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Transcriber's Office

Floor Debate
March 23, 2009

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SENATOR ROBERT PRESIDING

SENATOR ROBERT: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-eighth day of the One Hundred First Legislature, First Session. Our chaplain for today is Pastor Michael Mudlaff from the Westkirk Presbyterian Church in Urbandale, Iowa, guest of Senator Carlson. Please rise.

PASTOR MUDLAFF: (Prayer offered.)

SENATOR ROBERT: Thank you. I call to order the forty-eighth day of the One Hundred First Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

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

SENATOR ROBERT: Are there any corrections for the Journal?

CLERK: I have no corrections.

SENATOR ROBERT: Are there any messages or reports?

CLERK: There are, Mr. President. Enrollment and Review reports LB361, LB202, LB202A, LB620, LB164, and LB548 all to Select File. New resolution, LR62, offered by Senator Gay. That will be laid over. Amendment to be printed to LB561 by Senator Langemeier. A new A bill, LB328A, by Senator Pahls. (Read by title for the first time.) And I've received two appointment letters from the Governor to the...one to the Board of Parole, one to the State Racing Commission, both will be referred to Reference for referral to standing committee. That's all that I have, Mr. President. (Legislative Journal pages 797-803.) [LB361 LB202 LB202A LB620 LB164 LB548 LR62 LB561 LB328A]

SENATOR ROBERT: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda, General File.

CLERK: Mr. President, LB121A by Senator Wightman. (Read title.) [LB121A]

SENATOR ROBERT: Senator Wightman, you are recognized to open on LB121A. [LB121A]

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SENATOR WIGHTMAN: Thank you, Mr. President. LB121A is the accompanying A bill that goes with LB121. Just to bring you...refresh your memory, LB121 was the bill with regard to the nine counties that are presently receiving their assessors duties, functions at the expense of the state of Nebraska and as part of a program in the state of Nebraska. And LB121 would, now with an amendment, over a period of four years phaseout that function at the state level and return it to the counties. So LB121A provides the authority to spend \$616,540 that will be accumulated in a cash fund. This is a positive as far as the General Fund is concerned. But we would be able to spend the money that would come in from the counties as they assume those duties. It was originally going to be one-third of approximately \$462,000 a year, that would be when it's fully phased-in. It would have been one-third of that amount, but the bill was amended so it's now one-fourth of that amount. So the amount is going to be \$616,540. And the way that will work, it will be paid into a cash fund as the counties reimburse the state. And then that money will be used to offset a portion of the general appropriations that would have been necessary to continue to carry on that function. So in effect, it is a reduction of General Fund expenditures in the amount of \$616,540 the first year. That will go up in equal amounts each of the next two years and finally, in the third year, it will reach it's full amount of \$2 million and I think it's \$462,000, it might be \$2,642,000. But whatever it is, \$616,000 represents a fourth of that figure. So I urge the body to vote in favor of the advancement of LB121A to Select File so it can be considered in conjunction with LB121 on Select File. Thank you, Mr. President. [LB121A LB121]

SENATOR ROBERT: Thank you, Senator Wightman. Members, you have heard the opening to LB121A. Those wishing to speak, Senator Stuthman. Senator Stuthman, you are recognized. [LB121A]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to ask a question of Senator Wightman. [LB121A]

SENATOR ROBERT: Senator Wightman, will you yield to a question? [LB121A]

SENATOR WIGHTMAN: Yes. [LB121A]

SENATOR STUTHMAN: Senator Wightman, and I just was listening and trying to concentrate on something else. But the fact that you said that we pay into this fund, the counties will be paying into this fund. Which...identify the counties. Is that these nine counties or is this all the counties? [LB121A]

SENATOR WIGHTMAN: That's the nine counties. [LB121A]

SENATOR STUTHMAN: That is the nine counties. [LB121A]

SENATOR WIGHTMAN: Right. They...instead of...we're still going to have the same

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expenditures because the state is going to continue to function during this phaseout period. So instead of funding it out of the General Fund, the counties will pay this money in. It will be the cash fund and this LB121A would authorize the state to pay out of the cash fund that is being accumulated to offset part of the cost, the ongoing cost of the program. [LB121A]

SENATOR STUTHMAN: So, Senator Wightman, in other words the county is going to have to assess property taxes to be able to pay into this fund. Is that correct? [LB121A]

SENATOR WIGHTMAN: That's correct. [LB121A]

SENATOR STUTHMAN: And it will become the burden of the taxpayers in those identified counties which thought they had, you know, saved themselves some money and turned it over to the state. And the fact that, you know, it's going to be less of a burden on those counties if they're working into it in this four-year phase-in program. But, you know, yet it was still, you know, in my opinion, the responsibility, like everyone else, the other counties in the state of Nebraska, the fact that, you know, they're paying for their assessor, the duties of their assessor and everything like that, which is all related to the property tax. But, Senator, could I ask Senator Wightman another question. Maybe I can just continue on. [LB121A]

SENATOR WIGHTMAN: Just go ahead. (Laugh) [LB121A]

SENATOR STUTHMAN: The fact is though, you know, I think the majority of those counties did lower their tax levy as far as the taxing towards the property. And now they're going to have to pay more. Is this going to affect the counties as far as their lids are concerned or will it have no affect on that? [LB121A]

SENATOR WIGHTMAN: Senator Stuthman, we met with the senators from all of those districts last week and they have got amendments on Select File that we are going to propose. One of them will be that they will be able to...the state will turn over the personal property out at those locations. The other one is to make sure we're taking care of all of the lid problems they have. So we have, I think, addressed the issues that were their biggest concerns. And Senator Sullivan kind of led that group, so she might be able to fill you in. But I think we've addressed those issues. That isn't saying we've addressed every issue they feel they have, but. [LB121A]

SENATOR STUTHMAN: Okay. Thank you, Senator Wightman. Those were the issues that I'm concerned with as, you know, how are these counties, these nine counties going to be able to adapt to the issue of, you know, requesting that money, that revenue come from the taxpayer again, just like everyone else in the state has done. So with that, I'm sure Senator Sullivan maybe...I see her light is on, so I will return back to the Chair. Thank you, Mr. President. [LB121A]

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SENATOR ROBERT: Thank you, Senator Stuthman. Senator Sullivan, you are next and recognized. [LB121A]

SENATOR SULLIVAN: Thank you, Mr. President and colleagues. I don't know that I can answer your questions, Senator Stuthman. And I'd like to see if Senator Wightman would yield for a question. [LB121A]

SENATOR ROBERT: Senator Wightman, will you yield to a question from Senator Sullivan? [LB121A]

SENATOR WIGHTMAN: Yes. [LB121A]

SENATOR SULLIVAN: Senator Wightman, you certainly...when we met with our fellow senators last week in that committee group we did talk about all of the...addressing some of my concerns with respect to the equipment and the election and that sort of thing. But we did not talk about this A bill at all. So I'm a little confused myself as to what sort of liability the counties are going to incur. So I want you to explain that just a little more carefully, if you could. [LB121A]

SENATOR WIGHTMAN: Well, the A bill really just follows through and provides...all it's doing is saying as you reimburse the state for those, that will pass into a cash fund instead of directly into the General Fund. And then the payments toward the continuation of the program, during the phase-in period, would be paid...that money would be paid into the General Fund and would reduce the cost of the program from the current amount, which I think was about \$2,462,000. So it's really exactly the same as we've discussed. It's just doing the fiscal requirements that are necessary. So what the situation is the state won't decrease its expenses out of the General Fund. Your money from the county when they reimburse will flow into a cash fund which instead will be paid into the General Fund and used to reduce the cost of that program. It's a two-step instead of one. [LB121A]

SENATOR SULLIVAN: Okay, thank you very much. [LB121A]

SENATOR ROBERT: Thank you, Senator Sullivan and Senator Wightman. Seeing no other lights on, Senator Wightman, you are recognized to close on LB121A. [LB121A]

SENATOR WIGHTMAN: Well, I just want to again point out that this is a positive fiscal note, that in effect the state will reduce its expenses by \$616,540 a year, and that will go up by that amount each year for three years. And it could change if some of the counties assume these assessment duties earlier than at the end of the four years. So I do urge your support so that this bill can accompany LB121. Thank you, Mr. President. [LB121A LB121]

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SENATOR ROBERT: Thank you, Senator Wightman. Members, you have heard the closing to LB121A. The question before the body is, shall LB121A advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB121A]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB121A. [LB121A]

SENATOR ROBERT: LB121A does advance. Mr. Clerk, next item on the agenda, Select File. [LB121A]

CLERK: Mr. President, LB548. Senator Nordquist, I have Enrollment and Review amendments. (ER8037, Legislative Journal page 798.) [LB548]

SENATOR ROBERT: Senator Nordquist. [LB548]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB548. [LB548]

SENATOR ROBERT: Members, you have heard the motion. All those in favor signify by saying aye. Opposed nay. The motion advances. [LB548]

CLERK: Mr. President, I have nothing further on the bill. [LB548]

SENATOR ROBERT: Senator Nordquist. [LB548]

SENATOR NORDQUIST: Mr. President, I move LB548 to E&R for engrossing. [LB548]

