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Floor Debate
February 03, 2010

[LB190 LB200 LB650 LB650A LB685 LB705 LB723 LB725 LB735 LB770 LB787 LB788
LB816 LB821 LB865 LB888 LB912 LB914 LB1103 LR310 LR311]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for this, the nineteenth day of the One Hundred First Legislature, Second Session. Our chaplain for the day is Senator Carlson. Please rise.

SENATOR CARLSON: (Prayer offered.)

SENATOR LANGEMEIER: Thank you, Senator Carlson. I call to order the nineteenth day of the One Hundred First Legislation, Second Session. Senators, please record your presence. Record, Mr. Clerk.

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

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

CLERK: I have no corrections, Mr. President.

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

CLERK: Mr. President, your Committee on Enrollment and Review reports LB788 and LB816 to Select File, one of which has Enrollment and Review amendments attached. I have notice of hearings from the Judiciary Committee and from the Government, Military and Veterans Affairs Committee, signed by Senators Ashford and Avery respectively. That's all that I have, Mr. President. (Legislative Journal pages 429-431.) [LB788 LB816]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll now to proceed to the first item on the agenda, LB650A. [LB650A]

CLERK: LB650A, a bill by Senator Christensen. (Read title.) [LB650A]

SENATOR LANGEMEIER: Senator Christensen, you're recognized to open on LB650A. [LB650A]

SENATOR CHRISTENSEN: Thank you, Mr. President and fellow colleagues. I want to be real clear on this A bill here. It does not touch General Funds. This has a \$38,000

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expenditure which is, one, to update signage onto controlled-access highways to indicate the prohibition of operation of minitrucks. The department has estimated a one-time cost of \$20,000 from their cash funds. They're using \$84 a sign and 240 signs. Also, the Department of Motor Vehicles impact, one-time cash fund cost of \$18,000 for reprogramming vehicles title and registration system and the plate management system and the specialty plate system. They estimate 240 hours of program at \$75 an hour, to come up with their \$18,000. So again, this has an A bill of \$38,000 but it only is cash funds, has no impact upon the general expenditures of the Legislature. So I ask for your vote to get this A bill caught up with the minitruck bill, LB650, and advance this to Select File. Thank you. [LB650A LB650]

SENATOR LANGEMEIER: Thank you, Senator Christensen. You have heard the opening on LB650A. The floor is now open for discussion. Seeing no lights on, Senator Christensen, you're recognized to close. Senator Christensen waives closing. The question before the body is, shall LB650A be adopted? All those in favor vote yea. All those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB650A]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB650A. [LB650A]

SENATOR LANGEMEIER: LB650A does advance. (Doctor of the day introduced.) We'll now proceed on with today's agenda, LB200, excuse me, LB190 first. [LB650A LB190]

CLERK: Mr. President, LB190 is on E&R for engrossment. Senator Avery would move to return the bill for specific amendment, specifically...well, Senator, I have two amendments. I understand you want to withdraw AM1677. Is that right? [LB190]

SENATOR AVERY: That is correct. [LB190]

CLERK: Mr. President, Senator Avery would move to return the bill for specific amendment, AM1715. (Legislative Journal page 416.) [LB190]

SENATOR LANGEMEIER: At this time, I would remind the body we are on Final Reading for LB190. Senator Avery, you are recognized on your motion to return for a specific amendment. [LB190]

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. I am proposing to pull this LB190, the DNA testing bill, from Final Reading in order to substitute AM1715 for AM1677. You may remember that AM1677 would have made all convicted felons sentenced to probation to pay for their own testing. But there are still lingering doubts from many of us in this body and from the Appropriations Committee about the out-year costs of DNA testing for incarcerated felons. And that is after the funds that have been committed by the Attorney General's Office expire. So we have been meeting about this and AM1715, which I'm asking to replace AM1677, I think will

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assuage all of those concerns. AM1715 requires that all individuals convicted of a felony must pay for their own DNA test. This is not an unreasonable nor an excessive request. Convicted felons already must pay their court costs and they have to pay other costs associated with their crimes. And this additional \$30 maximum DNA fee is not unduly burdensome. Again, AM1715, which is before you here, completely removes any and all future General Fund responsibility for this program by making individuals convicted of a felony pay for their own DNA test. Also included in AM1715 is a provision that would strip the Attorney General from the definition of law enforcement in the bill. After consideration and discussions with others, questions were raised about the wisdom of giving the Attorney General both investigatory and adjudication powers within the same bill. The concern was that we didn't want to have the prosecutor also involved in handling the investigation evidence. The Attorney General does not oppose this and does not believe that this in any way diminishes the effectiveness of the underlying bill. Again, with this amendment there will be no fiscal impact to the General Fund now or in the future. I urge that you approve this. Thank you, Mr. President. [LB190]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the opening on the motion to return LB190 to Select File for a specific amendment. The floor is now open for discussion on that motion. Senator Heidemann, you are recognized. [LB190]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. Just briefly, there was discussion on this, the cost of this LB190 at earlier debate on Select File...on General File actually. I had concerns and I think that I need to stand up here and let everybody know that those concerns have been met. We've worked with Dave Cookson out of the Attorney General's Office. There was concern with ongoing costs. With the amendment, AM1715, those concerns are alleviated and have gone away. So I support returning LB190 to Select File. I support the amendment then, AM1715, and then I will support LB190 once again on Final Reading. Thank you. [LB190]

SENATOR LANGEMEIER: Thank you, Senator Heidemann. Senator Wightman, you're recognized. [LB190]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. If I could, I would like to address a question or two to Senator Avery. [LB190]

SENATOR LANGEMEIER: Senator Avery, would you yield? [LB190]

SENATOR AVERY: Yes, I will. [LB190]

SENATOR WIGHTMAN: Senator Avery, while I would support what you're doing here and certainly it will lessen the fiscal impact, and I know you're saying that it will eliminate the fiscal impact, I'm assuming that it may not totally eliminate the fiscal impact. And the

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reason I suggest this is that many times people charged with felonies do not have any money and they don't pay the court costs because there's no money available. Your bill would still require that everyone that's convicted of a felony or charged with a felony...well, convicted, I assume, would have a DNA exam. Is that right? [LB190]

SENATOR AVERY: That is true. They would...the sample would be taken on admission. And, I think that you probably would find that most of these convictions will have multiyear sentences, so there would be plenty of time for the felon and/or the family to come up with \$30 because this would be a condition of release. [LB190]

SENATOR WIGHTMAN: Okay, it would be a condition...so eventually it would be paid, but there might be money paid out in the meantime for the test because the test would have to be paid for, I assume. [LB190]

SENATOR AVERY: That is correct. The test would be paid for. But the State Patrol has quite an inventory of kits. The only thing that you're talking about that might still be lingering would be \$1.77 for the cost of the cheek swab. [LB190]

SENATOR WIGHTMAN: Okay. Well, I will support the bill. I do question that it would be a total elimination of expenses that the state might have. But I think that the intent of LB190, to have that on file down the road, may save a lot of money in law enforcement. So I would enforce...I would support the bill and this amendment. I do have some questions that it would totally eliminate some expenditure of money on the part of the state. Thank you, Mr. President. Thank you, Senator Avery. [LB190]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator White, you're recognized. [LB190]

SENATOR WHITE: Thank you, Mr. President. I rise to talk about something that's at point right now, though not the merits of Senator Avery's bill, which I will support. One of the real problems I've noted in three years in this body and as I finish my fourth and final session, I would urge for the consideration of all members is the problem of the fiscal note. We are an institution, we are the only deliberative institution in the state that debates and proposes laws. And yet I find over and over again that a fiscal note, issued by people that I have never met, containing opinions that I cannot question or refute because there is no mechanism to do that, can absolutely end the future of a bill without any kind of a hearing. Now as term limits take further and further hold on this body, we will inevitably lose power to the executive branch and more importantly to the bureaucracy that support the institution. The problem with fiscal notes are they are used from time to time as political axes. That if you have a vested interest in the bureaucracy, whether it is through the university, whether it is through Health and Human Services, whether it is through Department of Administrative Services, wherever you are, if they don't like or an individual doesn't like the actual material facts of a bill all they have to do

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is issue a fiscal note with a devastating number behind it and the bill is effectively dead, particularly in times like this. What I propose to you, and I'd ask you as a body to consider as we move through the rest of this session, is that every senator should, as they have a right to designate a priority bill, should have a right to challenge any single fiscal note, just one. And what should occur is if a challenge is made by that senator then the committee that issued the bill shall forthwith hold a hearing in which the person or persons who prepared the fiscal note shall come forward and testify about how they did it and what their assumptions were. The senator who has designated that fiscal note has a right to participate with the committee in questioning the person that issues the fiscal note, and has the right to introduce evidence refuting it. The committee then issues a simple report stating whether they accept the fiscal note as written, whether they have serious questions about it, or if they think the fiscal is not in fact sound and here's the real fiscal impact. What that will do, my fellow senators as you watch this go through, is take away the automatic right of veto by a bureaucracy that will produce a fiscal note. I have never seen an effective debate in three years on the assumptions in a fiscal note, in fact they're largely beyond debate. That's why we have the saying, death by fiscal note. And what I propose to you is this, we won't have that many challenges. And the few that we have will be very, very helpful. Because if a bureaucrat is tempted to kill a bill by fiscal note and they have to confront and support that decision once, they will be very careful not to overstate fiscal impacts in the future or if they do, to at least have a basis to justify it. What I suggest to you, and it means nothing to any bill I will ever offer again, so I do say this from complete lack of any kind of political axe to grind at all. I tell you right now you need to take control of the fiscal note process to ensure real democratic deliberation, otherwise you increasingly cede the responsibility voters put in you to determine the state's policy to people who are not elected and who will never be elected. [LB190]

SENATOR LANGEMEIER: One minute. [LB190]

SENATOR WHITE: And that is not acceptable. I thank you for your patience. I address this because Senator Avery, even now, struggles with the accuracy of a fiscal note on a bill that is really in the best interest of the state. I think there's a better way. I hope that as a body as you move forward you find it. Thank you, Mr. President. [LB190]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Council, you're recognized. [LB190]

SENATOR COUNCIL: Yes, thank you, Mr. President. I share Senator White's opinion with regard to the merits of LB190. But I have genuine concerns about the payment obligation here and how lightly the ability of a convict to pay this fee is being taken. Would Senator Avery yield to a couple questions? [LB190]

SENATOR LANGEMEIER: Senator Avery, would you yield? [LB190]

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SENATOR AVERY: I will. [LB190]

SENATOR COUNCIL: Yes, Senator Avery, the amount \$30 has been bantered around this morning. What does that \$30 represent and where did that figure come from? [LB190]

SENATOR AVERY: Well, let me start with where the figures come from. They come from the State Patrol because they are the ones that buy the kits and actually know the cost of administering these tests. Twenty-five dollars of the \$30 we're talking about would be the cost of the actual testing kit. An additional cost, if the felon should choose a blood sample it would cost \$3.83. If the prisoner should choose the cheek swab it would be \$1.77. So it actually never reaches \$30, that's just rounding up. [LB190]

SENATOR COUNCIL: Okay, because my concern is that in other places where defendants, convicted individuals are provided an opportunity for waiver in the case of indigency, there are no indigency provisions here. And in response to the question from Senator Wightman, you indicated that you believe that the convict or his family could come up with the \$30 at some point in time. The concern here is that this bill also relates to people who have been sentenced to probation. And suggesting that their ability to be released from probation notwithstanding their completion of maybe all of the requirements of probation, except the ability to pay this fee, would result in them remaining on probation. Is that...Senator Avery, am I correct in my understanding of that? [LB190]

SENATOR AVERY: I'm not sure if you are. I can tell you though that two things that are pertinent here--probationers have all kinds of costs associated with probation. This would not be an unreasonable burden of \$30 added to their already costs that run into the hundreds in most cases. Second thing is that prisoners do have opportunities in prison to work and earn money. They use that money to buy cigarettes and things of that sort. But...and there is a way for them to earn \$30 over the course of their incarceration. [LB190]

SENATOR COUNCIL: All right. Well, you know, the fact is that in many cases some of the costs...much of the cost of probation can be waived. In fact, in the first instance, the judge, upon the basis of the defendant's economic status, can waive the monthly probation fees. These fees are oftentimes waived in the event of indigency. And I just think it's not consistent to not have a method for waiving it in the event of indigency with regard to DNA sampling. [LB190]

SENATOR LANGEMEIER: One minute. Thank you, Senator Council. Those wishing to speak, we have Senator Heidemann and Senator Harms. Senator Heidemann, you're recognized. [LB190]

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SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I thought I had to stand up and say a few words and defend our fiscal note process. It was stated that we don't have control of the fiscal note process. And I will say that I do believe that we do have control of the fiscal note process, not only have control but that we do actually a very good job at it. We have heard in the last couple of years, the term has come up but I had never heard it before, death by fiscal note. And I'm going to stand up here and say if a bill has...runs into trouble because of money, it's not because of the fiscal note, it's because of the fiscal impact that that bill has. I would...if anybody in this body has questions on the fiscal note process, you need to go down to the Fiscal Office and spend some time with these people. There's not a better group around. And the way the fiscal process works, the note process works, is if a bill has a fiscal impact it goes out to the agency to find out what it's going to cost. Then it goes to the Fiscal Office and they examine that and they dig into it. And they either agree with it or disagree with it, and it will be stated on the fiscal note. And if you take the time to understand the fiscal note, if you take the time to read it, you will understand that we do have control of it. I think it is a good process. You have a group of people down in the Fiscal Office that are nonbiased, nonpartisan and very admirable people that are doing a very difficult job. And if you do have trouble, as I said when I started this conversation, I challenge you to go down there, get to know these people, get to know the process and I think you will become a lot more comfortable with it and understand it. And I think that's the key word, to understand it. And once you do, you will realize that the process we do have does work and we do have control of it. Thank you. [LB190]

