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Floor Debate
February 11, 2010

[LB200 LB257 LB258 LB381 LB391 LB546 LB643 LB667 LB689 LB705 LB708 LB711
LB723 LB725 LB735 LB754 LB762 LB786 LB787 LB788 LB797 LB799 LB806 LB816
LB832 LB869 LB873 LB883 LB888 LB891 LB892 LB911 LB914 LB1000 LB1006
LR295CA LR308 LR309 LR310 LR311 LR318]

SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-fifth day of the One Hundred First Legislature, Second Session. Our chaplain for today is Pastor Randy Fett, St. Paul's Lutheran Church, Grand Island, Nebraska, Senator Gloor's district. Please stand. []

PASTOR FETT: (Prayer offered.) []

SPEAKER FLOOD: Thank you. I call to order the twenty-fifth day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record. []

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

SPEAKER FLOOD: Thank you. Are there any corrections for the Journal? []

CLERK: I have no corrections. []

SPEAKER FLOOD: Are there any messages, reports, or announcements? []

CLERK: Your Committee on Enrollment and Review reports LB891 to Select File, LB892, LB643, LB723, LB787, LB914 all to Select File, some having Enrollment and Review amendments attached. Enrollment and Review also reports LB667, LB705, LB708, LB711, LB725, LB762, LB788, LB797, LB806, LB816, LB832, and LB873, all of those reported correctly engrossed, and LB911. Your Committee on Urban Affairs reports LR295CA to General File, that's signed by Senator McGill as Chair. Hearing notices from Natural Resources and the Judiciary Committees. Report of registered lobbyists as per statute to be inserted in the Journal. And a report received from Educational Lands and Funds on file in the Clerk's Office available for member review. That's all that I have, Mr. President. (Legislative Journal pages 523-526.) [LB891 LB892 LB643 LB723 LB787 LB914 LB667 LB705 LB708 LB711 LB725 LB762 LB788 LB797 LB806 LB816 LB832 LB873 LB911 LR295CA]

SPEAKER FLOOD: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR308, LR309, LR310 and LR311. Mr. Clerk, we now proceed to the first item on the agenda, legislative confirmation report. [LR308 LR309 LR310 LR311]

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CLERK: The Health and Human Services Committee, chaired by Senator Gay, reports on the appointment of Acela Turco to the Foster Care Review Board. (Legislative Journal page 517.) []

SPEAKER FLOOD: Senator Gay, you're recognized to open on your Health and Human Services Committee confirmation report. []

SENATOR GAY: Thank you, Mr. President. Acela Turco came in front of the committee and she had unanimous support from the committee. She brings a vast background and would be an asset. There was no opposition to her nomination and we'd encourage the Legislature to support the nomination. Thank you, Mr. President. []

SPEAKER FLOOD: Thank you, Senator Gay. Members, you've heard the opening on the Health and Human Services Committee confirmation report. Senator Lautenbaugh, you're recognized. []

SENATOR LAUTENBAUGH: Thank you, Mr. President. And thank you, Senator Gay, for advancing this nomination. I know Ms. Turco. I think she'll serve ably. She's infinitely qualified and I'd appreciate your support. []

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator McCoy, you're recognized. []

SENATOR McCOY: Thank you, Mr. President and members. I, too, know Acela Turco, find her to be a person of high integrity, and I also believe that she would serve very capably in this capacity and would ask you to advance her confirmation. Thank you. []

SPEAKER FLOOD: Thank you, Senator McCoy. There are no other lights on. Senator Gay, you're recognized to close on your confirmation report. Senator Gay waives closing. The question before the body is, shall the Health and Human Services Committee confirmation report be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. []

CLERK: (Record vote, Legislative Journal page 527.) 41 ayes, 0 nays, Mr. President, on the adoption of the confirmation report. []

SPEAKER FLOOD: The confirmation report is adopted. Mr. Clerk, are there further confirmation reports? []

CLERK: I have nothing further in that regard, Mr. President. []

SPEAKER FLOOD: Thank you, Mr. Clerk. (Visitors and doctor of the day introduced.)

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We now move to LB200. Mr. Clerk. [LB200]

CLERK: LB200, Mr. President, originally introduced by Senator Janssen, deals with motorcycles and changes helmet provisions, requires eye protection. When the Legislature left the issue yesterday, pending was Senator Janssen's AM1796. Subsequent to that offer Senator Lathrop offered AM1832 as an amendment to AM1796. Senator Lautenbaugh then offered a priority motion, that being to bracket the bill until April 14. That is the motion currently pending, Mr. President. [LB200]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Janssen, you have two minutes to share with the Legislature the status of your bill. [LB200]

SENATOR JANSSEN: Thank you, Mr. President. Good morning, colleagues. I don't need to take a lot of time to remind you about the bill. I think most of us know what LB200 is and the underlying amendments. I am hopeful that we can come to a vote on this today. I've made this my priority bill. I realize there is great passion on both sides of this bill. I put forth a compromise that I think appeases most people that would support this bill. I do realize that there is no compromise for some on this bill and they choose to take a different path. Support or oppose LB200, support or oppose the helmet law, I am hopeful that you will allow my priority bill, LB200, a straight up or down vote on this floor today as I would with your priority bills. And I see that priority bills are stacking up behind mine right now on the agenda. Once again, AM1796 would do four things. It would require eye protection for all motorcycle and moped operators and passengers, require all persons under 21 to wear a motorcycle or moped helmet, require persons who are 21 and over and not wearing a helmet to have a current and effective medical reimbursement insurance coverage of not less than \$1 million, and have proof of insurance with them while operating the motorcycle or moped, and this will sunset, LB200 will sunset in 2016, after we've had a good five-year look at the data and we can reconsider it at that time if we're here. With that, Mr. President, I yield the balance of my time. [LB200]

SPEAKER FLOOD: Thank you, Senator Janssen. Returning to discussion on the bracket motion which would bracket LB200 until April 14, 2010, Senator Lautenbaugh, you are recognized. [LB200]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I did want to discuss a little further something I said yesterday because I think it's led to some confusion. And that would be my comment regarding the tyranny of the majority. And if there's confusion about that, I would urge you to google it on the "interweb" as a famous President once said, but look it up. Simply the point I was making was this, we do have a limited government in this country still. And just because a majority thinks maybe something is prudent or wise, we are to be respectful of the rights of the minority. Everything we think is a good idea should not be foisted upon everyone else, even if a

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majority of us believe it to be a good idea. Our constitution, our Bill of Rights, our customs recognize there have to be limits on government power. If not, you have the tyranny of the majority in a democracy. That's why our system works when it works. We do not live in a tyranny, certainly. But I've stood up and cautioned a few times this session and last about how we overreach sometimes and go into areas I don't think we have a business going into because they affect personal liberties. And there was a comment yesterday, probably not made with a lot of consideration, that I want to dwell on a bit. And it was, let's stop talking about personal freedoms. The day we stop talking about personal freedoms is the day we just hang it up, I would submit. We should think about personal freedoms in every bill we pass and everything we do and every idea we consider. Something that is trivial to us is not trivial to someone else, I cite for you roadside trapping from last year. People kept saying, why are you talking about this? And my response a few times was, why are you not talking about this? Because it mattered to some and we were infringing upon what they wanted to do without good reason. There's been a reason articulated here for the helmet law, I concede that. But is it enough to justify us imposing our will on the people who may not want to wear a helmet? We heard the talk yesterday that even the Founding Fathers recognized the public good and things must yield to the public good. Of course, that's the case. I would submit if the Founding Fathers were here today they might suggest that all of us be strung up for some of the things we do. I don't think the Founding Fathers would recognize us. We have evolved for better or worse as a nation, but evolved we have. No one here is saying that personal freedom is an absolute, it does have to yield. But that's the question: Is this issue, is our desire to have people wear helmets a worthy enough desire, a worthy enough stated public good to make these people yield their rights? And again, make no mistake, bikers are a minority. They're not a federally protected minority but they are a minority numerically I would submit. I'm not a biker, I don't ride. But I feel like I'm developing an understanding that some of my colleagues may be lacking. Yesterday one of my colleagues talked about how we should MapQuest. If you MapQuest this you see the most direct route to Sturgis may not come through, I don't know, Valentine or whatever. I think that is a fundamental misunderstanding... [LB200]

SPEAKER FLOOD: One minute. [LB200]

SENATOR LAUTENBAUGH: ...of why people ride. It's not to get the fastest route from A to B or they would probably take a plane. You're missing the point of biking, you're missing the point of that freedom and what they enjoy. And MapQuest really doesn't hold the answer there. We talked...we heard one member talk yesterday about how snow skiing, horse jumping, those are all different, those are personal freedoms. We don't have to worry about those. But helmets on motorcycles are different. I would say that's not the case because it's still the same justification for worrying about head injuries in horse jumping as it would be in motorcycling. And I don't know why one of our members would say that somehow helmets are different on motorcycles. Be consistent. But in light of that, we filed the motion to bracket yesterday for sort of a test vote that we