SENATOR ROBERT: Members, the motion is to move LB548 to engrossment. All those in favor vote aye or signify by saying aye. Opposed nay. LB548 does advance. Next item, Mr. Clerk, General File. [LB548]

CLERK: Mr. President, LB355, a bill by Senator Lautenbaugh. (Read title.) Introduced on January 15 of this year, referred to the General Affairs Committee. The bill was presented on Friday of last week. Senator Lautenbaugh opened on his bill. Senator Karpisek opened on committee amendments from General Affairs. Senator Wightman had pending his amendment to the committee amendments, AM805. (AM455, Legislative Journal page 580. AM805, Legislative Journal page 793.) [LB355]

SENATOR ROBERT: Senator Lautenbaugh, you are recognized to open on LB355. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I'll be

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brief so we can get into the amendments that we were still talking about. Essentially, what LB355 does is it provides a separate class of liquor license for what I've defined as cigar bars which, as defined in the law or in the pending bill, proposed bill, are bars which receive 15 percent of their revenue from tobacco and tobacco-related products. This bill is meant to create a very narrow category of business entities, if you will. I believe we had a good discussion last week regarding the number of entities that could conceivably qualify under this bill. And we'll hear more this morning about the experience from other states that have similar exceptions, some with 5 percent of the revenue as the threshold, some with 10 percent. But we will move forward on this. I will yield the rest of my time so that the amendments may be discussed and we can get back to debate on the bill. [LB355]

SENATOR ROBERT: Thank you, Senator Lautenbaugh. Senator Karpisek, you're recognized to open on AM445. [LB355]

SENATOR KARPSEK: Thank you, Mr. President. Again, AM445 would make four main changes to the bill. First, it would replace the previous Section 4 contained in LB355 with a new section that prohibits counties from passing resolutions or cities from passing ordinances that prohibit smoking in cigar bars. Second, the amendment adds cigar bars to the list of exemptions to the Nebraska Clean Indoor Act (sic). Third, the amendment also changes the measurement of sale from gross profit to gross revenue. The gross revenue measurement is preferred by the Liquor Commission because it is easier to calculate and is less susceptible to manipulation. Finally, the amendment requires the proof of gross revenue be sent to the Nebraska Liquor Control Commission. This requirement makes it easier for the Liquor Control Commission to monitor compliance. Thank you, Mr. President. [LB355]

SENATOR ROBERT: Thank you, Senator Karpisek. Senator Wightman, would you like to reopen on AM805. [LB355]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. AM445 was an amendment that was meant to clarify and probably change the provision in Senator Lautenbaugh's bill that the 15 percent derived from cigars could not include cigarettes and tobacco-related products. So it changed the 15 percent to being constituted only from the revenues derives from the sale of cigars and cigar-related products. The thought in bringing this amendment is my position with regard to LB355 that originally was drafted, and I stated that on the floor, is that it would provide that there doesn't have to be a cigar sold anywhere on the...even though we call them cigar bars, all of the revenue requirements could be met only by the sale of cigarette and cigarette-related products because it says cigarettes and cigars and so that was the intent of AM445. Thank you, Mr. President. [LB355]

SENATOR ROBERT: Thank you, Senator Wightman. Members wishing to speak are

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Senator Lautenbaugh. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I have had discussions with Senator Wightman after we adjourned last week. And, I believe, we're moving towards an understanding that addresses his concerns. I don't want to speak out of school but I will tell you generally what we're talking about. I listened to Senator Wightman's concerns last week. And it was never my intent to create an entity that could sell several cartons of cigarettes to try to get some sort of a revenue threshold and qualify as a cigar bar. That said, I am amenable to an amendment, and I've filed one although I don't know procedurally what order we'll take it up or whether or not it will become perhaps this amendment, that simply excludes the sale of cigarettes from the revenue threshold, meaning that a bar would not be able to sell cigarettes in bulk, in volume to meet the 15 percent revenue threshold. Similarly, and this is based upon the committee we had and the testimony, one of the entities that used to operate as a cigar bar didn't even sell cigarettes. So obviously they had no beef with the amendment. Another one did have some of its revenue coming from the sale of cigarettes. So as a, you know, give and take on this, I'm amenable to removing cigarettes from the revenue, the 15 percent revenue calculation in exchange for lowering the 15 percent to a 10 percent threshold. This puts us, I believe, twice as much as some other states that have cigar bars exceptions set at 5 percent in line with a few other states that have the 10 percent threshold. Again, from the testimony we had in the committee hearing, the...that level of threshold would also require a substantial investment in inventory of cigars and related products that would be really a prohibition to entry for any entity that was simply trying to get around this and allow smoking for a little while. So with that said, I'm hoping that there will be some more discussion here. And Senator Wightman and I can make sure we're on the same page. One of the other requirements we're looking at adding is that there be on-site a walk-in humidor, which is exactly what you think it would be, a room that you can walk into that is full of cigars to purchase. That would be something verifiable, the Liquor Control Commission could look at and say, okay, they are committed to this, they have the investment, they have the inventory on hand and they are...it is their intent to be a cigar bar, not simply to circumvent the smoking ban. And we've talked about these compromises, I think, in good faith because the intent of this bill was very clear in my mind, and that is to create a very narrow exception to allow cigar bars to exist in Nebraska. They used to exist. There weren't very darn many of them. There won't be very many of them if this bill passes either. This is meant to be an exception for the very few. It doesn't prohibit anyone from trying to meet the threshold, but the market being what it is before we even had the ban there aren't going to be very many that could make this threshold. So I'd ask...I'm not sure if I should ask that you look favorably upon the pending amendment or not since the one I've drafted is different. But I will yield the rest of my time. [LB355]

SENATOR ROBERT: Thank you, Senator Lautenbaugh. (Visitors and doctor of the day introduced.) Returning to discussion on LB355 we have Senator Stuthman, Wightman,

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Avery, and Gay. Senator Stuthman, you are recognized. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to ask a question or two of Senator Lautenbaugh. [LB355]

SENATOR ROBERT: Senator Lautenbaugh, will you yield to a question from Senator Stuthman? [LB355]

SENATOR LAUTENBAUGH: Yes, I will. [LB355]

SENATOR STUTHMAN: Senator Lautenbaugh, if this bill would be fortunate enough to pass, would there be an opportunity for an individual bar that, you know, that has no smoking at the present time because of LB395, the June 1, and within the next year he decides, you know, I really wanted to have my bar stay open. And he would create the fact of that he's going to really promote the fact of selling cigars. And during that next year he realizes that his cigar sales happen to be 10 percent of his revenue. Could that bar open up as a cigar smoking bar? [LB355]

SENATOR LAUTENBAUGH: Yes and no. They would have to apply to the Liquor Control Commission to do that. This, once again, sets up a separate special liquor license that is a Class C liquor license. It empowers the Liquor Control Commission to investigate, as it would any other new startup business. But, no, you could not just declare one morning, okay, I think my revenue is there, today I'm a cigar bar and we allow smoking. You would have to go through the application process with the Liquor Control Commission to do that. [LB355]

SENATOR STUTHMAN: Well, thank you, Senator Lautenbaugh. This is an issue, in my opinion, what is just the beginning of starting to open up the exemption portion of it, which we hopefully and which we did and what we voted on, you know, a year ago, two years ago and allowed the effective date a year later than what it should have been. The fact that, you know, that there's going to be an opportunity, once we allow something like this to happen, the fact that somewhere somebody is going to make sure, and it might not be the next year, it may be a year after that, but this individual bar decides he wants to still have smoking in his bar. So he creates the business portion of it that promotes the sale of cigars. You can't smoke them in that business. But he will get the group of people to purchase these cigars and 10 percent or 11 percent of his sales, the past year, which may be two years or three years down the road, will have shown to the Liquor Commission that he has generated 11 percent of his revenue has come from the sale of the cigars which he has promoted as advertised and has promoted. And the fact is does the Liquor Commission have to give him the license to sell and smoke the cigars in his bar even if he has been closed for two years from smoking? Those are the issues that I think we will have to deal with in time to come because there's going to be a group that's going to figure out a way to allow smoking

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back in their bars. And then that's going to create an unlevel playing field, in my opinion. It's a situation that we're allowing an exemption. And I hear all the time it's going to only effect these three or four or five. It's not going to be just those three or four or five. If it's going to be those three or four or five, then let's designate which ones we're going to allow that to happen in and then that's it. But I don't think that's going to happen, I really don't because I don't think we, as a legislative body, can say, Joe Blow, your bar as a cigar bar, you can keep in business. And the fact is that you can... [LB355]

SENATOR ROBERT: One minute. [LB355]

SENATOR STUTHMAN: ...continue to smoke. Thank you, Mr. President. But that is the problems that I see coming down the road that, you know, bars will probably be closed or not...they won't be closed. The bars will never be closed. It's the fact that the individual will create an entity to really promote the sale of cigars in that bar. And it may be just a small community where there's only one or two bars. But they will develop a strategy to sell those cigars and then in the future that will be open to smoking again. Those are the issues that I'm really concerned about because I just think that once we allow an exemption to happen, then I think we're in for a real problem down the road, because once there's an exemption there's people that will manipulate it so... [LB355]

