a rationale as to accommodation. There's a restaurant in Senator Harms's district that if you go to that restaurant, regardless of whether you're smoking or not, you cannot smell smoke in that restaurant because the business has invested in the technology to accommodate both sides, making sure that they have a clientele that feels comfortable in that restaurant, regardless of whether they want to smoke at that location or not. Senator Stuthman has one too. But this discussion is not about accommodating. This discussion isn't even about treating the taxpayers, that we want to keep smoking, fairly. That's all part of this debate. What's before us at this point is whether we want to fix the bill. And again, there's a couple ways: you can return it from Select File; you can send it back to committee. But the introducer and the supporters of this bill have an advantageous position on Final Reading. Good for them. Whether it's ill-gotten gains or not, we're here. Whether they should continue to be rewarded for the 180 that they've done is a decision we're going to make. But there are options. But I'm not assuming, at least at this point,... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR ERDMAN: ...that it's necessary to respond, and maybe even more importantly, that this response isn't the appropriate one. And again, it has nothing to do

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with whether or not I think smoking is a good idea. I don't. I don't smoke, I never will and I never have. It's a fundamental debate about where do you draw the line about our role, and especially in a position or in a situation where there's a clear demonstrated ability for communities and interested parties to resolve this issue outside of the Legislature's involvement. And isn't that what we generally want to have happen on legislation? Don't we ask individuals, when they come before the committee to testify, whether they are pro or con, to try to work it out, and sometimes it leads to the legislation not going forward but that the issue being resolved? Isn't that also the responsibility of the Legislature? To correct somebody that said something earlier, I think it was Senator Stuthman, we're not here to pass bills; we're here to determine which bills make the state better in our public policy. [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR ERDMAN: Our job is not to pass bills. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Aguilar. [LB395]

SENATOR AGUILAR: Thank you, Mr. President and members. Much of the discussion this morning has been generated around the process and how the process works. Well, I think it works quite well, actually, and this is a great display of that. I would like to address some of the discussion that has taken place as far as the process and what Senator Johnson did last year. After he agreed to the opt-out clause, begrudgingly, he started hearing from constituencies who figured out what a piece of junk the opt-out clause was and how it could end up hurting their business if their community didn't support it and the neighboring community did. That caused a lot of concern. There was tons of e-mails that came in and said get rid of that opt out. And I'm sure that the people speaking in opposition to this bill got those same e-mails. They might not want to admit it, but I'm sure they did. Well, as the process proceeded, Senator Johnson went to Senator Mines. This came as no surprise. This was not a trick move. He walked up to Senator Mines and said, I can't do this, I'm changing my position, I want to get rid of the opt out. And he did so in a manner where Senator Mines had plenty of time to react to that. He did that purposely in a sense of fairness. And Senator Mines did react. He offered a bracket motion. But you haven't heard any discussion to that. It's...all the discussion you hear from the four or five opponents has just been what a sneaky, dirty trick that was by Senator Johnson. It was anything but. It was fair. He did what he had to do in reaction to his constituents. He did what he had to do that would be the biggest move to reduce Medicaid expenditures in the state of Nebraska in the history of Nebraska. That's another issue nobody has talked about this morning. We've talked about the need for eight more hours of debate. I would ask you this: Have you heard anything new this morning? We've had all this debate. It's getting time for an up or down vote. The people of the state demand it and they have a right to it. Senator Wallman, you talked about choices. Well, I've heard you speak on the floor before. And one of the

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things that sticks out in my mind was a statement you made on more than one occasion, and that is it's all about the kids, we need to care about the kids. Senator Johnson, my choice is that the kids in the state of Nebraska can breathe clean air when they go to work in a restaurant. We should care about that. I'd give the rest of my time to Senator Chambers. [LB395]

PRESIDENT SHEEHY: Senator Chambers, about 2 minutes. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Aguilar, words well spoken. And when spoken in due season, how sweet they are. Members of the Legislature, Senator Wallman is a gentleman I respect, I enjoy sitting behind him, listening to him, but sometimes he's so far off the beam he's like a lost ball in high weeds. (Laughter) He mentions being allowed to smoke in your own house. If you're smoking in your own house, let it be. Does he think you should be allowed to use cocaine in your own house? Does he think you should be allowed to smoke marijuana in your own house? Does he think you should be allowed to feed liquor to your little children in your own house? He mentioned a person named Adolf in Germany. Was he talking about Mr. Hitler or Mr. Eichmann? Mr. Eichmann was the implementer of what was known as the final solution. He's the one who carried out the killing of millions of people. So which one was he referring to? And we're not at that level with reference to anything that's being discussed in this bill. We're talking about public health. A cliché that often is stated when you talk about the clash between the rights of contending people,... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR CHAMBERS: ...the cliché is your right ends where my nose begins. So you have no right to contaminate the air that everybody breathes. If you live in an apartment complex and they have common grounds, you are not allowed to do things in those common grounds that are harmful to the other people who live there. These things are understood until you deal with people who themselves smoke. It would be good to take a poll of how many smoke and are against this legislation. People can have shortcomings, failings, but they should not try to impose their shortcomings and failings on others who are vulnerable and may be harmed in a fatal or lethal way thereby. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Dubas, followed by Senator Karpisek, Senator Langemeier, Senator Howard and others. Senator Dubas. [LB395]

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor. Every day that I come into this building I learn a new lesson, usually more than one. And right now I'm waiting for Howie Mandel and his shelves of briefcases to show up and say, deal or no deal? It just