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no longer need today. So I am going to withdraw the bracket motion at this time and debate will proceed as it would have otherwise. I urge you to vote against AM1832 and support AM1796 and the underlying bill. Thank you, Mr. President. [LB200]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Without objection, the bracket motion is withdrawn. Mr. Clerk. [LB200]

CLERK: Mr. President, then in that case Senator Janssen's AM1796 is pending. Senator Lathrop, yesterday, had offered AM1832 as an amendment to AM1796. (AM1796, Legislative Journal page 518. AM1832, Legislative Journal page 519.) [LB200]

SPEAKER FLOOD: Senator Lathrop, the Chair gives you two minutes as a courtesy to update the Legislature as to AM1832. [LB200]

SENATOR LATHROP: Thank you, Mr. President. And, colleagues, good morning. AM1832 is very simple. Senator Janssen's AM1796 would make not wearing a helmet a secondary offense. We're all familiar with what that means because our seat belt law is a secondary offense. The difficulty with making the helmet law a secondary offense is that as a primary offense, if a law enforcement officer sees a young person, if this bill were to pass with the amendment, sees a young person riding without a helmet he can pull them over, he or she can pull the person over. If it is a secondary offense, a 16-year-old can pull up right next to a police officer on a street in your community and the police officer can't do a single thing about it. It is, in my judgment, critical that if the Janssen amendment passes that it at least be a primary offense so that law enforcement can pull over those people who are under 21 and violating the law if this is to have any value whatsoever and be enforceable at all. So I encourage your support of AM1832. Thank you. [LB200]

SPEAKER FLOOD: Thank you, Senator Lathrop. Returning to discussion on AM1832, Senator Hadley, you are recognized. [LB200]

SENATOR HADLEY: Mr. President, members of the body, you know where I stand. I've made it clear on these. But I want to take a moment to say thank you to the agencies responding to the hostage situation yesterday in Kearney. These agencies were the Kearney Police Department, the Buffalo County Sheriff's Office, the Nebraska highway Patrol, and the FBI. They did an outstanding job yesterday. Over 30 individuals were at risk during the crisis. There was excellent cooperation amongst all of the law enforcement agencies. The skills of the officers involved was very evident. The efforts reflect the excellent training at the local, county, state, and national level for our law enforcement officers. Response was quick, efficient, and well coordinated and, best of all, no one was injured. Quite often we as taxpayers criticize employees of government. Here we are...we as taxpayers should be very proud of our employees who handled a

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very, very difficult situation yesterday excellently. Thank you, Mr. Speaker. [LB200]

SPEAKER FLOOD: Thank you, Senator Hadley. Senator Gay, you are recognized. [LB200]

SENATOR GAY: Thank you, Mr. President. I wanted to talk on the amendment a little bit, how to enforce this. Today I was speaking with a treasurer, deputy treasurer. And I asked, you know, when you go to license a bike, a motor bike, you get in there and when I read on...in Section 3, 21, but part 2 of Section 3, while operating...it says, effective...you must have effective medical reimbursement insurance, coverage of not less than \$1 million. And I said, how do you carry proof of insurance? Well, when you go to license a vehicle, car or a motorcycle or whatever, I said, how much do they look at that? And they don't, they don't look at the...so when you're going to the DMV or if you're going to your county treasurer to get your license they're not looking at how much coverage you have. Usually, it's on the computer, on the DMV computer that you have insurance. The reason you bring your card in most of the time is in case there's a flaw that they can't see it on the computer that you have insurance coverage because it renews in the same month or there's a glitch, you have that card there that they look at. They don't really look at the cards. So if I pull out my insurance card, they're not looking at my coverage. So the question I have again is enforcement of these things. Because when we pass laws, somebody has to enforce what we say. So we go out and then it says here, anybody that's going to do this, not wear a helmet shall carry proof of insurance with him or her while operating. So how do you...how is this enforced? And, I guess, does everybody have to have the \$1 million insurance policy or just those that aren't going to be riding? So, Senator Janssen, I'd like to ask him a question here, if he's around. I'd like to get that clarified. Because the way I understand it is... [LB200]

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

SENATOR GAY: But, I guess,...thank you, Mr. President. But I think the idea is some of these things that we say to help justify this bill, well, if they're just carrying \$1 million insurance, I think really, and I've said this again, and I will put an amendment in if this gets to Select File because I truly believe this. The issue, we keep adding things for these bikers. And I think, really, we're doing them a disservice. All they want, and I'm not a proponent of this, but all they want is to be, hey, we just want to ride without a helmet. They don't want all this other...and I'm not going to say, they don't want all these other requirements. And in a way I can understand that, too, because I think this issue is simple. The statistics show that you're much more, much more at risk to get in an accident and you're not wearing a helmet. If you are, it helps some but it doesn't guarantee anything either. So what I'm saying is, when we actually, if this law continues...if this continues to pass, let's not make it so much that the average person who's not paying attention to what we're saying here or doing here today doesn't get a

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hassle. I would hate to be the treasurer and then how are the insurance people...I assume when you go and buy...insurance agents need to understand our law. And I assume they will be up to speed that, oh by the way, if you need a motorcycle policy, you need to carry \$1 million insurance. Fine. They're the ones that need to tell our constituents, by the way, you need this. I think the constituents are going to say, what? You kidding me? I've been doing this for years, I've never had to have this. Well, I'm sorry, you do now because the Legislature mandated this because of the helmet bill. And then maybe the constituent says, you know what, I've always worn a helmet and... [LB200]

SPEAKER FLOOD: One minute. [LB200]

SENATOR GAY: ...but now we've then taken those riders who want to wear a helmet and said to them, well, you know what, sorry, we know what's best for you, you're going to buy this \$1 million policy because what I think is those drivers that want to go without the helmet, they wanted it. So now we went to the long-term care, we said that's not going to work, we pulled that off. Now we got this proof of \$1 million insurance. And I still think that's more doable. I will say I don't know what the cost of a \$1 million policy is for a motorcycle rider. But I think what we're doing is just...this is so muddled, this bill. And then I talked earlier about how do you enforce is that guy 21 or is he 18 or which is it? Law enforcement can't enforce it. So now we've created a law enforcement problem, an insurance problem, and probably a county treasurer's problem in the interest of protecting people. So... [LB200]

SPEAKER FLOOD: Time, Senator. [LB200]

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

SPEAKER FLOOD: Thank you, Senator Gay. Senator Lathrop, you are recognized. [LB200]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I think this has been a good debate, I really do. And I think before I go into my comments, it's important for people to know that this is what we came here to do. We are doing our job today, we are vetting a piece of legislation and it isn't about friendships and it isn't about relationships. This is about whether you think this is a good idea or not. And I'd like to talk about where we're at with respect to this bill, a little bit of a score card, if you will. We've made accommodations or AM1796 is an attempt to make accommodations to some people who weren't comfortable simply repealing this and turning over the liability for a lot of this care to the state and to the trauma centers across the state. And so we have made this a secondary offense. I've talked about that. This will become completely unenforceable. And what...we only need to look to Florida to see what happened when Florida repealed their helmet law. And I'd like to talk a little bit about that this morning.

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They did almost exactly what this amendment and LB200 would do, and that is they said, well, we're going to have the 21-year-old and under, anybody under 21 be required to wear a helmet. What they found is, and make it a secondary offense. What they found is the 18-year-olds and the 16- and 17-year-olds quit wearing a helmet. We made the bill, if this amendment is adopted, completely unenforceable. Right now we have a 98 percent, something on that order, level of enforcement. It will go down to very few people wearing helmets at all because no one can enforce the law until that person has been in a wreck or they're caught speeding. I want to talk about the insurance piece because that was put into AM1796 to get some of you on board. The insurance piece to start with is unenforceable. There's no provision, no penalty, you don't even have to show it to register your bike, you're just supposed to do it. Now if you don't, there's no penalty. We don't put that kind of stuff into the law without some consequence, some enforcement mechanism, but there is none here. And here's another question for you. Understand this about insurance, 60 percent of the people who are riding these motorcycles have policies, 40 percent don't have a policy or their policy is Medicaid. So if someone gets pulled over and they're asked for their insurance card and they pull out a Medicaid card, are you comfortable with that? Does that satisfy the requirements? It shouldn't. And then if we mandate insurance, you know, I got a call this morning from somebody in a different district, they said, I don't agree with you on the helmet law. And I said, well, do you know that the bill is going to mandate insurance? Well, no, I didn't know that, I don't like that. Well, it's going to mandate you wear goggles. Well, I should have a choice to do that or not do that. You see, we've made so many accommodations in this bill and it's being...the media portrays it as an up or down vote on the helmet repeal. It's not, we're mandating insurance. And while I'm on insurance, here's something else that's both ironic and, I think, sad. We're going to mandate insurance in this bill to get it passed. But we have many of the same advocates for this mandated insurance that signed on the constitutional amendment that says you can't mandate health insurance. So if this insurance requirement is starting to make you feel comfortable about the bill, let me suggest something to you, that this constitutional amendment, and I've read it, that would abrogate this. This provision that may be making you feel comfortable would be unconstitutional. [LB200]