SENATOR ROBERT: Time. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President. [LB355]

SENATOR ROBERT: Thank you, Senator Stuthman. (Visitors introduced.) Returning to discussion, we have Senators Wightman, Avery, Gay, Carlson, and others. Senator Wightman, you are recognized. [LB355]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. Generally, I am agreeable with Senator Lautenbaugh's amendment in principle. He may have mentioned it on the floor and I didn't hear all that he said, but one of the things it does is remove any establishment, as I understand it, that sells food products. In other words, they can't sell meals at that bar. I like that part of the amendment because I think it very much limits the type of establishment that would be entitled to use this. I've had questions raised on the floor, well, what if they just lowered the price of liquor or beer or whatever they're selling on the premises? Well, the fact is, in my opinion, they're going to be selling 75 or 80 percent probably alcoholic products compared to the 10 percent as proposed in Senator Lautenbaugh's amendment. I can't see them lowering the cost to get a lower revenue so that they can get to 10 percent of that. I don't think that's going to make much sense. So I do think this is very narrowly drawn and then that's what I was wanting to reach with regard to LB355. I just think it was much too broad as originally proposed. This answers a lot of my questions. I will say there's precedence, a number of states that have smoking bans, have provided that cigar bars would be an

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exception. Some of them provide more than 10 percent, I will say that. But South Dakota, the Governor just recently signed a smoking ban which is new for them, and it does provide 10 percent with regard to cigar sales and cigar-related products. So it's not without some precedence in other states. I think the cigar bar is allowed in several, and I can't tell you how many states but South Dakota's would be almost exactly as it would be with this amendment. Now I may propose a slightly different amendment as far as the wording and perhaps at that time will withdraw AM445 and ask that either Senator Lautenbaugh's or my own amendment be substituted for that, probably my own. But we will get that to Senator Lautenbaugh. I don't think it changes it, I think it clarifies it a little bit by changing the placement, except those...removing the selling of the food products. We would just change that in the structure of the bill and I think clarifies it from my perspective a little bit. But generally, I am supportive of Senator Lautenbaugh's amendment to AM445 and will probably support that. Thank you, Mr. President. [LB355]

SENATOR ROBERT: Thank you, Senator Wightman. Senator Avery, you are next and recognized. [LB355]

SENATOR AVERY: Thank you, Mr. President, colleagues. I wonder if Senator Lautenbaugh would be willing to yield to a few questions. [LB355]

SENATOR ROBERT: Senator Lautenbaugh, will you yield to a question? [LB355]

SENATOR LAUTENBAUGH: Yes or even a few. [LB355]

SENATOR AVERY: Only a few. [LB355]

SENATOR LAUTENBAUGH: Even a few. [LB355]

SENATOR AVERY: All right. I'm looking at the green copy of the bill. And on page 2, lines 18 and 19 it reads that the owner of a cigar bar "shall include proof of the cigar bars annual gross profits." I believe the committee amendment changed that to "gross revenue." Am I right? [LB355]

SENATOR LAUTENBAUGH: Yes. [LB355]

SENATOR AVERY: What is required to establish this proof? [LB355]

SENATOR LAUTENBAUGH: Whatever the Liquor Control Commission will dictate. [LB355]

SENATOR AVERY: That means like gross receipts from sales. [LB355]

SENATOR LAUTENBAUGH: Well, there will be a reporting form they'll have to draft.

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And keep in mind that, especially with removing food from this now as what the upcoming amendments will do, we're down to basically the reporting to tobacco sales and the reporting of liquor sales, both of which are heavily taxed and already reported. So while we did not specify, and this is what you will give to the Liquor Control Commission, it's fairly obvious that's what they'll ask for because that already exists. [LB355]

SENATOR AVERY: Do you think it's a good idea to leave this unaddressed in the legislation? [LB355]

SENATOR LAUTENBAUGH: In a word, yes, I do trust the Liquor Control Commission to do its job. And it's pretty clear what we're trying to do here. They need to verify the revenue percentage. And as I said several times last week, they're not new at this and they didn't just fall off the turnip truck. They know how to do it. [LB355]

SENATOR AVERY: Let me address page 11, lines 8 through 10, where the threshold is established at "15 percent or more of...gross profits," changed to "gross revenue." How will this threshold be determined? [LB355]

SENATOR LAUTENBAUGH: You would take the amount of revenue and you would multiply that times .15 and you would have 15 percent of that. Then you would compare it to, I believe the language we might end up with is, "cigars and related products," and the revenue from that and see if that equaled the 15 or 10 percent threshold, depending on which we end up with. [LB355]

SENATOR AVERY: Are you at all worried about the additional bookkeeping burdens that are placed on the bar owners? [LB355]

SENATOR LAUTENBAUGH: No. [LB355]

SENATOR AVERY: But you are, in general, you're opposed to excessive regulation of business. [LB355]

SENATOR LAUTENBAUGH: (Laugh) Senator, I don't think anyone would argue allowing these businesses a chance at operation and a little modicum of freedom in this regard that they have to report their revenue to get this breath of fresh air and opportunity to thrive, if you will. I don't see how that's a regulation. If we were telling all businesses they had to do this then, yes, that would be overregulation in my mind. But if these businesses want to operate in this way, this is the freight, this is the cost of doing business, this is the only way we can possibly allow it. And I just assume you're being facetious when you say this is overregulation. [LB355]

SENATOR AVERY: No I wasn't, actually. Another question. I don't see any safeguards

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in here to deter cheating. Does the bar lose it's Class C liquor license or just the privilege of permitting smoking? What are the penalties here? [LB355]

SENATOR LAUTENBAUGH: The penalties would be the same, anytime that you are caught falsifying records of any kind that you need to give to the Liquor Control Commission, your application or on this, they're... [LB355]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute. [LB355]

SENATOR LAUTENBAUGH: ...proposal is for suspension, there are different penalties depending on first, second, third offenses. Certainly, removal of license is one of the possible sanctions, removing a license for all time for the particular applicant is another possible sanction. Once again, a lot more teeth than would exist under the Clean Indoor Air Act. [LB355]

SENATOR AVERY: I'm going to oppose the amendment, AM805, and I'm going to do so, not because it's a bad amendment but because I think it sugarcoats what is a bitter pill and makes it easier to swallow. It is still a bad bill, even with this amendment. And I would urge you to join with me and oppose it. Thank you. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Gay, you're recognized. [LB355]

SENATOR GAY: Thank you, Mr. President. I rise...I'm actually going to support the amendment because I think it makes it a better bill. If this bill does...ongoing, I'll see where it is, doubtful I'll support the bill but make it a better bill. And then we have something, if it passes, we've got a better bill. I do think removing the tobacco products, the cigarettes particularly is essential, otherwise this is, as Senator Avery says, it's just kind of opening the door. Senator Lautenbaugh, I said Friday, you know, I'd work to try to make it a better bill, of course, along the way because I do believe in this process that's what we should do. I don't like the strategy of making it worse and then for some reason the bill passes, we've got a much worse situation on our hands. So I think this limits it. The next amendment...just as I'm reading on the Chamber Viewer, the next amendment I'm not so sure is good that we lower that threshold. I had heard discussions of raising the threshold. But I'm going to keep my options open to see where we end up and how they would do this. I do believe with the loss of your liquor license, I understood that as we discussed on Friday, why it went to General Affairs, dealing with the liquor license. That is a very strict penalty. So I think that the cigar bars, if this happens, would continue to monitor that very closely just because they don't want to lose their liquor license, which would be then for sure their business is gone. So I don't think the excessive regulation is a problem here. But anyway, I just wanted to say I

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do believe if we're going to vote on just this amendment, I hope there is no substitutions and we vote amendment by amendment. But we'll see what happens. But I just wanted to get on record I do support this amendment to remove the cigarette portion. I think it makes it a much tighter bill and then we'll have other amendments, I think, coming. But I do support AM805 and I'd encourage you to make it a better bill and then decide on the whole package whether you like opening up the whole idea. But I would hope you'd support AM805. Thank you. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Gay. (Visitors introduced.) Resuming floor discussion on amendment to committee amendment, AM805 to AM445. Members requesting to speak, Senator Carlson, followed by Senator Lautenbaugh, Senator Wallman, Senator Stuthman, and Senator Haar. Senator Carlson, you're recognized. [LB355]

SENATOR CARLSON: Mr. President and members of the Legislature, I'd like to address a question to Senator Wightman, if he would yield. [LB355]

PRESIDENT SHEEHY: Senator Wightman, would you yield to questions? [LB355]

SENATOR WIGHTMAN: Yes. [LB355]

SENATOR CARLSON: Senator Wightman, your amendment is simply to eliminate cigarettes and other tobacco products as a part of the calculation of the 15 percent of gross sales. That's correct? [LB355]

SENATOR WIGHTMAN: Right, that's correct. [LB355]

SENATOR CARLSON: If that amendment would pass that way and we disregard others that might be a part of this, do you then support the underlying bill? [LB355]