SENATOR LANGEMEIER: Thank you, Senator Heidemann. (Visitors introduced.) Returning to discussion on the motion to return LB190 to Select File for a specific amendment. Those wishing to speak, we have Senator Harms, and Senator White. Senator Harms, you're recognized. [LB190]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator White, when I first came in here to the Legislature and got on the Appropriations Committee I didn't really have a full understanding about how they determined the cost and those sorts of things. But as time progressed and I began to understand it and began to see the people who came before the Appropriations Committee, brought by the fiscal analyst staff, I'd have to tell you, colleagues, that I've been very impressed with them. They're bright, they're articulate and they really zero in and burrow down into the facts and into the figures. And so when I've had some questions about the fiscal side of it or fiscal note, I just simply go to them and say, hey, will you please explain this to me so that I can have a better understanding. And when I walk out I have a better understanding. And I also realize that they are...they do a great job. And so I would echo exactly what the Chair of the Appropriations Committee has said, Senator Heidemann, that if you have a question or a concern, go talk to them. Mike Calvert and his staff are great folks. They do great work. They've helped us get through some very difficult times in trying to

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decide on our budgets. And they are open. So I would encourage you to do this because they are good and they will help you better understand it. And then if you still have some problems then you can challenge that. But I think once you have the discussion I don't think you probably will. So thank you, Mr. President. [LB190]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator White, you're recognized. [LB190]

SENATOR WHITE: Thank you, Mr. President. I really appreciate Senator Harms and Senator Heidemann's comments. But what I would urge you to remember is the Fiscal Office, however competent, however detached, works on assumptions provided from other agencies. I have had bill after bill where I've had huge, adverse fiscal notes that came from the university and were not really challenged, nor is there a mechanism to challenge them. I've had them from Department of Administrative Services. The information that the Fiscal Office relies on comes from other parties, sometimes executive branch, sometimes independent agencies. I had provided information once that said the state should have an energy audit. We got a fiscal note of incredible expense that just to have an audit that we found out later would be provided for free by NPPD or OPPD on most structures. So what I am saying is not so much that our people who work for us have a problem. I'm not saying that, Senator. I'm not attacking the integrity of the Fiscal Office here. What I am telling you though, like any accountant, like any fiscal person their numbers are only as reliable as the information they are provided. And there are fundamental assumptions that they must accept as true when they get information from the executive branch, from Health and Human Services, from the university that have an impact on the numbers that we give. The thing about a deliberative democracy, the thing about the judicial system as well is nobody gets to have a determinative impact without being willing to stand up and say how they came to it. This doesn't mean that they lack integrity. All kinds of witnesses who are perfectly full of honesty and integrity and good character are subjected to routine cross-examination. They can be wrong. They can make an assumption that's not accurate. They can assume a fact they relied on that is not true. The process is not a matter of whether they're good people or whether they have integrity. The process is in this case did they rely on false logic or false information. And so all I urge the body to say is as each of you gets a fiscal note, while the Appropriations Committee may feel comfortable that they can answer, that they can have integrity, I am unaware of a real process with real meaning where we can challenge that if you are not on Appropriations. And I will tell you that that is a hole in the system. And it does not attack integrity nor does it attack the authority of the Appropriations Committee or the work that those people do. It simply says anybody that has that much influence on a bill, whether it passes or doesn't pass, by determining the fiscal impact, and what Senator Heidemann said is it's the impact. Well, that impact is judged only by the accuracy of the fiscal note. The bill may, in fact, have a positive impact but have a note that says its negative. And we have no mechanism whatsoever that I am aware of where, on open records in front of the public

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so the public can also hear and determine, and remember, Senator Heidemann and Senator Harms, the public is the second house in the Legislature, there is no public forum that we can talk and debate. This is not an attack on the integrity of any individual, it is an observation that there is a hole in our system where essential public policy is being made not in the open, not through open testimony, not through questions of elected representatives, but is being made quietly in offices by people who work sometimes for us and sometimes for the executive branch. That is not the best method to examine whether or not the policy and the assumptions are accurate and in fact are consistent with the public good. It is not, again it is not an attack on any individual. [LB190]

SENATOR LANGEMEIER: One minute. [LB190]

SENATOR WHITE: Thank you, Mr. President. [LB190]

SENATOR LANGEMEIER: Thank you, Senator White. Seeing no other lights on, Senator Avery, you are recognized on your motion to return LB190 to Select File for a specific amendment. [LB190]

SENATOR AVERY: Thank you, Mr. President. This does what we've all been trying to achieve on this bill. I apologize that it has been such a torturous path to get here. But this is, I think, the best we are going to be able to do to reduce the fiscal impact to zero or nearly zero. And I urge you to vote yes on this. Thank you. [LB190]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the closing on the motion to return LB190 to Select File for a specific amendment. The question before the body is, shall it return? All those in favor vote yea. All those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB190]

ASSISTANT CLERK: 43 ayes, 0 nays on the motion to return the bill, Mr. President. [LB190]

SENATOR LANGEMEIER: The motion to return is adopted. Senator Avery, you are recognized to open on AM...the bill does return. Senator Avery, you are recognized to open on AM1715. (Legislative Journal page 416.) [LB190]

SENATOR AVERY: Thank you, Mr. President. I'm not going to belabor the point. I have explained it in some detail. This will simply reduce the fiscal note to nearly zero if not zero. It will put the responsibility for paying for these testing kits and for the test itself on the convicts. And I think it is reasonable for us to do this. And I urge you to vote yes. Thank you. [LB190]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the opening on

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AM1715 offered to LB190. The floor is now open for discussion. Senator White, you are recognized. [LB190]

SENATOR WHITE: Thank you, Mr. President. And I want to explain something right now because it's very important and it shows a flaw in our underlying assumption. Senator Council will address this as well. We are concerned about \$30 a prisoner having an adverse fiscal impact. Okay. And as I read it a person's eligibility for probation, the alternative of which is incarceration, is determinable on whether they can pay the \$30. And it's not optional for the judge. Okay, now we can talk about equal protection, rich and poor. But that's not what I have raised this issue on. Here we have a perfect example of a fiscal note changing policy, the fear it may have adverse fiscal consequences, and yet that fiscal note says nothing of the cost of incarcerating that person if they can't pay the \$30. And I will tell you right now I think across all classifications of prisoners it's \$28,000 a year to house a prisoner. So we've just changed policy because we're afraid of a one-time fee of \$30 when the consequences of a person not being able to pay that is that they're going to be incarcerated. Now I think in Douglas County, and Senator Council will know this number better than I, the actual cost of housing a prisoner is well in excess of \$100 a day. Now what's the real fiscal impact? What you have just seen here played out in front of you is policy being changed out of fear of fiscal impact and yet, even as we do it, we may, because we don't have a good handle necessarily on the fiscal impact, increase the actual cost to the state and to the counties by a substantial amount. Every prisoner that can't pay \$30 is going to go to jail. And every day we're going to spend a lot more than \$30 to house them. Is that really the fiscal consequences we want? Thank you, Mr. President. [LB190]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Council, you are recognized. [LB190]

SENATOR COUNCIL: Yes, thank you, Mr. President. Senator White has referenced some of the concerns that I have. And if you look at the underlying bill, LB190, when we talk about costs associated with probation, the imposition of those costs are discretionary. The judge has the discretion whether or not to impose those costs, impose a fine particularly in association with probation. And if you look at the probation section, when it calls to pay the cost to determine the presence of drugs or alcohol, psychological evaluations, offender assessment, dah, dah, dah, if such offender has the financial ability to pay for such services. We take that into account, an individual's financial ability to pay with respect to some of the most critical terms of a probation sentence, yet for purposes of maintaining a DNA sample base we're willing to ignore an individual's financial condition and ability to pay in order to collect that and save the associated cost. I would just, you know, suggest to the body, as Senator White has indicated, that this may result in increased costs for individuals who simply do not have the ability to pay the costs of this sample. As minimal amount as it may appear at this

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point in time, it does not also contemplate any increases in these costs that may occur over the course of time because the language is very specific--all costs associated with the DNA sample. So we don't know what amount it is that these individuals are being...will be expected to pay over the course of this legislation being in effect. But what I do know is that there are individual offenders who simply do not have the financial ability to pay particularly all of the costs associated with probation sometimes when they are probation-eligible individuals. And this amendment says that before an individual is released from probation they must first pay the cost of the sample. Now it's not necessarily true, Senator White, that that individual would be jailed, but they certainly would have their probation extended, which has costs associated with probation supervision of that individual. So I think we need to take those costs into account when deciding on whether to advance LB190 with AM1715. [LB190]

SENATOR LANGEMEIER: Thank you, Senator Council. Seeing no other lights on, Senator Avery, you are recognized to close on AM1715. [LB190]

SENATOR AVERY: Thank you, Mr. President. I appreciate the questions raised by Senator White and Senator Council. But I think that we have to recognize that there are costs associated with probation. Probationers already are required to pay costs and those costs are much in excess of \$30. This...I don't think it would be impossible for most of the probationers to come up with an additional \$30. With respect to those who are incarcerated, they have opportunities to work and to earn a little bit of money. And that can provide them with the means to pay the \$30. This is a good bill as I think most of us recognize. We have done all we can to bring the fiscal impact to the state down to zero or near zero. And I think that we cannot do better than what we have already done. And I urge you to vote yes on AM1715 and then let us get this back on Final Reading. Thank you. [LB190]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the closing on AM1715 offered to LB190. The question before the body is, shall AM1715 be adopted? All those in favor vote yea. All those opposed vote nay. Have all those voted who care to? Record, Mr. Clerk. [LB190]

CLERK: 37 ayes, 2 nays, Mr. President, on the adoption of the Select File amendment. [LB190]

SENATOR LANGEMEIER: AM1715 is adopted. Senator Nordquist for a motion. [LB190]

SENATOR NORDQUIST: Mr. President, I move LB190 to E&R for engrossing. [LB190]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. The ayes have it. LB190 is advanced. Mr. Clerk, items. [LB190]

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CLERK: Thank you, Mr. President. Hearing notices from Health and Human Services and Transportation and Telecommunications Committees signed by their respective chairs. Transportation Committee, chaired by Senator Fischer, reports LB723, LB787, and LB914 to General File. The Executive Board, chaired by Senator Wightman, reports LB685 and LB770 to General File with amendments attached. And Banking Committee, chaired by Senator Pahls, reports LB888, and LB912 to General File. That's all that I have, Mr. President. (Legislative Journal pages 431-434.) [LB723 LB787 LB914 LB685 LB770 LB888 LB912]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. (Visitor introduced.) Mr. Clerk, continuing to LB200. [LB200]

CLERK: Mr. President, LB200, a bill previously discussed by the Legislature. Originally introduced by Senator Janssen. Yesterday's debate, Senator Janssen offered AM1720. Senator Coash moved to amend, FA60 that was adopted. Pursuant to that action, Mr. President, I have a priority motion. Senator Janssen would move to reconsider the action in the adoption of FA60. [LB200]

SENATOR LANGEMEIER: Thank you. Senator Janssen, would you give us a two minute reopening on LB200 first. [LB200]

SENATOR JANSSEN: Yes, thank you, Mr. President. LB200 seeks to repeal the helmet law as we know it in Nebraska for those people ages 21 and above. It still mandates that people that are 20 and below would wear a protective helmet. Nowhere in the law does it say that you cannot wear a helmet. Again, I'd like to reiterate that this is not an antihelmet law. For me it's a philosophical belief that it's not government's right to tell us what we can and can't do in this particular arena. I know that several of my colleagues think otherwise and that's fine. Like I said, it's a philosophical debate. I appreciate the debate we've had so far on this. And I appreciate the encouragement actually from those that are with me and also those who are not that have said this is an important public policy and it needs to be heard. With that, Mr. President, I'll yield the balance of my time. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Janssen. As the Clerk has stated, there is a motion to reconsider offered by Senator Janssen. You're recognized to open on your motion to reconsider. [LB200]

SENATOR JANSSEN: Thank you, Mr. President, members. I filed a motion this morning to reconsider FA60. I have talked with Senator Coash about this and will yield him some time before I finish here. Yesterday, I came here and when I got home I talked to my fiance' and she pointed out to me that she thought I did a good job yesterday and some things this or that. And she also pointed out to me that I was wearing a blue shirt with

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this same suit and I had too many competing colors going on yesterday. Had a gold tie and I'm not supposed to wear a dark shirt under a lighter suit. I was unaware of this and I didn't believe her so I checked with another female who also said, yes, Senator, you probably shouldn't have worn that blue shirt under there. So I made a mistake. So I wore the same suit today, had her pick out the shirt and the tie. And now there's no more competing colors. I felt that yesterday we kind of had a lot of competing interests so I thought it relevant to bring up. FA60 was competing with AM1720. It was put together as a floor amendment which a lot of times those are put together somewhat hastily. In looking at it there is really no long-term care specific to this. It's something that I'd be willing to look at down the road. But at this time I would move to take that off. I would ask those that are supportive of the helmet repeal to work with me on taking this portion off. The insurance thing will still stand in AM1720 as I originally introduced it. My intentions today are to have this removed, move forward with debate. I see there are other floor amendments that have been filed. I was not aware of those. I was not approached about those. I'm not aware of any filibuster movement, but again I do plan on opposing all the amendments other than AM1720 for today and am willing to work with anybody in a meaningful way to make this bill better between General and Select. But it would be my goal today to move forward and get this on to General with just AM1720, with FA60 moved off of it. And with that, Mr. President, I'd yield the balance of my time to Senator Coash. [LB200]

SENATOR LANGEMEIER: Senator Coash, 7:40. [LB200]

SENATOR COASH: Okay, thank you, Mr. President. Good morning, members. I appreciate Senator Janssen giving me some time to address his reconsider motion on my floor amendment from yesterday. First of all, members, I want to make the record clear. FA60 yesterday was not intended to derail LB200. It was not intended to burden riders. Shortly after the passage of FA60 we got word that, and Senator Fulton illustrated this, there would be chaos. Long-term care insurance, as indicated in FA60, has a lot of moving parts to it and we got to work through those. FA60 was always about assuring those who ride and choose to ride without a helmet protect themselves to the point where their choices don't put a burden on the rest of us as taxpayers. I still believe that that should be the policy of this state. But I also believe that those who ride should decide but there are limits that need to be in place. Senator Janssen and I have talked about this issue at length. He has indicated his desire to let LB200 live or die on General File with his AM1720 and without FA60. I told him I would support this. It may die today, we'll see what happens. The problems that we have found since our discussion yesterday are this, you may or may not be able to write a policy that's tied to traumatic brain injury. You may or may not be able to get a med pay policy that would cover a rider to the extent that I think that they should be covered. But I'm not giving up on this. And I spent this morning working with members of the insurance agencies in how we can take this bill and make sure that coverage is provided to the extent that taxpayers will not have to pick up the burden for a traumatic brain injury. Now I've talked