SPEAKER FLOOD: One minute. [LB200]

SENATOR LATHROP: So ultimately we've tried to come up with accommodations to various senators who said, if you do this I'll sign on, if you do this I'll vote for it. The reality is that we're making the bill unenforceable. The helmet law as it will exist applying to 21-year-olds won't be enforceable. And the insurance requirements are going to start sorting people out. Now we're going to tell a guy who's perfectly willing to wear a helmet, you got to go buy a policy of health insurance. I can't hardly stand up without talking about the people who will die. If you look at the statistics, we'll lose probably ten more people a year, ten people that will die unnecessarily. Dozens of people will have spinal cord fractures and brain injuries every year to accommodate a few people who

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have been courteous in their lobbying, I'll grant you that. They have every right to come to the lawmakers of the state and ask to repeal this. They've been good. [LB200]

SPEAKER FLOOD: Time, Senator. Thank you, Senator Lathrop. Senator Janssen, you are recognized. [LB200]

SENATOR JANSSEN: Thank you, Mr. President, members. Once again, overnight there have been no revelations. There's no new insurance policies, there's no new information this morning that I didn't have yesterday that I didn't have last week. The insurance that you need to have is a general health policy. It's just like I have. It does not affect the motor...we're not telling any motorcycle rider that they have to go out and buy a policy. We're not telling them that, just keep wearing the helmet. What we are ensuring is that the riders are insured that choose to ride without a helmet. And that provides, in most cases, \$10 million of insurance right up front, something again I want to point out that we don't require of the automobile drivers, which we all are. And we far exceed the number of...and almost a new word I learned this work, it has been used a lot this week is hobbyist rider. Again, I thank Senator Lautenbaugh for pointing out that the interstate is not the preferred mode of travel for these riders. These riders enjoy weekend rides, they enjoy the byways. I've gone on rides, actually, I was in a car on a long motorcycle ride with several riders following. I guess I was in the chase vehicle, if you will. And we went through Red Cloud, Kearney, not in that order, Fairbury, and it was an enjoyable time, lots of camaraderie. The riders...it was a hot day, sweat coming down on their face, a lot of them complaining about how dangerous it was--the fact that they had to keep clearing sweat out of their face and wiping their face mask. But that's another story for another day. I'm still here before you asking my colleagues to give this minority, if you will, in numbers the right to at least have an up or down vote on this issue. I'm not certain if the votes are there to pass the bill. I'm not sure. I've done vote count after vote count. We all know how those go. I think I was told that somebody was promised, you know, 72 votes for 49 votes on a...to be a committee chairperson once. We know how that goes. But I would like to see it on the board. I'd like to see the board lit so these riders, these citizens of Nebraska, these people that have taken all of the advantages of their government that they can to come here every possible way that they can to lobby their position. They didn't pay a lobbyist to come down here and lobby for this bill. In fact, I think the only one out there lobbying on their behalf was paid by an individual, not by a group, not by the several groups that are opposing this minority of hobbyists. We put forward a policy that will work. It's a better policy than they have in 30 other states that are allowing their riders to ride free right now. I'm asking you to do that for the Nebraska riders as well. I'm asking you to stand up for them and help get me an up or down vote on this today so that we can move on to other bills in this Chamber. Thank you, Mr. President. [LB200]

SPEAKER FLOOD: Thank you, Senator Janssen. Senator Utter, you are recognized. [LB200]

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SENATOR UTTER: Thank you very much, Mr. President. And good morning, colleagues. I've sat here for it seems like several days, seems like a long time now listening to the debate on this issue. And I just want to, I guess, reflect with you, if I may, for just a minute or two about some of the things that I've heard, some of the comments that I've heard, some of the people that have contacted me, and some of the feelings that I have with regard to repealing the helmet law. Two or three days ago, I had a call from the Adams County Sheriff. And he's a gentleman that has been involved in law enforcement for a long, long time, I dare say maybe more than 30 years and has been the sheriff of Adams County for a long time and has done a good job. And I respect his opinion. And he said, Dennis, I just want to share with you the idea that I have about the helmet bill. He said, as I've been a law enforcement officer, I've observed a lot of people doing a lot of things that were contrary to the law. I've seen people that have run stop signs, have coasted through stop signs, have ran red lights, have done all kinds of things that are contrary to the law. He said, I have never in my history of being a law enforcement officer ever seen anybody ride a motorcycle without a helmet. And he said, that says something to me. It says something to me that the motorcyclists, the people that are riding understand the benefits of that law but respect...not only understand the benefits of the law but also respect that law. And he said, as far as I'm concerned, it's probably one of the most respected laws that I have observed as a law enforcement officer. I want to tell you the story of the two Marks. There are two Marks that are very important to me. One of them happens to be my son, and he lobbied me very early on. He rides a motorcycle and lobbied me very early on to support this repeal. And we had a long, at times difficult, discussion. And I'm not sure either one of us changed the other's mind, but it caused me to think about him and his family and the things that happened...that could happen as a motorcycle rider. The other Mark is a gentleman that succeeded me in my job before I retired, and he's also a rider. And he called me up...on the phone the other day. And I'd purposely not talked to him because I knew he was a motorcycle rider. And I felt like I knew where he probably stood and I decided, well, I just don't want to engage in this conversation. But he called me and he said, Dennis, please don't repeal that motorcycle...vote to repeal that motorcycle helmet bill. He said, you know, I'm just dumb enough that if you repeal that I might be tempted to ride my motorcycle without a helmet, and I think that wouldn't be very smart. I have talked with constituents... [LB200]

SPEAKER FLOOD: One minute. [LB200]

SENATOR UTTER: ...honestly who have supported the helmet bill. I've talked to far more of them who are in support of the helmet bill than are in support of the repeal of the helmet bill. I've talked to the medical professionals in my community. And almost universally they think that repealing the helmet bill would be a bad idea. And so it's talking to all of these people and working through this whole process that...and looking at the pile of research that allows me to think that just isn't...that even though it's a

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freedom issue, that freedom is not free and it's in the best interest of this state to not repeal the helmet bill. So I will have to oppose. Thank you. [LB200]

SPEAKER FLOOD: Thank you, Senator Utter. Senator Christensen, you are recognized. [LB200]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, again I'm going to come back and talk about all the deaths that we have in all kinds of other areas that I don't think anybody is looking at. You know, motor vehicles was 227; railroad accidents was 3; motor vehicle nontraffic accidents, 14. You come in, you've got all kinds of drug poisonings, 98 of them; again, the accidents from falling, 207. If you're worried about people that are getting hurt, you'd help a whole lot more people to require bucket trucks to put up Christmas lights, the number of people that fall every year. You know, I...you go compare some of these states even that have...and look at the percent of wrecks, believe it or not the states that have helmets have a higher number of wrecks. Why is that? I can tell you why it is. I gave the example on the first day of this debate or second that helmet causes fatigue, causes sweat in your eyes, it can be a real detriment. Do I choose to wear one? Most of the time. Would I without this? Yes, I would. But the fact is there's times it's going to be safer with it off. I had a guy tell me, he says, the other day, he says, I was on a snowmobile, my hands were freezing, my feet were freezing, but my face and my head was fine. Said, it never dawned on him, he said, what was the problem. The helmet was keeping his head warm. Your head regulates the heat to your body, so the body wasn't getting the heat that it needed. The same thing happens in the summer, got that helmet on, that helmet heats your head, that's where the fatigue comes in. I have used these helmets. I've used them day after day and come to the point I was tired. I was more tired the days I used the helmet than the days I didn't. But I happened to be doing something different. I happened to be on an ATV when I was doing this day after day. I didn't have to wear it, I was choosing to. The fact is when I was irrigating and on the farm full-time I would start irrigating at 5:30 in the morning. I generally got done around 11:00 at night. And I can tell you I was to the point I couldn't handle the fatigue when I wore the helmet on that ATV. I either had to hire more help or I had to get rid of the helmet. I'm just telling you the helmet may help... [LB200]

SPEAKER FLOOD: One minute. [LB200]