SENATOR WIGHTMAN: Well, I will support it. I will support it even if it's changed to 10 percent. I've made that statement. And Senator Lautenbaugh is proposing to reduce the requirement to 10 percent, but it clearly is cigars and cigar-related products. And it has a different amendment from mine that you could not sell, on premises you could not sell food in the establishment. So I like that as well. [LB355]

SENATOR CARLSON: Okay, thank you, Senator Wightman. And if I could address Senator Lautenbaugh, I'd like to at this time. [LB355]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to questions? [LB355]

SENATOR LAUTENBAUGH: Yes, I will. [LB355]

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SENATOR CARLSON: Now, Senator Lautenbaugh, you either have an amendment or you had mentioned the other day about reducing, if AM805 passes, reducing the percentage then to revenue by cigars alone to 5 or 10 percent. What is the level that you're considering? [LB355]

SENATOR LAUTENBAUGH: Well, I think 5 percent goes too far. Although some states have gone that route, that wouldn't be my preference. I think 10 percent is ample. And again, I don't pull that number out of the air, much like we didn't just pull 15 percent out of the air. We had testimony in committee on this bill where one of the entities that exists in Omaha, in the Benson area, indicated what the thresholds of revenue were prior to the ban, what they could count on based upon the extensive investment they had, and how much of that would be related to cigarettes, if we took that away. That's the rationale for the change from 15 percent to 10 percent is that it makes a nod to reality that if we're taking away something else they can sell that counts towards the percentage total or at least lowering the percentage total to make it in line with the prior threshold that was attainable for cigar sales. [LB355]

SENATOR CARLSON: Okay. Now Senator Wightman's concern was that in the 15 percent that if cigarettes were allowed to stay in there that a bar could really begin to sell cigarettes at wholesale or even discount in order to raise the total amount of revenue that comes in. So his amendment takes care of that concern. In the opposite direction now I think it's more applicable if it were 5 percent versus 10 percent. But certainly at 5 percent it would seem to me like, and only from cigars, that that could encourage a bar to sell a lot of cigars at wholesale or below to get to the 5 percent threshold. Would that be a possibility or a potential concern and probably not at 10 percent? [LB355]

SENATOR LAUTENBAUGH: One of the things we struggle with in this body is that we do often create hypotheticals and ignore the realities of the market. I suppose a retailer could mark cigars down and down and down to increase their numerical sales. But at the same time, there's a point at which you're losing money on the cigars. And the people who provide the cigars expect to be paid for them. And you cannot qualify under the 10 percent to the exclusion of all other market forces. At some point you are bankrupt. This is similar to Mr. Welsch suggesting... [LB355]

PRESIDENT SHEEHY: One minute. [LB355]

SENATOR LAUTENBAUGH: ...that you could give away drinks to get people to buy cigars. Well, you could give away lots of things right up to the point where you locked your door and went out of business. These things don't operate in a vacuum, although we seem to sometimes. So I would suggest that's not a realistic possibility. [LB355]

SENATOR CARLSON: Okay, thank you. And I've indicated before that I'm really not in

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support of the bill. And I get irritated, some other instances, when people bring out far-fetched possibilities that maybe aren't realistic. I'm not trying to do that but appreciate the response of Senators Wightman and Lautenbaugh. Thank you. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Lautenbaugh, you're recognized. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do then, for clarity sake, rise and urge you to vote against this amendment as I think the following amendments deal with the same subject matter. And it's my hope that Senator Wightman will be withdrawing this amendment so we can proceed to the one that was more consistent with our discussion. Again, I don't believe we're opening the door here. I listened to Senator Stuthman's comments where he kind of recounted in horror that it was possible that a business might start selling cigars in an attempt to reach the threshold and then become a cigar bar. Well, yeah, I mean that's kind of the point of the whole thing actually. If we create some sort of a closed class where no one else can enter it, well, first of all, I don't think that's good for business; and second of all, that might raise some constitutional concerns of its own. Yes, this is open so there's a possibility of future entry. But once again, I think Senator Stuthman's example simply ignores the reality of the market. Existing cigar bars, historically, promoted the sale of cigars and they had the level of buyers they had. There were no cigar bars in Columbus. There were no cigar bars in Hay Springs. You can promote the sale all you want but if there's no buyers, there's no buyers. And there's a finite number of buyers for cigars. You can give them away for a penny apiece and your sales might go up but, again, you go bankrupt. So we are looking for things to worry about here I think and looking hard for things to worry about. But if the worst horror story you can find is that somehow, somewhere someone may find a way to reach that 10 percent threshold and enter the market, you'll forgive me if I don't tremble in fear at that thought. I think that's what we're supposed to allow. You know, last time I checked the zip code this was still America. I think we're supposed to allow people to enter markets and leave markets as they see fit. What we're not supposed to do is force people out of the market based upon our concerns and perhaps over-hyped concerns. And yes, Senator Stuthman was 100 percent correct, someone could enter the business. That doesn't make me rethink my position. That makes me rethink we thought of a lot of potentialities in this bill and it's a good bill. Thank you. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. (Visitors introduced.) Senator Wallman, you're recognized. [LB355]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Cigar bars. Local control. What do most of us run on? Local control. So what did we do with the whole state? We decided to have a smoking ban; Lincoln, Omaha decided on their own, but we took it upon ourselves in this body to eliminate smoking in public places all over

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the state. And I'd like to ask Senator Lautenbaugh a question, if he would. [LB355]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to questions? [LB355]

SENATOR LAUTENBAUGH: Yes, I will. [LB355]

SENATOR WALLMAN: As of the present time, are there exemptions to this present smoking ban? [LB355]

SENATOR LAUTENBAUGH: Yes for tobacco shops. [LB355]

SENATOR WALLMAN: Thank you. So we talk about entrepreneurship, local businesses, taxes, make people feel good that want to start something. Is it healthy? That's not up to me to say. Is it good for the state? Is it good for morale? Sure it is. So I support Lautenbaugh's bill and I'll see what to do with the amendments. Thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Stuthman, you're recognized. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I've been doing a little bit of research on this. And I've raised the question on, you know, how are people going to get around this, and if the amendments are adopted where it just deals with cigars, you know. We have a situation where there are these little cigars. You know, is that going to be identified as a cigar? We have Swisher Sweets, you know they sell, they're little cigars. They're just a little bit longer than a cigarette and they come in a pack of 20 just like a cigarette pack is. You know, and these Swisher Sweets they've also got menthol, they've got peach flavored, they've got strawberry flavored, they've got cherry flavored, and they have mild. So are these going to be considered a cigar or are these going to be considered a cigarette? In my opinion, they look like a cigarette but they're a little cigar. I think the majority of the people think that a cigar is that larger long cigar. But I don't think that's going to be the issue, it's going to be the fact that the cigarettes, and I also would like to mention the fact that these little Swisher Sweets, you know, they also have a filter on them too. So how are we going to identify, you know, which is a cigar? Just by the labeling that it says a little cigar, is that going to fall into that same category as a cigar? And it probably will. But I think it's maybe just...we could call it a big cigarette or a little cigar. I have real problems, like I stated earlier on, you know, the fact that we're starting to open this up. And as we open this up and allowing some, there's going to be more coming down the road. In two, three, four, five years from now they will find out that, you know, there's some bars that, you know, allow smoking that have accumulated enough revenue to satisfy the Liquor Commission that they can allow smoking in their named cigar bar. We'll probably have them open all over the state. That's the issue that I face and I think will happen. I don't think we should

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allow them. If we want to allow certain ones, let's identify those individuals. But I don't think we want to. I just feel that we're starting down...down a road where we're just opening the door just a little bit so that we can just let the baby mice through but not let the big ones in there. I think we're just getting started down the wrong direction. I think we're going to be on this bill for a little while. We'll be on it, you know, in my opinion, the rest of the morning. So...but that's my opinion. I just...I was a very strong supporter of LB395 when it was enacted. And I did agree with the fact to allow them...the bars to stay open another year, giving them an opportunity until June 1 of '09 before they had to close, not close but no smoking in the bar. And there's quite a number of establishments that already have remodeled, cleaned up, got rid of the smoke, and already have nonsmoking bars. And I... [LB355]

PRESIDENT SHEEHY: One minute. [LB355]

SENATOR STUTHMAN: ...really respect those individuals. But this is a situation that I think that there's going to be an opportunity where it can be manipulated to the fact where the Liquor Commission will, by law, say, yes, they have reached that threshold and they can open it up again as smoking. They'll probably go a couple of years with nonsmoking in there. But if they promote the cigars, little cigars, cigarillos, I think we need to identify, we need to make it a lot tighter if this bill would pass but I don't think it will. Thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Additional members requesting to speak on amendment to committee amendment AM805, Senator Haar, followed by Senator Wightman, Senator Avery, and Senator Lautenbaugh. Senator Haar, you're recognized. [LB355]

SENATOR HAAR: Mr. President, members of the body, I have a few questions for Senator Lautenbaugh. [LB355]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield to questions? [LB355]

SENATOR LAUTENBAUGH: Yes, I will. [LB355]

SENATOR HAAR: Thank you very much. In terms of any kind of limit, like 10 or 15 percent or whatever, does...would a cigar bar have to maintain that over a period time? Would it go month by month? How would you do that? [LB355]

