

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

Floor Debate  
February 17, 2010

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[LB226 LB258 LB381 LB764 LB805 LB914 LB918 LB924 LB931 LB950 LB979 LB987  
LB1014 LB1070 LB1110 LR295CA LR319 LR320 LR321]

SENATOR ROBERT PRESIDING

SENATOR ROBERT: Good morning. Welcome to the George W. Norris Legislative Chamber for the twenty-seventh day of the One Hundred First Legislature, Second Session. Our chaplain for today is Pastor Bob Lawrence of the South Auburn Church of Christ, Auburn, Nebraska, Senator Heidemann's district. Please rise.

PASTOR LAWRENCE: (Prayer offered.)

SENATOR ROBERT: Thank you. I call to order the twenty-seventh day of the One Hundred First Legislature, Second Session. Members, record your presence. (Visitors and doctor of the day introduced.) Mr. Clerk, please record.

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

SENATOR ROBERT: Thank you. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR ROBERT: Are there any messages, reports, or announcements?

CLERK: I do. Priority bill designations: Senator Hadley, LB918; Senator McGill, one of the Urban Affairs Committee priority bills, LB381; and Retirement Systems Committee selection by Senator Pankonin, LB950 and LB979. I have notice of hearings, Mr. President, from the Judiciary Committee, two different hearings, Senator Ashford. An amendment, Senator Rogert, to LB226. And a new resolution, LR319, by Senator Loudon. And that's all that I have at this time, Mr. President. (Legislative Journal pages 543-545.) [LB918 LB381 LB950 LB979 LB226 LR319]

SENATOR ROBERT: Thank you, Mr. Clerk. We'll now move to first item on the agenda, motion to suspend Rule 5, Section 4(c) to permit introduction of a bill.

CLERK: Mr. President, Senator Campbell would move to suspend Rule 5, Section 4(c) to permit introduction of a new bill, Request 4451, after the tenth legislative day.

SENATOR ROBERT: Senator Campbell, you are recognized to open on your motion.

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. The motion before us today I realize is an unusual motion to suspend the rules to allow introduction of a new bill. The bill itself addresses the eligibility of low-income, unborn

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children for prenatal care independent of the mother's eligibility status. Today, our discussion and requested action is centered on the procedures of the Legislature. As a body that adopts rules to govern our work, we need to determine if we will proceed. Because the public policy issue comes to the Legislature beyond the tenth day of bill introduction time frame, a motion to suspend the rules is in order. I believe this public policy issue is compelling and deserving of our discourse and leadership. I believe the Legislature has, as one of its hallmark responsibilities, to take up the discussion of public policy issues and, from time to time, to recognize that a public hearing and discussion is warranted and has merit, even if not within the usual parameters. How we move forward on this issue is far more defining of the Legislature's authority and role in seeking public information on this important public policy issue. I certainly urge your support of this motion before you. In the Capitol, you will find inscribed on one of the walls a quote, "A community like an individual has a work to do." In many respects, the Legislature is our state's community. The 49 of us come together with a duty to do its work. Today, we are seeking your approval to suspend the rules and move forward with an issue of importance that needs our discussion and our thoughtful work. Thank you, Mr. President.

SENATOR ROBERT: Thank you, Senator Campbell. Members, you have heard the opening to the motion to suspend the Rule 5, Section 4(c). Those members wishing to speak: Senators Flood, Gay, Campbell, McCoy, Harms, Ashford, and Nordquist. Senator Flood, you are recognized.

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. Earlier this year, federal officials notified DHHS that Nebraska could no longer qualify an unborn child for Medicaid prenatal care. The result Senator Campbell shared: 6,000 women in our state were notified that their benefits would terminate unless they requalified under Medicaid guidelines for the pregnant mother. Hopefully many will qualify under this new approach. There is a possibility that some legal residents will not and for sure undocumented pregnant mothers will not. For over 30 years, Nebraska has had a policy under our Medicaid program administered by this state to insure the unborn child for prenatal Medicaid care. Unfortunately, this significant policy change was made, and as it was made, we were still trying to understand as legislators its impact on Nebraska as the ten-day deadline to introduce new bills lapsed. Today, I do believe the Legislature should suspend the rules. We should suspend the rules to allow the policymaking branch of state government to consider this complex issue. Regardless of your position on the issue, our duty is to the citizens. And our duty to the citizens is to afford Senator Campbell's bill a full and fair hearing. If you vote to allow the introduction of this bill, you are voting for a public hearing and the possibility of committee action. You are not voting on the substantive content of the proposed bill. You may ask, why are we doing it this way? Why this procedure? It's true, I could order a hearing on an amendment in a committee. Unfortunately, there's no bill specific enough to the proposed subject matter. And at the end of the day on an issue so important and potentially, I'll admit,

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controversial, this is the most transparent and straightforward approach. I believe in this Legislature. I believe in this Legislature because we confront the tough issues. We may disagree on the actual issue, but, unlike Washington, D.C., we take the issues head on. If we fail to adopt this motion, March 1 will come and go and the federal government will have made the decision that at least 1,000 unborn children face the possibility of not receiving prenatal care in the dawn of life. Introduction of this bill ensures that Nebraska lawmakers ultimately decide what the policy of our state should be. At the very least, we owe those children enough of our time and consideration to listen to their mothers, their doctors, supporters of the bill, opponents of the bill, and taxpayers of this state. This issue doesn't get any easier if we fail to act today. In fact, in the first ten days of this session, what we are doing today happened 474 times without fanfare. The onset of this issue, its complexity and significant nature of its impact on state policy necessitate a suspension of the rules. Please join me in voting yes on this motion. Thank you, Mr. President.