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to Senator Janssen about this. I may bring this back on Select File, and if I do that I'll work with him before I do it. I won't make any surprises with him. And if I can get something put together by the time this hits Select File I will. And it will be a much more thoughtful discussion...or thoughtful proposal than FA60 was. And so I'm going to work diligently between now and Select File, if we make it that far, to bring you an amendment that will work, if that's possible. I'm not going to spend much more time talking about LB200 today. I believe that the body has made...just about every one of us have made our feelings clear on this. And we've had debates on freedom, we've had debates on choice, and we've had debates on safety. And all of those debates are valid. But I'm going to save my issue when I have something thoughtful to bring in front of you. Thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Coash and Senator Janssen. You've heard the opening on the motion to reconsider FA60 to AM1720. The floor is now open for discussion. Those wishing to speak, we have Senator Harms, Lathrop, Gay, Janssen, and Hadley. Senator Harms, you're recognized. [LB200]

SENATOR HARMS: Thank you, Mr. President and colleagues. I want to talk just in general today about LB200, AM1720 and then the additional consideration from Senator Coash. But before I do that, I want to take a moment to apologize to Senator Gay. Senator Gay, I guess, yesterday when you were doing your discussion I didn't have the professional courtesy to sit down. So I was standing up. And I've been told that the only thing that people saw was an old man's aging bald head, which is embarrassing. (Laughter) So I will make sure the next time you're up I'm going to behave, I'm going to listen and I will not do that, I promise that. I'm still concerned, colleagues, and I want to share some information with you. Yesterday I gave you some data and some statistics about how the public views. And that was done in 2004. Let me give you some of the later data that's occurred and that was in the year of 2008 and when MADD did a survey. And what they discovered was, I'm going to give this to you by your Congressional district so that you know when you go home what the majority of the people feel in your district about this issue, about this issue of changing and repealing the helmet law. And this is the question that they asked, Should the Nebraska law requiring motorcycle helmets be repealed or continued? And the answer could be continued, repealed, not known, 78 percent of all the people in Nebraska that they surveyed said leave that law alone. They don't want it repealed. Yesterday I told you it was...in 2004 one study showed 89 percent, one showed 79 percent, and I said I don't think it's probably changed much, but I didn't have any facts. I have those today at least for you to consider, 78 percent of the people in this great state tell you they don't want this to happen. District 1, Congressional District 1 says 75 percent; District 2, 78 percent; and what really surprised me in the district that I live in, Congressional District, 79 percent say don't touch this. So the average is 78 percent. And what you're going to find is exactly the same thing that Senator Ben Nelson said. And I'm not being critical of him. But what the public has said, you're not listening to us. We are unhappy with the

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fact that we didn't want health insurance changes. When you go home you're not going to talk to a select group of people, you're going to be talking to the people, a majority of the people in your district, in your community that will not agree with this decision. Let me go on further to clarify a couple of things, if I might, in regard to this issue. In some studies that have been done it has indicated that all states that have weakened or repealed helmet laws have experienced an increase in fatality rates. And what I said yesterday, if you recall, that when we make this change and five years we come back and we address this issue, I hope it's not a tragedy for this great state when we finally say, you know what, we made a mistake. We have more people who have killed themselves or been injured or we have more serious injuries. I object to that. There are a lot of studies that you can look at, a lot of research that can show you both pro and con. But I'll tell you now, folks, colleagues, there are more research studies that show you that without a helmet it is entirely dangerous to you and your health. Let me show you or let me discuss something international. This is not the only place in the world that this discussion is taking place. It's also taking place internationally. It's taking place in other parts of the world. And what a study showed in England... [LB200]

SENATOR LANGEMEIER: One minute. [LB200]

SENATOR HARMS: ...and they took all the studies that they could put together to try to determine whether a helmet was good or whether it was bad, whether it was harmful, whether it made any difference, and what they found is it reduced the risk by 69 percent and death by 42 percent. I don't think we can ignore that kind of data. I don't think we can ignore the statistics. It is in fact dangerous. Now you can look at research that shows it maybe caused more neck injuries. I'll tell you what, I'd rather have a neck injury than have my skull completely torn apart. Colleagues, we need to look at the studies, we need to look at the research. We need to understand what the ramifications are. And I would urge you to pay attention to what your own community is saying to you. Thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Lathrop, you're recognized. [LB200]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I have...I think this is an appropriate time to talk about the cost to the state associated with a repeal of the motorcycle helmet law. Because essentially, we all got to feel a little bit better thinking that the long-term care costs would be covered by the motorcyclist, and so we could say, as we moved LB200 along, if that's what its fate is to be, that at least we were not passing the costs onto the state. And so this morning what we're doing is taking that assurance out of the bill. And I know why. We're taking the assurance out of the bill because people have all called an insurance agent and said, how much is this going to cost? I've talked to Senator Carlson and some others who have looked at this. This is about a \$3,000 a year on average, a \$3,000 a year expense

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to motorcyclists. So now we want to take it out. I understand that. And those who advocate in favor of LB200 certainly wouldn't want to go back to the ABATE group and tell them that they just saddled them with a \$3,000 a year responsibility so that they can ride without a helmet. But once we remove this, you need to understand who's going to pay the cost of this care. And again, I don't want to belabor the point but it's worth belaboring, a lot of brain injuries. And when people have brain injuries it starts out with a good deal of time in the intensive care unit where they receive...could have brain surgery, surgery to relieve the pressure on the brain, to relieve bleeding on the brain, they stay in the ICU for long periods of time, then they go into rehab hospitals. Then they end up in places like Quality Living. The cost of that care, the cost of that care is extraordinary. I've done these brain injury cases when we do a projection of the life care costs of someone with a significant brain injury it's in the millions of dollars, it's in the millions, that's with an M, millions of dollars. I handed out yesterday some statistics. And I hope you have taken a little bit of time to read them, but one is particularly important for us to recognize as we consider absolving those who ride and decide of the responsibility for their care. One of these from the National Highway Traffic Safety Association on the second page here says, 21 percent of the people that are involved in these accidents had their charges billed to Medicaid. So understand that when we talk about absolving those who ride and decide of the responsibility for their care, we're going to pick up one in five of those people, the state is. So if we're talking about economic development, I guarantee you a little bit of sales tax on what these guys will buy on their way through to Sturgis isn't going to offset what we're going to spend in Medicaid. Ultimately, ultimately, to me this is about the lives of the people who will die. It is about the brain injuries of those who will suffer. But for those of you who call yourself fiscal conservatives... [LB200]

SENATOR LANGEMEIER: One minute. [LB200]

SENATOR LATHROP: ...who came here on the promise that you would watch the state's budget, you should understand that we will pick up one in five of these injuries. And they will be billed to Medicaid. Or if they don't qualify for Medicaid they'll simply walk out on the University of Nebraska Medical Center, they'll walk out on Creighton Medical Center where they have their emergency room care, or the hospitals in your local communities. And that cost will be spread around to the next people who come through the door that have an insurance policy. What we are doing today has budget implications. It directly affects our Medicaid budget and we should understand that before we repeal FA60. Thank you. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. (Visitors introduced.) Returning to floor discussion on the motion to reconsider FA60, those wishing to speak, we have Senator Gay, Janssen, Hadley, Pankonin, Wightman, Campbell and others. Senator Gay, you're recognized. [LB200]

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SENATOR GAY: Thank you, Mr. President. Just...I would vote for the...to reconsider that motion because it was wrong what happened yesterday by coincidence. But I think what happened kind of sums up where we're at here. We're looking for ways to say, and I don't want to speak for everyone because we all had different reasons, if you voted for that, against or didn't vote. But it was a mistake. We're going to go correct it, I hope, because we don't want to burden those good riders or anybody here. Basically, what we'd say is no one would be riding a motorcycle because they couldn't get this covered. So I will vote to repeal the amendment that we just did. However, I still won't vote for the bill, for the overall bill. We're talking about we want to make this better. We always look here and we say, what are other states doing? It's common practice around here, we know it. We go to these conferences, we learn from others. Well, just in Pennsylvania, Pennsylvania repealed their motorcycle helmet bill and right there it was, the data said 82 percent involved in crashes...decreased from 82 percent to 58 percent two years after the repeal, it went up that much. Anyway, the study shows...and Pennsylvania, by the way, has the bill where the younger people have to be educated and all these other things. It's almost identical to what we have. But anyway, a 32 percent increase in head injury deaths, and a 42 percent increase in head injury related hospitalizations. So we're doing that. On another amendment, and I say let's take a look at this and see where we're at in five years. Well, in those five years when the people are getting brain injuries and so on and so forth, I don't want to be responsible for that either. I'm a little ahead of myself, but I don't think that's the way to go. The simple situation is you're either for this or you're not. All these amendments, and I will listen to other amendments that might make this a little better. But when it's all said and done, we should just say allow these people to either ride without their helmet or with it on. I think this is a black and white issue. We're trying to find ways because all the data says that more people will get injured and have head injuries and costs will go up. The data supports that. And no matter what is handed out, and I know there was just something handed out by an economist saying that helmets actually would help you get more injuries or more neck injuries. Well, doctors, by the way, is who I'd listened to on this issue. All their data says that if you're not wearing a helmet, brain injuries are going up, deaths are going up. So I think it's simple. Senator Harms talked about most constituents out there, I think, that I talked to are saying don't repeal this helmet law. And I know there's passionate people and it's the riders. But my other rider friends, by the way, who I'm not going to force to buy this long-term care policy, you know, they say to me, well, I'm going to wear the helmet anyway. Well, fine, then let's keep the law where it is. So that argument doesn't jibe either, they just want the choice. All of a sudden they make the choice they're going to go to the store that one time or two times or whatever it is they're not wearing a helmet, something happens. But when we talk about freedoms again seat belts, speed limits, all these other things that are out there for protection are there for a reason. And to me all science says that it makes sense to wear a helmet when you have no support around you other than the bike and maybe some leathers you're wearing or whatever the case it is. We've all seen somebody blow by us 90 miles...I'm going down the interstate 65 miles, somebody is going by me at 90 miles an hour, helmet on or not,

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whatever. But that would be the same person probably not wearing the helmet. I'm just guessing, using a little sense here. I know there's probably more...well, there are much more responsible riders out there, no question. Should they suffer because of this? I don't think they're suffering because of this. [LB200]

SENATOR LANGEMEIER: One minute. [LB200]

SENATOR GAY: So a little bit, too, we want to talk about the tourism dollars. If this is a dollars and cents thing there is an article in the World-Herald about the cranes in Nebraska bringing in \$12 million or \$16 million, there's Rosenblatt, we have the College World Series, we have the zoo, we have other things all throughout Nebraska, the Arch, other...many activities that our tourism does very well. So I'm not...I wouldn't base it on that argument that a few people are going to avoid Nebraska to go to Sturgis. My friends still go to Sturgis either way. They usually take 29 and over just because that's the quickest way to get there. They might go the scenic route, and they have many times too. So that argument of monetarily to support tourism I don't think flies either. So as we have more debate I'm open for more amendments. I will vote to reconsider this and remove that long-term care because I don't want to hinder those good riders and those responsible riders who do wear a helmet... [LB200]

SENATOR LANGEMEIER: Time. [LB200]

SENATOR GAY: ...and follow the rules. Thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Gay. (Visitors introduced.) Returning to discussion on the motion to reconsider, those wishing to speak, we have Senator Janssen, Hadley, Pankonin, Wightman, Campbell, White and others. Senator Janssen, you're recognized. [LB200]

SENATOR JANSSEN: Thank you, Mr. President and members of the body. I was up late last night. I apologize to some of you. I may have called you after it was your bedtime. I made a lot of phone calls last night. Kind of the telemarketer last night and it's because this means a lot to me. We talked about numbers. I was also up late last night chatting with the 3rd District U.S. Congressman from this state, who I believe represented the same area that Senator Harms represented. He listened to his constituents and he got elected to Washington, D.C. So when you go home and you talk to your constituents, that's something to think about. I...the polls and the data, I know it's probably getting a little bit bogging at this point. One side has one poll, another side has the other poll. I can tell you the poll that was indicated, I believe by Senator Harms, which was sent to me also is from a poll taken by MADD. I'm not saying it's bad or good. I'm just saying that's who it was taken from. I could tell you last night on the Omaha news channels, 54 percent, a nonscientific poll by the way, 54 percent of people were in favor of repealing the helmet law. On 10-11 news this morning, their viewers, callers, 72

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percent were in favor of repealing the helmet law. Is that to say that that's scientific? No, it's not. Both sides are going to have statistics on this, it's an emotional issue. And again, for me it's a philosophical issue. We talked about the increase in fatality rates when the helmet law was removed in 30 other states. I can agree with that. It's because there's more bikes registered also. That goes up as well. There's more bikes on the road, it reckons to reason that there also is going to be more fatalities and more accidents, that's just going to happen. I'm asking for a vote this morning to repeal or pull off FA60. I looked at other ways of doing that. I decided that this is the only way I can get a priority out in front and take this off. I think there's other ways to add parts of this back in on Select File. I just thought this was the cleanest way to do it. Some may disagree. But I'm hopeful that I can get your support on this to pull it off and move forward and do, just like Senator Gay said, let's find out where we're at on this, let's vote. Let's see if we're for it or we're against it. At the core with all the numbers, everything else, at the core of this is simply you're in favor of it or you're not in favor of it, your philosophy on what government should and should not do. And with that, Mr. President, I urge the body to support the reconsideration on FA60. I'll yield the balance of my time to Senator White, if he'd like it. [LB200]

SENATOR LANGEMEIER: Senator White, 2 minutes 14 seconds. [LB200]