SENATOR LAUTENBAUGH: Well, we've been working with Liquor Control on this. The first year of operation they would have to probably report quarterly to verify that it is, in fact, up and running. After that there would be an annual reporting requirement, although I guess they'd be free to require semiannually if they were inclined to. [LB355]

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SENATOR HAAR: Okay. So that was one of my things. How we...because this is kind of interesting because they have to maintain a certain level of a certain product to retain their license. Do we have other examples of that? [LB355]

SENATOR LAUTENBAUGH: If we do, I'm unaware of them or I can't come up with one at the moment. This was really the best way I could think of. I didn't want to see a circumstance where a place got an exception to a smoking ban based upon the pretense of wanting to operate for the specific purpose and then backed away from it. The whole thing has to be ongoing, in my mind, contingent on actually being a cigar bar as defined in the bill. I didn't want it to be a one-shot thing to allow people to try to circumvent the intent of the otherwise ban. [LB355]

SENATOR HAAR: Okay. Well, I appreciate that. And I think Senator Stuthman has brought up an interesting question. Is there a definition of what is a cigar in the bill? [LB355]

SENATOR LAUTENBAUGH: In the bill, no. There's a definition otherwise and more importantly probably of cigarettes because I believe, as the amendment is coming it will simply exclude cigarettes. Now those are surely defined under federal law and we could reference them, if that would add a level of comfort. But the bill was meant to include, I suppose, pipes and whatnot as well too. So the big concern, I guess, was the sale of the cartons of cigarettes to try to...to try to get the revenue threshold. So cigarette is certainly definable. There are other things, everything else would not be a cigarette, I guess, is the best way to put it. [LB355]

SENATOR HAAR: Okay. Well, I intend to listen carefully to the debate. I guess, since the people of Lincoln did vote to ban smoking in bars, I feel that I will probably vote against this but I promise to listen carefully. Thank you. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Wightman, you're recognized. This is your third time. [LB355]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I don't intend to take my full time. I do want to point out that when the smoking ban started it was to create a smoke-free workplace. That's my recollection of what we started out to establish. It never did cover homes, never did cover automobiles. I know there's a bill that may come before this Legislature yet with regard to automobiles. But if we can narrow the exception to where maybe only four or five, two or three, whatever, bars could come within this exception, and right now I think even at 10 percent I think it's going to be very difficult for anyplace other than Omaha or Lincoln to have a bar that can generate 10 percent of its total sales from cigars and cigar-related products. Then it seems to me we probably haven't destroyed the original intent of the bill which was to create a smoke-free workplace. Because if there are only three or four places in the

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state of Nebraska, and we can argue whether that's five or six or one or two, but if we have limited it that much, then it appears to me that anybody who's going to work in this cigar bar probably has an option to work somewhere else. There are hundreds of other bars, if not thousands of other bars across the state of Nebraska. There may be a thousand in the city of Omaha for all I know but it will be a big number. And if they want to work in any bar that does not qualify as a cigar bar, they're free to work there. So I think that it does narrow the exception such that we still have kept intact the original purpose of the bill, which is to create smoke-free workplaces. Thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Avery, you're recognized. [LB355]

SENATOR AVERY: Thank you, Mr. President. Last week, we heard some arguments in support of this bill that made the point that this is really about private property rights, individual liberty, and those sort of things. If that is the case, then why aren't other health and safety rules and regulations in the workplace a violation of those very same rights? If your private property provides a place of employment where employees have no say about whether they are exposed to secondhand smoke, then the state has the authority and responsibility to regulate that. We regulate other health and safety standards and rules. Our job is to pass laws that promote the public interest, not private interest. Clean air is a public good. It promotes the public interest by promoting public health. And we have talked about this before. I know a lot of people don't like to hear it but secondhand smoke is a health issue. And it's not merely an annoyance to nonsmokers, it's a serious health risk. States have the right to expand liberties beyond those specified and implied in the U.S. Constitution but they can also reduce them. Protection of the freedom of all may in fact require an abridgement of the freedom of some. That's what this is about. Promoting the public health might require some of us to agree to some abridgement of our freedom. This may require action by government to impose upon some citizens the positive obligation to act in ways that promote the positive public good rather than simply private advantage and that is even when that obligation is something to which they may not consent. I have the right to free speech, so do you, it's established in the constitution. But we do not have the right to yell "fire" in a crowded theater if there is no fire. I have the right to private property but I can...if I use that private property to establish a meth lab, then my property and liberty can be taken away. I can prove that creating a waste dump on my private property will effect the common good of the community because the toxins from that waste dump would leach out and contaminate others. This is an actual harm. And my right to use my property is curtailed by the needs of the common good. The point here is we have to be careful that we don't take the argument of individual liberty and private property rights so far that it actually infringes upon the common good and the actions that we should be taking in this body to create a just society and protect all of our citizens from harm. A just society requires some citizens to surrender a portion of their personal liberty in order to create a

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benefit that otherwise would not be created a public good. In a just society rights can never exist without some element of duty. Rights must always be matched with duties and we have to be mindful of that. If smokers have no duty to nonsmokers, then smokers have personal liberty to do as they please... [LB355]

PRESIDENT SHEEHY: One minute. [LB355]

SENATOR AVERY: ...because of the claim that nonsmokers is ignored. So when we talk about personal liberty I think we have to balance that against the public good. And I believe that that is what we are trying to do here. And I would hope that we keep that in mind as this debate goes along. Thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Lautenbaugh, you're recognized. This is your third time. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. Senator Avery, I agree with you up to a point. We all agree up to a point. And the question is, where is that point or line in which we draw...that we draw, and that's what we struggle with here every day. And, sir, you go too far. In this instance you go too far. We've heard the argument today that these bars are going to spring up all over the state despite the fact that they never existed all over the state before. If we repealed the law of the marketplace sometime this session I missed it. It just doesn't work that way, folks. And we can sit here and spin these horror stories about how we're opening the door and this is just the first exception but it's not. I ask you, I say this a lot of times in closing arguments, you didn't get to bring much with you, you jurors, but at least bring your common sense. Restoring the right to operate a cigar bar is not going to create more cigar bars than existed before we started tampering with the right. And I wonder if Senator Avery would yield to a question. [LB355]

PRESIDENT SHEEHY: Senator Avery, would you yield to a question? [LB355]

SENATOR AVERY: I will. [LB355]

SENATOR LAUTENBAUGH: Senator Avery, as I've formulated this, you understand that this would probably bring back the couple of cigar bars that previously operated in Lincoln. Would you concede that? [LB355]

SENATOR AVERY: No, I don't know of any cigar bars in Lincoln. [LB355]

SENATOR LAUTENBAUGH: They previously operated here. You just don't have a familiarity with them, is that the case? [LB355]

SENATOR AVERY: Well, I don't know if they previously operated. [LB355]

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SENATOR LAUTENBAUGH: How are the operators or the patrons of cigar bars enforcing their rights or forcing their smoke on other people exactly? [LB355]

SENATOR AVERY: When their workers are made unwilling smokers by secondhand smoke that is an infringement on the workers' rights and it's also a diminution or a diminishing of the public good. We have the authority and the right in this body to regulate the workplace to protect workers. Now I know we heard, last week that, well, if you don't like smoke don't work in my bar. What if a person doesn't have another job? That's the only job they can get. [LB355]

SENATOR LAUTENBAUGH: Thank you, Senator Avery. And again, we have the strawman from last year. The hypothetical small town in which there is going to be one place of business and it's going to be a cigar bar. Folks, if that's what you're worried about, let me put your mind at ease. That place doesn't exist. That place never will exist. I don't care what wide intersection you can find out in greater Nebraska where there is one place of business going in an area called a town, but the going concern there is not going to be a cigar bar that gets 10 percent of its revenue from the sale of cigars. That is, frankly, an absurdity. And at this point we're dealing with an absurdity. That is not an argument against this bill that is an argument against doing anything with the smoking ban as it currently exists. Despite the fact that it has exceptions in it for tobacco shops, we're being given extreme hypotheticals to argue against this bill, extreme and unrealistic hypotheticals. We just heard Senator Avery testify that he never even knew there were cigar bars in Lincoln. But I'm sure he knows there are other employers in Lincoln and plenty of them. Yet somehow we're now creating a right to work in cigar bars and be free of cigar smoke. I do sometimes read the online comments in the Journal Star, the anonymous, courageous authors who send in their thoughts on what we do here. I checked them Saturday morning after the article ran, and we're talking about Lincoln people presumably, of the 25 comments... [LB355]

PRESIDENT SHEEHY: One minute. [LB355]

SENATOR LAUTENBAUGH: ...17 were in favor, either opposed to the ban or at least in favor of this conceptually, 17 out of 25 in Lincoln, the place whose freedom of choice we're supposedly infringing upon. I would argue we infringed upon their freedom of choice last year because if the city councilmen in Lincoln woke up one morning and decided they wanted to let cigar bars operate, they could not because we banned it. That's not local choice, that's not a local option, that's quite the opposite. And now here we are being told that people have a right to work in these places and that might be the only job they can find. I would suggest that's a fantasy. I would urge you to vote against this amendment that has disappeared, like everything else. I can't remember the number as I stand here. (Laugh) And vote in favor of one of the other ones that's going to come up shortly. Thank you. [LB355]