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sounds like what we're talking about. But I enjoy that game and I enjoy this process. But in my mind, this isn't a process. We are crafting policy and we are crafting policy that has major impacts on the lives of the citizens of the state of Nebraska, and so we have to weigh those positives and negatives and decide, hopefully, what will be in the best interest of the majority. As I said, I learn something new every day and I learn about the rules and how to play within the rules, but I also learn how to play with the rules. And I see that we do that quite often in this body, too. And we do it to make our points, to get things across that we feel very strongly and passionately about. I support returning this bill to Select File. I think it is an issue that is very important to the citizens of Nebraska. If everybody else's mailbox is like mine, I know you're getting a lot of contacts and overwhelmingly my citizens are telling me that they support this ban. And I think we need to continue this dialogue. I think we need to have a bill that can go forward in a technically clean and strong manner. And so I hope that we can bring this part of the debate to a conclusion, get this bill returned to Select File, and move forward. Thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Karpisek. [LB395]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Senator Chambers brought up before, if I was selling some hot dogs, although I call mine wieners, and I smelled something funny, would I sell them? Of course not, I wouldn't sell them. What would I do with them? I'd throw them in the trash and start over. I wouldn't throw them into the next batch and taint that batch because it would just keep getting into the next batch. So they'd go in the trash. That's the way I feel about this. It should have started at the beginning and worked its way on. Also, Senator Lautenbaugh, I'd just say good for you for standing up, saying what you think, although you don't know all of the things. I don't yet either. And last year, I think it was Senator Chambers that told me, hey, you're not a freshman senator anymore, you're a senator, so stand up. Now I bet he wishes that he wouldn't have told me that. (Laughter) But that's all right. Senator Chambers, I try to sit on this floor as much as I can to be...at least hear what's going on. But the number two reason is to watch you and try to learn from you, because you are the master. And although I am not near as good at it, but maybe after 36 more years I will be close, and I'm sure you'll be back at that time, because it's only four years out, and we already know how old you are, so you'll be back. But I do watch. And again, I respect Senator Johnson for coming this way and trying to do this, because it is his passion, but I don't think it's the right way to go. I have to apologize to Senator Aguilar because I said I didn't believe him. That was a bad move on my part. I do believe him. I didn't make a very good analogy. Maybe if I made a better analogy, he would have answered differently. Could I engage in a little conversation with Senator Stuthman? [LB395]

PRESIDENT SHEEHY: Senator Stuthman, would you yield? [LB395]

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SENATOR STUTHMAN: Yes. [LB395]

SENATOR KARPISEK: Thank you, Senator Stuthman. I keep going back to your safe haven bill this year and last year. I think that that bill had overwhelming support, except for maybe one senator. [LB395]

SENATOR STUTHMAN: Yes, that is very true. [LB395]

SENATOR KARPISEK: But you worked with that one senator to make it better for him. [LB395]

SENATOR STUTHMAN: Yes, I did. [LB395]

SENATOR KARPISEK: Do you think it made it better for you? [LB395]

SENATOR STUTHMAN: I would have to say no. [LB395]

SENATOR KARPISEK: So I agree with you. Thank you for being honest on that. Why didn't you, on...I'm not done with you yet. (Laugh) [LB395]

SENATOR STUTHMAN: Okay. Sorry. [LB395]

SENATOR KARPISEK: That's all right. Why didn't you, on Final Reading, do this? Why didn't you go back to the green copy? We would have passed it easily over Senator Chambers' madness, no, I don't...anger. Sorry, Senator Chambers, you're not mad. (Laughter) [LB395]

SENATOR STUTHMAN: Senator Karpisek, I felt that we needed to pass a safe haven law. In the bill that was passed, you know, is taking care of the babies, he child that I'm most concerned about. But it was broadened a little bit. But the main emphasis is still on my intent of the bill, which is carried out in the bill as it is...as it was passed at this time. So I did accomplish what I was trying to accomplish, but I think if I would have stood my ground,... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR STUTHMAN: ...I would have not been able to get it passed this year. [LB395]

SENATOR KARPISEK: Thank you, Senator Stuthman. And that is the exact place I'm going. You got most of what you wanted, but not all. And I feel that this bill, with the opt-out clause, is coming together; not getting everything that Senator Johnson wants but getting most of it. I haven't seen very many bills come through here yet that you get

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everything you want. I certainly haven't. But I think that's the way that we go about it. And I would feel a lot better if that were the case. I gave my word to Senator Johnson yesterday that I would not put a bunch of amendments on this today because he isn't feeling very well. I'm going to stick to my word on that, and I have not done that. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Langemeier. [LB395]

SENATOR LANGEMEIER: Mr. President, members of the body, we've had so much discussion today about the rules and how we got to this point. And I've heard all this conversation about how we're going to vote to take this back to Select File and we're going to fix it, we're going to make it technically right and that. I just want to remind everybody that this motion to Select File takes us back for AM1736. We up and down it, whichever way it goes, then it goes back to Final Reading. There's no other adjustments. So then if you want to amend it again to get it back in technically good language, we're going to have another motion to take it back to Select File. So I want to make sure everybody is aware of we're not taking it back to Select File to go through what we typically have in the Select File process, where we offer amendments upon amendments upon amendments. We're going to go back, we're going to do an up and down vote on AM1736, whether you like it or don't like it, goes back to Final Reading, and if we want to adjust it again then we're going to go right back to this process, return it back from Select File. So I just wanted to make sure everybody has got that clear, because there has been this discussion how we're going to deal with amendments. And if you look, there's more amendments filed. But to deal with the next amendment we have to have another motion to return to Select File. So that's what I rise to clarify so everybody has that in their grips. As Senator Chambers says, we can play within these rules, just remind everybody how the rules work. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. Senator Howard. [LB395]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I, too, have gotten many e-mails on the subject and overwhelmingly the message has been to pass a statewide smoking ban. I'm going to reflect back a little bit to last year when I attempted to place a floor amendment on this bill. That amendment would have restricted smoking in foster homes. The concern I heard at that time was that we would lose foster homes, and admittedly we're already short of good, quality foster homes. The good news is that this year private agencies with foster care programs have come to me to tell me that they are restricting smoking in their foster homes. They are making health and welfare of the child their priority, and that's a priority every child deserves. I'd like to thank Senator Harms for reminding the body of the serious harm secondhand smoking is known to cause in children. And I'm just going to review that again for you because I think that's critically important. There's no doubt that exposure to secondhand smoke has long-term harmful effects, particularly on the developing body of a child.

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According to the U.S. Environmental Protection Agency, secondhand or environmental tobacco smoke is a mixture of the smoke given off by the burning of a cigarette, a pipe, or a cigar, and the smoke exhaled by smokers. Secondhand smoke contains more than 4,000 substances, many of which are known to cause cancer in humans and animals. Children are particularly vulnerable to the effects of secondhand smoke because they are still developing physically, have higher breathing rates than adults, and have little control over their indoor environments. Children exposed to high doses of secondhand smoke, such as those whose parents or primary caregivers, and I refer back to foster parents, smoke. These children run the greatest risk of experiencing damaging, permanent health effects. Exposure to secondhand smoke can cause asthma in children who have not previously exhibited symptoms, increases the risk for sudden infant death syndrome, increases the risk for middle ear infections, and in infants and children younger than 6, who are regularly exposed to secondhand smoke, are increased risk of lower respiratory tract infections such as pneumonia and bronchitis. For children with asthma, secondhand smoke can trigger asthma attacks and make asthma symptoms even more severe. We cannot continue to turn a blind eye to this issue. The stakes are too high. This is an opportunity to reduce the physical and economic consequences that occur as a result of children being involuntarily exposed to secondhand smoke. I'm going to remind you, too, to keep in mind that these children in many cases are underinsured or not insured at all, and we all pay the cost of that medical treatment through our Medicaid program. If I have any time remaining, I would like to offer that to Senator Chambers. [LB395]