SENATOR ROBERT: Thank you, Senator Flood. Senator Gay, you're recognized.

SENATOR GAY: Thank you, Mr. President. I want to expand on Speaker Flood's comments and Speaker (sic) Campbell's and let you know how a bill, and probably many of you have seen the bill, was drafted over the...Speaker Flood talked about how we got to this position and why we're trying to do this today. I would say by the time we found out and what's going back and forth, there had been many changes. And my staff, our legal counsel, Michelle Chaffee, and Health and Human Services drafted a bill, along with a lot of hard work with Liz Hruska. They've been working in the last week almost nonstop on this issue and it's a complex issue. That is why we should deal with it, I think, and give it a hearing, give it an opportunity. You don't have to make your decision now is what we're trying to say; is as policymakers, do we owe it to the public to listen to this important issue, make a decision, get some input? You will get some input on this issue, I guarantee you. It's an emotional issue. It's a controversial issue, let's face it. But I think what we, as Speaker Flood said, we need to probably deal with this issue, not we probably do, we do. We need to deal with this issue and give some direction, otherwise we're back and forth and we don't have a policy in place. And I think it's an important enough issue, prenatal care, that we need to address it because there...obviously, this is something that's going to continue on when we are gone in the summer and just continue on. We can't stop human nature. So the bill, as I say, we're prepared to answer any questions that you may have, I think, if that's appropriate. We'll see how the debate goes. I think you should know what we're doing. I'll try to answer to that to the best of our abilities, all of us that have worked on this, and see if we can answer that. I would say I think this is narrowly defined. It's prenatal services. It's not a lot of extra. It's what it is. It's in the bill and it's only the necessary things to have a good outcome on a pregnancy. And that is the issue as well, and I don't want to boil everything down to economics; it's not. But if we don't take care of these situations, prenatal services, you'll probably hear more about this: What's the cost of not doing

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that? These are potential...they are Nebraskans. They are going to be Nebraskans, and if we fail up-front, what's the cost in the long term? That's something I think we will be discussing as well. So as you deliberate and we discuss this motion to suspend the rules, I hope you'll pay attention, but the key is you do not have to make that decision today, your policy decision today, without getting more input from the public, constituents, anywhere you want to get that information. The process, the way I understand it, it would be referred to a committee. The committee would hear it like they would anything else, both proponents and opponents. And then you'd come out and you'd get some more information. In that time, you will get some more public information as well to let you decide. So today it's an important issue that we need to vote on and take some action, and I'd encourage full debate on this motion. Thank you, Mr. President.

SENATOR ROBERT: Thank you, Senator Gay. Senator McCoy, you are next and recognized.

SENATOR McCOY: Thank you, Mr. President and members. I rise this morning in support of Senator Campbell's motion to suspend Rule 5, Section 4(c) to permit the introduction of her bill. I want it to be very clear, however, that my support of the motion before us is not to be construed in any way as support for the bill in its present form. Some of us to whom this bill is unacceptable in its present form are ready to allow it to be introduced and deliberated on in committee out of a decent respect for the convictions of other members of the body. Thank you, Mr. President.

SENATOR ROBERT: Thank you, Senator McCoy. Senator Harms, you are next and recognized.

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in support of the rule suspension. I think just in the short time that I've been in this Legislature for four years, I think this is one of the most important decisions we're ever going to make. And I think that we need to get this...we need to have the opportunity to allow Health and Human Services to have this hearing to get the input from the public, to get the input from the committee, and hopefully bring it to the floor for a full debate. When you have approximately 6,000 women who need potential help or services, and we know that from what the studies have shown us, that without prenatal care the end results could be very expensive, and that's why I think it's so important to do this. Health and Human Services has already quit taking applications. We know this is building up. We know that it's an issue for us. I don't think we can run from this. I think we need to take it head on. We need to talk about it and discuss it. I think it's important for us to do this suspension so we can get to the bottom and see if we can find a solution for the children and the mothers of this great state. Thank you, Mr. President.

SENATOR ROBERT: Thank you, Senator Harms. Senator Ashford, you're recognized.