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PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR48 and LR49. Mr. Clerk, you have items for the record? [LB355 LR48 LR49]

CLERK: I do, Mr. President. Government Committee, chaired by Senator Avery, reports LB280 to General File; LB674, General File with amendments; and LB623 indefinitely postponed. Judiciary, chaired by Senator Ashford, reports LB414 to General File with amendments. And a series of resolutions: LR63, LR64, LR65, and LR66, all by Senator Avery, those will be laid over. (Legislative Journal pages 804-809.) [LB280 LB674 LB623 LB414 LR63 LR64 LR65 LR66]

Mr. President, I have a priority motion. Senator Stuthman would move to bracket LB355 until June 2, 2009. [LB355]

PRESIDENT SHEEHY: Senator Stuthman, you're recognized to open on your motion to bracket until June 2, 2009. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I just feel we're in a situation here where we're not getting definite answers and the fact that we're...it's portrayed that, you know, things aren't going to happen, things are not going to happen. I think there's other things that we have to identify with this as far as cigars, cigarillos, cigarettes. How are you going to identify that? There is a definite separation in taxing of cigarettes, cigars, and chewing tobacco. We just voted on that this session of the method of taxation but we left the cigars the old way, mainly because they said that, you know, cigars are so different. I don't know what is different about cigars as far as the taxation portion of it is concerned. When we had the cigarettes they were taxed and chewing tobacco...cigarettes are taxed on the cigarette tax on the pack, the carton. But chewing tobacco was on the tax on the wholesale value of the chewing tobacco. And that's the way it is still on cigars. But we did change the chewing tobacco part of it to make it as the tax on the weight. What this did, the cheaper quality products at that time, they had to pay a lot more tax. The more expensive chewing tobacco they pay a lot less. So in my opinion those that have the most expensive chewing tobacco, those companies are going to be making a lot more money at the expense of the cheaper chewing tobacco. They said there was a lot of resistance to changing the method on cigars to a weight basis. I don't know, I think scales are the same when you weigh chewing tobacco or whether you weigh cigars. I think that's the same. The scales don't change. I think some of the comments were the fact that it will not, it will not create more cigar bars. If it will not create more cigar bars, then let's identify a number of bars that we will allow in the state of Nebraska, cigar bars that we will allow in the state of Nebraska to operate, whether it's five, whether it's one, whether it's two. But this fact saying, oh there will never be anymore cigar bars in the state of Nebraska, the fact is all they have to prove is they have a Class C liquor license and their revenue from cigars

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or, as we have it right now, tobacco-related products has to be 15 percent, there's an amendment 10 percent of their gross revenue has to come from those products. And I'm sure that there are managers out there that own these bars, if this bill would pass, that within one year of the fact that they closed and no smoking in that bar, they will get to where they can prove the fact that their bar qualifies as a cigar bar. The issue is to saying, no, there will never be anymore of these, I mean, there are only going to be four or five, in my opinion that's not the issue. There can, once we pass the law, pass the statute there are individuals, there are individuals that will manage legally to get around it. I think that's a very important issue. Another thing in the conversation was in these cigar bars, these people that smoke cigars they don't inhale and it's healthy for them. But I'm sure that the person right aside of them is probably breathing in that secondhand, you know, cigar smoke. I think that's a real issue. I mean, we've tried because of health issues the fact that, you know, we're trying to make it a better place in Nebraska for the people, for the public. I think this is an issue that we're trying to develop something and make it as good as possible but we're going to be opening up a loophole where we're allowing some exemption. And once, you know, the fact is that this individual Class C liquor license has developed the amount of revenue that it takes for the Liquor Commission to allow them to have smoke in their bar, they've probably been closed for a year or two, but they can reopen as a smoke place. We really didn't designate, you know, bars as a smoke-free place, it's a work-free smoke environment for the workers there. That's the issue. And now we're trying to move in on the fact of how many dollars has to be generated from smoking products for them to allow the establishment to continue to sell and smoke in those environments. I think we're going down the wrong track. I have a real concern with this. But while I've got a little bit of time this morning, I've got another issue that is really heartbreaking to me. And it was an issue that was in the World-Herald, on the Sunday paper, it was about foster care. She didn't look like this when she went into foster care, and it's about this girl that was bitten by a dog. That really touches me. I know this has absolutely nothing to do with the cigar bars or anything like that but that's immaterial. I'm very much concerned with how things happened for this individual girl from Omaha and the fact, which I do have a bill in the Legislature which would require background checks for individuals that are driving or transporting these foster children that are in homes and go to visit their mother or parent or grandparents or anything like that, that they need to have a background check, a criminal background check. And the fact that this individual was transported at one time with the fact that the person was outright drunk. These things and a lot of you people here on the floor, the majority, have children. Things that affect a child in their younger years will affect them for the rest of their life. And, I guess, it would be the same with smoking. If children are brought up in a home where there's smoke, I'm sure these children are affected the rest of their life. Yes, we do allow smoking in the private home. But I think in respect to the children and the majority of the parents, you know, do not smoke around their children. And I really respect those individuals for doing that. I think we're addressing a situation today is the fact that are we going to start to allow some exemptions to take place just with this little four or five cigar bars? And it has almost

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been promised me the fact that this is all there's ever going to be. But I will guarantee you that is not what will happen. I would hope that they would never get anymore. But I think we're at a position right now where we can make a difference, we can make a difference for years to come. I think the fact that if we start to allow some little exemption just for these couple individuals, and I've heard many times it's not going to open up the flood gate. [LB355]

PRESIDENT SHEEHY: One minute. [LB355]

SENATOR STUTHMAN: I would hope that it wouldn't open up the flood gate but I will guarantee you one thing, when I was going through the debate of LB395 in which the majority of you people were not here on the floor at that time when we initially started that, it was, you know, we're just...just want to do this, we just want to do this. I've heard of the attempts of everyone trying to, you know, keep some of these smoking establishments open. Even to the fact where it had to be a contained building. But if there was a 2 by 4 that separated the buildings and you could put a pencil between those two 2 by 4s, the fact was that was not a contained building, that was two different buildings. So you could allow the smoking in the one side, which would be the smoking area, and the other side would be the nonsmoking area. But you could just go right across because it wasn't...the boards weren't nailed together on that situation. [LB355]

PRESIDENT SHEEHY: Time, Senator. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You have heard the opening on the motion to bracket until June 2, 2009. Members requesting to speak, Senator Wightman, you're recognized. Senator Wightman. [LB355]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I do rise in opposition to the bracket motion. I know that Senator Stuthman has talked about that we're going away from a smoke-free environment in the workplace. Frankly, because of the narrowness of the exception, I do not believe we will be doing that. If we have four or five, and I know the argument can be made that it may open up the possibility of new bars opening that could become cigar bars. But I think it's still very limited. I doubt if beyond Omaha and Lincoln we would ever have the number of customers needed to get to the 10 percent threshold. So I think that even with this amendment, if the bill passes with this amendment, and I'm going to propose a different amendment if we get by the bracket motion, that we still have preserved the integrity of the original intent of the bill which was to establish a smoke-free workplace. Because if there are only three or four places that would be able to qualify, and even if it's seven or eight across the entire state, there are plenty of other options where the people that might work in these cigar bars could work elsewhere. So I don't think we dare limit it till it becomes

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applicable only to a closed class. So I think you're always going to have the possibility that somebody else may be able to qualify under the act if it's finally passed. But as long as we can protect what I consider the integrity of a smoke-free workplace, and we've already created some exceptions, we have one with regard to smoke shops. And so I think this bill as it will be amended before I vote for it will still preserve that integrity. Thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Additional members requesting to speak, Senator Schilz, followed by Senator Stuthman, Senator Nelson, Senator Price, and Senator Howard. Senator Schilz, you're recognized. [LB355]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. I stand this morning in opposition to this bracket motion. I think that once again we are possibly missing the point here. I mean if we're going to sit and argue about the health effects of cigarettes and tobacco and things like that, then let's introduce a bill to outlaw cigarettes, tobacco, and things like that. Let's not take an exception to a rule and move about it in that manner. I just want everybody to know that, you know, I support the underlying bill. I don't support the bracket, and I would hope that we could move on and move forward. And I would ask you all to vote no on the bracket amendment. Thank you very much. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Schilz. Senator Stuthman, you're recognized. [LB355]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. And I want to thank Senator Wightman for a couple of his comments there. It just kind of leads into what I am trying to get across to members of the body here. Senator Lautenbaugh states it only deals with a couple, a couple of designated cigar bars. Senator Wightman says, well, maybe this could...there might be 7 or 8, and in a couple years it might be...might be eight or ten, but that's all, that's all it will affect. No. Once you open the gate and there is an opportunity, and there is an opportunity with this bill for people to establish the fact that they can have a smoking cigar bar. All it takes is a Class C liquor license and whatever may be decided on here today, is the fact that your revenue has to be 10 or 15 percent from cigarette or cigar products, tobacco products. That's all it takes to create that. And I don't think it says anywhere in there that if a bar that sells cigars, cigarettes, and liquor and is smoking right now but the only thing that's going to happen different, as of June 1, is you can't smoke in there, but within another year they can reopen as a smoking cigar bar because they have gained, they have accumulated, they have records to prove it, because of the way they manage their operation where within another year the Liquor Commission will allow them to open up again as a cigar bar that allows smoking. And again, it's a workplace. There's going to be individuals working in there unless the manager of it that owns it is going to work all day and all evening. It's going to be a workplace. But there's so many issues here that I just see this