SENATOR CHRISTENSEN: ...when you have that accident, may or may not, I'm not sure the statistics are there. On the death ratio, I'm not sure it's there. If you got a head injury, yes, it's going to reduce it. I don't have any doubt there, but it's going to increase neck problems, going to increase the fatigue, increase the accidents. You know, I think we've all beat this one to death. We need to vote on it. You're going to have to vote your conscience on it. But there's two sides to this. It's not just about freedom. It can be about fatigue, it can be about increasing the accident numbers. Thank you, Mr. President. [LB200]

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SPEAKER FLOOD: Thank you, Senator Christensen. Senator Avery, you are recognized. [LB200]

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. I am convinced that everything has been said on this issue but not everyone has yet said it. And if you will bear with me I might repeat myself because sometimes it seems that we need to continue to make the same point, hoping that eventually you'll make the point so well, so persuasively that people will be persuaded. I wanted to just relate to you a few empirical facts about motorcycle riding without helmets. In 2005, over 4,500 motorcyclists died and approximately 87,000 were injured in highway crashes in the United States. Per miles traveled in 2005, a motorcyclist is approximately 34 times more likely to die in a crash than someone riding in a passenger car. Head injury is a leading cause of death in motorcycle crashes. An unhelmeted motorcyclist is 40 percent more likely to suffer a fatal head injury and 15 percent more likely to suffer a nonfatal injury than a helmeted motorcyclist when involved in a crash. The National Highway Traffic Safety Administration estimates that motorcycle helmets reduce the likelihood of a crash fatality by 37 percent. That's a significant number. Also, another study found that motorcycle helmets are 67 percent effective in preventing brain injuries and that unhelmeted cyclists involved in crashes were three times more likely to suffer brain injuries than those wearing helmets. That's compelling. The National Highway Traffic Safety Administration estimates that from 1984 to 2005, helmets saved the lives of over 17,500 motorcyclists, and that if all motorcycle operators and passengers had worn helmets during that period the estimate is that over 11,500 additional lives would have been saved. A study conducted by the University of Southern California analyzed 3,600 traffic crash reports covering motorcycle crashes and they concluded that wearing helmets was the single most important factor in surviving motorcycle crashes. Repeal of state universal helmet use laws has resulted in fewer riders wearing helmets. According to the National Occupant Protection Use Survey from 2000 to 2005, helmet use dropped from 71 percent to 48 percent nationally and remained at 48 percent in 2005. These are facts. These are not suppositions. These numbers are not based on guesses or conjecture. They are empirical facts, empirical facts, that is to say they are based on factual observation, not opinion. Our deliberations in this body should be informed by rational, logical arguments. And the best way to arrive at rational, logical arguments is to base our arguments on factual information. They have to be based on facts. [LB200]

SPEAKER FLOOD: One minute. [LB200]

SENATOR AVERY: It is in the public interest to pursue the public safety. It is in the public interest to preserve this law. Now I admit that it might actually not promote the private interests of some motorcyclists. But is it unreasonable to require cyclists to give up some of their personal freedom to promote the public interest? I say, no, it is not. Because in a just society, citizens are required to surrender a portion of their personal

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liberty in order to create a public good that otherwise would not be created. I've made that point here probably four times now, and maybe I'll make it again. I urge you, I urge you that you reject this bill to repeal. And whatever amendments that are up there that we're going to have to consider, let's take them on, let's get it done, and let's do it soon. Thank you, Mr. President. [LB200]

SPEAKER FLOOD: Thank you, Senator Avery. Senator Lautenbaugh, you're next. [LB200]

SENATOR LAUTENBAUGH: Thank you, Mr. President. I'd yield to Senator White. [LB200]

SPEAKER FLOOD: Senator White, 4:55. [LB200]

SENATOR WHITE: Thank you, Mr. President. I want to discuss with Senator Avery, not to ask him questions, but to take on a fundamental issue and it is literally one of the jobs that we pick up every day and we don't often articulate what we're doing. The great tension in a civil society is between individual liberty and collective responsibility. That is the tension we fight all the time, whether it's a DUI standard, whether it is what is a reasonable taxation basis, how much do we fund public education. And it is the tension between, as Senator Avery points out, the community good and individual liberty. And that...in that we find freedom. Now unlike Senator Haar, who had said yesterday anarchy is perfect freedom, I would say it's not. Anarchy is not free because even the strongest has to worry about being attacked at night or from the back. Liberty is found in peace and security. And unlike Senator Avery, you do not, in my opinion, sacrifice an individual liberty for the collective good of fewer head injuries. Where I draw the line is if it is an individual who will suffer the consequences, not the community, but the individual will suffer the consequences, then all bets should be in favor of the individual to make that decision, if it is primarily individual. Now let's take, for example, DUI. The individual who drives intoxicated isn't the person who's necessarily going to suffer the consequences. That person is a threat to the safety and security of other members of the community. That is not the case with a helmet law. Overwhelmingly, though we've talked about cost and the cost of care, but overwhelmingly the price to be paid if that individual makes a bad decision and is injured is by the individual. So what I would tell you as we struggle through these things philosophically, I always try to see before I will regulate the individual, I try to determine if the primary harm is going to be suffered by someone other than the individual, okay, in which case I would tell you I am fairly aggressive about using the law to protect society at large from individuals. But if the primary harm is going to be suffered by the individual themselves, things like smoking, things like drinking, things like eating fast foods, things that will primarily, the consequences will primarily fall on the individual making that decision, then I believe a free society says educate them, warn them, but let them decide. A paternalistic society in which we pretend we know better than they do makes those decisions when the

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primary harm falls on the individual. And those people who are pushing this, I want you to know, I have enormous respect for. They have seen harm. They, through the best motives in the world, wish to prevent it. The devastation that these injuries can cause, they understand. But in the end they have decided that it is their right to choose what consequences should be avoided for the individual. And to me that's not a free society because it interferes with the pursuit of happiness. Again, when we have these kind of regulatory questions, I submit to you all that the first question you should ask yourself, does this really threaten society as a whole or does it threaten the individual? If it threatens the individual, I suggest... [LB200]

SPEAKER FLOOD: One minute. [LB200]

SENATOR WHITE: ...the individual should make the decision and not us. Thank you. And I turn the rest of the time back to Mr. Lautenbaugh. [LB200]

SPEAKER FLOOD: Senator Lautenbaugh, you have 50 seconds. [LB200]

SENATOR LAUTENBAUGH: Thank you, Senator White. As always, we're moving ahead in lockstep, you and I, and I appreciate that. [LB200]

SPEAKER FLOOD: (Bell sounds) Sorry. (Laughter) [LB200]

SENATOR LAUTENBAUGH: Was that a gong or a bell? I'm not sure which. Briefly put, and I yielded my time to Senator White because you've heard me say it, but he is dead on, on this. We're substituting our judgment for those of other adults when we do things like the helmet law. And that's wrong. Like I said many times, it's where you draw the line. And this is a...we've gone too far with the helmet law and we need to step back. Our time is running out on this. We'll have a cloture vote very soon, I believe. And I would urge you to vote for cloture. I would urge you to support...oppose... [LB200]

SPEAKER FLOOD: Time, Senator. [LB200]

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

SPEAKER FLOOD: Thank you. Senator Campbell, followed by Senators Gay, Gloor, Lathrop, Pankonin and Avery. Senator Campbell, you are recognized. [LB200]

SENATOR CAMPBELL: Thank you, Mr. President. Yesterday on the floor we talked about people suffering from falls in their homes and their bathtubs, falling from ladders. And I thought a lot about those statistics and illustrations. But I would say to my colleagues these were not on public roads or public highways. As a body and as a state, we do many things with public roads and highways. We set standards for roads, how they are designed, how they are built, we set speed limits on curves, on school

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zones, on streets, and we put in laws for seat belts and child restraints. A major question that comes before us, and I would agree with Senator White that we constantly balance the responsibility that we have from the individual's viewpoint as well as from the collective good. Well, one of our responsibilities is the safety of the traveling public. That's why we have roads standards, that's why we have speed limits. We have a responsibility as a body to look at what's in the best interest of the traveling public. I would say that we need to keep the seat belt law in position. And I'd yield the rest of my time to Senator Lathrop. [LB200]

SPEAKER FLOOD: Senator Lathrop, you have 3:15. [LB200]