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SENATOR ASHFORD: Thank you, Mr. President. Much has been said, but I will just refer to a statement, comments made by my hero George Norris when describing the Nebraska Legislature. And he said, "Your constituents do not expect perfection. They know it is human to err but they do expect, and have the right to expect, absolute honesty, unlimited courage, and a reasonable degree of efficiency and wisdom." As Senator Harms and the others have said, we are at a significant point. We reached this point on the safe haven bill, and Senator Gay was instrumental in sorting out that issue. We could have turned our backs to those children. Senator McGill was there and Senator Dubas working on that task force. We could have turned our back on those children, but we did not. We embraced them and we embraced their families and we passed legislation that have made their lives better. It was significant. It was important. It was the most important moment of the last four years in this Legislature, in my opinion. We are at that point again. And I'm not going to belabor this. We all know that. We all know it is our duty to take on the tough issues, as Speaker Flood has said. I cannot be prouder of any organization that I've ever been involved in than the Nebraska Legislature, and I strongly urge that we step up, as I know we will, we go through the process, we introduce the bill, we give this bill, as we do all bills, a public, full, public discussion; and that at some point in the next few weeks we get together and we do it, what we always do, is we meet the issues with courage and with absolute faith that we are representing our constituents in a manner that they would want us to do so. Thank you very much, Mr. President.

SENATOR ROBERT: Thank you, Senator Ashford. Senator Nordquist, you are recognized.

SENATOR NORDQUIST: Thank you, Mr. President and members. I rise in support of the motion to suspend the rules and the underlying legislation that Senator Campbell has introduced. It's been a pleasure working with her, Senator Gay, Speaker Flood, and others to prepare this. It's an issue that came up toward the end of bill introductions. None of us had a clear understanding at that time of the cost, of the challenges. Since that point, I've been working...we've been, as a group, working with Liz Hruska in the Fiscal Office to come up with those numbers, to find out what kind of impact this will have on our budget. I support the underlying bill for two reasons: first is that it is fiscally responsible. Over what we're budgeting now for these services, there will be a savings of some extent--Liz is still working to find the exact number there--simply because the services we're providing now were under Medicaid which, if we get a 60-40 match in the federal government, 60 percent from the federal government, those services will now, most of them, will be shifted over to SCHIP, which is a 72-28 match. So there will be significant savings. But there's also the fiscal responsibility piece of, as Senator Gay mentioned, preventing low-birthweight babies, preterm babies. Some research I have here, preterm babies, the hospital stay average is over \$15,000 over 12 days compared to \$600 or just over a day and a half for uncomplicated newborns. Those are costs that

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we'll have to bear as a state if we don't take steps to reduce the number of preterm babies. Several states have done studies. In New Hampshire, they showed over a \$2 savings to every \$1 spent. Missouri showed \$1.50 savings for every \$1 spent. And the Institute of Medicine did a national study and showed a \$3 savings for every \$1 spent on prenatal care. So it's important to remember, whether or not you believe that the unborn in the womb deserves the benefits, the second that they're born they will get benefits and we will be paying for it. So it's best for us as a state to make the fiscally responsible decision and get them the services they need early on. But I think also the second reason, this is the most fundamental pro-life issue we can talk about in this Legislature. It's whether or not we as a state, which we have done for over 30 years, for over 30 years we have said that unborn children are Nebraskans and are entitled to benefits under our system. Now we have to make a decision whether or not we want to continue that policy. I appreciate your support of the rule suspension and of the underlying legislation when it advances to the floor. Thank you.

SENATOR ROBERT: Thank you, Senator Nordquist. Senator Krist, you are recognized.

SENATOR KRIST: Thank you, Chair. Thank you, colleagues. I rise in support of the suspension. This is the right thing to do. It's the right thing to do on so many levels. You all have said it better than I could. It's the right thing for the human condition. It's the right thing for us to do and discuss. But I've got a little twist to put in here. It's also the right thing to do from this body's perspective on state sovereignty. Letting the federal government tell us what to do with the citizens inside this state is wrong. We're making a statement today. We're saying we're going to do what it takes. We're going to suspend the rules. We're going to talk about things. We're not going to allow the feds to tell us what to do inside the state for our citizens. I applaud what you're doing, and you've all said it better than I can. Thank you, Mr. President.

SENATOR ROBERT: Thank you, Senator Krist. Senator Wightman, you're recognized.

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. Of those that have spoken, all of them have spoken eloquently on this matter. I think it is, as Senator Harms suggested, one of the more important things we will take up. I realize this is an unusual procedure that we take. It's only happened a couple or three times since I've been here for almost four years in which we've considered suspending the rules to consider a bill introduced out of time, but I think this is an important matter. It's important to a lot of the women in the state of Nebraska. I think it's important to all the citizens of the state of Nebraska. And it is important that we stand up as a state and take control of our own destiny, I think, rather than have the matter dictated to us by the federal government. So I support the rule...or the suspension of the rules. I probably will support the bill, although I think that's the nature of the procedure that we're undertaking. We will send this bill to the Health Committee. They will have an opportunity to study it in far more depth than this body has a chance to study it right

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now. They will study the funding, possible methods that we will have as far as funding what we will be undertaking in this bill. And I think that the bill deserves a hearing before the committee. So I urge all of the members of the body to support the suspension of the rules and allow this to be considered by the Health Committee. Thank you, Mr. President.