PRESIDENT SHEEHY: Senator Chambers, about 1 minute, 40 seconds. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Howard. And I have only enough time to try to undo some the errors of my good friend, Senator Karpisek. He operates a meat market. He knows the difference between various types of meat. He might work well with his hands, but he doesn't listen well with his ears. He said, I said hot dogs. I said, sausage. He doesn't know the difference between sausage and hot dogs, and he runs a meat market? See how people misrepresent what I said. They build a straw person, in this case a meat person, knock it down, and they think they've dealt with my issue. Having only one minute, that's about all I can say. But when I'm recognized, I'm going to try to get at some of the underlying issues that Senator Karpisek was attempting to raise. And I am glad that he continues to express his view, even when he might be slightly off the mark. We need people... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR CHAMBERS: ...to generate discussion, to keep it moving and even inject a bit of levity. And Senator Karpisek and my friend, Senator Friend, are funniest when they are trying to be most serious. That's when humor develops. In a situation where something incongruous is stated, there's a clash, and the only way you can respond is

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with laughter. And that's also why they say laughter is the best medicine, I presume. But in this case, we all know we're dealing with a very serious subject, but that does not mean we cannot at the same time make a point along the way with a bit of humor or wit. And that is how you keep people's minds engaged. [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR CHAMBERS: So I hope Senator...thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Carlson, Senator Avery, Senator Kruse and others. Senator Carlson. [LB395]

SENATOR CARLSON: Mr. President and members of the Legislature, I've got a dilemma as to where we are in this debate. I've heard statements that our word is our bond. I believe that. A contract is a contract. I believe that. I believe that we are here to do the right thing for the people of Nebraska. But I'd like to address a few questions to Senator Fischer, if she would yield. [LB395]

PRESIDENT SHEEHY: Senator Fischer, would you yield? [LB395]

SENATOR FISCHER: Yes, I will. [LB395]

SENATOR CARLSON: Senator Fischer, if we vote to return LB395 to Select File, do you still have the right to amend the bill to again include the opt-out provision? [LB395]

SENATOR FISCHER: I think Senator Langemeier is going to explain the rule here. What we're doing at this point, though, is returning LB395 to Select File for a specific amendment, which is AM1736. The bill is returned to Select File and we discuss that amendment. If that amendment then is passed, the bill will once again be on Final Reading. It goes to E&R and then it will be on Final Reading again. This is the only amendment, AM1736, that will be discussed or can be offered at this point. [LB395]

SENATOR CARLSON: Okay, thank you, Senator Fischer. And it's my understanding that if we vote to go back to Select File we could also vote to return to Select File to add an amendment. I think the procedure is there. Now my thought is if the votes weren't there, and I've heard that this morning, if the votes weren't there to move the bill to Select File in the first place without the opt-out provision, if we go back to the original bill, those of you that are opposed to this bill, why would the votes be there now if the opt-out provision is removed? I have an amendment to make an even more restrictive provision than what you have, I think, that I'd like the opportunity to submit. The only way I can do that is if we return to Select File and go through the process to allow that to happen. So you don't want to go there. Senator Karpisek, would you yield to a question? [LB395]

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PRESIDENT SHEEHY: Senator Karpisek, would you yield? [LB395]

SENATOR KARPISEK: Yes, I would. [LB395]

SENATOR CARLSON: Senator Karpisek, you don't want to go there. I've got a dilemma. What do I do? [LB395]

SENATOR KARPISEK: You can file your amendment after it goes back to Final. This is only for the one amendment. It will go back to Final after this amendment. You could file your amendment and then we'll have this same process to see if we go back to Select for your amendment. [LB395]

SENATOR CARLSON: Well, I've heard comments this morning that this procedure we're going through is unfair. Is it unfair for me to want to submit an amendment? [LB395]

SENATOR KARPISEK: No, sir, not if it's not the same amendment that we put in. [LB395]

SENATOR CARLSON: Okay. Okay. Thank you, Senator Karpisek. [LB395]

SENATOR KARPISEK: Thank you. [LB395]

SENATOR CARLSON: I just don't see that returning to Select File is being unfair or un-Nebraskan. Senator Aguilar brought out a good point or a point about a conversation Senator Johnson had with Senator Mines. I'd like to hear more about that conversation. And we need to go back to Select File in order for that to happen. The bill came out of committee as a green bill on a 6 to 1 vote. The opt-out provision came about as a result of debate on the floor. The bill needs to come back to the floor,... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR CARLSON: ...not to the committee. And so I think that this discussion is good. And I do support bringing the bill back to Select File. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Avery. [LB395]

SENATOR AVERY: Thank you, Mr. President. I am going to support the proposal to return to Select File, specifically because I want a chance to remove the opt-out provision. Let me tell you why. I think there are some pretty serious problems with the opt out. First of all, we can...the state law, it allows local jurisdictions the option to ignore

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a state smoke-free law, denies health protection to a portion of the state's population. The intent of a statewide smoking ban is to protect all Nebraska citizens from secondhand smoke in the workplace. Breathing secondhand smoke we know to be harmful. And I believe that breathing smoke-free air should be a right given to every citizen in every community of the state. Another problem with the opt-out provision, which prompts my vote here, is that it creates confusion. Given that there are 384 incorporated municipalities and villages in 93 counties in Nebraska, there is strong potential for a number of different laws all over the state that would create confusion. Many business associations support a consistent law statewide. Numerous associations, such as the Nebraska Restaurant Association, the Retail Association, the Hispanic Chamber of Commerce, Big Red Keno, and others are asking for a law statewide that is fair and equal for all bars and restaurants statewide. Several local governments have expressed opposition to the opt-out provision. Communities such as Bellevue, Gretna, La Vista, Papillion, Springfield, all have asked that if we have a statewide smoking ban that it should apply to everyone. Grand Island, Hastings, Lexington, and North Platte have all passed resolutions in opposition to the opt out. There's another reason why the opt out is bad policy. It creates an uneven competitive environment for businesses. Bars and restaurants in one community that opts out will attract smokers that might otherwise frequent those establishments in their own community. The opt-out provision makes a smoking ban basically impotent. Communities do not like the opt-out provision, as I indicated; they don't want to be placed in the situation that forces them to compete on an...in an uneven environment. Let me tell you a little bit about Lincoln's experience. Lincoln has shown that a significant number of smokers, when we first passed the ban, began driving to neighboring communities such as Waverly. And many Lincoln businesses suffered for a period of time. They were able to bounce back in large part because they became creative and innovative in providing smoking environments on the outside for their smokers, and that has been a good thing for them. There are other arguments for why we need this smoking ban. One is economic. What happened in Lincoln after the smoking ban is we had a 6.9 percent drop in the number of smokers. That represented 18,432 smokers. The healthcare costs per pack of cigarettes... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR AVERY: ...sold is \$3.75, that is provided by the Center for Disease Control. If each of these Lancaster County smokers who quit smoked one pack a day, the healthcare savings from the number of smokers quitting is more than \$25 million a year. So not only is this a healthcare issue, it's an economic issue. If we had a similar statewide ban, the smoking ban would result in 122,000 smokers quitting, and this would translate into approximately \$160 million in health savings statewide. I think this is a good thing to do. Send it back to Select File and let's take this offensive provision out. Thank you, Mr. President. [LB395]