SENATOR LATHROP: Thank you, Senator Campbell and colleagues. I want to talk to some of you who I have talked to along the way and who have said, I don't like this bill. And in a little bit, I expect this morning, we'll take a vote on cloture. And some of you I have talked to say, I'm not going to vote for this bill, but I may give them an up or down. And I heard Senator Janssen say, well, it's my priority bill, I deserve an up or down. You know, I want to talk about cloture for a minute because the cloture is a legitimate rule to be employed in the right case. I think it would be silly to employ it on some of the stuff that we passed up to this point in time. But when it comes down to a life or death issue, there's nothing wrong with filibustering a bill, there is nothing wrong with that. And I wonder how many people who are talking about deserving an up or down vote have been upset with what's happening in Washington, D.C., where everything requires 60 votes to get it passed. Probably not many of you. There is nothing wrong with the process that's taking place today. There is nothing...we are, as a body, getting to the place where we're debating things and deciding I can't do that to my friend. Or even if we think it's a bad idea, I can't be against it because that person's my friend. Or we're standing out here and not debating things because we're afraid somebody is going to debate our bill. That's our job, that's what we came here to do. If you don't like this bill, if you don't like this bill and you vote for cloture, you're copping out. It is a cop-out to say I don't like LB200 because you are complicit in this thing passing and the people who will die and the people who will get brain injuries and to say, well, I just wanted to see an up or down vote is a cop-out. It is a cop-out. [LB200]

SPEAKER FLOOD: One minute. [LB200]

SENATOR LATHROP: This is an important matter. It is worthy of the debate that it is getting here. It is worthy of the procedures that are being employed to keep it from passing, and your vote on cloture should be no if you oppose the bill. And if you tell me that you oppose this bill and you intend to let it pass through and have a vote up or down, you know what you're doing and I know what you're doing. This isn't about courtesy, this is about the people that are going to die. And I'll tell you it's not just about liberties and personal liberties, which we've wore out on this floor. This bill is junk. We have mandatory insurance with no enforcement. We've made it a secondary offense so

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that we'll never enforce the helmet bill in this state. This is poor work product by this body if we pass the bill with this amendment. And when cloture comes around, it should be no if you don't like the bill. Thank you. [LB200]

SPEAKER FLOOD: Thank you, Senator Lathrop. (Visitors introduced.) Continuing with discussion, Senator Gloor, you're recognized. [LB200]

SENATOR GLOOR: Thank you, Mr. President. Members of the body, good morning. I'd like to go back to a comment made by Senator Christensen about his concern about a variety of ways that Nebraskans get hurt above and beyond the concern we're talking about here with the helmet law. And I wonder if Senator Christensen would yield to a question. Mr. President, I wonder if Senator Christensen would yield to a question. [LB200]

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

SENATOR CHRISTENSEN: Yes. [LB200]

SENATOR GLOOR: If, Senator Christensen, there was a way that I could help you address one of those areas, what would you pick as an area that we might be able to address outside of I would discourage bucket trucks for putting up Christmas decorations, which might, in fact, be a little bit more problematic for us. What might you pick that I could help you with in the next session? [LB200]

SENATOR CHRISTENSEN: Well, in looking over the list as you might be looking at it, it's difficult to legislate a number of things when you're falling off of a house, you know, you can always legislate safer, broader ladders, the feet or base of them, things that way. But far as just picking one of these that I mentioned, I'm not sure that...how you're going to step up and legislate them. But you can always look at automobiles. There's a number of accident...head injuries in cars too. And especially when you're looking at these littler cars, like the smart cars and these things, you know, we're definitely going to have more injuries in them little ones. To give you a good answer beyond looking inside automobile, I don't know what you're going to legislate. But, I guess, I would even say if you're worried about the motorcycles, I would rather have someone step up and say, let's get rid of the motorcycles and have that debate than getting rid of the freedom of the helmet, because I believe the helmet has as many detriments to it as it does benefits. But if you're looking at the deaths, there's a dangerous vehicle. But no one goes after that cycle. [LB200]

SENATOR GLOOR: Thank you, Senator Christensen. A couple interesting perspectives. I'm not so sure that I'd be excited about cosigning a bill that legislated away the ability to have motorcycles in the state of Nebraska. But it would make for an

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interesting debate. But you do point out a good point and make a very good point. And that is it's difficult when you take a look at all the risks that we're subject to on a daily basis how many of those really can be addressed by legislation. What is unique, I think, about the helmet law is that it is a very small section of public safety that we can address. That's what makes it unique. And there's no argument that we would love to do, if nothing else, wrap most Nebraskans in bubble paper so that they didn't get injured, but that's not practical. I think a helmet law is one of those practical things that we can accommodate, one of those practical things that does make a difference. And contrary to Senator White's "ascertainment" of the individual will suffer the consequences as opposed to society, I do not firmly believe and have enough evidence in my years in healthcare that society does carry the burden of people with injuries as a result of motorcycle accidents, specifically head injuries as a result of motorcycle accidents. Clearly, society ultimately carries that burden in the millions and millions and millions of dollars at taxpayer expense for somebody debilitated as a result of head injuries. That to me is a societal consequence and it's the reason that I continue to support... [LB200]

SPEAKER FLOOD: One minute. [LB200]

SENATOR GLOOR: ...maintaining...thank you, Mr. President, continuing to keep in place, and am opposed to LB200, motorcycle helmets. Thank you. [LB200]

SPEAKER FLOOD: Thank you, Senator Gloor. Mr. Clerk. [LB200]

CLERK: Mr. President, a priority motion. Senator Janssen would move to return...rerefer LB200 to the Transportation and Telecommunications Committee. [LB200]

SPEAKER FLOOD: Senator Janssen, you're recognized to open on your motion. [LB200]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. Thank you for the debate this morning. This is a new motion for me. I've got a chance to look at my rule book and dust it off quite a bit during this debate. Let me explain what I'm doing here. I am basically moving to the front to speak on this. I am intending to put in a motion for cloture on this vote this morning and wanted to get one last chance to speak on the bill and maybe have some other supporters speak on it. I have no notes for this. This is my priority motion or my priority bill. I put it in a year ago and I remember saying at the time that, oh, this isn't my priority, this is just a bill I'm putting in, we'll see what happens with it, we'll see if it gets out of committee. It didn't get out of committee. I talked and I'm grateful. Senator Loudon gave me a vote on this to get it out of committee so we could have this debate so those men and women sitting up there, motorcycle riders, would get a chance to see where we stand on this bill, on this freedom of choice issue. I hope they felt represented. I'm not sure where the votes are at. I've talked to many of you. I've asked for cloture. I'm going to ask for cloture. I've

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asked for cloture votes, I've asked for your support on this. I've worked with those that wanted to work with me on this. I'm respectful, very respectful of those that have their own opinions on this that are different than mine, just as you have shown me the respect for my difference of opinion with you. I would beg of you one last time, however, and plead with you that a cloture vote is not a vote for the bill, it's a vote to allow basically what I call my class, the freshmen class of last year of senators, the chance to vote on this. Give me the cloture vote and give the people that were elected by Nebraskans last year to come serve in this body, we were asked this question, I was asked it multiple times, where do I stand on the helmet law. And I told them. And the thing I point out, not one single political action committee or lobbying group or person came to me with a check in hand and said, Charlie, where do you stand on the helmet bill because we support you if you oppose it. Nobody offered any help in my campaign for that. There were groups that came to me that said, we hope you oppose the helmet bill, and by the way we're going to support your campaign. I said, well you know, I really don't, it's not a big issue for me, I don't ride, I'm not certain it will come up. I certainly had no intentions of bringing it out. But to me this speaks to what we're down here for. I listened to the people that I talked to at the coffee shop, I've listened to people, once in a while I might stop into a place that serves an alcoholic beverage that's so I can see my good friend, Senator Rogert, once in a while. (Laughter) And they ask me there, can you put this forward, Charlie? And some people are against it. Make no mistake, I'm taking some heat in my home district for this bill. I'm carrying some freight here. And what I'm asking my colleagues to do is give me a chance to vote on the bill. I'm going to ask for cloture. At this time, I'm going to yield some time to Senator Lautenbaugh and let him speak a little bit on the issue as well. [LB200]

SPEAKER FLOOD: Senator Lautenbaugh, 6:30. [LB200]

SENATOR LAUTENBAUGH: Thank you, Mr. President. And thank you, Senator Janssen. I'm not sure what I can add but I'll try. Again, this does come down to in my mind a personal freedom issue and whether or not we're going to substitute our judgments for the judgment of an adult, another adult who doesn't see things the way we do. And you may say we do that all the time and that may be true, but we should not do it lightly. We should think about what we're doing. And I would argue here that what we're trying to avoid, the supposed public good that we're trying to promote, does not justify us intruding on the rights of these individuals. And yes, this is a certain amount of repetition, and yes, you've heard all this before I hope. But I hope you're listening and I hope you're thinking about this seriously because this is a good bill and it's an important issue. And it was not brought, as was pointed out, by any sort of a national interest or any sort of a lobbying group to me either. It was just individuals contacting me and saying, please let us decide how we want to govern ourselves and our affairs. Please let us decide whether or not we want to wear helmets. And that struck a chord with me because I think it should be up to these individuals. There is probably no chance I would ever ride a motorcycle without a helmet. And that's my choice and I'm fine with that. But