SENATOR ROBERT: Thank you, Senator Wightman. Senator Council, you're recognized.

SENATOR COUNCIL: Thank you, Mr. President. I rise in strong support of the motion to suspend the rule and the bill to be introduced by Senator Campbell. When we look at our rules, I can think of no better occasion to utilize the ability to suspend the rules than the issue that is presented to us today. As Senator Flood stated in his comments, had we been notified sufficiently in advance of this change in the rules, there's no doubt in my mind that the bill that Senator Campbell is planning to introduce would have been introduced and would have been heard by a committee. The fact of the matter is that the state was not notified in sufficient enough time to follow our normal procedures. And the utilization of the ability to suspend the rules is to be used in extraordinary situations, and that's exactly what we are confronted with today. What makes it extraordinary is the fact that thousands of children, unborn children, and their mothers would be affected if we elected to just rest on our rules, not consider a bill at this time, and be forced at a later point in time to take the matter up either by encouraging the Governor to call a special session or waiting until next year. We can't afford to do that. The lives of youngsters in this state are at risk if we don't take action at this particular point in time. In fact, in the 2009 Kids Count report that was issued, the quote occurs, "Overall it is critical for Nebraska not to be complacent about the percentage of babies born too small and too soon. We must pay attention and do better by mothers and babies so they are born alive, of good weight and thrive from their first birthday and beyond." We have a moral obligation and policy duty to allow this bill to be introduced, to allow it to be fully vetted, and allow a vote to occur and show the people that we represent in the state of Nebraska that we do care about our children, that we're not going to hide behind our rules to avoid facing a very critical, a very complex, and a very controversial issue. We must stand tall and firm at this time. And I will reserve my comments until the bill is advanced to this body for debate, but my reasons for voting to support a suspension of the rules--and hopefully the bill will come before us in its present form--has absolutely nothing to do with any issues a rounding state sovereignty or any of those things. This has to do with Nebraskans taking care of Nebraskans, plain and simple.

SENATOR ROBERT: Thank you, Senator Council. Senator Nelson, you are recognized.

SENATOR NELSON: Thank you, Mr. President, members of the body. I have a question or two for Senator Campbell, if she will yield.

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SENATOR ROBERT: Senator Campbell, will you yield to a question?

SENATOR CAMPBELL: Certainly.

SENATOR NELSON: Senator Campbell, I want to thank you for bringing this motion. I have a question. I'm hearing two different figures here: 6,000 unborn children or 1,000 unborn children. Now, those are rough figures, but it's my understanding that the federal government has...or there's a different approach where at least 5,000--am I wrong on that--will continue to be covered?

SENATOR CAMPBELL: Senator Nelson, I think that's a good question. The Department of Health and Human Services is in the process of relooking at the files and they are finding many of the women who will qualify because they can count themselves and the unborn child in the qualification. What we anticipate finally is somewhere near 1,000 that may not be covered under the review of cases that we are now seeing.

SENATOR NELSON: Well, thank you. As I understand, that's a rough estimate then. And so we're down to 1,000 now instead of 6,000, in your opinion, would that be...

SENATOR CAMPBELL: Close.

SENATOR NELSON: ...unborn children that would not be covered? And I'm not trying to put you...

SENATOR CAMPBELL: Yes, Senator, that would be a close estimate.

SENATOR NELSON: All right.

SENATOR CAMPBELL: I think until they finish the review, we won't have an exact number.

SENATOR NELSON: Okay. Senator, this is a procedural motion and I don't think we should talk on the issues, but let me ask you what, in your opinion, is the urgency? Suppose this had occurred in May or June. Would we be coming back for a special session or would we address this issue in our regular session next year?

SENATOR CAMPBELL: Senator, that's very difficult to answer. Why the urgency now is because of the deadlines that have been put into place. As of March 1, the benefits would go away. And I think it's the deadlines that prompt the urgency to suspending the rules and making sure that the bill can go to committee and have a public hearing.

SENATOR NELSON: All right. Thank you, Senator. I have a question for Senator Gay.

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SENATOR ROBERT: Senator Gay, will you yield to a question?

SENATOR GAY: Yes.

SENATOR NELSON: Senator, thank you. This bill will be, I would assume, referred to the Health and Human Services Committee. Would that be correct?

SENATOR GAY: I assume. I'm not on the Referencing Committee.

SENATOR NELSON: All right. Would the committee, then, after hearing this and if it does come out of committee, is it possible to prioritize it at this late date? You can't possibly hear it by Friday of this week. How can we be assured it's going to come to the floor?