SENATOR WHITE: Thank you very much. Thank you, Senator Janssen. Let me talk to you briefly as just legislators. What I'm going to say won't change a thing if you believe helmet law should be repealed or not repealed. But I do want to talk to you about how we can change Senator Coash's amendment to address legitimate concerns from the motorcycle community, from Senator Gay on the cost to Medicare/Medicaid. What I would do if this were my bill, I would offer a floor amendment that says the following: If you choose to ride a motorcycle without a helmet then you must have on that motorcycle a medical care endorsement. And medical care is already part of normal vehicle insurance. That endorsement must say that you have at least \$1 million in medical payment coverage that will cover all costs, including long-term care arising out of use of that motorcycle. Now if you are pulled over without a helmet on, on your motorcycle, and the police officer says, show me insurance, and you don't have that endorsement, there should be a very substantial fine, \$500. [LB200]

SENATOR LANGEMEIER: One minute. [LB200]

SENATOR WHITE: You choose to wear a helmet, you don't have to pay for the extra cost of higher medical insurance. You have to pay what you already have to pay. You choose not to wear a helmet and you get hurt, don't dump the cost on the public. It's a matter of personal freedom to wear or not a helmet, I agree with that. It's also a matter of personal responsibility that you're not going to dump the cost on the public. Now is that going to be prohibitively expensive? I will tell you absolutely it won't be. And it won't be for a couple of reasons. Number one, the increased fatalities from motorcycle

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accidents will actually reduce the cost of medical care. A horrible thought but true. The increase in cost in neck injuries are incredibly expensive to treat and that will go up with more helmet use. The brain injuries will go up and they are very expensive, but the fatalities will more than balance them. [LB200]

SENATOR LANGEMEIER: Time. [LB200]

SENATOR WHITE: Thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Hadley, you're recognized. [LB200]

SENATOR HADLEY: Mr. President and members of the body, I would like to rise just to take a little different slant at this. We are talking about the cost of...potentially the cost to the state in Medicaid and the federal government in Medicare. I'd like to talk a little bit about potential cost to healthcare and to hospitals in Nebraska. If we pass the required mandatory medical insurance and we do not have a helmet law, how do we handle all those outstate riders that are going to ride across our state? If they get in an accident and do not have insurance, we could have a problem. I'm sure all of you are familiar with EMTALA the Emergency Medical Treatment and Active Labor Act, which basically says a hospital has to take somebody in the emergency room without talking about insurance whatsoever. And they have to provide them care. Right now there are three Level II trauma centers in the state, Scottsbluff, Kearney and Bryan in Lincoln. There's one Level I trauma center and it is a combination of hospitals in Omaha. That's where these badly injured motorcycle riders would be taken. If they're from another state and do not have medical insurance these hospitals have to provide the care. I hesitate to say it but in a previous life I did serve on a hospital board and I served on the patient charity write-off. And I remember a car injury to a person that we wrote off a \$400,000 bill because the person did not carry any insurance. Even though you're supposed to be required to have insurance, they didn't have it. So I'm concerned about the cost to our medical, the physicians, the providers, the hospitals if we do away with the helmet bill and we have legally riders from out of state being able to ride across our state without medical insurance. Thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Hadley. Senator Pankonin, you're recognized. [LB200]

SENATOR PANKONIN: Thank you, Mr. President. I'm going to talk a little bit about these insurance issues this morning and I'm not going to speak about the concept on the underlying bill. But I think it's interesting to note that this is a good example of this body not doing its homework and jumping for potential solutions without knowing all the facts. Yesterday we passed FA60, and now it's...now we're up for a reconsideration motion because it wasn't the proper policy, it wasn't thought out. And I had an e-mail

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today from a constituent who is a rider who says I'd rather wear my helmet than go through all this insurance stuff you guys have put on this bill. I have long-term healthcare insurance. I know it's expensive to have a good policy. And I knew that FA60 was going to be a huge hindrance for anybody to have a motorcycle if you're going to have that requirement. And no one had really done the research on what the cost availability was of this insurance. Now this morning we hear that Senator Janssen is going to stand on AM1720. And I want to just touch base on that about the insurance provisions. If you go to page 2, and I'm a little ways away from my laptop, but it says if a motorcycle is being registered, an application for the registration has to include medical reimbursement insurance coverage of no less than \$1 million. Senator Krist and I were talking about this, this morning. And I want to ask Senator Krist a question, if he would so allow. [LB200]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Senator Krist, will you yield to a question from Senator Pankonin? [LB200]

SENATOR KRIST: Certainly. [LB200]

SENATOR PANKONIN: Senator Krist, as we discussed off the mike today, what did you find from your research yesterday on that provision? [LB200]

SENATOR KRIST: Let me say that I shared this information with Senator Coash this morning in paper form. But as a preferred customer of my insurance company, which is an international insurance company and a membership type insurance, as a preferred member I would only be able to get \$25,000 in coverage to ride a motorcycle. [LB200]

SENATOR PANKONIN: Of this type of insurance, Senator Krist,... [LB200]

SENATOR KRIST: Yes. [LB200]

SENATOR PANKONIN: ...in your view? [LB200]

SENATOR KRIST: Yes. [LB200]

SENATOR PANKONIN: Thank you, Senator Krist. [LB200]

SENATOR KRIST: Can I add one other thing? I can only speak from my experiences with my insurance company. It may be possible to do something more, but it was discouraging when I found out that I could only get \$25,000. [LB200]

SENATOR PANKONIN: Thank you, Senator Krist. That's the point. We have not vetted

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this bill. We have not done the proper research to be making a decision on this. This could actually hurt so many of our riders with all kinds of insurance, requirements that they don't want, they don't understand what the cost availability is going to be. We need to take our time not only on FA60, which as we know is not right, but also AM1720. This insurance provision...these insurance provisions need to be researched. I know Senator Carlson knows insurance and he has likewise done some research and has concerns as well. So I want to ask the body to take our time. And I don't know that we're at any shape to move ahead on this bill with the questions that we have. Thank you, Mr. President. [LB200]

SPEAKER FLOOD: Thank you, Senator Pankonin. (Visitors introduced.) Continuing with discussion on the reconsideration motion, Senator Wightman, you are recognized. [LB200]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. First of all, I will support the motion to reconsider FA60. I think Senator Pankonin had some great points with regard to how little, perhaps, thought process has gone into some of these amendments. And probably FA60 is one of them. And I did support that at the time. But as I think about the information we've heard today, I think it would almost be impossible, probably is impossible to comply with providing long-term insurance for probably a big percentage of the riders. And if it were complied with it would be at a great cost. So I will support reconsideration and will support any attempt to take that off the boards at this time. At the same time, I do not intend to support LB200. I think there are number of things that need to be given consideration. One of them I would like to discuss on the mike with Senator Janssen, if he would yield. [LB200]

SPEAKER FLOOD: Senator Janssen, will you yield to a question from Senator Wightman? [LB200]

SENATOR JANSSEN: Yes. [LB200]

SENATOR WIGHTMAN: Thank you. Senator Janssen, I was off the floor yesterday during some of the debate and it may have been discussed. Has there been any polls among bike riders that indicate how many favor repeal of the motorcycle helmet law? [LB200]

SENATOR JANSSEN: I'm certain there is, Senator Wightman. I don't have it at hand. I know I can get that. My indication or inclination is it would be a very high number that would be in favor of it just based on the lobby that they have come down here year after year. But I certainly can't speak to that. And again, you got to consider the poll and the source in some of those cases too. [LB200]

SENATOR WIGHTMAN: And I agree with that. But we are considering polls here of the

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public. And it seems to me strange that we don't have something rather concrete with regard to how many of the motorcycle riders would favor LB200. Because I've talked to motorcyclists and maybe they were hand-selected and people that I knew, but of three or four that I talked to almost everyone said, we'd prefer that you don't repeal the helmet law. It's been in effect,...we believe that it's been effective and it saves a lot of injuries. And one or two of them told me that they believed that they would have had some severe injuries in accidents that they'd had, had they not had a helmet on. So I think this needs to be considered. But certainly as we move forward in considering these amendments, some of which we have already adopted, I think that's of major consideration. Because say there are 30 of them, 30 percent who would favor not repealing it. And I think it could be that high, it might be higher than that. Certainly, I have no statistics to show that. But we're talking about placing tremendous requirements upon these bike riders who are willing to live with the current law. And I agree with Senator Pankonin, I think it would be almost impossible to find someone who would write a \$1 million medical insurance coverage for a bike rider or for anyone else as far as that's concerned. I've certainly dealt over the years, as an attorney, with medical insurance coverage. I think frequently you find it to be in the \$10,000 to \$20,000 range. I remember having a case a few years ago where someone did have \$100,000 coverage... [LB200]

SPEAKER FLOOD: One minute. [LB200]

SENATOR WIGHTMAN: ...and that surprised me. Thank you, Mr. President. So one other statistic that has been mentioned before, as a member of the Appropriations Committee it certainly catches my eye, and that is the estimate is that and history shows that about 21 percent of all medical expenses that would be incurred in this type of accident would be paid for out of Medicaid. And certainly that's going to be a great cost to the state of Nebraska. So again, I urge you not to vote for LB200. With regard to FA60 and the reconsideration I certainly will support that. Thank you, Mr. President. [LB200]

SPEAKER FLOOD: Thank you, Senator Wightman. Continuing with discussion, Senators Campbell, White, Gloor, Schilz, Stuthman, Fulton, Carlson, Lathrop, Haar and others. Senator Campbell, you are recognized. [LB200]

SENATOR CAMPBELL: Thank you, Mr. President. Colleagues, we learned yesterday what happens when we say, golly, we'll do most anything to get the votes that we need. We passed an amendment yesterday that when I contacted an insurance company, said, well, at a 30-year-old that policy would start at \$2,500, and if you were 55 it would be \$4,200. I had a rider contact me, as I'm sure we all have talked to many motorcycle riders. He was very upset because he has supported the helmet law, he has worn a helmet, he believes in wearing helmets after two accidents that the helmet protected him. And he said, now you're going to penalize me and put the insurance on? I do not

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like LB200, I do not think it's a good bill. But I will support the reconsideration because I'm not about to penalize the people in the state, those riders who have supported the bill, have supported the law and wear a helmet. I want to follow up on Senator Pankonin's comments which I totally agree with. And I want to remind my colleagues that yesterday, and please dig this out of the papers, we received a letter from the Nebraska State Board of Health. They've done the comparison. We don't need another five years to know that helmets reduce injuries and fatalities. So do not be lulled into saying, well, we can get the statistics for five years and then we'll know a lot more. We know them now. Let's take the time to read what we are given and to follow up on those statistics. I'll yield the rest of my time to Senator Lathrop. [LB200]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Senator Lathrop, 2:40. [LB200]

SENATOR LATHROP: Thank you. And I appreciate the time, Senator Campbell. I was out in the lobby. As you might expect, there's some insurance people that have an interest in this, the folks that sell liability policies. And Senator White suggested that maybe the solution is to require that those who ride without a helmet carry a million in coverage, here's the problem, two problems. The first problem is there's no such thing. You talk to the people out back who represent the auto insurance companies, State Farm will not give you med pay on a motorcycle. Let me say that again. State Farm will not sell med pay on a motorcycle. Why? Because this is a dangerous proposition. So to tell...to suggest that we're going to put a million in med pay coverage on this, require it, causes two problems. One is we're going to ask motorcyclists to go out and get something they can't find. And the second problem is with enforcement. As soon as some people, we make this a secondary offense and some people are riding all over, the only way we're going to know whether somebody is complying with the law is when they've hit somebody and they're now lying in the street. And if they don't have the requisite coverage, and clearly they won't if they're required to have \$1 million of it, we're going to pick up the tab. The other thing is the long-term care insurance, even if we leave FA60 on this, the long-term care insurance is only going to go for five years. So take a 25-year-old guy that gets in an accident, it's not his fault, gets a brain injury, the long-term care insurance covers it for five years. And then you know where he goes? He goes to Medicaid. We are going to pick up the cost of these riders that want to decide not to wear a helmet. [LB200]

SENATOR LANGEMEIER: One minute. [LB200]

SENATOR LATHROP: And to say that we will discriminate between those who wear a helmet and those who decide not to leaves us in a situation that is completely and entirely unenforceable. The police can't pull somebody over to find this out. It's a secondary offense under the amendment, so that means that the only way that a

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policeman can even ask about it is if he pulls somebody over for a different reason. This bill is becoming unworkable. As we try to find a way to make some people feel better about voting for it, we are making a mess out of the rest of it. We are imposing insurance requirements that haven't been thought through. We are going to end up with a bill that requires that...that allows some people to go without a helmet and requires everybody to carry insurance. And I think in the end your constituents, even those people... [LB200]

SENATOR LANGEMEIER: Time. [LB200]

SENATOR LATHROP: ...that jammed the lines, won't appreciate it. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Lathrop and Senator Campbell. Senator White, you're recognized. [LB200]

SENATOR WHITE: Thank you very much and thank you, Senator Lathrop. But let's talk about a couple of factors that are left unsaid. If, in fact, State Farm will not now sell any kind of medical care coverage contingent on a motorcycle, then in reality you're already horribly on risk for anybody that drives a motorcycle. Senator Lathrop, if that's really where you're going, grab the bull by the horns, say nobody can ride motorcycles because the accidents even with helmets result in horrible neck injuries, horrible head injuries, and we end up paying for them anyway. That's the bull, grab it by the horns if that's really where you're going. And I would tell you that's not where we're going nor is it where we should go. I will tell you right now they say, well, we don't have the insurance now. Fine. Make it a primary offense. Make it a primary offense that if you are on a motorcycle without a helmet, a police officer has a right to pull you over to confirm you have insurance. And if there is no available insurance in the state, guess what? Nobody is going to be able to ride a motorcycle without a helmet. But I will tell you this: If people really care about it and if we say in this state it is only legal to carry...to ride on a motorcycle without a helmet if you have insurance in the amount of--you want a million--a million dollars, and you can be stopped to verify that, then a couple of things will happen. Number one is you won't have a lot of people driving without helmets, and the people who are riding without helmets are going to have insurance and that's going to help the state because that million dollars will be there whether it's a head injury, a neck injury, they break a leg, whatever it is you're going to have more people with more insurance because the market is going to be there. The market will be there if the demand is there. The price that will be paid or not...and we're not going to force one motorcycle rider, not one, to have to put on a helmet or have to take a helmet off or to pay more for insurance or not. What we are going to be doing is taking the bull by the horns and saying if this dangerous activity--and it is a dangerous activity--is already costing us huge amounts of money, then those who engage in it and decide to wear no helmet will have insurance, you're improving fiscally the state's position because right now if State Farm won't even insure the risk, that means we are. That's the reality. Now