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issue will be addressed a year after they have gone smoke-free. They can go to the Liquor Commission. It's all you have to do. Prove that 15 or 10 percent of your revenue came from tobacco products and you can reopen again. Because I don't see anything in this bill that states that any bar, any bar/establishment that has a Class C liquor license that has smoking now that will close...the smoking part will close June 1 of '09, it doesn't state in there that once you are not allowing smoking in the workplace you will never be able to have smoking in there again. This bill allows that to happen. It allows that to happen within a year afterwards because of proof of records. And no one has told me yet the fact that, you know, how can you get around that. If your records, honest records, and I trust everyone, the fact that they, you know, are submitting their records and then they will be able to open it up again as a smoking cigar bar. That is what I'm concerned with. I don't see anything in this bill that states that if your workplace, which is a bar, Class C liquor license, also selling cigars,... [LB355]

PRESIDENT SHEEHY: One minute. [LB355]

SENATOR STUTHMAN: ...cigarettes, you know, can never open up again as a smoking cigar bar. And it was just evident right now, the fact that we were only dealing with a couple and then now maybe it could be 7 or 8, and before this bill is passed, may be 10 or 12 or 100. But it's opening up the avenue for bars to continue to have a smoking environment. Thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Nelson, you're recognized. [LB355]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'll speak briefly. I rise in opposition to the bracket motion. I think we have a controversial bill here but I like the amendments that I see are filed that are coming up. I think that we can tighten this very narrowly and confine it pretty much to those that are in existence at this time. If you ever go into one of these cigar bars, there is a substantial investment there, especially in the form of a humididor. These are expensive items. And if we have amendments down the road that don't allow the sale of food and you can't use cigarettes to add to your 15 or 10 percent, then I think we will have a pretty tight bill. So I oppose the bracket motion. I think we should go ahead, move ahead on this bill with amendments. And I will yield the rest of my time to Senator Lautenbaugh. [LB355]

PRESIDENT SHEEHY: Senator Lautenbaugh, 4 minutes. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President and thank you, Senator Nelson. I'll be brief because I do want us to get this bracket motion to a vote so we know where we are on this thing. I'm not going to be like a broken record here. I feel like I've answered these questions. I'll answer them again. Especially with the amendment coming, these places are going to be required to generate 10 percent of their revenue

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from...not cigarette sales, and to have a walk-in humidor. So again we're being treated to the specter of somehow small bars across Nebraska are going to invest what amounts to tens of thousands of dollars and somehow create a market for cigars that didn't exist before so they could qualify for this ban. They may be desirous of that for all I know, but we don't create markets. They don't create markets. We can destroy markets, we're working on it now, but we don't create markets. Just because someone some place says, gee, I'd like 10 percent of my revenue to come from cigars, doesn't mean they'll have a population base to do that. These numbers, again, weren't pulled out of the air. They're based upon what existed prior to the ban when people were promoting the sale of cigars, and these are the revenue thresholds that the few places that existed were able to meet. The concerns that we're opening the door to some huge number of places, I have to be frank, are just a fantasy. Unless somehow we repeal the laws of supply and demand over the next few months of the session, it cannot happen, and we cannot do that. I would urge you to vote for this bracket motion and vote on the amendments for most of them as the bill proceeds. Thank you...or vote no on the bracket motion, excuse me. I want to be very clear on that (laughter), exceptionally clear for once. Please vote no on the bracket motion and look favorably on the upcoming amendments. Thank you. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Thank you, Senator Lautenbaugh. Senator Price. [LB355]

SENATOR PRICE: Call the question. [LB355]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease on the motion to bracket until June 2, 2009? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB355]

CLERK: 27 ayes, 7 nays, Mr. President, to cease debate. [LB355]

PRESIDENT SHEEHY: Debate does cease. Senator Stuthman, you're recognized to close on your motion to bracket. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. You know, it was kind of fun to listen to my almost seatmate in the culture corner here, Senator Lautenbaugh. He was going to be very brief and then he said, you know, vote for the bracket motion, and I thought that was really nice. I thought, finally he has seen the light, finally he has seen the light and said, you know...but then there is...then there's an individual here that's, whoa, whoa, wait a minute. Gave the old hand signals, you said something wrong. But the issue that I have is I don't think this should pass. I hear there's a fact that, you know, that there's going to be an amendment that they have to have a humidor and stuff like that, you know? I don't know much about a humidor. How

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big or how small do they have to be? It's just a humidity controlled environment, is what it is. It could probably only be the size of a suitcase that takes care of the cigars, because I'm sure cigars are fresh. They're not delivered every six months to these bars. I'm sure they're not. I'll bet they're on a weekly basis when they deliver these cigars, unless you're getting them from Cuba and depends upon when they send the ship over. But I just...I just think we need to bracket this motion until June 2 and I would like to ask for your support on this. This is an issue...and I don't like to repeat myself but the fact is we're starting to open the door up just a little bit, just for a few, but they got to have a humidior, they got to have a few other things. Their sales, their sales have got to be at a certain threshold. But every one of those situations can be attainable, in my opinion. So if you want to open it up, you know, in three, four years to have, you know, the bars with smoking again, I guess that's your decision, but I don't think that's a direction that we want to go. Thank you, and I would ask for a call of the house and I would have a board vote. And thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Thank you. [LB355]

SENATOR STUTHMAN: And I would ask for your support on this bracket motion. Thank you. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. There has been a call of the house. The question is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB355]

CLERK: 40 ayes, 0 nays, Mr. President, to place the house under call. [LB355]

PRESIDENT SHEEHY: The house is under call. All unexcused senators please report to the Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Cornett, would you check in. Senator Stuthman, all members are present or accounted for. Members, you have heard the closing on the motion to bracket LB355 until June 2, 2009. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB355]

CLERK: 10 ayes, 30 nays, Mr. President, on the motion to bracket. [LB355]

PRESIDENT SHEEHY: The motion to bracket is not adopted. The call is raised. We will now resume to floor discussion on amendment to committee amendment, AM805 to General Affairs Committee amendment, AM445, to LB355. Members requesting to speak: Senator Howard. Senator Howard, you're recognized. [LB355]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I appreciate Senator Stuthman's comments earlier, especially regarding children in foster care. We have a long way to go in ensuring that all children will be safe in their foster care

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placement. Two years ago I introduced a bill that state-licensed foster homes would be required to be smoke-free when foster children were present. These children come into care with enough issues to deal with without adding exposure to secondhand smoke. Yes, cigarettes are legal products, but where does one person's right infringe on another person's, especially that of a child? Unfortunately, Senator Joel Johnson was unwilling to include this bill in the smoking ban package that we passed two years ago. On the positive side, a number of agencies that provide foster care services have contacted me to let me know that they have made the decision themselves to restrict the exposure of foster children to secondhand smoke through internal regulations. I appreciate their concern for vulnerable children and I thank them for putting these policies in place. Thank you. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Stuthman, you are recognized. [LB355]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I just think the fact is that we're trying to make something probably better and I respect that. But the fact is, the fact is do we really want to open this up a little bit? And I'll guarantee you that I think once we allow this to happen other amendments, other bills in years to come will address that and they will say, you know, in 2009 they did pass a bill that just made the door ajar in allowing something to happen. But it's been...it's been quoted many times here on the floor the fact that, you know, this really just pertains to a couple or maybe a few more. We really don't know yet for sure and we're getting amendments that hopefully addresses a lot of this. Unless we get it nailed down to exactly what they want to happen, and that's going to be impossible, in my opinion, the fact is that there's only a couple things that have to be addressed if this bill would pass. I think we're dealing with a situation where there was an attempt made this year to allow, you know, counties, local form of government, you know, to opt out again. That bill didn't make it out of committee and I thank that for that...I'm thankful for that. But this one did make it out of committee. It's a prioritized bill. It's a priority of an individual and I respect that very much, but the fact is the issue before us is, are we going to allow smoking in the workplace for several or many designated businesses? That's what it really comes down to, that we're going to allow, you know, some smoking to take place because they meet certain requirements. That's the issue. That's the underlying issue. I thought we had it pretty well taken care of a couple years ago and I respected the fact that we allowed them, those that operated bars, workplaces, another year to get positioned for it, and I thank all of those businesses that have already done it. I was just told this morning, and I didn't read the Lincoln Journal Star or whatever magazine it was, that Lancaster County was thinking of going smoke-free on any county property. I think that's wonderful, I really do, and I think that's going to happen in a lot of areas. I served on the hospital board in Columbus area there, Columbus Community Hospital board, and the hospital is smoke-free. Then they went the whole grounds is smoke-free. So the individuals that want to smoke, and I respect them, if they want to they have to go out