SENATOR GAY: Well, I'll try to answer that best I can, is we need to wait seven days to have the hearing, first of all, and then there's still...we could do a committee priority right now by Friday and pick it and if it doesn't advance, it doesn't advance, but if we did that I'd be pretty sure it has the votes. So that's kind of what we're looking at, at this point, to be real honest with you. However, I don't know what's going on, whether an individual wants to do this or not. I haven't got that far. All I know is we're going to wait seven days, Senator.

SENATOR NELSON: All right. All right. Thank you, Senator Gay. I will support this motion, but, like Senator McCoy, I want to reserve further votes on the discussion when it eventually comes to the floor so we can hear both sides. Thank you, Mr. President.

SENATOR ROBERT: Thank you, Senator Nelson. Senator Dierks, you're recognized.

SENATOR DIERKS: Thank you, Mr. President and members of the Legislature. I think this an excellent example of our Unicameral system and the rules that we set. We don't see it very often, but it's an extremely fine example I think for how we represent our people. I think that we have to realize or remember that our federal government was established by the states in this nation, not the other way around. We have state's rights called sovereignty, and I think it's a great example of our sovereignty that we can take on and handle a federal dictate that has a bad effect on our state. So I will support this full-bore. I think it's a great way to show our people, show the state of Nebraska the things that we can do when we have to. Thank you.

SENATOR ROBERT: Thank you, Senator Dierks. Senator Haar, you're recognized.

SENATOR HAAR: Mr. President, members of the body, I rise in support of suspending the rules and also in support of Senator Campbell's bill. Of course we should proceed to

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deal with this issue. I really don't think we can blame this one on the federal government. I think it's an unintended consequence of something we did last year and now we need to try to fix that. Just to be very brief, to quote a favorite of mine, a political favorite of mine, Hubert Humphrey, when he said, "Compassion is not weakness." And I think that we're driven in this case, obviously, people have shown that this could save money, but it's a matter of compassion. It's a matter of our humaneness that we deal with this issue of prenatal care for women. Thank you very much.

SENATOR ROBERT: Thank you, Senator Haar. Senator Carlson, you are recognized.

SENATOR CARLSON: Mr. President and members of the Legislature, rise to say that suspension of the rules is a serious matter and not one to be taken lightly. I appreciate the position that the unborn is a human being, a significant position to take. Furthermore, I believe that we are never, never wrong to do the right thing. I believe that the only difference between an unborn child and one who has experienced the birth process is a change of position. Both are human beings to be treated with fairness and dignity. I also agree with Senator Krist, thank him for his comments along with those of Senator Dierks on the fact that we as a state are independent, we make decisions that we think are right, and we stick with those decisions. So I am in favor of suspending the rules for this purpose and thank the body for listening.

SENATOR ROBERT: Thank you, Senator Carlson. Senator Price, you are recognized.

SENATOR PRICE: I call the question.

SENATOR ROBERT: The question has been called. Do I see five hands? I do. The question before the body is, shall debate cease? All those in favor vote yea; opposed vote nay. Mr. Clerk, please record.

CLERK: 31 ayes, 0 nays to cease debate, Mr. President.

SENATOR ROBERT: Debate does cease. Senator Campbell, you're recognized to close on your motion.

SENATOR CAMPBELL: Thank you, Mr. President. I very much appreciate all of my colleagues who stood this morning to support the suspension of the rules for this very critical issue. And I would particularly like to thank Speaker Flood, Senator Gay, and Senator Nordquist, and a number of other senators who worked on this issue over the last couple of weeks seeking a solution, trying to do what we thought was best, bringing before our colleagues a bill that we felt needed to be discussed and have a public hearing. I've been so encouraged in the last several days and respect for my colleagues in the sense of no matter where you are in this issue, you have been kind and thoughtful and looking at the perspective of how do I do the duty as a legislator. You are to be

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commended for that. And with that, Mr. President, I'll close.

SENATOR ROBERT: Thank you, Senator Campbell. Members, you have heard the closing on the motion. The question before the body is, shall we suspend Rule 5, Section 4(c) to permit introduction of a bill? All those in favor vote yea; opposed vote nay. This will require 30 votes. Mr. Clerk, please record.

CLERK: 36 ayes, 0 nays, Mr. President, on the motion to suspend and allow the introduction.

SENATOR ROBERT: Rule 5, Section 4(c) is suspended. Mr. Clerk.

CLERK: Mr. President, a new bill. (Read LB1110 by title for first time.) In addition to that, Mr. President, a new resolution: Senator Mello offers LR320. That will be laid over. And Senator Haar would designate LB1014 as his priority bill for this session. That's all that I have, Mr. President. (Legislative Journal pages 545-546.) [LB1110 LR320 LB1014]

SENATOR ROBERT: Thank you. We will now move to the next item on the agenda, General File, 2010 senator priority bills, Krist division, LB258. [LB258]

CLERK: Senator Harms offers LB258, Mr. President. It relates to the Liquor Control Act. It changes and provides penalties for minors in possession of alcoholic liquor. The bill has been discussed on February 11 and again on February 16. At this time pending, Mr. President, are the committee amendments as offered by the Judiciary Committee. And Senator Karpisek has an amendment to the committee amendment, specifically AM1888. (Legislative Journal page 537.) [LB258]