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the question is, do you want to take that right, that liberty to ride a motorcycle away entirely because after all, we're insuring it? We are insuring it. So what I ought to tell you is: Look, if you want a helmet bill that will work without a fiscal impact to the state, if you really mean that or reduce the fiscal impact because riding motorcycles has a tremendous fiscal impact to the state since State Farm won't even insure it, then this is what you do. You say, look, you're going to put on a helmet and everything is the same. You take that helmet off at the face of a \$500 or a \$1,000 fine, you better have a million dollars in provable coverage. And you know what? If no insurance company ever offers it, you won't have anybody without helmets. And it's very easy to enforce. A guy going by on a motorcycle without a helmet is pretty easy to see. And you know what will happen? The market will follow the law. The market will start analyzing the accidents, and it's a horrible statement, it's horrible, but Senator Lathrop knows it's true. It is far cheaper to kill a person than to desperately injury them--far cheaper. And they will analyze numbers, they will analyze deaths, they will analyze healthcare costs, and they will set a price on what it would take not to have a helmet. And then people will have a choice whether they want to pay that price or not. [LB200]

SENATOR LANGEMEIER: One minute. [LB200]

SENATOR WHITE: I would tell you right now, I fully support the liberty right of a person to choose to engage in a highly dangerous activity that really puts no one at risk but themselves whether that's riding a horse over a jump--which I do--riding a motorcycle down the highway, running a jet ski, being a stunt pilot. I don't know what gives you joy but whatever it is, if you're not hurting anybody else, generally, I say go to it but have the responsibility that you aren't going to dump the cost on the rest of society. Right now, motorcycle riders, according to Senator Lathrop's information, are doing just that. This bill would encourage them to get health insurance if they wanted the additional freedom of taking a helmet off and I'm okay with that. And then guess what? We pass that bill and they can't get insurance, watch ABATE. Watch these people band together, get an insurance policy with real statistics, and really figure out the real cost... [LB200]

SENATOR LANGEMEIER: Time. [LB200]

SENATOR WHITE: ...and watch them demand it and watch the insurance industry respond. They can make a reasonable profit. They will. [LB200]

SENATOR LANGEMEIER: Time. [LB200]

SENATOR WHITE: All we have to do is get the law out of the way. Thank you. [LB200]

SENATOR LANGEMEIER: Thank you, Senator White. Those wishing to speak, I have Senator Gloor, Schilz, Stuthman, Fulton, Carlson, Lathrop, and others. Senator Gloor, you're recognized. [LB200]

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SENATOR GLOOR: Thank you, Mr. President, members of the body. I am somewhat disappointed, not somewhat, I'm just plain disappointed that nobody has risen in the defense of our esteemed colleague, Senator Harms, whose self-described aging old bald gray head is certainly far preferable to anything else I've seen on television in recent years. So, Senator Harms, no reason for apologies and thank you for the statistics. I also would like to follow through with comments made by Senator Hadley. I've known Senator Hadley for a number of years. First got to know Senator Hadley as he described in his role as a volunteer on the board of a competing hospital, a hospital that I competed against for many years, and it was formidable by way of competition because there were committed volunteers like Senator Hadley serving in that capacity. The fact that he no longer, for a variety of reasons, serves in a volunteer capacity is to the detriment long term of his community to central Nebraska and to the state of Nebraska ultimately. A comment I think has to be made. But Senator Hadley talked about knowing the expense associated with uncompensated care that rolls into hospitals across this state, and it gives me an opportunity for an exciting topic--hospital reimbursement 101. This is a great chance for a tutorial and one that I will probably have an opportunity to give many times over the years. I'll give everybody a chance to settle in. I know how excited they are about this particular topic but it is germane. A vast majority of the hospitals in the state of Nebraska are reimbursed under what's called cost-based reimbursement. It impacts both Medicare dollars and Medicaid dollars which fall under our purview. And it's important that we understand that because quite frequently when we complain about healthcare cost, we don't understand the fact that decisions that are made and not made by this body, by insurers, by individuals, ultimately result in a combination of factors that add to the overall cost of healthcare. It's the reverse of death by a thousand cuts. It is, in fact, expense by a thousand additional costs. And motorcycle accidents, along with car accidents, along with any accident, add to that. But it is certainly true when it comes to head injuries related to motorcycle use or lack of helmets in riding motorcycles. In other states that also have cost-base reimbursement in their hospitals, cost-base reimbursement basically falls into the category of a program the federal government originally established that allows hospitals--this pertains primarily in rural areas who are a certain distance apart--under the agreement, and so this is very much controlled by the federal government under these purviews. So people who talk about maintaining their autonomy and don't realize the extent to which the federal government already dictates the way their hospital will operate need to understand that. As long as they limit the size of their hospital to a certain number of beds, a couple of dozen roughly, as long as they limit the length of stay that they care for patients which limits the scope of services that they can provide, can't get into very elaborate forms of care if you can't keep patients for a long period of time, those institutions and their boards agree to that, then they are guaranteed cost-based reimbursement. What a wonderful way to run a business. Doesn't make running hospitals that are cost-based reimbursed easy, but it certainly helps with the dollars and cents and, in fact, that was the federal government's plan when it set up

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cost-based reimbursement is to provide assistance to hospitals that because of their size were felt to still be a critical component of their communities. [LB200]

SENATOR LANGEMEIER: One minute. [LB200]

SENATOR GLOOR: Thank you, Mr. President. Cost-based reimbursement means that if an injured motorcycle rider because of their lack of wearing a helmet comes into an emergency room, as Senator Hadley has pointed out, they can't be denied care. Federal government requires that they be brought into that emergency room, evaluated, and stabilized before they can be discharged and a head injury is difficult to stabilize. That cost to provide care to them rolls into the cost of that hospital, and they get reimbursed by Medicare and Medicaid for a large portion of that cost. It, therefore, has a direct inflationary impact on what we as taxpayers, through what we pay into Medicare and through what we pay in statewide to Medicaid, have to pay for. It's one of the thousand cuts that results in the overall addition to cost in our healthcare system. [LB200]

SENATOR LANGEMEIER: Time. [LB200]

SENATOR GLOOR: Thank you very much, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Gloor. Senator Schilz. [LB200]

SENATOR SCHILZ: Call the question, please. [LB200]

SENATOR LANGEMEIER: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on the motion to reconsider? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB200]

CLERK: 30 ayes, 0 nays, Mr. President, to cease debate. [LB200]

SENATOR LANGEMEIER: Debate does cease. Senator Janssen, you're recognized to close on your motion to reconsider FA60 adopted to AM1720. [LB200]

SENATOR JANSSEN: Thank you, Mr. President and members of the body. FA60, give you a little insight to what the plan is here today. I would appreciate your support. I definitely want a green on the reconsideration motion on FA60. I think I've heard an "agreeance" that that should come off. There's a lot of confusion with that in saving this bill. So, again, I think we need some time to reconsider AM1720 as well and I'm going to have Senator McCoy speak to that a little bit in my closing as well. I just, at this point, want to tell you I very much so appreciate agreeing on this vote as we move forward and I'd appreciate some work with me on the amendments to follow down the road. And

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from here I'll yield the balance of my time...excuse me, Mr. President, when the vote is taken, I would request a call of the house, a roll call vote on the vote. And I'd yield the balance of my time to Senator McCoy. [LB200]

SENATOR LANGEMEIER: Senator McCoy, 3:50. [LB200]

SENATOR McCOY: Thank you, Mr. President, members of the body, and thank you, Senator Janssen. I rise to mention to you that we will in a moment have before us a bracket motion that I have introduced to bracket LB200 until February 9. I'll detail to you in short order why that is the case. I am in support of LB200 and would ask for your vote in reconsidering FA60. Again, with the bracket motion that is before us, we will look to work on this a little more before we bring this back and, again, I will talk in more detail to that in a moment. But I would ask you to vote yes on reconsidering FA60. Thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator McCoy. There has been a request to put the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB200]

CLERK: 39 ayes, 0 nays, Mr. President, to place the house under call. [LB200]

SENATOR LANGEMEIER: Thank you. The house is under call. Senators, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. The house is under call. Senator Dubas, Senator Howard, Senator Wallman, Senator Ashford, please return to the Chamber and record your presence. Senator Cook, would you please check in. Senator Dubas, please return to the Chamber, the house is under call. Senator Janssen, do you wish to proceed without Senator Dubas? There has...we will. There has been a request for a roll call vote in regular order. The motion before the body is, shall FA60, which was adopted to AM1720, be reconsidered? Mr. Clerk, please call the roll. [LB200]

CLERK: (Roll call vote taken, Legislative Journal pages 434-435.) 42 ayes, 2 nays, Mr. President, on the motion to reconsider. [LB200]

SENATOR LANGEMEIER: The motion to reconsider is adopted. With that, I raise the call. Mr. Clerk, a priority motion. [LB200]

CLERK: Mr. President, Senator McCoy would move to bracket the bill until February 9, 2010. [LB200]

SENATOR LANGEMEIER: Senator McCoy, you are recognized to open on your motion to bracket LB200. [LB200]

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SENATOR McCOY: Thank you, Mr. President and members of the body. As I outlined a moment ago before we voted yes to reconsider FA60, I offer to you this morning a bracket motion for one week to February 9, 2010, and let me explain to you why. I support LB200, but there have been some very valid concerns have been raised throughout this discussion that's now in its third day. This is a very important issue before us, I think, as we all know, an issue that many of us care very deeply about as do I. And I offer to you this bracket motion this morning with the full support of the introducer of the bill, Senator Janssen, and I will yield him or pardon me I should say he will speak in a moment to it. This bracket motion also is supported by Speaker Flood and Senator Flood will...I will yield him a few minutes here in a moment. Senator Janssen has committed to prioritizing this bill. And one week time will give us the opportunity to explore the insurance aspect of this issue in greater detail. As a member of the Banking, Commerce and Insurance Committee, I pledge to you that I will work diligently on this issue in the next several days to give us a fuller picture of the dynamics behind such a concept. This bracket motion is not to kill this legislation; it's to give us a better understanding of the dynamics behind this. And there are other members of the committee, Banking, Commerce and Insurance Committee, that have also been gracious to offer their time to look into this issue as well. Something comes to mind this morning to me that I think may be appropriate to note. A great president of our country John F. Kennedy once said, "Let us never negotiate out of fear. But let us never fear to negotiate." This issue is critical. But it is necessary to look at the larger dynamics of this issue. And with that, Mr. President, I would yield the remainder of my time to Senator Flood. [LB200]

SENATOR LANGEMEIER: Senator Flood, 7:09. [LB200]

SPEAKER FLOOD: Thank you, Mr. President. Thank you, Senator McCoy. The reason I asked to speak here is just to make sure you know how I look at bracket motions in the Speaker's Office. Number one, if you bracket a bill and it's not prioritized, it's dead for the rest of the year. So last Thursday we bracketed a bill and if that bill is not prioritized by Senator Mello, it's not coming back. So my understanding in this situation, Senator Janssen is willing to consider prioritizing LB200. That means it can come back. Now, by our rules if this bill is bracketed and assume it's prioritized which you can do at this time, I can't put it back on General File for the Legislature to consider until after February 9, 2010. But that doesn't mean that you can bracket a bill and prioritize it and it's going to come up February 9, 2010. I have in my discretion anytime after that date to schedule it. So I just want to make sure as we talk about bracketing bills you understand a couple of things just procedurally. Bracket motions most of the time will probably kill your bill. In Senator Mello's case, I got to clarify, I think that bill was bracketed the last day of session. I can't bring it back even if it was prioritized, just to clarify. If it's prioritized, it will come back but not necessarily on the day or shortly thereafter. It will come back at a time when we can fit it into the schedule. So everything that Senator Mello said is completely accurate. If this bill is prioritized, we will see it again, we'll come back to it on

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General File, and we'll come back to it and we'll discuss FA60 and we'll vote on that FA60 as if it hadn't been adopted before following the reconsideration motion. So we are procedurally in a place that we haven't been. And I wanted to take this opportunity this morning to make sure everybody was exactly clear on how we treat bracket motions. And so if this is successful, sometime after February 9, assuming there's a priority, the bill will come back. Thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Speaker Flood. [LB200]

SPEAKER FLOOD: Senator McCoy can have the balance of his time. [LB200]

SENATOR LANGEMEIER: You'd yield back his time, 4:50, Senator McCoy. Senator McCoy waives the extra time. You have heard the opening on the bracket until February 9, 2010, of LB200. We return now to floor discussion on the motion to bracket. Those wishing to speak, we have Senator Stuthman, Fulton, Carlson, Lathrop, Haar, and others. Senator Stuthman, you're recognized. [LB200]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I do support this bracket motion. I think it's the right approach to take on this issue. But there's a few comments that I want to make and I'm sure that I won't utilize all of my time just for the fact that there are others that want to speak on it. But I think since we have this bracket motion, you know, we should address it shortly, we should take a vote on it, and continue on with the agenda because we have spent many hours on this already. The issue that I was going to bring to the surface is the fact that we are talking a lot about, you know, brain injuries, head injuries, people becoming wards of the state not being able to pay. Yes, I am aware of that. But I'm also aware of the fact that all of those that have brain injuries did not come from motorcycle accidents. They come from four wheeler accidents. They come from skateboarding accidents. They come from car accidents. They come from any type of an accident. They probably come from accidents with livestock--riding horses. So, I mean, it is an issue but yet in my opinion it's not the whole issue of the fact that, you know, that if you're riding without a helmet, if you have an accident, you're going to have brain injury. Yes, you might. But I'm under the opinion that we have to allow the people to use their best judgment, utilize their education, utilize their knowledge so that they do wear the helmets when they feel that the helmets should be worn. I'm sure there's situations where a youth riding a bicycle, just going down the street very slow has an accident, has head injuries, has brain injuries. They may be a vegetable for the rest of their life. That is what I am concerned about. You know, we don't have the situation where all of them are coming from the motorcyclist, all the head injuries come from motorcyclist. And if we are really concerned about that, like was stated yesterday or the day before, it is a risk maybe we should put in a box, be escorted here to the Capitol so that we never encounter an accident, but that's not going to happen. People will take a risk. We have head injuries with accidents. I was involved in one of them at one time. I did survive. I was involved in an accident with livestock. I