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PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Kruse. [LB395]

SENATOR KRUSE: Mr. President, I call the question. [LB395]

PRESIDENT SHEEHY: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB395]

CLERK: 25 ayes, 10 nays to cease debate, Mr. President. [LB395]

PRESIDENT SHEEHY: Debate does cease. Senator Johnson, you're recognized to close on your motion. [LB395]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. And thank you, colleagues, for such a very good discussion here this morning. Let me tell you...just fill in few gaps that I didn't earlier. And what it is, is this, is that when I came to the conclusion that what I had agreed to with Senator Mines with the opt-out clauses was bad legislation, I went to my staff and others and said, I cannot live with what I have agreed to, I don't think I have any choice but to go to Senator Mines and tell him that this is the case. My staff said, if you do, basically you are obligated to let him have the next move. And indeed, I went to him; did let him have the next move. His move was to bracket the bill, essentially terminating that bill for the last session. Now I don't think that Senator Mines had any intention at that time as to what his course in life personally would be, in that he would resign from the Legislature. If he had not resigned from the Legislature then we would really kind of have the same question as what we have this year, is, do we go back and start with a new bill, as some of our friends here this morning have suggested, go through the whole process, starting out with committee hearings and so on like we did at the last session? That was one option that we had available to us. But we went through this very, very extensively this last year. It is the short session and that means that even now with just the...seemingly almost getting started, we're more than 40 percent done with this session. There is a lot of work to do. Did we want to use up some of this valuable time going through these same steps to get where we are here today? It still comes down to the opt-out clauses being the problem. We have other solutions to that, and one of the solutions is a date delayed implementation that we have agreed to with many people in this body. So one of the statements again that I would like to comment about that has been made this morning is that the opt out is a good thing. I have received innumerable motions from municipalities of all types saying, pass what kind of Clean Air Act you want, but whatever you do get rid of the opt-out clauses. There has just been innumerable ones of these. I can't remember a single one that said, keep the opt-out clauses. So that's where we're at today is to bring this back, basically determine whether there should be an opt-out clause, and should... [LB395]

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PRESIDENT SHEEHY: One minute. [LB395]

SENATOR JOHNSON: ...this be compensated with...by what is basically a delayed implementation? One of the things with this is that it has never been our intent to harm businesses. This...we still realize that there will be some adjustments that need to be made. And so this is why we will seriously consider and recommend to you that there be a delayed implementation of approximately one year so that businesses can adjust to this and make their financial problems as small as we can. I go back to what I said originally,... [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR JOHNSON: ...this is the best thing we can do for the health of Nebraskans. Thank you, sir. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the closing. The question before the body is on the motion to return to Select File. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB395]

CLERK: 31 ayes, 10 nays, Mr. President, on the motion to return the bill. [LB395]

PRESIDENT SHEEHY: The motion to return does pass. Senator Johnson, you are recognized to open on AM1736 to LB395. [LB395]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. Mr. President and others and fellow members of the Legislature, AM1736, I would ask for your approval of this amendment. What AM1736 does are three things. First, it removes the opt-out provisions that we just have alluded to. These are in Sections 16 and 17, and it removes the current operative date provisions in Section 22, again what we just alluded to. Secondly, the amendment provides for a new operative date of 12 months after the Governor signs the bill and adds the emergency clause. Adding the emergency clause basically starts the 12-month clock ticking from when the Governor signs the bill. Thirdly, the amendment revises the definition of tobacco retail outlet and makes other technical changes in the bill. My friends, I would ask that you consider this amendment as it is extremely important. And I ask for your approval of this amendment. Thank you very much. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the opening of AM1736. Members wishing to speak are Senator Lautenbaugh, Chambers, Friend and others. Senator Lautenbaugh. [LB395]

SENATOR LAUTENBAUGH: Thank you, Mr. Lieutenant Governor, members of the body. I thought I would rise again and take another pass at this. I did hear some

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discussion a little while ago about a new trial. And you get a new trial if you can show there's newly discovered evidence that could have...could not have been discovered with reasonable diligence previously. What we're hearing as new evidence is that there's feedback against the opt out. Fine, I'll take that at face value. However, one thing I have learned in this body is that we don't always talk about what's actually pending. Sometimes our comments go far afield. So I'll continue on this strain, if I may. When you get a new trial, you don't go back to closing arguments, you don't go back to the defendant's case; you go back and start over. So if a new trial is sought, maybe a new trial should be had here. Maybe we should go back and start all over. But leaving that aside, I'll comment on what we're actually talking about because this is something that troubles me. I'll posit a hypothetical bar, we'll say it's a cigar bar. We'll say the owner of this bar has invested tens of thousands of dollars in ventilation to make it more palatable to people who might want to avoid smoke. We'll say the owner of this place has spent thousands installing a huge walk-in humidor. We'll say he even put the word "cigar" in the name, just to kind of tip his hand as to what might go on there. I would submit to you that no one who goes in there, no one who applies for a job there has any reason to be surprised that they're going to be exposed to smoke when they enter that place of business. I have a son who has asthma. It would never occur to me to take him into a place of business that has the word "cigar" right in the name. I don't expect the world to change to accommodate him; I expect a little common sense on my part. Don't go there. We're talking here about just leveling the playing field. I think it's probably more of our job to not make the playing field unlevel. I don't think it's our job to, in all circumstances, level the playing field. And I would submit that if we're doing that just for...doing this just for that reason, we're probably looking at doing the wrong thing. I hear from my constituents as well. I hear from people in Blair and Fort Calhoun saying, just because Omaha may have done something that's improvident doesn't mean you should force it down our throats. And I understand that. I understand that all too well. So I would ask that you not adopt this amendment and that we leave the opt-out provisions in there for those reasons. That doesn't go to make it perfect bill by any measure, by any measure, but at least it's better in that subtle way. Thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Chambers. [LB395]

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Lautenbaugh is a lawyer. He knows...he should know what an analogy is. When you go before a court, if the case before the court is going to be analogized to another case, and the two are exactly the same, the court will say, this case is on all fours with the other. He knows that the analogy is used for a particular purpose and that we're not talking about a new trial here in the sense that it would be in a court of law. And if he didn't know, then it's my job to teach him that there's a difference between legislative proceedings and those in a court. My point...and he's admitted he wasn't here. My point is that bringing a bill back for additional consideration is certainly allowed in a legislative assembly, and is desirable when necessary, if you can get an entire new trial in court.