SENATOR ROBERT: Senator Harms, will you give us a brief recap on where we're at, please? [LB258]

SENATOR HARMS: Well, thank you, Mr. President. As we know, this is a change in public policy and there's no need to go over what the purposes are. We've already gone through most of that. It's really in regard to this particular amendment. What I wanted to do for just a moment is I'd like to review so that we don't lose track of really where Nebraska is in regard to underage drinking. As I said on a couple of occasions, it's the most common used substance that we have in this great state. It's the gateway to a lot of other drugs. Nebraska high school students are more likely to binge drink--30 percent versus 25 percent. Two out of five, two out of five, colleagues, teenagers drink and, in many cases, drink heavily. Nationally, the regular use of alcohol is 14 years old, regular use, and that is like three or four times a week. And we know in this great state from the data that we've seen from the research we've looked at that it goes clear down to nine years old. And in my county, the data that I gave you yesterday, in the Panhandle, it

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starts at the sixth grade. Three percent of the sixth graders have been...kids have been binge drinking compared to 2 percent in the rest of the state. And that gets more difficult as they get a little bit older. Nebraska ranks ninth in the nation on teen binge drinking. They rank third in the nation for driving after an influence of alcohol. They rank second in the nation in the number of teens riding with a driver who has been drinking. And eight youth, eight teenagers, as an average a year, die on our highways because of alcohol-related accidents or because they've been driving. Colleagues, look at this another way: 7 percent of...we rank seventh in the nation in regard to young fatalities. There are over 31 states that already have this procedure. And I've had comments from my colleagues that have said, Senator, does this really make any difference having this sort of thing? Let me tell you that it does make a difference. And the research that was done by the Reuters Health Report last year, those who say states have use and lose, your alcohol fatality rate comes down, it drops 5 percent. So the question isn't whether it helps. It is helping. It is making a difference. The other side of it, that equates to about 132 teenagers that we save their lives in those states. There is a difference here. I've also heard the comments that, you know what? These kids can't participate in activities, the very thing that keeps them out of trouble. I would have to say that they are in trouble. They're drinking. They have broken the law. That's what this is about. They broke the law. And if we don't like this law, then let's just change the law. If you don't want them to...if you want them to be able to drink, put it down to 14 years old if that's where you're at. And what I'm really saying here, I think it takes a lot of courage to stand up and address these issues, and I think you've had great debate here. And I think it's a great discussion, but don't hang our hat on the fact that it's going to make a difference in their activities. You know what, colleagues? The first time is only 30 days. [LB258]

SENATOR ROBERT: One minute. [LB258]

SENATOR HARMS: Thank you, Mr. President. Only 30 days, that's not very much. The other question is, well, what does it cost, Senator Harms, in regard to having them go to classes? As far as I know, in most of the classes they would have to take there is no charge. The charge may very well occur when they have to have an in-depth analysis in regard to their problem. And that's an issue that I don't think this state should pay for. That's an issue that parents need to pay for, and if they can't pay for that then they ought to work out a payment plan, because I don't think we should give these students and the parents any freedom here. My point is, you got to be a parent, you got to stand up for what it is, and you got to tell your kids what the danger is in regard to the use of alcohol. We're talking about brain impairment here, permanently. And so, Mr. President, that's where we are, and we're on the amendment, and I'm willing to continue to have that discussion. Thank you, Mr. President and colleagues. [LB258]

SENATOR ROBERT: Thank you, Senator Harms. Senator Ashford, would you like to bring us up to speed on your amendment? [LB258]

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SENATOR ASHFORD: Well, thank you. We're on the amendment to the amendment. AM1803 is, obviously, the Judiciary Committee amendments and we...I guess my light is on, we talked yesterday about some of the changes in the Judiciary Committee amendments which lower the age to 18 and under for this particular penalty from being assessed by the court. There are some other changes, but essentially what the debate is about here, and it is a critical debate, and that is...in my view, and that is whether or not the judge in a case involving an MIP, involving a minor in possession of alcohol should have the discretion to assess a money fine rather than a suspension of a license in these types of cases. We can...I will talk about the substance of that amendment to the amendment later, but that's where we are, Mr. President. I don't think it's any more complicated than that. [LB258]

SENATOR ROBERT: Thank you, Senator Ashford. Senator Karpisek, would you like to open on your amendment? [LB258]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I think Senator Harms went over everything pretty well. AM1888 does change the "shalls" to "may." It would leave it up to the judges' discretion whether they pull the license or not in accordance to the way that Senator Harms has it referenced in his bill. That's all the amendment does and I think that's where we're at, and we'll probably be ready to vote in not too long. Thank you, Mr. President. [LB258]

SENATOR ROBERT: Thank you, Senator Karpisek. Members wishing to speak on AM1888, the amendment to the committee amendments: Senators Price, Krist, Flood, Conrad, Harms, Ashford, and others. Senator Price, you're recognized. [LB258]