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did make it. So with that, I just wanted to bring that issue to the surface that, you know, all of these brain injuries do not come from motorcycle accidents. They come from accidents. And we don't, you know, require or mandate every situation that you have to have a helmet on. But as long as we're around, as long as we're active, we're going to have accidents in no matter what profession or what type of activity you're in, there's going to be accidents. So with that, I do truly support the bracket motion. I think there needs to be some issues addressed as far as the insurance is concerned, and hopefully that can be taken care of and be solved before it comes back on the floor. So with that, thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Fulton, you're recognized. [LB200]

SENATOR FULTON: Thank you, Mr. President and members of the body. I stand, firstly, in support of this bracket motion, and I had my light on earlier with the intention of explaining my position and explaining what I'd like to see happen on this bill. I'll go ahead and do that and then I'm going to, after that, yield some of my time back to Senator Janssen. My history on this, I have been opposed to repealing the helmet statute and at this point I remain that way. And my rationale...and this actually is something that I've not heard said yet and that's why I'm choosing to say it now, my rationale is one of conservatism. And when I say conservative, I don't say that in the political terms that we tend to think; I say it in the strict philosophical term. I'm willing to leave it alone. There are an awful lot of people out there who don't know that we're even having this debate, a lot of bike riders who don't know that we're having this debate. And if we end up enacting legislation that effects them, we'll hear from them and rightfully so. So I'm willing to leave it alone. But I also recognize what Senator Janssen is talking about and that argument, that persuasiveness of the principle of personal freedoms that also should hold some weight with us. So I have an idea and I've talked about this with Senator Janssen is how we could put forward legislation that provides for this personal freedom on the part of riders who choose not to wear a helmet without making life any different for any other person in the state of Nebraska. It's going to take some doing and that would have to occur on Select File unless there's a bracket motion that would buy some time such that we could work out legitimate and responsible legislation that addresses both principles. And so I'm willing to do that. I'm willing to work with this...work on this with Senator Janssen, but at this point I'm not yet willing to promise that I'd vote for it until I see the finished product. So this is a responsible motion and the fact that Senator Janssen has decided to make this a priority bill I think provides even greater relevance. So with that, you don't have me yet but perhaps you could soon if we can work out something that is acceptable such that we don't change life for other people in Nebraska and we don't expend future monies. With that, Mr. President, I'd like to yield the remainder of my time to Senator Janssen. [LB200]

SENATOR LANGEMEIER: Senator Janssen, 2:20. [LB200]

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SENATOR JANSSEN: Thank you, Mr. President. Thank you, Senator Fulton. Am I ecstatic about throwing a bracket motion up on my bill? No, of course not. Am I open to it? Yes. Why am I open to it? It's for senators like Fulton that have just expressed an interest in wanting to learn more about this, wanting to meaningfully work with me and the riders on a way that we can accomplish this. The last thing I wanted to do is when I started to feel the momentum coming the way of the rider, coming the way of freedom on this issue, was to blur the issue with an insurance policy that may or may not exist. When I have a respected member of this body who's been in the insurance industry for over 30 years come up to me and say, I'm not certain this policy is around, I'm certainly going to have a little pause for concern in this bill. And I think we're too close to it. I did say I'd prioritize it if I can get the insurance aspect clarified, which I'll work with Senator McCoy. I appreciate him reaching out to me in that manner. So I'm going to support...you probably won't hear this a whole lot, I am actually going to support the bracket motion on LB200 with the idea of bringing it back with a clarification on the insurance, exactly what we're looking at so we can get this bill passed and allow freedom to ring, as I'll say it, in Nebraska for the riders, finally, just like it does in 30 other states. So for clarification, please... [LB200]

SENATOR LANGEMEIER: One minute. [LB200]

SENATOR JANSSEN: Thank you, Mr. President. Please do support this bracket motion. I'm up in the queue to speak. I'm actually going to take my...push my button and not speak again on this issue. I think we've all had our say on it. Certainly I'm not telling you what you can and can't do, but I'd like to get to a vote this morning on the bracket motion and move on with our agenda and hopefully bring a cleaner, better bill back to this body after February 9 if that's possible. Thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Janssen and Senator Fulton. Senator Carlson, you're recognized. [LB200]

SENATOR CARLSON: Mr. President and members of the Legislature, I really believe that the amendments that have been proposed are done with good intentions. And certainly part of the reason they're there is because I had indicated two years ago I wouldn't support a repeal of this law unless there was a million dollars of medical coverage on a cycle policy to cover the rider and any passenger. I do support the bracket motion. I'm glad that the Speaker has jurisdiction and has the say over when this bill comes back to the agenda because I really think it may take more than a week. I want to comment a little bit on the insurance aspect of it. Long-term care possibly could be divided into two types of policies--comprehensive long-term care which covers a person that needs long-term care for whatever reason, they reach that position or situation where they need long-term care. Another possible type of coverage would be a narrow coverage policy, and that's what I think we're trying to address here and I don't

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know that it exists. I don't know that companies are interested in it. But in order to be effective for the individual and be possible for the individual if we're talking about long-term care, the individual has to be insurable so the company can say, no, and realistically it needs to be affordable. Now, from the aspect of the insurance company, if they're asked to provide a premium on a narrow policy that covers people only when their passengers or drivers, riders on a motorcycle, not covered for any other situation, only that. Makes it a narrow policy. An insurance company has to research it. They've got to decide yes or no on the coverage, whether they want to offer it. If they want to offer it, they have to determine what's an adequate premium. The premium that they decide upon should make the product profitable or there's no reason to offer it, and nothing is wrong with a product being profitable. To be effective for those that would purchase the insurance, I think that several companies must offer the coverage in order to make it competitive. And that's looking at long-term care. As we look at medical coverage, again, it's not a comprehensive major medical policy for a million dollars. It's covering a narrow situation of being a rider or a passenger on a motorcycle and injuries that occur from there. So the insurance companies have to go through the same process to determine whether they want to offer a product that would be appropriate in the way of medical coverage. So this is a complex issue and I do support the bracket motion. Thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Haar, you're recognized. [LB200]

SENATOR HAAR: Mr. President and members of the body. A couple other questions that we'll need to answer along the way here. This proof of insurance, will that be required when you get your license, when you get your driver's license? What would it be? How do we handle out-of-state riders? Will they be required to have the same insurance? It's been said a number of times that it's really easy to tell who has a helmet and who doesn't if we'd go to this whole...this twin system of some people needing a helmet or insurance and some not. And then I guess the question would be, would police officers have special authority to stop those without helmets to make sure they had proof of insurance? Because I don't think we do that with cars now. You only find that out when you actually have an accident or when you apply for your license. And then the question comes up about the passenger and whether that passenger would be required to have a helmet or not and whether that would change the insurance coverage. So I think there's an awful lot of questions to answer. I am still opposed to LB200, but I think in the discussion we're going to have to cover all those others...and I don't know whether Senator Lathrop wanted to speak on this, but I would give him the rest of my time if he so wishes. [LB200]

SENATOR LANGEMEIER: Senator Lathrop, Senator Haar would yield you 3 minutes, 20 seconds. [LB200]

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SENATOR LATHROP: Thank you. I appreciate it. I have a little bit of a dilemma on this one. My dilemma is that I think we've come to the place in debating this bill where we have come to recognize that we're talking about a hazardous activity. Senator Stuthman, it may not be the only place where you get a brain injury. I don't think that's not a reason to look carefully at whether we have a helmet law or not. The dilemma is that we talk to the people who sell property and casualty and we've talked to somebody and we heard from somebody who sells the long-term insurance, and we're going to bracket this for a week so that we can go figure out the insurance things. It doesn't look like we're going to be able to come up with a fix, so we might just be kicking this can down the road. And then a thought occurred to me. If we come in on the floor and mandate a bunch of med pay coverage, health insurance essentially for somebody in a motorcycle accident, this afternoon Government is going to listen to a bill that would make it a constitutional amendment that you can't mandate insurance and health insurance. And what are we going to do? Are we going to fill this bill with requirements and then avoid them with a constitutional amendment? I really don't know what I'm going to do with this bracket motion because ultimately the process of vetting out legislation has worked. We've gotten to the place where there's an impasse. We have people who recognize the death and the brain injuries that will follow from a repeal of this and we're running around trying to find band-aids to put on the arguments, ways to stop the dam from leaking, and they involve insurance products that we will then mandate because this bill is about freedom of choice. Now we're going to mandate goggles, we're going to mandate insurance, we're going to mandate all these different things in the name of giving somebody a choice to ride a motorcycle without a helmet. [LB200]

SENATOR LANGEMEIER: One minute. [LB200]

SENATOR LATHROP: And then I'm not sure that whatever fix we come up with that makes so many of you more comfortable with moving this bill won't be unconstitutional if this amendment that they're taking up over in Government passes. I really...you know, I guess as a courtesy I'd be willing to support the bracket to allow my friend Senator Janssen and Senator Rogert to look at this issue. But I think it's fair that we look at the Medicaid costs. What is the state going to pay because we're going to pick up one in five of these accidents. And Senator White is right. These people get in terrible accidents and they have terrible orthopedic injuries, but that doesn't change the fact that we will have more of them, we will have more brain injuries, and we will have more deaths if we repeal this...the helmet law. And I will continue in my effort to oppose LB200 even if it's brought back on the ninth or some day following that. Thank you. [LB200]

SENATOR LANGEMEIER: Time. Thank you, Senator Lathrop and Senator Haar. Senator Council, you're recognized. [LB200]

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SENATOR COUNCIL: Thank you, Mr. President. My light has been on for some time. We were talking at the time about FA60. And as you'll recall my final comments yesterday were on FA60. And I would remind my colleagues that at that time I stated I opposed FA60 and I told you why, that it was not fair, it was not reasonable, and most importantly it was not practical. And now we've heard today and just...if you listened intently to Senator Carlson a few minutes ago when he described all of these various long-term care insurance policies and what they entailed and what they didn't entail, I would like to remind you of a statement I made yesterday that relates to the impracticality of FA60. If you look at the section of the statutes that are being affected by LB200, AM1720, FA60, you'll see in there that we have the financial responsibility, that is our compulsory auto liability insurance section. And the agency that we have charged with carrying out what's set forth in that section is the Department of Motor Vehicles, not the Department of Insurance. And I don't know how many members of the staff of the Department of Motor Vehicles in the offices across the state of Nebraska could determine whether a certificate or whatever evidence that someone had a long-term care insurance policy satisfied the requirements of the act. According to what Senator Carlson just said, you'd have to be someone from the Department of Insurance to determine whether or not the long-term care insurance policy that a rider obtained satisfied the requirements of this statute. So it's absolutely impractical. I also indicated yesterday that I would oppose and I continue to remain opposed to AM1720 without the long-term care insurance. I agree with Senator Campbell that even without FA60, without the long-term care insurance, the \$1 million insurance penalizes riders who choose to wear a helmet because quite frankly, Senator Haar, you're right. I don't know how you distinguish and how do you decide whether you do or you don't. If you wear a helmet, if you choose to wear a helmet, are you in compliance with the law if he don't have the million dollar policy? And it's my understanding from talking to riders that quite a large percentage choose to wear a helmet. So they would be penalized by having a requirement to bear the cost of this liability insurance. And I also suggest to you that you compare what's being asked here of motorcycle riders with what we ask of the motoring public, which if I recall hearing yesterday that most motorcycle accidents are caused by motorists failing to yield the right of way more often than not, but under our compulsory automobile liability insurance statute, we only require those people to carry bodily injury coverage up to \$25,000. So what's missing from this discussion, which I find interesting, is this whole issue of fault. And the assumption underlying all of this insurance is that... [LB200]

SENATOR LANGEMEIER: One minute. [LB200]

SENATOR COUNCIL: ...the mere fact that a person chooses to ride a motorcycle places them at fault for any injuries they suffer and any payments that may need to be made on their behalf without consideration at all of who may have caused those injuries. And that's what Senator Fulton was referring to when he says that we don't want to change life for others in Nebraska. Well, the fact of the matter is under our present

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automobile liability insurance, we oftentimes change the life of other Nebraskans. I'm conflicted as well, Senator Lathrop. I don't know whether to support this bracket amendment or not. Part of me says, support it so that we come back whenever and you realize you can't fix this. [LB200]

SENATOR LANGEMEIER: Time. [LB200]

SENATOR COUNCIL: Trying to structure an insurance program to fit this won't happen. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Council. (Visitors introduced.) Returning to discussion on the motion to bracket. Those wishing to speak, we have Senator Karpisek, Avery, Lathrop, Haar, and Gay. Senator Karpisek, you're recognized. [LB200]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. Yesterday I said I really didn't like the amendments that were coming on, but if I thought that's what we needed to do to push it over the finish line that I would vote for it. Well, in hindsight we probably did something that we didn't intend or I did, anyway, and I was surprised when we would make all riders get the extended insurance. That certainly was not my intent nor I don't think Senator Janssen's. I will vote for the bracket so we can try to get this straightened out. I'm sure we will get it straightened out and get back to the issue of helmets or no helmets. We've gotten so far off the subject that I don't know that we can get back to it any time soon without taking a break. I guess if it goes back to it's just easier to not have the long-term insurance, I'm okay with that too. I will vote for the underlying bill. I will vote for the bracket. And I'm sure that everyone involved will sit down in a week's time. I want to thank Senator McCoy for only doing a week. I think that's a good amount of time for us to be able to sit down and talk. I think it's a smart move and I hope everyone agrees with it and we can take it up later, get on with some other business at hand. Thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. Senator Avery, you're recognized. [LB200]

SENATOR AVERY: Thank you, Mr. President. My light was on a long time ago when we were not talking about the bracket motion. But I do have some information that might be of interest to my colleagues. As Chair of the Government, Military and Veterans Affairs Committee, I often do research on military matters. And I ran across some information yesterday that is pertinent to this debate, and it has to do with how the military and the Department of Defense generally deals with this issue of helmet use and protective gear for cyclists. And what I found was that the military is very restrictive, extremely restrictive in what they require. They require personal protective equipment for all military personnel both on and off duty, and all civilians riding motorcycles on military installations. The requirements are these: The riders must have a Department of