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it is just my choice. And I wouldn't presume to inflict my decision and my judgment on someone else on this topic. We run a risk of trivializing the rights of the individual, diluting the rights of the individual and making everything part of the collective good. Once we have some obligation for health coverage, as we do now, once it's on our nickel we feel like we can control everything. Everything becomes our business. And I think that's sad. I think we have to allow our citizens freedoms and allow them to take risks that they choose as adults to take. And if it sometimes costs society, I would argue that society also benefits from having free, strong individuals that feel empowered to govern their own affairs and their own lives. I agree with what Senator White said. I agree with what Senator Janssen said. Please allow this to come for an up or down vote. Please vote in favor of cloture. We did not debate this bill last year because that Legislature had spoken on this the year before. We do have a different body now. Please let them be heard on this. I understand if you don't support the bill, but please vote for the cloture motion that is coming and let us have an up or down bill and let us defend the rights of these individuals. I'll yield my time back to Senator Janssen. [LB200]

SPEAKER FLOOD: Three minutes, Senator Janssen. [LB200]

SENATOR JANSSEN: Thank you, Senator Lautenbaugh. I couldn't agree more. I'm going to ask you here shortly for your cloture vote to allow us to vote on this. I'm not sure where the votes are going to go. I've counted them many times. I think I've already said that. This may be my last chance to speak on this on the mike. I just want everybody to know how much I appreciated the debate. I also want the supporters of this bill and also the opponents of this bill that are looking in to realize that this was not a passion of mine when I came down here but it was your passion. And I hope I represented your passion as my own passion. Opponents out there, when they come to me with a bill that I think is worthy of debate, I will deliver that same type of passion, whether it's my personal passion or not because I and we are elected here to serve you. And I hope I've done a good enough job to get the votes. If it doesn't turn out that way, I'll just try better next time. I urge you...well, I will urge you to vote for cloture even though I won't get to say that as soon as that is dropped. But at this time, Mr. President, I would like to withdraw my recommit to committee. [LB200]

SPEAKER FLOOD: Without objection, so ordered. Mr. Clerk, you have a motion on the desk? [LB200]

CLERK: I do, Mr. President. Senator Janssen would move to invoke cloture pursuant to Rule 7, Section 10. [LB200]

SPEAKER FLOOD: Senator Janssen, for what purpose do you rise? [LB200]

SENATOR JANSSEN: I'd like to call the house and a roll call vote in reverse order.

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[LB200]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB200]

CLERK: 42 ayes, 0 nays, Mr. President, to place the house under call. [LB200]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Ashford, Senator Nelson. Senator Ashford, please return to the floor. All senators are present or otherwise accounted for. Reviewing Rule 7, Section 10, as it pertains to cloture, it is the ruling of the Chair that full and fair debate has occurred on LB200. For that reason, the motion to invoke cloture will be heard. Members, the first vote is the motion to invoke cloture. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please read the roll in reverse order. [LB200]

CLERK: (Roll call vote taken, Legislative Journal page 528.) 27 ayes, 20 nays, Mr. President, on the motion to invoke cloture. [LB200]

SPEAKER FLOOD: The motion to invoke cloture is not successful. I raise the call. Mr. Clerk, we now move to LB735. And before that, items for the record. [LB200]

CLERK: Mr. President, General Affairs Committee, chaired by Senator Karpisek, reports LB786 to General File, LB869 to General File, LB1000 to General File, LB883 to General File with amendments. Business and Labor provides notice of hearing. And priority bill designation: Senator Dubas has selected LB689; Senator Pirsch...Banking Commerce and Insurance Committee has selected LB888 as one of the two committee priority bills. (Legislative Journal pages 528-531.) [LB786 LB869 LB1000 LB883 LB689 LB888]

Mr. President, the next bill, LB735, is a bill by Senator Gay. (Read title.) The bill was introduced on January 6 of this year, at that time referred to the Transportation and Telecommunications Committee. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM1747, Legislative Journal page 439.) [LB735]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Gay, you're recognized to open on LB735. [LB735]

SENATOR GAY: Thank you, Mr. President. I'd like you all to imagine a security camera capturing the image of your 18-year-old daughter being abducted in a busy store

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parking lot in broad daylight. Then imagine having to wait four agonizing days, not knowing where she is or what has happened to her. To the parents of Kelsey Smith of Overland Park, Kansas, this is not an imaginary scenario but a real-life nightmare that occurred in 2007. It was the catalyst for this bill, LB735, which allows for the adoption of the Kelsey Smith Act. LB735 is a very simple bill that has huge potential to prevent serious injury or death. This is the reason I introduced LB735 and have designated it as my priority bill this session. The bill was heard by the Transportation and Telecommunications Committee on February 3 and was advanced unanimously to General File. There is a committee amendment that helps clarify a portion of the bill which I also fully support. To give a summary of what this bill does, it provides that upon the request of a law enforcement agency a wireless carrier must provide the best available call location information of a wireless communication device. Law enforcement would only request such information in emergency situations that involve the risk or threat of death or serious physical harm. Currently, wireless carriers may voluntarily provide call location information but are not required by state law to do so. Though it seems like common sense, privacy or liability concerns have, in fact, prevented wireless carriers from providing timely call location information in these emergency situations. At the hearing on this bill, Kelsey Smith's mother, Missy Smith, testified about how the family and law enforcement met resistance from her cell phone carrier in trying to access this information that could give clues to Kelsey's whereabouts. Cell phones while turned on send signals, called pings, to nearby towers. These pings enable law enforcement to track these cell phone's path and they can very accurately narrow down its location. Mrs. Smith told the committee that Kelsey's carrier even hesitated acting after receiving a court order. When the company finally released the requested information four days after Kelsey's abduction, her body was located within 45 minutes. She had been brutally raped and murdered. It is not known if getting her cell phone information sooner would have saved her life, but as a parent myself, I couldn't even begin to imagine what those four days would be like. Under this bill, there is no cause of action will lie against a wireless carrier or its officers, employees, or agents for providing this call location information while acting in good faith under the act. A wireless carrier can be held harmless for any and all claims, damages, cost, expenses, and attorney's fees arising from the release of the call location and information. Finally, this bill provides that the wireless carriers will provide contact information to the State Patrol on a semiannual basis or after changes to contact information are made. The State Patrol is then to provide that information to other law enforcement agencies within the state. This is contact information of the wireless company. It will help ensure that law enforcement has a proper contact person and information of the wireless company when an emergency situation arises. At this point, it's important that you understand these don't happen rarely but could happen more. What we're doing here is making the phone company, requiring the phone company, there was no opposition by the phone companies, to give that information out when it's asked for by a law enforcement agency. I think that's the crux of what this bill does is somebody is prepared to give that information to the proper authorities. As you can see from the handout that I will be

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handing out, the ten leading causes of death by age group--homicide actually is the second cause of death for 15- to 24-year-olds, which surprised me. But this bill is not just about homicides. It can be useful in a number of emergency situations. Imagine a suicidal friend calling to say he's taken a bunch of pills and then he loses consciousness, it could locate this person. Perhaps the bill will help get emergency responders to him in time to save his life. Imagine an elderly parent who is diagnosed with dementia, wandering away from a nursing home in the middle of a cold, wintery night. Many times, maybe not even dementia but other situations, someone just this winter was outside, slipped and things happen very quickly on these cold nights. But more and more people are carrying these cell phones. They may not know all the different options available, but most phones can be located with this pinging. So that could help...from hypothermia or something like that setting in. Kansas was the first state to pass this legislation, just last year. And I believe if we pass LB735 we would be the second state to enact this important policy. The Smiths' goal is to have this to be in law in all 50 states. And I have little doubt that it will be very soon. I urge you to vote in favor of LB735 to give us another tool in preventing serious harm or death coming to somebody's loved one. Also, Mr. President, I would say there is a federal bill being introduced by Congressman Tiahrt in Kansas to get this law as a federal law as well. So it's kind of moving on two tracks here. Personally, I thought this was a good bill to prioritize. It's early. I like the bill obviously or I wouldn't prioritize it. But I do think, after talking to law enforcement and seeing some of the cases over the years, that this could be a useful tool. When you look at support for this on your computer, the State Patrol came in to testify. And they are the ones that will house the information that we go through. Well, they won't house it, but they were very supportive and gave us some other cases where this could be a very useful tool. And again, I know there is an amendment that Senator Fischer will be introducing that we thought helped clarify this for the minimal opposition that there was. We thought this was a useful amendment as well. Thank you, Mr. President. [LB735]