SENATOR PRICE: Thank you for that opportunity, Mr. Chair. Members of the body, I rise in support of what we're debating today. I know this to be an important topic before us. I would like to caution, though, it does seem that some hyperbole may be working its way into our discussion. I want to make sure that we stay focused and understand exactly what it is that's before us, and that perhaps we would eliminate some of the grandiose statements that are being made here. And I'd also like to ask that we consider in this amendment where we give potentially some judicial latitude here that perhaps we could entertain a concept where the first offense would be a "may" and then thereafter could be a "shall." In other words, let's not go all the way. We have the latitude and the authority to make it as amenable or as strict as we want. So with that, I would like to entertain Senator Harms with a question, if he would yield. [LB258]

SENATOR ROBERT: Senator Harms, will you yield to a question? [LB258]

SENATOR HARMS: Yes, I will, Mr. President. [LB258]

SENATOR PRICE: Thank you, Senator Harms. A quick question for you is, you do

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seem adamant about perhaps that we'd go with a "shall" instead of a "may" on the sentencing guidelines, correct? [LB258]

SENATOR HARMS: That's correct. [LB258]

SENATOR PRICE: Would you be amenable to saying and understanding that, you know, if we're talking about something on Arthur County or something out west, could a judge perhaps or...and anywhere, could they have a "may" in the first offense and a "shall" thereafter? [LB258]

SENATOR HARMS: Oh, I think you can do whatever you would like to do. You know, you could... [LB258]

SENATOR PRICE: Well, no, I'm asking that... [LB258]

SENATOR HARMS: Yeah, I think you could probably do that,... [LB258]

SENATOR PRICE: Okay. [LB258]

SENATOR HARMS: ...but how much time do we have, Mr. President? This is not mine. [LB258]

SENATOR ROBERT: Three minutes. [LB258]

SENATOR HARMS: Could we have this dialogue? [LB258]

SENATOR PRICE: Yes, absolutely. [LB258]

SENATOR HARMS: Okay, here's the issue that I have in regard to that. When we talk about "shall," it says you're going to do this. We already know in this great state that we have judges in different counties that let these kids go by, they know the parents, they're influenced from the outside. They will not do that. They will not make these kids pay the price. And so what happens then is, you got one county here, and then a county next to it says, I'm going to hammer you, you're going to...we're going to follow the law, you're going to get it. So you know what let's do? Let's go over to this county and get drunk so we don't have to worry about it. That's where the problem lies. [LB258]

SENATOR PRICE: And, Senator Harms, I appreciate that and I don't disregard that lightly. What I am trying to bring up is that we have a...in many areas, we have the ability for a judge to let a first-time offense, you know, have a different consequence from a second offense where we can say on a second offense, no. What I'm really concerned with is, you know, we have a three-strikes rule right now. And a three-strikes rule I believe is really, really clogging some of the system up there where we're perhaps,

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perhaps not able to incarcerate or put someone away fully to full term because we have to bring someone in who had the third strike because they had a different offense. And I believe some people would argue that if an offense of a third strike type is not equal to other crimes that are committed. So I just want to make sure that we don't clog the system by mandating every time that...and they're going to have to go get this training and they're going to have to be people who do overhead. But let us do it...let us find a way on maybe on the second time, absolutely, and I would have no problem with that. And that's where my comment is and I would like to hear the debate on the body and perhaps even Senator Karpisek or someone like that would make comment to it later on... [LB258]

SENATOR ROBERT: One minute. [LB258]

SENATOR PRICE: ...about the opportunity there to put a "may" on the first offense and then "shalls" thereafter. Thank you very much. [LB258]

SENATOR ROBERT: Thank you, Senator Price. Senator Krist, you're recognized. [LB258]

SENATOR KRIST: Thank you, Chair. Colleagues, I think this issue, by itself, we all have personal stories to tell and we can all inject an incredible amount of drama into this situation. I don't think any one of us, though, disagrees with the fact that we have to pass legislation that's tougher on underage drinking, for all the right reasons, again. But I...getting to the point of law and actually deciding where the "shalls" and the "we's" (sic) shall go, I'm having an issue with that. I wonder if Senator Ashford would yield to a question, Chair. [LB258]

SENATOR ROBERT: Senator Ashford, will you yield to a question? [LB258]

SENATOR ASHFORD: Yes. [LB258]

SENATOR KRIST: In your opinion as a lawyer and as the Chair of the committee, are we allowing the judges the flexibility that they need on the first offense? Could you speak to that for a second? [LB258]

SENATOR ASHFORD: In my view...thank you for the question, Senator Krist, in my view, the discretion creates all sorts of issues. And one of the major issues and something that we deal with a lot in Judiciary is disproportionate minority prosecution. I'm very concerned that if we make it discretionary, which it is...well, now it's basically a fine, what's going to happen is that those with the means are going to come in with attorneys, they're going to get the fine assessed, and those without will get the more serious penalty of a suspension. I'm absolutely convinced that that will happen, Senator Krist. And that's why I think the committee was so concerned about it. The second