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This talk of saying that when you've got a bill on Final Reading which addresses the issue you want to address, but you ought to offer a brand new bill the following year, that is preposterous, that is foolish, that is inefficient, it is a waste of time and money. But it is a good strategy for those who have nothing else to argue. But the body should not accept that. Every bill not killed during the first session, the first part of the two-year session, carries over to the next one. Are they suggesting that every bill that was carried over should be reintroduced the next session? No. They are not experienced and skillful in arguing in a legislative setting. Some of my lawyer friends argue before judges who are not very bright, so they get away with making statements that are not even supported by the law they call themselves citing. They cite cases which stand for a principle different from the one they are presenting to the court and arguing for. I know what I'm saying. I know what I say means and I will continue to make that point. And when these new people come here, they have as much right to speak as anybody, but you think I'm going to sit back and let somebody come up here and use what I said and turn it into something different and act as though that's what I said? If I deal in diamonds, brothers and sisters, I'm not going to let somebody pull a zirconium out of his watch pocket and say, this is what Senator Chambers was talking about. No, that's what he's talking about. Now some people are not very skilled and they will use a meat axe. Somebody who has a bit more skill may use a saber. Somebody even more skilled may use a stiletto, and somebody who is highly skilled may use a scalpel. There are different circumstances under which may be any one or a combination of those cutting implements would be appropriate. But if I have used a scalpel and somebody knows only how to use a meat axe, they're not going to deal appropriately with what I have said. Now what is before us? We all know what's before us. And there are some people who are swayed by what the tobacco industry wants and that's what they're going to argue for. Some people are swayed because they have a personal addiction to tobacco... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR CHAMBERS: ...and they're going to be swayed by that. It doesn't matter why a person says what he or she says on this floor. The arguments are made. We know that there are people who speak for certain special interest groups. Why do you think they're outside that glass door if they don't have minions in here speaking for them? And if they can get a senator to speak for them, that's what they're paid to do. And we as legislators have the responsibility to do some winnowing. If somebody with a special interest group makes sense on a point, be able to accept that. But you don't have to swallow the whole fish because of the way you like the way a particular scale looks when the sunlight strikes it. I'm going to support Senator Johnson's motion. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Friend. Senator Erdman. [LB395]

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SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. Not to correct my colleague from Blair or north Omaha or wherever, west Omaha. I'm not sure, Senator Lautenbaugh, what your district is actually entailing, but from District 18. I believe there is an opt-out provision or an exemption granted to those tobacco shops under this amendment. Regardless, the question before us now clearly is whether or not this is a solution to the underlying bill or not. This is a way to solve the opt-out provision that's currently in LB395, and that is you take it away. The other option is to actually solve the opt-out provision that's in the underlying bill on page 7, subsection (3), and take out the ludicrous language that was put in there by 25 of my colleagues last year that says that you can opt out by a city council, but be forced back in by 5 percent of the registered voters if they sign a petition. We could send this a number of directions. You can vote on this. Does it make the bill better? It does. Does it make the bill in the form that it probably needs to be to pass? Probably not. There probably needs to be some additional work done and there may be the opportunity to do that. But fundamentally you have to come back to the discussion about what is the basis for LB395? It's Lincoln's smoking ban. That's what it is. Now you're going to ask, why is that the standard? It's because that's probably the most restrictive smoking ban that's in the state. It doesn't have the ridiculous provisions that Omaha has in their keno exemption, which that still doesn't make sense to me. It's almost like you should allow smoking in bowling alleys because it's somehow healthier because you're doing some other activities. I mean it...but whatever. They got a majority of the council in Omaha to vote for it, good for them, bad for the public policy. But the real question comes back is, are the issues across the state the exact same as they are in Lincoln? The answer is, no, it's obvious. But my earlier comment as to whether the state needs to respond or not is still one that I think has yet to be definitively answered. Senator Avery talks about 7,000 people who quit smoking. Great. They'd buy a pack a day, 64 cents, multiply that by 365 days, times 7,000 people, that's how much revenue the state of Nebraska isn't receiving. There is a weighing process here. Are we generating or saving more money on the healthcare side of things than we are on the revenue side of things? We probably are. But the city of Lincoln still gets \$1 million a year out the cigarette tax funds. They're not contributing to that solution. There is more to this debate than what's before us. I think we can spend the time discussing it. I think we could take as much time on Final Reading on this bill as we would on any other bill had it been introduced, gone through the committee and that process. That's fine. But let's decide what we want to do. If a majority of the businesses, and this is one of the things that we don't hear now because I think the evidence points contrary, but I still have the reports that I heard as a member of the Health Committee, it's better for the business, it's better for the employees, and it's better for the community for them to go smoke free. If that was true, why do we need the bill? And is it an economic issue or health issue? Granted, it could be both. But the target has continually moved throughout this process to try to get 25 votes or 33 votes or whatever you need to get it here. So I think it's a healthy discussion. I will tell you that the e-mails that I received, and maybe it's because of my philosophical position

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regardless of the other issues here about the role of government, I'm getting e-mails today saying we want the opt-out provision left in. [LB395]

SENATOR FRIEND PRESIDING [LB395]

SENATOR FRIEND: One minute. [LB395]

SENATOR ERDMAN: They're actually from Senator Harms's district. Senator Harms, I'll forward those to you, if you would like. But it isn't settled fact that everybody is in favor, and they never will be. If you can get to 25, take a shot at it. If you can get to 33, I should say, because without the amendment that I offer, you'll have to get to 33 to make it work the way that Senator Johnson wants it to work. But I hope we have as much discussion on this as we did on the evidence of the concern about what we were doing. Let's talk about the policy, let's move to that discussion. Thank you, Mr. President. [LB395]