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Transportation approved helmet properly fastened under the chin. They must also have impact or shatter-resistant goggles or full face shields properly attached to the helmet. A windshield or eyeglasses alone are not considered proper eye protection. They must wear sturdy footwear, leather boots or over the ankle shoes are strongly encouraged. They must have a long-sleeved shirt or jacket, long trousers, and full-fingered gloves or mittens designed specifically for use on motorcycles. A brightly colored upper garment during the day and a reflective upper garment during the night. Outer upper garment shall be visible and not covered at all times. These instructions and requirements apply to all military personnel at any time whether they are on the base or not or whether they are on duty or not. All Department of Defense civilian personnel operating a motorcycle must abide by these rules. And at Kirtland Air Force Base, they go farther. They require that all personnel riding motorcycles must wear an upper garment containing a minimum of 144 square inches of one of the following authorized bright contrasting colors. It can be international orange. It can be international red or international yellow. The garment must be reflective for use during hours of darkness and limited visibility. The garment must be worn as the outermost layer of clothing. In addition, the full 144 square inches must be visible to the rear. Well, why is this at all pertinent to our debate? First of all, the military knows the danger of severe injury, they know it's real. They also know that the Department of Defense is responsible for treatment of the injured. The department knows that the costs are high, often leading to very long-term care obligations by the Veterans Administration. If you are a military personnel and you are injured on the job or in the line of duty, obviously you will have a service-connected disability. [LB200]

SENATOR LANGEMEIER: One minute. [LB200]

SENATOR AVERY: But if you are legally on pass from the military installation, you may also get a line of duty determination investigation that would lead to an affirmative yes in the line of duty because the person was legally on pass. That then means that this person with a severe head trauma will probably have a very long-term obligation by the Veterans Administration involving a high rating for disability, and that's a cost the military is trying to hold down. The military understands the importance of helmet use. They require that and more. And I think that we should pay attention to this because this is not just about what happens to the individual. It's what happens to us as a society because we're all going to be obligated in the end to help pay for this. This issue about insurance is an important one. We've been talk... [LB200]

SENATOR LANGEMEIER: Time. [LB200]

SENATOR AVERY: Thank you, Mr. President. [LB200]

SENATOR LANGEMEIER: Thank you, Senator Avery. Senator Haar, you're recognized. [LB200]

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SENATOR HAAR: Mr. President, members of the body. This bracketing is really very curious to me and it puts me in a dilemma. Today, we're being asked to do a bracketing as a courtesy to a member of the body and that's probably how I'm going to vote because I think we owe courtesies to each other. But I am still very disheartened when last week when "partisanism" raised its head. Bracketing was used as a punishment to silence a legitimate issue before the body. And so, again, it puts me in kind of a dilemma here. Is bracketing a courtesy? Is it a punishment? And I think if it is a courtesy, in fact, that should limit its use as a punishment as well. And I would give the rest of my time to Senator Lathrop if he'd like it. [LB200]

SENATOR LANGEMEIER: Senator Lathrop, 3:50. He waives the time. Senator Gay, you're recognized. [LB200]

SENATOR GAY: Thank you, Mr. President. I am going to vote for this bracket motion, I think, give them a chance to work it out. However, earlier I did say I think this is a fairly clear issue. You either don't or you do wear a helmet. These other things, look into them, fine. This has been done many times in the Legislature and it's always a contentious issue. But if you're going to look into it and how do you enforce some of these things they're going to come up with is to me still going to be, I think, a challenge not to throw cold water on the situation. But if you're truly wanting everyone's input, I hope those that get together on this issue will listen to some of the opponents point of views. I mean, what they're saying is we want to talk about this and we're going to get it worked out according to our perspective, but there is still another perspective. And if you look, there's no neutral if you look at your statements. You're either for or against this. So a little bit, I think, we need to look at how would law enforcement...every time I talk to a law enforcement officer or a judge or something like that, they're saying, boy, these things. Enforcement. How do you enforce some of these ideas that we're trying to get? Senator Council, you know, she gets it. She was talking about how if we're going to go through the process, is it really going to work or are we just putting it here in the Legislature? You got to implement these ideas and make them actually work, just like the insurance. You know, who's responsible for doing this? This bill, I think, still needs a lot of work. You know, if it comes back the ninth or after or whenever they're ready to return it, I hope they will listen to the other side of the situation as well because if you're going to compromise, that means working with both parties. And what I'm afraid of is we're going to go try to find some more ways around this and then try to appease everyone and still not have a workable bill. A workable bill, as Senator Fulton talked about and I think many of us want, is something that can actually be implemented in the real world, the day to day, we don't cause more troubles for these riders. So with that, and I know the people that are going to be involved are very well capable. I'm just putting this in. I'm going to vote for the bracket. This is not to delay. It's just some input. Thank you, Mr. President. [LB200]

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SENATOR LANGEMEIER: Thank you, Senator Gay. Seeing no other lights on, Senator McCoy, you are recognized to close on the bracket motion. [LB200]

SENATOR McCOY: Thank you, Mr. President, members of the body. I think Senator Gay very eloquently speaks to the core issue. And I agree with his words that we do need to take a very close look at this and not just in the light of a certain philosophy or a perspective or side of this issue one way or the other. And I commit to you my involvement in this, I will try to look at this without a jaundiced eye towards what my personal opinion may be of the underlying issue. And that's a very, very valid point. We will work on this issue. We will work with the insurance community and the insurance industry as I indicated in my opening. We will solicit feedback and involvement from both perspectives on this issue. I am reminded, and I think Senator Gay may concur with this, of another quote. I'm a fan of quotes and have many, many of them in my office. And another one of my favorites that I think is also appropriate in this environment is, "difficulties mastered are opportunities won." Winston Churchill said that. I think that we've dealt with a difficult issue for the last three days and I'm not sure we will be able to completely master it. But I think the opportunity that may be won here is that we will be able to be afforded the opportunity with passage of this bracket motion. We will be afforded the opportunity to step back, as has been our long tradition in our Legislature at times, to step back away from a contentious issue and work on it, and that's what we will do. And with that, Mr. President, colleagues, I would ask for your support in this bracket motion until February 9, 2010. Thank you. [LB200]

SENATOR LANGEMEIER: Thank you, Senator McCoy. You have heard the closing on the motion to bracket LB200 until February 9, 2010. The question before the body is, shall LB200 be bracketed? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB200]

CLERK: 34 ayes, 0 nays, Mr. President, on the motion to bracket the bill. [LB200]

SENATOR LANGEMEIER: The motion to bracket is adopted. Mr. Clerk, next item, LB705. [LB200 LB705]

CLERK: Mr. President, LB705 is the next bill. (Read title.) The bill was introduced on January 6 of this year, at that time referred to Transportation and Telecommunications Committee. [LB705]

SENATOR LANGEMEIER: Thank you. Senator Haar, you're recognized to open on LB705. [LB705]

SENATOR HAAR: Mr. President, members of the body. LB705 is very simple and has no A bill, so it shouldn't take too long, I hope. Currently, if you're a Disabled American Veteran, you're allowed one DAV plate. And this is really a good example of constituent

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input. A constituent called me and said, I'd like to have more than one DAV plate for my multiple vehicles. So I've worked with him and we bring LB705, came through committee. This bill allows you to register all of your vehicles with the DAV plate if you're a Disabled American Veteran. And actually this makes the DAV plate the same as the Purple Heart plate. Again, no fiscal note. There's an amendment coming up which I think is a very good amendment. But with that, I will end my opening. Thank you. [LB705]

SENATOR LANGEMEIER: Thank you, Senator Haar. Mr. Clerk, for a motion. [LB705]

CLERK: Senator Pirsch would move to amend, AM1729. (Legislative Journal pages 435-436.) [LB705]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I am offering this amendment, AM1729. I think it takes a good bill, a very good bill, and makes it even better. I, too, have received calls from constituents who have served their nation and regarding the same matter. There's a discongruity, disuniformity. Right now some veterans such as Purple Heart veterans are allowed multiple plates. However, for other veterans who have plates designated in the case of Senator Haar's underlying bill, Disabled American Veterans, they don't have that opportunity to have multiple plates issued. And what this amendment would do would also add to the list Prisoner of War, those who have Prisoner of War plates and Pearl Harbor plates. And so I think it makes it comprehensive, adds a uniformity to the whole scheme, and is something that doesn't cost us anything but it symbolically, I think, makes a statement to those who have supported this country that we support them. And so with that, I would ask that you vote yes on the amendment and vote yes on the underlying bill. Thank you. [LB705]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Thank you, Senator Pirsch. You have heard the opening on LB705 and AM1729. Are there senators wishing to speak? Senator Langemeier, you are recognized. [LB705]

SENATOR LANGEMEIER: Mr. President, members of the body, I apologize. I don't have a copy of AM1729 in front of me. Would Senator Pirsch yield to a question? [LB705]

SENATOR CARLSON: Senator Pirsch, would you yield? [LB705]

SENATOR PIRSCH: I would. [LB705]

SENATOR LANGEMEIER: Senator Pirsch, after I listened to your opening, it sparks thoughts in my mind. We had a lot of discussion. As a matter of fact, I introduced a bill

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in the last session that went to Transportation Committee that dealt with a number of different type of plates and Senator Fischer had the same and it was advanced. Would AM1729...should that not have been a bill? [LB705]

SENATOR PIRSCH: Actually, a lot of the concept in AM1729 was introduced last year. This would be a little bit more narrow what is not included amongst this amendment this year that I've proffered as opposed to last year is just the exception of spousal plates, which that concept was not brought up in Senator Haar's underlying bill. I don't intend to expand out or bump out the purview of the bill, so I will stick to it. It's my understanding that not only Senator Haar has no objection to this amendment, but Senator Fischer, the Chairman of the Transportation Committee, has no objection to this bill as well. That's my understanding but I would...if that is not true, Senator Fischer, I know is here on the floor and I also would invite her input. [LB705]

SENATOR LANGEMEIER: Okay. Okay. Thank you for your comments. It's my time. With that, I would conclude and thank you, Mr. President. [LB705]

SENATOR CARLSON: Thank you, Senators Pirsch and Langemeier. Senator Fulton, you're recognized. [LB705]

SENATOR FULTON: Thank you, Mr. President. I actually just popped my light on there just because we were moving along here and I'm not entirely familiar with AM1729. I've read through it, so I'm going to have a couple of questions for Senator Pirsch if he would yield. [LB705]

SENATOR CARLSON: Senator Pirsch, will you yield? [LB705]

SENATOR PIRSCH: I would. [LB705]

SENATOR FULTON: This just opens up such that instead of being relegated to one, is it vehicle or is this vehicle in tow? [LB705]

SENATOR PIRSCH: It's my understanding this could apply to multiple plates, could be trailer, semitrailer, you know, any vehicles that are owned or trailers, so anything that is plated would...and this means an awful lot...again, a large part of this is symbolic though it may have the potential to raise a little revenue for the state through the plates. This means an awful lot...these people gave a lot serving their country as POWs and in Pearl Harbor and they're proud of their service to the country and they do feel that it's an integral part of them, and so. [LB705]

SENATOR FULTON: Yep. I'm with you. I'm with you on the principle, Senator. [LB705]

SENATOR PIRSCH: Yeah. [LB705]

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SENATOR FULTON: I'm curious. That's actually where my curiosity is, is... [LB705]

SENATOR PIRSCH: Um-hum. [LB705]

SENATOR FULTON: ...piqued, I guess. Where do...is it possible that more revenue would be generated from this? Because we're opening this up, we're able to have specialty plates by way of policy decision, you know, a couple of years ago, maybe it was last year, and now we're going to open it up, which I'm in favor of completely. But I'm also seeing an opportunity here. Is there a revenue to be generated from this? Have you thought through that aspect of the amendment? [LB705]

SENATOR PIRSCH: Yes, I have. And that's the thing. It's a win-win is my analysis for the state that we will derive, obviously, to the more...you know, these specialized plates are going to send more revenue to the state. But that's not my principle analysis in looking at this bill. You know, I'm bringing it forward, you know, even if it was revenue neutral. Obviously, I wouldn't go forward with something if I thought there was a cost in this economic time. But even if it was revenue neutral, it's the right thing to do for our veterans and... [LB705]

SENATOR FULTON: Okay. [LB705]

SENATOR PIRSCH: It means so much in their life and they are proud of their service and they have every bit...you know, they have every right to be. And so they've given so much, so I think it is something that they want to make sure that others do recognize that there are people out in the state who did make that, you know, who made that sacrifice. And this is a great way to keep that consciousness high that they did and that they're here. [LB705]

SENATOR FULTON: Okay. Thank you, Senator Pirsch. Thank you, Mr. President. [LB705]

SENATOR CARLSON: Thank you, Senator Fulton and Senator Pirsch. Senator Sullivan, you're recognized. [LB705]

SENATOR SULLIVAN: Thank you very much, Mr. President. I wonder if Senator Pirsch would yield for a question? [LB705]

SENATOR CARLSON: Senator Fischer, would you yield? [LB705]

SENATOR SULLIVAN: No, I said Pirsch. [LB705]

SENATOR CARLSON: Sorry. Senator Pirsch, would you yield. (Laughter) [LB705]

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SENATOR SULLIVAN: Excuse me. [LB705]

SENATOR PIRSCH: Pirsch, Fischer are very...I would, yes. [LB705]

SENATOR SULLIVAN: Thank you, Senator. I rise in support of this bill and also the accompanying amendment. Just a clarification on your amendment, Senator, that the individual applying for the special plate would have to provide proof of...don't want this to be a problem for the individual applying, so what kind of proof do they have to provide? [LB705]

SENATOR PIRSCH: Yes, and I'm sorry, I don't have a copy of my amendment, but there is a certifying step in there. You can't just go in there and say, I want that plate. You have to show the Department of Motor Vehicles. Similarly, if you're taking out a handicap plate, you would have to show that you have a handicap. So it is something that is done at the department before the plates can be issued, so. [LB705]

SENATOR SULLIVAN: Well, I realize that but with a disabled veteran it's probably easier to show, but I mean in your amendment you're talking about the fact that there are survivors of the attack on Pearl Harbor, and maybe that's easy to show. I don't know. I just am...I don't want this to be problematic for the individual that's going after this license, so I just wanted to know how much documentation they're going to need to provide. [LB705]