SENATOR STUTHMAN PRESIDING []

SENATOR STUTHMAN: Thank you, Senator Gay, for the opening on LB735. As the Clerk has stated, there are committee amendments from the Transportation and Telecommunications Committee. Senator Fischer, will you give the opening on the committee amendments. [LB735]

SENATOR FISCHER: Thank you, Mr. President and members of the body. The committee amendment, AM1747, makes two separate changes to the bill. The amendment narrows the definition of law enforcement agency to mean a police department, town marshal, sheriff and the State Patrol. The Nebraska State Patrol testified at the hearing in support of the bill but felt the definition of a law enforcement agency was too broad in the original bill. This change keeps the bill in line with current statutory definitions of law enforcement. The amendment also narrows the release of

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liability against the wireless carrier to providing call location information to law enforcement in accordance with the act. In addition, wireless carriers would be held harmless from any claim related to the release of call location information while acting at the request of law enforcement. These new language additions will effectively limit the hold harmless language to the wireless carrier's acts provided for in this bill. Thank you, Mr. President. [LB735]

SENATOR STUTHMAN: Thank you, Senator Fischer. You have heard the committee amendments. Those wishing to speak, Senator Gloor, you're recognized. Senator Gloor waives his opportunity to speak. Senator Harms, you're recognized. [LB735]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Gay, would you yield, please? [LB735]

SENATOR STUTHMAN: Senator Gay, would you yield to a question from Senator Harms? [LB735]

SENATOR GAY: Yes, yes, I would. [LB735]

SENATOR HARMS: First, Senator Gay, thank you for introducing this legislation. I'm supportive of the amendment as well as the bill in general. I noticed that the Trial Attorneys did testify in a neutral sense. As I said before on more than one occasion on this floor, that always catches my attention. I still think it's difficult to testify in a neutral capacity, but could you tell me how that took place and are they really supporting it or not supporting it? [LB735]

SENATOR GAY: I think they're more supportive of it. I don't want to speak for the Trial Attorneys. I will, Senator Harms, discuss what their issue was. When you grant full immunity to somebody, that anytime a trial attorney, I think, sees full immunity it causes concerns. And I understand that and I think the amendment, what this does is clarifies who would have the liability. And I think by the amendment, and I don't want to speak for them but we'll see if there is any other opposition, I think we helped alleviate those concerns because this is a document like any human document. There could be errors in it and things can happen, but I think this alleviated a lot of their concerns, Senator Harms. [LB735]

SENATOR HARMS: Thank you, Senator Gay. As I said, I rise in support of this. I've always had concerns about tracking a teenager or a family member in an emergency situation, and I can't imagine what it would be like having my granddaughter or one of my grandchildren or my own children or my wife being abducted. And the fear that goes into your heart is probably something we can never measure. And if there's an opportunity for us to save their lives, to stop some of the horrible things that happen to teenagers or family members on being abducted, we need to do this, colleagues. This is

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an important piece of legislation. I know on my own cell phone recently I discovered that you've got an opportunity to go 911 or all areas where they could actually track me or track my family. We've converted our cell phone to being able to identify if that phone is on that you can track us, you'll know where we're at, and I urge those folks of you who have your cell phones, you ought to look at it. There is an opportunity for you to make sure that you can set your phone up so that it can be done easier than it is today. So I just rise, as I said, in support of this. I think it's important for us. It's important to have the discussion. But I thank Senator Gay for doing this because, Senator Gay, I think what we'll find for this legislation and you can take...it should make you feel good, I believe you're going to save a lot of lives. So thank you very much, colleagues. Thank you, Mr. President. [LB735]

SENATOR STUTHMAN: Thank you, Senator Harms and Senator Gay. Seeing no other lights, senators wishing to speak, Senator Fischer, you're recognized to close on the committee amendments. Senator Fischer waives her closing. The question for the body is, shall AM1747 be amended into LB735? All in favor vote yea; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB735]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB735]

SENATOR STUTHMAN: The amendment is adopted. Senator Sullivan, you're recognized. [LB735]

SENATOR SULLIVAN: Thank you very much, Mr. President. And I would just like to say thanks to Senator Gay for introducing this. This issue hit close to home for a family in my district a few years ago. You may remember a young couple from Ord were involved in...it was a blizzard situation, I think, probably in Sarpy or Douglas County, not...in Sarpy County. They became disoriented. Their calls for help could not be identified on their cell phones and they ultimately died. So I think this will provide a great service to the public and I thank Senator Gay for prioritizing it. Thank you. [LB735]

SENATOR STUTHMAN: Thank you, Senator Sullivan. Seeing no other lights, Senator Gay, you're recognized to close on LB735. [LB735]

SENATOR GAY: Thank you, Mr. President. I just take this time to thank those colleagues who spoke in support of this. I did want to take this time also...tragedy sometimes can turn out with a little better causes and I think that's what this bill is trying to get done for the parents, the Smiths. But I did want to say, you know, those people that supported this, we see some of the phone companies and they're the ones that have to implement this policy and they're very supportive, and I would say that on the floor. You know, sometimes there's a letter from a company saying, you know, it's just the right thing to do and we're not fighting this. It is the right thing to do, and I think that

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is the case. Senator Sullivan talked about a case which I was very familiar with, of course, but that is one example. Since then with the enhanced wireless and some of the things that have happened over the years, what we're really doing here is taking technology that's been improved and helping to utilize that to increase public safety and that's why, to me, I know this looks like it has great support. But I truly did want to prioritize this just to kind of have a very good cause and I think it's something that I could be proud of in the future and all of you can be as we move on in the future, because I do think it will do some good. And I think it has some benefits that we won't even see today, but just knowing law enforcement and the volunteer firefighters and those people that supported this, I think this will be a very useful tool and it will be very well run. Thank you, Mr. President. [LB735]

SENATOR STUTHMAN: Thank you, Senator Gay. You have heard the closing on LB735. The question is, shall LB735 advance? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB735]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB735. [LB735]

SENATOR STUTHMAN: LB735 does advance. Mr. Clerk. [LB735]

CLERK: Mr. President, next bill. Senator Harms offers LB258. (Read title.) Introduced on January 14 of last year, at that time referred to the Judiciary Committee. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM1803, Legislative Journal page 502.) [LB258]

SENATOR STUTHMAN: Thank you, Mr. Clerk. Senator Harms, you're recognized to open on LB258. [LB258]

SENATOR HARMS: Thank you, Mr. President and colleagues. States all across the nation have absolutely struggled with what to do with underage drinking. Getting caught drinking, being charged with a minor in possession, these things are all cool for a lot of our kids and there's a badge of honor that goes along with this. And without a meaningful sanctions, colleagues, we will not be able to deter nor will we be able to change the behavioral habits of young people from drinking. Many states have adopted already the use and lose laws. If you use alcohol, you lose your driver's license. This hits young people where I believe it gets their attention. It makes a difference because all of a sudden we're addressing the issue of something that's important to them. And maybe it will stop them to start to think about their consequences of their actions and what takes place. Currently, if a young person is caught drinking and they're convicted of violating, violation of a minor in possession, it's no big deal. They pay their fine, their parents pay their fine and they go on. This is not a deterrent. I've talked with judges, I've talked with county attorneys, I have spoken with teenagers, and alcohol counselors, law enforcement, and they all tell me, for the last three years that if you want a positive