SENATOR FRIEND: Thank you, Senator Erdman. Members of the Legislature, we are discussing AM1736. Senators wishing to speak are Kruse, Lautenbaugh, Karpisek, Hansen, and Chambers. Senator Kruse, you're recognized. [LB395]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand to support the amendment. And if the amendment does not pass, I will oppose the bill and advancing it back to Final Reading. And I do that because we have a much better option than a bill with the opt out, and it's a real option. It's out there and it's ready to go, and that's the citizens' petition. It's ready to go. It's been drawn up for several months. It's been reviewed. It is a bill...it is language that takes no prisoners, by the way. It's more strict than ours because this group feels strongly about it. There are 50 groups that have endorsed this petition drive. They have the volunteers to get the signatures without having to spend a bunch of money. And with 75 percent of the public favoring a ban, there's really no doubt that they can make this work. So that's an option to advancing the bill if it still has opt out. We have spotty smoking in Omaha and, frankly, it's chaos. And that's one of the reasons I'm opposed to the opt out. I think it's unfair to businesses that, through no fault of their own, suddenly are next to a business that is operating in a different way than they are. I would submit that a total ban protects persons' rights. We talked about that a lot last spring. In a community with one restaurant, anyone can go to that restaurant if there's a ban. If there's not a ban, there are some persons in that community who have no restaurant to go to. I am in such a community. I have taken my wife to the hospital for an anniversary dinner because it's the only option we had for a smoke-free environment so we could enjoy our thing. That's not where most people want to go for an anniversary. I'd like to go some other place. I live in a community of 50,000 people that doesn't have a better option than going to the hospital. The choice is a factor, protecting citizens' choice, giving them the right to go to a place and to enjoy a restaurant so that all can do that. The second factor, of course, is that secondhand

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smoke kills. And when we have opt out, then there are some workers who are going to need protection. They have to have the job; they aren't going to get the protection. I also believe that without the opt out on there, don't say that quickly, it's better for business because at present there are restaurants that would like to be smoke free, but they really have no viable option since...because of the competitive location. Sometimes it's just their location; it wasn't something that existed when they chose to be there, it wasn't...may not have existed when they chose their style of operation, but suddenly they are in a noncompetitive thing unless they offer a smoking place. For those reasons, I support the amendment and I would oppose advancing the bill if the amendment is not on it. Thank you. [LB395]

SENATOR FRIEND: Thank you, Senator Kruse. Senator Lautenbaugh, you're recognized. [LB395]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. Senator Chambers, I apologize if you didn't like the way I used your prior analogy, but I thought I would just carry it to what I saw to be the logical extreme, logical conclusion, if you will. With respect to my friend, Senator Erdman, the exception that's in the bill does not deal with the hypothetical cigar bar I was discussing. It appears to deal with smoke shops, where tobacco is sold and all other sales are incidental, which I assume would mean pipe cleaners, cigarette lighters and the like. So there is not an exception in there that would protect that business owner that I was speaking of. And I'm hearing this is about choice. I'm hearing this is about protecting choices. From the e-mails I'm getting, this seems very, very far from protecting choices. This seems to be going in the exact opposite direction. I again urge you to vote against this amendment. Thank you. [LB395]

SENATOR FRIEND: Thank you, Senator Lautenbaugh. Senator Karpisek, you are recognized. [LB395]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Switching gears here a little bit. The local opt out, to me, seems to be the most logical way to go. Lincoln and Omaha have had their say. Now we want to level the playing field, so that means that Lincoln and Omaha win. Whatever they want they get. I don't think so, not right now, not without a few of us others speaking up a little bit. Senator Kruse talks about it not being fair to the bar next to one that has smoking. If 25 percent of the population smoke, we keep seeing that coming up, why would a smoke-free bar not make it? You got 75 percent of the population to try to get in. It's the 25 percent that would go somewhere else and maybe those people would come to your bar because their buddies are there that don't smoke. We're talking about personal rights and I agree, people should not have to smell secondhand smoke or be around it. So don't. What I'm talking about is my personal right as a business owner. I do not force anyone into my business. They come in willingly. To me it's no different than if you...I invite you over to my house for supper. You don't like that I have a dog in my house, I have cats in

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my house, have a fish and a bird. You don't have to come over and have supper. If there's someone in my business smoking, you don't have to come in either and buy my product. I own it, I pay the bills, I do everything in there. Why is it any different than my house because I invite people in to try to make a living? And I know that this will not resonate with those of you that don't have a business, never been on a local board and try to fight for your people back home. I've got a lot of e-mails both ways and I know all of you have, too, but all I keep hearing is, oh, we got a bunch that don't want the opt out. Maybe because they're in Lincoln or Omaha and they're losing a lot of their business to the smaller towns around. I don't think it's fair to those small towns not to let them have their say. Denton, Nebraska, I don't think they have any property taxes because they have keno; they have paved streets, a beautiful park. I think that's up to them. That's business. If a place is owned by more people than one, I agree, it should not be allowed to have smoke in it. But why can't we have the local opt out? Again, I think more people in here need to be...come here from a perspective of having been on a local board, school board, county board, anything, I think you might have a different look at things after the state has pushed enough down your neck that you're tired of it, and you decide maybe I'll run for it and try to make a difference. But then you get here and it's the same stuff and you find out why it gets crammed down their throat. Those elected...people are elected, cities, counties, let them make the decision. Let them figure out how to do it. Again, I just don't...the level playing field gets nowhere with me. It was their choice. [LB395]

SENATOR FRIEND: One minute. [LB395]

SENATOR KARPISEK: If we want to get in a foot race and want to tie one leg behind my back, you don't have to. Let's run, see who wins. Is it the right thing to do? In some places, yes. But I think if it's someone that has put their blood, sweat, and tears into a business, let them decide. Thank you, Mr. President. [LB395]

SENATOR FRIEND: Thank you, Senator Karpisek. Senator Hansen, you are recognized. [LB395]

SENATOR HANSEN: Thank you, Mr. President. I've listened to a lot of this, this morning again, and I'm glad we got the return to Select File so we can talk about the opt out, even though we were talking about it earlier anyway. But I don't think I would be for the opt-out clause either. I wouldn't be for the green copy if I hadn't been on the HHS Committee. Through that testimony that we heard that day we heard young kids that have to go home, you know, and if they went to a place and their parents took them to dinner, they go home, they wash their clothes, they wash their hair, and they still smell like smoke and it affected them, it really did. They had the option of not going, I agree with Senator Karpisek. Get out in my district, there aren't that many restaurants that you cannot avoid going to occasionally. Senator Kruse says that he took his wife to the hospital, hopefully the cafeteria, to celebrate their anniversary. We have better