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and cross the road to be on the other side of the property, and which some of them do. And if they want to, that's okay. But I think the issue is the secondhand smoke. Now maybe, maybe cigars are different. Maybe cigars, once you smoke it and it's burned, there's no pollutants left in that smoke. Maybe they're blowing a lot of smoke. [LB355]

PRESIDENT SHEEHY: One minute. [LB355]

SENATOR STUTHMAN: Now that's very possible, but I don't have any proof to say that, you know, people that breathe secondhand smoke, and I will say when I was a kid there were certain types of cigars that really did smell good. I will say that. But maybe we should pass a bill that those good smelling cigars can be used anywhere so it gets an aroma no matter where we are. But I think we need to get some more information as far as, you know, tobacco smoke, secondhand tobacco smoke. It was said that smoking cigars was healthy for the individual. That's because they never inhaled. And I think those are some... [LB355]

PRESIDENT SHEEHY: Time, Senator. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Karpisek, you're recognized. [LB355]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I just want to say that this is not a back door to the smoking ban. You all know I wish it was. Senator Stuthman talked about a bill coming up to let counties opt out. That was my bill and I'm not happy that it didn't get out of committee because it was the negotiation that happened last year. I understand why it didn't come out of committee. That's fine. That's how the committee system works and I understand. It was a fight last year on the floor and I guess that's all right. I don't think that this is the back way in to go. I still will say that I don't...although secondhand smoke is definitely a health concern, I don't think on this body that is what people are fighting this bill for. I think they're fighting it because they don't like to go to a bar or restaurant and come home smelling like smoke. Again, we can say all the negative things about secondhand smoke, smoking, everything to go along with it and I'll agree, I'll wholeheartedly agree. I agree with Senator Schilz, we're dodging around the subject. Then there should be a bill to make them illegal, which I would probably fight. But (laugh) let's be honest. I don't think that this is a back doorway in. I think these businesses, this is how they made their money. Senator Coash had said to me one time, well, if a bar...if we took away their ability to drink then I could say, well, then let's give them the ability to drink. The cigar bars, we took away their ability to smoke in the cigar bar. Again, I don't think it's the way in. I understand what Senator Stuthman is saying and it may look like the back door. I don't think it is. I think Senator Lautenbaugh is being very "genuous" here. I think he's trying to keep a few businesses

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still in business. When these businesses close, no one has to worry about getting secondhand smoke because they're closed. The employees...I still say, too, people do not have to work there. I think there's a lot of things that are said that we try to skirt around and make it sound the way we want it to sound because we're not being honest to just flat say what we want to say. I don't think I could ever be accused of not saying what I'm trying to say. So let's just keep it on the up-and-up, just say I don't like to smell smoke, I don't like to go home smelling like smoke, I'd rather put a business out of business than to go home smelling like smoke. I do think Senator Avery has stepped over the line of common sense on this one issue. Senator Avery, as I know, never owned a business. He worked for the university. I wonder how he would have liked the university coming and telling him what could happen in his classroom, how he could teach--oh, you can't say that, you can only say it this way. Again, Senator Avery and I talked this morning. It's nothing personal. I'm really, of course, upset about this whole situation. I think I read Senator Lautenbaugh said, bars out there that are trying to finagle a way around this, give it up, the fight is lost. I wish it weren't. And I hope that down the line it will prove that I'm wrong. But I think we're going to see a lot of businesses go out... [LB355]

PRESIDENT SHEEHY: One minute. [LB355]

SENATOR KARPISEK: Thank you, Mr. President. We're going to see a lot of businesses go out of business and this isn't the time that we can afford to have those businesses go out. We always wonder why we have such high taxes or we hear that all the time. Gosh, we can't gamble, we can't smoke, we can't do this, we can't do that, we're too moral. We'll let them go everywhere else to do it but then we're going to have to get money somewhere, folks. I don't think that we need to put businesses out of business. This will only save a few. I wish I could save them all but I can't. Let's just say what we really mean here. I don't think that it's a health concern for employees. Work there, don't work there, there's a lot of other jobs where you breathe different things. And I've worked on a farm as a young man. I know you breathe some things that aren't very good for you there either. Thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Nelson, you're recognized. [LB355]

SENATOR NELSON: Thank you, Mr. Speaker, members of the body. Senator Stuthman raised the question about what a humidior looked like, at least a walk-in, and I don't know if I used the right term there. I have a cigar store in my district. I wasn't aware of that till we started debate here last week, but I took the liberty of going up to that cigar store in my district on Saturday afternoon, walked in. There was nobody there at the time except an employee and a manager, but I must say this. There was not a hint of the residue of cigar smoke in there that afternoon. There may not have been many people smoking, but I almost have to say it was as fresh in there as the produce

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section of a Hinky Dinky store or, rather, a Hy-Vee store. And the humidior, if you look at the balcony, that room was about as wide as the balcony is and probably about 18 feet long, and there were a lot of very...boxes of cigars and boxes on display, and of course you maintain a certain temperature in there. But it had a glass door, just like we walk through here, and it was obvious to me it's a very substantial investment to put something like that in and the whole business there takes quite a bit of investment. So I just offer that information to those of you who have never had the opportunity and, with that, I would like to give the rest of my time to Senator Wightman. [LB355]

PRESIDENT SHEEHY: Senator Wightman, you're recognized. You have 3 minutes. [LB355]

SENATOR WIGHTMAN: Thank you, Mr. President. Thank you, Senator Nelson. At this time, I'm asking for permission to substitute another amendment that we have filed, AM827, which more nearly mirrors Senator Lautenbaugh's amendment but I think is more clear, and substitute that for AM805. Basically, what it would do, I think it clarifies by changing the placement of the words "which does not sell food" after "license," instead of later where it's thrown in with other exceptions. And further, it defines cigarettes so "except from the sale of cigarettes as defined in section 69-2702," so that would be the only purpose and the only way that it would change from Senator Lautenbaugh's proposed amendment, which isn't on the board yet. My understanding is he is agreeable that this be in place of his amendment. Thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Senator... [LB355]

SENATOR WIGHTMAN: So I'm asking for permission to substitute. [LB355]

PRESIDENT SHEEHY: So, Senator Wightman, you're asking for a unanimous consent. [LB355]

SENATOR WIGHTMAN: I am asking that AM827 replace AM805. [LB355]

PRESIDENT SHEEHY: Senator Wightman is requesting unanimous consent for the substitution for AM827 to AM805. Any objections? If not, so ordered. Senator Wightman, you're recognized to open on AM827. (Legislative Journal page 810.) [LB355]

SENATOR WIGHTMAN: Thank you, Mr. President. I discussed the changes I think pretty well upon my motion to substitute. As I say, I think it clarifies it a little bit by changing the placement of the word "which does not sell food." Senator Lautenbaugh's amendment would have included that with exceptions, but I think it's better, it reads better if we limit that exception or place that exception immediately after the words

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"license," that has a Class C liquor license which does not sell food. So part of my amendment is that. Part of the amendment is to reflect what Senator Lautenbaugh's proposal was in the amendment that has not come up yet. We're changing it from 15 to 10 percent, so we are lowering that, but we are taking out the sale of food. We're saying that that 10 percent threshold cannot be reached by the sale of cigarettes. Now they can sell cigarettes on the premises and that should be understood, and my amendment provides that it would have to have a walk-in humidor on the premises, which I think again very much limits the exception. Because my understanding is that's a fairly substantial investment and somebody that isn't pretty sure that they could meet that test down the road would not likely place that walk-in humidor in their premises. So...and then as I say, it does define cigarettes according to previous definitions or a previous definition in Nebraska statutes, which is set forth in Section 69-2702, which does define it. It clearly takes out...it's got to be wrapped in a paper product as opposed to a tobacco product, which cigars are. So that would be the purpose of the amendment. Thank you, Mr. President. [LB355]

PRESIDENT SHEEHY: Thank you, Senator Wightman. You have heard the opening of amendment to committee amendment, AM827 to AM445. Mr. Clerk, you have items for the record. [LB355]

CLERK: I do, Mr. President. I have a Reference report referring certain gubernatorial appointees to standing committee for confirmation hearing. Revenue Committee, chaired by Senator Cornett, reports LB59, LB127, LB161, LB296, LB336, LB466, LB485, LB536, LB539, LB570, and LB613, those reported indefinitely postponed. Amendments to be printed: Senator Karpisek to LB403; Senator Lautenbaugh to LB355; and Senator Avery to LB355. Mr. President, an announcement: Judiciary Committee will have an Executive Session at noon today in Room 1126; Judiciary, Exec Session at noon, from 12:00 to 1:30 today in Room 1126. Senator Howard would like to add her name to LB38, Senator Cook to LB633. (Legislative Journal pages 810-812.) [LB59 LB127 LB161 LB296 LB336 LB466 LB485 LB536 LB539 LB570 LB613 LB403 LB355 LB38 LB633]

And a priority motion: Senator Nordquist would move to adjourn the body until Tuesday morning, March 24, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Tuesday, March 24, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.