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action, if you want to get results, take on the issue of my driver's license, take on the issue of my automobile. Colleagues, there's a tragic health, social, and economic problem that can result from the use of alcohol. Underage drinking has been shown to be a casual factor in a host of serious problems for teenagers: alcohol poisoning, high-risk sexual behavior, traumatic injury, drowning, burns, violent property, crimes, suicide, homicide, fetal alcohol syndrome, and the need for treatment, and the need for treatment of drug abuse and dependency. And that list goes on, colleagues. That list gets deeper and more severe each time. Underage drinking cost the state citizens of this Nebraska \$553 million in 2007. The cost includes medical care. It includes loss of time, pain, suffering, associated with a multiple of problems resulting from the use of alcohol. Now, put this in a different sense, colleagues, it translates into a cost of \$249,000 for each kid in this great state. Nebraska ranks ninth highest among 50 states for the cost per youth of underage drinking. And I would refer to you that you will get a chart here a little bit later that identifies the underage drinking issue and the facts. It will give you more data, more information than I am able to give you in this opening comments. Young people who drink before the age of 19 are four more times likely to develop alcohol dependency and two and a half times more likely to become abusers of alcohol than those who begin drinking at the age of 21. What really shocked me, colleagues, that there is a relationship between alcohol and the adolescent brain development. There's been a lot of research that has been done with this particular issue, and it's now quite clear that brain damage goes through a tremendous amount of development during teen years, and one of the areas that I would call remodeling the frontal lobes occurs. The frontal lobes play an important role in making decisions and controlling urges and planning for the future. Because your brain is not developed as a teenager, what happens to you is, that it's altered. It's changed and it's changed forever. And what they have found in the research is that experiences can influence the development of this portion of the brain. So this means that it does alter your brain. And what it really says to us, is that it impairs three major areas. It impairs memory, it impairs reasoning, and it impairs attention, and the sad thing, colleagues, it never comes back. It's lost. It's lost forever. Let me share some data with you and some statistics that show you how severe this issue is in this great state of underage drinking. And I'm here to tell you, colleagues, it's not something that we should be very proud of in Nebraska. First, alcohol is the number one drug for Nebraska youth. Alcohol is the most common use in substance for use, and it also is the gateway to all the other use of drugs. It's the beginning. Alcohol for high school students in Nebraska that are more likely than high school students nationally to binge drink and that's 30 percent versus 25 percent. More than two out of five high school students or kids in our public school system or school system drink--two out of five. More than two out of five have a drinking problem in this great state. Nationally, the regular use, and I emphasize regular use of alcohol, begins at the age 14. And I can tell you in this great state it begins at the age of nine and ten. Let me share some quick data with you. In Omaha alone a study was done that shows that 45 percent of the youth that were surveyed said they started at the age of, under the age of 14 started drinking and by the time they were 15 and 17 years

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old, 61 percent said they drink regularly. Of the Nebraska high school students, 42 percent said they consume alcohol, five or more drinks of alcohol on a regular basis. Nebraska ranks ninth in the nation, 14 binge drinking. Nebraska ranks third in the nation among teens driving after drinking. Nebraska ranks second in the nation in the number of teens riding with drivers that has been drinking. Eight youth every year at a minimum die in this great state because of alcohol-related crashes. Let me put this in a little bit different perspective for you. We rank seventh in the nation for young fatalities in this state. To put these statistics in perspective for you, the 31 states that already have license suspension revocation procedures for alcohol use of a minor...and as they're, I think, handing out information for you, I think you'll find that we don't look very well on the chart. We stand out by ourselves. Today we have the opportunity. Today we have the choice of making a difference in our children's lives. Today we can say to our teenagers and our kids who are in junior high that we are no longer going to tolerate this issue in this great state. We are no longer going to allow you to destroy your lives. We are no longer going to allow you to kill yourselves on the highway. We're going to hold you responsible for your behavior. We're going to hold you responsible for your actions. Over the years this great state has let this drift away from them. We've become more lenient in the opportunity to allow our teenagers to drink. Now that we have had a chance to see the research, now that we know what the data tells us, it is nothing for us to be proud of in this state. We are absolutely allowing, we are allowing our kids to die, to alter their minds so they can't be useful in society. I don't think that's anything to be proud of here. So I would urge you to give thought to the passage of LB258. I'm not going to go through the procedures on this because there are...an amendment that was made by the Judiciary Committee that really becomes the bill, and I think that's where we want to stop and address that issue. So thank you, Mr. President. [LB258]

SENATOR STUTHMAN: Thank you, Senator Harms. You have heard the opening on LB258. As the Clerk has stated, there are Judiciary amendments, AM1803. The Judiciary Chairman, Senator Ashford, will you...you're recognized to open on the amendment. [LB258]

SENATOR ASHFORD: Yes, thank you, Mr. President. And I want to thank Senator Harms for his efforts on this bill. The committee...this bill was introduced last year and we have spent some time working on it and discussing it. And it is an important piece of legislation. And it is in our view, it is a shift in how we front-load, how we deal with these kinds of infractions, these kind of offenses, to front-load the...in effect, the penalty. And what we found in the committee is what's happening so often are these minor in possession cases are just perfunctory charge in a county court. There's a fine paid or whatever it is and then off they go. And then at some later time in their lives they may find out that this offense is on their record and they can't get a scholarship to college or whatever, but by that time they're in their twenties or in their late teens and it's years after the MIP occurs. This is important, important legislation and we're going to see it again in the juvenile justice bill hopefully, if it comes out of the Judiciary Committee

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dealing with suspension of licenses, because it's the kind of front-loading of the punishment in effect that will really alert these young people, as Senator Harms has so correctly stated, to what they're, in effect, doing. There are...AM1803 is...are the committee amendments, includes the committee amendments and I'm going to go through them in somewhat of a boring fashion but just so we get it in the record. The committee amendments would provide that persons 18 and younger would face the following penalties for an adjudication or conviction under the minor in possession laws. If the minor has one or more licenses issued under the Motor Vehicle License Act, the following penalties would apply. For a first offense, such person would be guilty of a Class III misdemeanor and would have their license impounded for 30 days and would be required to attend an alcohol class, education class. For a second offense, the person would be guilty of a Class III misdemeanor as well and would have their license or permit impounded for 90 days and would be required to complete no fewer than 20 or no more than 40 hours of community service. For a third or subsequent offense, such person is guilty of a Class III misdemeanor again and there would be a 12-month impoundment with 60 hours of community service. AM1803 would also deal with persons 18 years and younger who would face penalties for an adjudication or a conviction. If that individual does not have a permit or license under...issued by the state, the following penalties would apply if they do not have a license. First, for a first offense such person would be guilty again of a Class III misdemeanor and would be prohibited from obtaining a license for 30 days after being able to do so. For a second offense, it would be 90 days after otherwise being able to obtain the license, with community service as in the prior case. And in the subsequent offense, 60 hours of community service with a year...they would be prohibited for a year from receiving the license. The committee was of the opinion that the loss of a license impacts minors 18 and under differently from 19 and under, or 20 and under, and we had a good discussion on the issue of whether this act ought to apply to 20-year-olds. And the committee was of the opinion, when after discussing this matter with Senator Harms, that 18 and under was the appropriate age. This is...Senator, or Speaker Flood has a similar bill in our committee this year and we had a great hearing yesterday about the issues that are raised by Senator Harms. And we'll, as I said, hear it again in the juvenile justice bill. When we try to make these young people aware as early as possible in their lives of the gravity of what they're doing, we had...yesterday, we had a young man come in who wanted to get into medical school but had three MIP...or actually I think he had more than that, but at least three MIPs as a young person and was unable to get into medical school, fine young man and, hopefully, he'll eventually make it. But as he said, it was just very perfunctory for his first offense and perfunctory for his second offense and the gravity of what he was doing just did not sink in. This is a serious, serious, important issue. And I applaud Senator Harms and Speaker Flood for his bill in addressing this issue. Juvenile justice in our state needs to be reformed. We need to address the needs of juveniles in a more direct way. And that, both for the benefit of society and the public safety, issues involved with juveniles, but also clearly the juveniles themselves. Senator Harms has said it better than I could ever dream of

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saying it with all of his years of experience and education. We need to listen to him, and with that I would urge the adoption of AM1803 and then the advancement of LB258. Thank you, Mr. President. [LB258]

SENATOR STUTHMAN: Thank you, Senator Ashford, for the opening on the committee amendments. Senator Heidemann, you are recognized. [LB258]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. Just very briefly you, hopefully, have noticed that the Appropriations Committee preliminary report was just put on your desk. Something to do over the long weekend, and read it, and get up to date. If you have any questions on it, I would more than willing to try to answer them or any other Appropriations member or anybody in the Fiscal Office can help you also. We do have a February forecasting board that will be coming up on the 26th of February. There will probably be some actions that will be taken after that, but for right now, what you have before us would be good reading. Thank you. [LB258]

SENATOR STUTHMAN: Thank you, Senator Heidemann. Mr. Clerk, items for the record. [LB258]

CLERK: Thank you, Mr. President. Urban Affairs Committee, chaired by Senator McGill, reports LB799 to General File with amendments. Education Committee, chaired by Senator Adams, reports LB1006 to General File with amendments; and LB257, LB391, LB546 indefinitely postponed. Confirmation report from the Education Committee. New resolutions: Senator Pankonin would offer LR318. Name adds: Senator Ashford would like to add his name to LB381; Senator Fischer, LB705, and LB735; and Senator Coash to LB754. (Legislative Journal pages 532-534.) [LB799 LB1006 LB257 LB391 LB546 LR318 LB381 LB705 LB735 LB754]

And priority motion, Senator Flood would move to adjourn the body until Tuesday morning, February 16, at 10:00 a.m. []

SENATOR STUTHMAN: Thank you, Mr. Clerk. The priority motion is, shall the body adjourn until February 16 at 10:00 a.m? All those in favor say aye. All opposed say nay. We are adjourned until Tuesday at 10:00 a.m. Everyone have a nice weekend. Thank you. []