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conditions than that in my district where we do have businesses that chose, so far, to not have smoking, and it's a great environment, and up to 20, 25, 30 percent increase in business for some of those restaurants that decided to do that too. So it's a difference...it's a choice between private rights, your private right to smoke or good policy, and it's good health policy. If I had not sat on the HHS Committee, I probably would be on Russ...sorry, Senator Karpisek's side. But seeing the testimony that we did, I think that we need a good statewide ban without the opt-out clause. There is no new science in smoking and cigarettes. There were some that said, you know, if you throw a cigarette in the ditch it might burn for a few seconds, then go out, but that's the only new science that we've heard. There's no new science in smoking. They are still bad, they always have been bad. My mother died 11 years ago from smoking for 40 years. There's no new science in that. What there is, is new awareness. There's new awareness that people know that the smoking is bad and they know that we have an opt-out clause down here in Lincoln, and the don't like it, so they let us know. They know that...I think it's more an awareness issue than certainly for science. If you want new science, I'll give you an example of that. When I was a kid there would be people say, you know that new cola that's around in the red bottle, you take a piece of steak and you put that in a cup of this cola, the next morning it's gone. Why are you drinking that? That stuff has got to be hard for you. It's not good on your body, it's not good for your stomach. Now I saw in a Quik Stop, on my way home a couple of weeks ago, that that same cola company has a blue label now and it has vitamins and minerals in it. So that cola is good for you; that's new science. (Laugh) I still have to try the thing with the meat. I think that even with added minerals it's still going to eat it up. There's a business in North Platte that has a \$10,000 air handler. That air handler is ten years old. We went to that business a couple of weeks ago, too, because we were invited and we needed to go, I mean, just meet the people there. That ten-year-old, \$10,000 air handler in a small bar did not work. It was going, it was roaring, it was doing its job, but it didn't work. I think we need an opt-out clause...we don't need the opt-out clause, I'm sorry, Senator. I'm sorry, Freudian slip. (Laughter) [LB395]

SENATOR FRIEND: One minute. [LB395]

SENATOR HANSEN: We don't want the opt-out clause. We need fresh air as a good policy and also as a good health policy in the state of Nebraska. Thank you, Mr. President. [LB395]

SENATOR FRIEND: Thank you, Senator Hansen. Senator Chambers, you're next and you're recognized. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I'd like to engage my colleague, Senator Karpisek, in an exchange or two, if he's willing to yield. [LB395]

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SENATOR FRIEND: Senator Karpisek, will you engage with Senator Chambers?  
[LB395]

SENATOR KARPISEK: I was expecting it. Yes. [LB395]

SENATOR CHAMBERS: Senator Karpisek, could I just open a meat market without having any license, any clearance by the state or the local entity that determines things such as that and start selling meat to the public? [LB395]

SENATOR KARPISEK: No, sir. [LB395]

SENATOR CHAMBERS: So you have regulations right now on what you can do in that business, right? [LB395]

SENATOR KARPISEK: On things that I sell to the public. [LB395]

SENATOR CHAMBERS: Yes. Now one thing that the public encounters in your place is the ambience or aura. Is that correct? [LB395]

SENATOR KARPISEK: (Laugh) I would like to think so, I don't know. [LB395]

SENATOR CHAMBERS: Okay. Now you know that an abundant source of protein for people around the world is found in insects. Are you aware of that? [LB395]

SENATOR KARPISEK: Sure. [LB395]

SENATOR CHAMBERS: Suppose your place was crawling literally, no pun intended, with insects and you said, this is extra protein which I will include in the products I sell at no additional cost to the customer. Do you think the inspector would accept that and say, okay? [LB395]

SENATOR KARPISEK: Of course not, because that's what I am doing to my customer, not what my customers are doing in my business. [LB395]

SENATOR CHAMBERS: But here's the thing, that is a source of protein, but there are certain things you cannot do in your business because the government says so. Isn't that correct? [LB395]

SENATOR KARPISEK: That is correct. [LB395]

SENATOR CHAMBERS: Okay. Now you said that a business person who has put blood, sweat, and tears into his or her business ought to be able to make certain decisions, included, I think from what you said, is whether there will be smoking in your

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business, correct? [LB395]

SENATOR KARPISEK: Certain decisions, yes, Senator. [LB395]

SENATOR CHAMBERS: All right. Now if you can put blood, sweat, and tears into your business, suppose you were putting blood, sweat, and tears into the meat that you're selling. How about that? [LB395]

SENATOR KARPISEK: No, I don't think you could do that. [LB395]

SENATOR CHAMBERS: Well, supposed you said, what goes up must come down, spinning wheel got to go round. You ever hear that before? [LB395]

SENATOR KARPISEK: I think I have. I was pretty young, though. [LB395]

SENATOR CHAMBERS: Who sang it? [LB395]

SENATOR KARPISEK: I have no idea. [LB395]

SENATOR CHAMBERS: Blood Sweat and Tears. Okay. Now here's what I want to get to with you, though, in all seriousness, and I was serious about that. The government does have regulations relative to what can be released into the air by certain businesses. Is that true? [LB395]

SENATOR KARPISEK: That is true. [LB395]

SENATOR CHAMBERS: Why is that? Because people have a right to breathe fresh air and not inhale contaminants and things that will hurt their health. Isn't that basically true? [LB395]

SENATOR KARPISEK: That is basically true, in... [LB395]

SENATOR CHAMBERS: All right. [LB395]

SENATOR KARPISEK: ...their own yard or their own house. [LB395]

SENATOR CHAMBERS: Now you are not allowed in certain places to burn leaves in your own yard, even if no fire hazard is posed. Isn't that true? [LB395]

SENATOR KARPISEK: That is true because it drifts other places. [LB395]

SENATOR CHAMBERS: And you don't think that polluting the environment has anything to do with it? [LB395]

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SENATOR KARPISEK: Well, yes, Senator,... [LB395]

SENATOR CHAMBERS: If you put... [LB395]

SENATOR KARPISEK: ...I think then... [LB395]

SENATOR CHAMBERS: Okay. [LB395]

SENATOR KARPISEK: ...we should go after making cigarettes illegal rather than this way. [LB395]

SENATOR CHAMBERS: You...thank you, I was going to say Arthur Murray, but I won't put that on you. That's all I'll ask you right now. [LB395]

SENATOR KARPISEK: (Laugh) I can't dance very well, Senator, but I try. [LB395]

SENATOR CHAMBERS: Right. Members of the Legislature, it has been said over and over and established over and over how harmful cigarettes are. Marijuana is illegal because nobody has figured how to make money out of it, or they didn't do it soon enough to get it legalized by the government. There is no drug that kills as many people directly as tobacco, none. There is legalization of tobacco because of the power of the tobacco industry, and you see that power being manifested by those who say that the government has no right to ensure that in public establishments... [LB395]