SENATOR PIRSCH: You bet. And I will call your attention to page 1. It's a two-page amendment. I'll call your attention to page 1 of my amendment which in particular starts on line 19 in (2) which deals with the issuance of such license plate: The license plates will be issued when the applicant pays the regular license fee and an additional fee of \$5 and furnishes proof satisfactory to the department that the applicant fulfills the requirements provided by subsection (1) of this section. And so that is...and I'm talking about this is with respect to the Pearl Harbor plates. Subsection (1) deals with being a survivor of the Japanese attack on Pearl Harbor. And then there is specific requirements as to what that means. You have to have been a member of the United States Armed Forces December 7, 1941, was on station on December 7, 1941--and keep in mind, these are all elements you have to prove to the department or you cannot get these license plates--during the hours...and the specific hours even, 7:55 in the morning to 9:45 in the morning Hawaii time at Pearl Harbor, the Island of Oahu, or offshore at a distance not to exceed three miles. [LB705]

SENATOR SULLIVAN: Okay. That... [LB705]

SENATOR PIRSCH: And you have to be...and this was brought in past years, you have to have been discharged or otherwise separated with a characterization of honorable

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from the United States Air Force. [LB705]

SENATOR SULLIVAN: Okay, and so these veterans would be familiar with the documents that they have to take with them to get these plates. Is that correct? [LB705]

SENATOR PIRSCH: Certainly, and I think, Senator... [LB705]

SENATOR SULLIVAN: Okay. Very good. [LB705]

SENATOR PIRSCH: Yeah. And there is similar very restrictive verbiage with respect to not just to Pearl Harbor but the other aspect of it which is the prisoner of war. And so that occurs on page 2 beginning on line 14, so. And that deals with people captured and incarcerated by an enemy of the United States during a period of conflict with...and there's other restrictive language. So I do appreciate the question... [LB705]

SENATOR CARLSON: One minute. [LB705]

SENATOR PIRSCH: I hope that answered your... [LB705]

SENATOR SULLIVAN: Certainly it does. Thank you very much and, again, I rise in support of the amendment and the underlying bill. Thank you. [LB705]

SENATOR CARLSON: Thank you, Senator Sullivan and Senator Pirsch. Those still wishing to speak, Senators Fischer and Nelson. Senator Fischer, you're recognized. [LB705]

SENATOR FISCHER: Thank you, Mr. President and members of the body. I do stand in support of Senator Pirsch's amendment and in support of Senator Haar's bill. If I can help clarify some of the discussion that was going on earlier, I will try at this point to do so. Senator Pirsch's amendment really just puts this in line with current practice that we have on the Purple Heart plates as Senator Haar's bill will do with the DAV. Senator Sullivan, on your question on how you will certify if these people are eligible for the plates, in statute now under the Purple Heart Plates, a person has to be, of course, honorably discharged and also hold current membership in a Nebraska Chapter of the Pearl Harbor Survivor's Association. On the disabled veteran plates, they have to be classified...again, an honorable discharge and classified by the United States Department of Veterans Affairs as 100 percent service-connected disabled. And Purple Heart plates, the applicant has to receive from the federal government an award of a Purple Heart which is the citation then that comes with that award. So there is documentation for this. Senator Stuthman had asked me off the mike on...in this bill or in this amendment and in the bill you see that it covers also trailers. Again, that is just putting it in line with the current statute that we already have with regards to the Purple Heart Plates. So I hope that answers all the questions. I think Senator Pirsch has a

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good amendment here and, as I said, I do stand in support of the amendment and the bill. Thank you. [LB705]

SENATOR CARLSON: Thank you, Senator Fischer. Senator Nelson, you're recognized. [LB705]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like some clarification here on both the underlying bill and the amendment. Perhaps I should start with Senator Haar, if he would yield to a question. [LB705]

SENATOR CARLSON: Senator Haar, will you yield? [LB705]

SENATOR HAAR: Yes. [LB705]

SENATOR NELSON: Thank you, Senator Haar. I'm looking at the fiscal note here on your bill and it indicates that they estimate that perhaps \$1,500 in additional fees will be generated by increasing this or expanding this to the DAV veterans, is that correct? [LB705]

SENATOR HAAR: Yes, and what's interesting when I talked to the particular constituent who brought this, he was more than willing to pay that extra fee. He just wanted to be able to use that license plate. [LB705]

SENATOR NELSON: Well, that's the question that I have. On the bill there on page 2 and on line 14, the plates shall be issued upon the applicant paying the regular license fee and an additional fee of \$5. Now, are we getting...is the Department of Motor Vehicles getting \$5 for each additional plate or is there just a \$5 fee that covers all of these plates that are going to be issued to the applicant? [LB705]

SENATOR HAAR: Great question. I'll find that out for you. [LB705]

SENATOR NELSON: All right. Okay. And the same thing then applies to Senator Pirsch. I'm just wondering about...I don't know the process of issuing this plate but I know there's got to be some cost to that, to these special plates and their numbers. Is the \$5 additional fee going to cover things if, in fact, they're issuing five plates, you know, to a veteran or a Purple Heart veteran. So perhaps we could get the answer to that question here and I will support the bill as is, but maybe we can find out a little bit more about that on Select. Thank you, Senator Haar. Senator Pirsch, do you have an answer to that? [LB705]

SENATOR CARLSON: Senator Pirsch, would you yield? [LB705]

SENATOR PIRSCH: Thank you, Senator Nelson. And as I stated, my anticipation is this

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would generate revenue, actually be a win-win. But with respect to an actual fiscal note, one was developed for Senator Haar's underlying bill. Obviously, the Fiscal Office did not design one specifically for my amendment at this point. But with respect to the fiscal note for Senator Haar's underlying LB705, if you look, it will be net positive for the state in terms of revenue to the tune of \$1,500. So that would...obviously, they encompass both...look at both costs and fees generated to come up with that overall figure. [LB705]

SENATOR NELSON: Thank you. But I think there's another aspect to this question. The people that issue the plates, are they going to charge \$5 for issuing five plates or is it going to be \$5 per plate, that additional fee? I'm not sure I'm clear on that point yet. [LB705]

SENATOR PIRSCH: And I'm sorry, was that a question directed to me, Senator? [LB705]

SENATOR NELSON: If you have an answer, yes. If you would answer. [LB705]

SENATOR PIRSCH: The question is whether there will be \$5 assessed per plate? [LB705]

SENATOR NELSON: Yes. [LB705]

SENATOR PIRSCH: Or do you mean per applicant with unlimited... [LB705]

SENATOR NELSON: Right. That's... [LB705]

SENATOR PIRSCH: I believe that it is...if you can hold on just one second. My understanding right now--and I'll confirm this in just a little bit--is it's \$5 per applicant, so. [LB705]

SENATOR NELSON: Five dollars, that's...all right. [LB705]

SENATOR PIRSCH: Yeah. But I'd like to confirm that. [LB705]

SENATOR NELSON: All right. [LB705]

SENATOR PIRSCH: I'll confirm it at a later point in time if we can pass it on. [LB705]

SENATOR NELSON: Thank you. Thank you, Senator Pirsch. [LB705]

SENATOR PIRSCH: Yeah. [LB705]

SENATOR NELSON: Thank you, Senator Haar. [LB705]

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SENATOR CARLSON: Thank you, Senator Nelson and Haar and Pirsch. Those still wishing to speak, Senators Price and Wallman. Senator Price, you're recognized. [LB705]

SENATOR PRICE: Thank you, Mr. President and members of the body. As a veteran, I stand here in appreciation of the concern and the consideration that is being shown on the floor in this matter and hopefully to shed a little bit of light. Upon discharge, at least in my career, I know there are people who served a long time before I did, but you will be issued a DD Form 214. On this DD Form 214, your awards, decorations, schools, etcetera, etcetera, are documented, and that form may suffice and most likely will be what you used to validate and verify many of these questions. Of course, prior to that there was another form number. I apologize, it escapes me, the actual number, but there was a form. Trust me, the government had a form to document where you were and what you did. You also have your change of station orders, your PCS orders. There are many documents that can be gathered up there in the archives. And I'm sure in case there was a flood, fire, or some other damage, there are other documents. There are also unit records. So please rest assured there is a way to validate and verify your, either the award and/or the presence at the prescribed time for whatever matter it was that we were considering. And, again, I do appreciate Senator Haar bringing this forward and Senator Pirsch in trying to make this more encompassing so we don't have to come back again on this. And I surely hope we get a chance to vote on this today. And I would yield the balance of my time to Senator Fischer, if she should so choose to use it. [LB705]

SENATOR CARLSON: Senator Fischer, 3 minutes and 20 seconds. [LB705]

SENATOR FISCHER: Thank you, Mr. President and members. I just want to clarify that the cost of the \$5 is per vehicle, not per plate, not per applicant. It's per vehicle. This isn't a money-maker. Senator Fulton had brought up the question of revenue. This isn't a money-maker. And that \$5 goes for our cemetery that we have here, the national cemetery that's in Senator Loudon's district. So that extra money from these plates goes to our veterans and I wanted to clarify that. Again, I support the amendment, support the bill. I don't believe there are anymore questions. Thank you. [LB705]

SENATOR CARLSON: Thank you, Senator Fischer. Speaker Flood for an announcement. [LB705]

SPEAKER FLOOD: Thank you, Mr. President. We're getting ready to adjourn here shortly this morning. A couple of quick notes. We're going to continue on General File tomorrow, Thursday. We will take up Final Reading on Friday. We will most likely be dealing with some Select File at the early part of next week. Wanted to give you kind of a frame of reference as you watch your bills through the system. Again, General File

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tomorrow, Final Reading, then General File on Friday, and then some Select File either Monday or Tuesday of next week. Thank you, Mr. President.

SENATOR CARLSON: Thank you, Speaker Food. Senator Wallman, you're recognized. [LB705]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. Thank you, Senator Haar, Senator Pirsch. As I look through my Legion Magazine, lots of Second World War veterans are gone. They left us. The greatest generation is leaving us. So whatever we can do to honor these, thank you, thank you. Thank you, Mr. President. [LB705]

SENATOR CARLSON: Thank you, Senator Wallman. There are no other lights. Senator Pirsch, you're recognized to close on your amendment. [LB705]

SENATOR PIRSCH: I just wanted to say I appreciate all the questions here on the floor, and I think they're good to give people a level of comfort to make sure it is what it's purported to be. So I'd ask you to support AM1729 at this time and the underlying bill. Thank you. [LB705]

SENATOR CARLSON: Thank you, Senator Pirsch. You've heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB705]

CLERK: 36 ayes, 0 nays, Mr. President, on adoption of the amendment. [LB705]

SENATOR CARLSON: The amendment is adopted. We return to the floor for discussion on LB705. Senator Conrad, you're recognized. Your light is not on now, Senator Conrad. There are no other senators wishing to speak. Senator Haar, you're recognized to close. Senator Haar waives closing. The question is, shall LB705 be advanced to E&R Initial? All in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB705]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB705. [LB705]

SENATOR CARLSON: LB705 is advanced. Mr. Clerk. [LB705]

CLERK: Mr. President, LB725, it's by Senator Fischer. (Read title.) Introduced on January 6, referred to Transportation, advanced to General File. There are committee amendments. (AM1630, Legislative Journal page 376.) [LB725]

SENATOR CARLSON: Senator Fischer, you're recognized to open on your bill. [LB725]

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SENATOR FISCHER: Thank you, Mr. President and members of the body. LB725 proposes changes to reinstate exemptions for certain vehicles that were in place prior to 1988. The current language of state statute requires fertilizer trailers and agricultural chemical applications and distribution equipment to be subject to the Federal Motor Carrier Safety Regulations, which include the need for brakes, brake lights, and turn signals. The purpose of LB725 is to provide a definition of fertilizer and agricultural chemical applications and distribution equipment and to provide exemptions from brakes, brake lights, and turn signals requirements for these vehicles. The exemption is sought because the trailers chassis are not equipped with brake and light systems from the manufacturers. They are designed and intended to be used primarily in the fields and at low speeds, and the chassis are not conducive to retrofitting. Contact has been made with the Federal Motor Carrier Safety Administration to make sure that LB725 would not take the state of Nebraska out of compliance with federal regulations. Thank you, Mr. President. [LB725]

SENATOR CARLSON: Thank you, Senator Fischer. Mr. Clerk. [LB725]

CLERK: Transportation offers committee amendments, Mr. President. [LB725]

SENATOR CARLSON: Senator Fischer, as Chair of the Transportation Committee, you're recognized to open on the amendments. [LB725]

SENATOR FISCHER: Thank you, Mr. President and members. The committee amendment, AM1630, adds a new section to the bill. Section 60-66...excuse me, Section 60-363 is amended to create an exemption from carrying a registration certificate with a fertilizer trailer. Instead, the registration certificate shall be kept at the principal place of business of the trailer's owner. These trailers have no place to carry a registration certificate upon them. Fertilizer trailers include gooseneck applicators or trailers designed and used exclusively to carry or apply agricultural fertilizer or agricultural chemicals and have a gross weight of less than 20,000 pounds. Thank you, Mr. President. [LB725]

SENATOR CARLSON: Thank you, Senator Fischer. Mr. Clerk, items for the record. [LB725]

CLERK: I do, Mr. President. New resolutions: LR310 and LR311. LR310 by Senator Krist, LR311 by Senator Flood. Both will be laid over. I have a Reference report referring a certain gubernatorial appointee to standing committee for confirmation hearing. The Committee on Transportation reports LB735 to General File with amendments and LB821 to General File with amendments. I have amendments to be printed to LB200, a series of amendments to LB200. An announcement. Education Committee will have an Executive Session upon adjournment. Education Committee, Exec Session, Room 2102 upon adjournment. Name adds: Senator Price to LB865;

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Senator Schilz to LB1103, Senator Gloor to LR310. (Legislative Journal pages 437-440.) [LR310 LR311 LB735 LB821 LB200 LB865 LB1103]

And I have a priority motion. Senator Flood would move to adjourn the body until Thursday morning, February 4 at 9:00 a.m.

SENATOR CARLSON: You've heard the motion to adjourn until Thursday morning at 9:00 a.m. All in favor say aye. Opposed the same. We are adjourned.