SENATOR FRIEND: One minute. [LB395]

SENATOR CHAMBERS: ...there should be no smoking. The government, through its police powers, has the right to protect and ensure the health and safety of the public. Police powers are outside of what might be contained in a statute. These kind of things have been recognized, and this is an overstatement, from time immemorial. But I make it to underscore a point. When it comes to protecting the health of the citizens, the government has an unquestioned right to do so. And what is being attempted here today is something that is late in coming, but it's better late than never. I had to fight and embarrass my colleagues to get them to stop smoking in this Chamber. They used to have this place full of cigarette and tobacco smoke. I rescued you all from that before you even got here, and now it seems outlandish to think that people would be sitting up here smoking,... [LB395]

SENATOR FRIEND: Time. [LB395]

SENATOR CHAMBERS: ...or that lobbyists would be under the balcony smoking; 11:54, Mr. President. (Laughter) I couldn't resist. [LB395]

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SENATOR FRIEND: Thank you, Senator Chambers. Senator Erdman, you are recognized. [LB395]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. There are some terms being thrown around that may or may not be appropriate. And I think Senator Chambers' examples are on point. We do regulate different entities based on their responsibilities as an establishment or as an entity. We don't do that, however, because it's a right for individuals to receive those products. There is no requirement that they receive those items, whether they go to Russ's Meat Market or wherever that is; it's a convenience. But one of the things that I think is interesting about any debate that we have on the floor of the Legislature is somebody always brings up or at least proposes the idea that there is a threat of a petition out there. Now I don't know about you, but I don't think the people of the state of Nebraska are stupid. And if they want something they're going to vote for it because of the reasons that they think are in the best interest of the state. They don't go through the same process we do, obviously--the debate, the long, prolonged process--but in theory the idea is that they will be informed when they vote. And that's a theory. But if you think they're stupid, then how did you get here? So the petition process is alive and well. Whether or not we pass this bill or not will not deter some from pursuing that. Just as we heard on the debate on casinos, the idea was the Legislature needed to put something on the ballot so that the people wouldn't put something on the ballot. Well, you know what happened? There were three proposals on the ballot--ours and two others. Even if we would pass this law in some form, if it's not strong enough for somebody, they still have that right. The question before us is, is this the right policy that we, as a collective body, believe is appropriate for the state of Nebraska, notwithstanding those issues that we can't control? Although some have tried in the past and will continue to try to make it harder for them to do that. So even if we pass LB395, there's no guarantee that the folks that would like to see a more restrictive ban won't still pursue that. Will it take some of the steam out of their sails or wind out of their sails? Sure. But as we saw with other proposals, if there's an interest strong enough, they'll still put it out there, and in fact they may have competing ideas out there as well. Public establishments, what is a public establishment? This is a public establishment, courthouses are public establishments, they're public facilities. The restaurant in Senator Hansen's district is not a public establishment, it's a private restaurant which the public has access to. I applaud Senator Chambers and others for their efforts to make public buildings and public facilities smoke free; I support that as well because you have a legal right or an obligation or a duty to be there. I think that's appropriate. It addresses the issues of Senator Lautenbaugh's children who have asthma, or the other individuals that would like to be a part of the legislative process, or individuals that are before a court, or those that have to register their vehicles. They have a responsibility and an obligation to be there. You don't have an obligation to eat at McDonald's or Whiskey Creek or any other restaurant, but it is a convenience. It's a convenience that a lot of Nebraskans and a lot of Americans take advantage of. But we

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tried prohibition before and it didn't work. And now what do we do? We provide establishments for individuals to consume alcohol. Unfortunately for the alcohol industry, I haven't consumed that ever in my life either. But we're treating that legal substance, which most of us would agree is not good for you or is not healthy, depending upon your level of consumption in general, differently than we are here. And the logic is that your smoking on me in secondhand smoke, and there... [LB395]

SENATOR FRIEND: One minute. [LB395]

SENATOR ERDMAN: ...you're causing the damage to yourself until you get in the car and drive or until you get in the bar fight. If you had a business in the state of Nebraska that 100 percent of their clientele were smokers, and they only wanted to provide that to those individuals, and there was no offense to the nonsmokers, there is no accommodation for that. Why not? I'm not going to go in there. Just a thought. Thank you, Mr. President. [LB395]

SENATOR FRIEND: Thank you, Senator Erdman. At this time the Chair recognizes Speaker Flood for a brief announcement. [LB395]

SPEAKER FLOOD: Thank you, Mr. President, members. Today I want to take the opportunity to thank Dr. Dale Michels who, a little over 25 years ago, began the Physician of the Day Program in the Nebraska Legislature. It was fitting this morning, shortly after 9:00 a.m., he helped save someone's life in this Capitol. I also want to recognize members of the State Patrol and Capitol Security Division that responded very quickly to a medical emergency off of this Chamber. I would ask that all of you stand up and recognize Dr. Dale Michels of Lincoln for his service to the state and his work today as a family physician. [LB395]

SENATOR FRIEND: Thank you. Thank you, Mr. Speaker. Mr. Clerk, you have items? [LB395]

CLERK: I do, Mr. President. Your Committee on Education, chaired by Senator Raikes, reports LB1089 as indefinitely postponed. Business and Labor, chaired by Senator Cornett, reports LB821 to General File with amendments. Senator McDonald, as Chair of General Affairs, reports LB723 and LB1058 to General File with committee amendments attached. Hearing notices from Natural Resources, Education Committee, Retirement Systems Committee, and Health and Human Services. Senator Schimek would move that LB39 become law notwithstanding the objections of the Governor. That will be laid over. Priority bill designation: LB1058, by General Affairs Committee. And an amendment by Senator Chambers to be printed to LB782. Finally, Mr. President, Revenue Committee will meet in Exec Session today at 12:45; Revenue Committee, 12:45, in their normal hearing room. Senators Dwite Pedersen and Schimek would like to add their names to LB1092. (Legislative Journal pages 586-591.) [LB1089 LB821

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LB723 LB1058 LB39 LB782 LB1092]

And I do have a priority motion. Senator Flood would move to adjourn until Thursday morning, February 14, at 9:00 a.m. []

SENATOR FRIEND: Thank you, Mr. Clerk. Members of the Legislature, the motion is to adjourn until Thursday, February 14, 2008, at 9:00 a.m. All those in favor please say aye. All those opposed say nay. The ayes have it, we are adjourned.