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reason is that...the reason that Senator Harms has talked about which is the policy underlying this, and that's the issue of underage drinking. What happens is these...the evidence we heard is these young people who don't...who just get a fine and move on and move on, they don't take it seriously, and as a result at some point--21, 22, 23--they wake up and have this penalty on their record and they can't get a job and they can't get a Pell Grant and they can't get into medical school. That's what we heard. That's the evidence. So I strongly support Senator Harms in this matter. Thank you. [LB258]

SENATOR KRIST: Chair, I wonder if Senator Pirsch would yield to a question. [LB258]

SENATOR ROBERT: Senator Pirsch, will you yield to a question? [LB258]

SENATOR PIRSCH: I would. [LB258]

SENATOR KRIST: In your vast experience in prosecuting MIPs, is it your impression that those that have wealth have fared better in the current judicial system than those that have not? [LB258]

SENATOR PIRSCH: Those who have wealth? [LB258]

SENATOR KRIST: Those that can pay for a good lawyer to come in and fight against you as a prosecutor have better results than those that cannot? [LB258]

SENATOR PIRSCH: You know, everyone who has the inability to pay for an attorney is afforded a public defender in Douglas County, and so, by and large, almost everyone, unless they specifically refuse to have an attorney, is represented by a public defender. You know, it depends at what stage of the process. If they come into court on their initial arraignment, then at that point in time--obviously it's their initial appearance in court--they do have the option that they can choose to plead guilty right there and then. If that's done, then they wouldn't have an attorney, but if they do plead not guilty, they are almost in every case afforded a public defender as far as... [LB258]

SENATOR KRIST: So the judgment...a judgment falls to the judge, in terms of making a decision based upon, in your opinion, prosecution and defense, that the person is represented whether they have wealth or not. [LB258]

SENATOR PIRSCH: And really almost uniformly they are appointed a public defender. There isn't too much delving into actually the ability to pay. [LB258]

SENATOR KRIST: Okay. [LB258]

SENATOR PIRSCH: They're almost routinely afforded a public defender. [LB258]

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SENATOR KRIST: Okay, thank you. [LB258]

SENATOR ROBERT: One minute. [LB258]

SENATOR KRIST: And I would like Senator Karpisek to yield to a question, if he would, please. [LB258]

SENATOR ROBERT: Senator Karpisek, will you yield to a question? [LB258]

SENATOR KARPISEK: I would. [LB258]

SENATOR KRIST: And I'm going to ask you to keep it brief because I know you will. Do you think...did you bring this amendment to the floor to be less punitive or that you're less intent about keeping our underage from drinking? [LB258]

SENATOR KARPISEK: No, not at all, Senator Krist. I brought it because my concern is that we are really going to take some kids that may have made a mistake, been at the wrong place at the wrong time, and they can't get to their other activities and they start a downward spiral; also, to leave it in the hands of the judges. [LB258]

SENATOR KRIST: Thank you. Okay, then my point, based upon all this discussion, is this: I was 16 and stupid. And all the testimony that came in from the senator said I never had an MIP. This is a different world we live in. In the old days, the State Patrol used to pull you over and say, pour it out on the side of the road. [LB258]

SENATOR ROBERT: Time, Senator. [LB258]

SENATOR KRIST: Thank you. [LB258]

SENATOR ROBERT: Thank you, Senator Krist. Senator Flood, you are recognized. [LB258]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. One of the issues I continue to hear about on this issue is the impoundment of the driver's license not being connected to the actual criminal activity that results in the conviction. First of all, I would remind everybody that we do take driver's licenses away from people that don't pay their child support, so there's already a precedent in our criminal and driving statutes that allows Nebraska to rely on such a procedure. Secondly, I think that if you are underage and you are possessing alcohol, you're most likely behind the wheel at some point. I've been in the courtroom for nine years listening to the factual basis provided by the police officer on an MIP. Four individuals stopped in a motor vehicle, they've got six cans of booze or beer, they're all cited for minor in possession. I think there's some concern in here, what about the person that's sitting in the backseat that

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hasn't drank anything? That person made a conscious choice to get into a car where I would bet they knew there was alcohol. Those two things don't mix very well for 16-, 17-, 18-, 19-year-olds and beyond. The legal drinking age is 21. The one issue that I have on this bill that I guess caused me the most concern, based upon the opponents' position at this time, is that they say we shouldn't take a driver's license for just an MIP. Well, whether they realize it or not, in my opinion, we're minimizing the conduct. And one MIP turns into two; two turns into three. Ten years later, there's a couple of DWIs and a 15-year revocation. Mom and Dad don't drive their son and daughter on most occasions to a beer party and then pick them up; they get a ride. Can you imagine asking your mother or father to: Hey, Mom, I'm going over to Fred's house tonight and there's going to be a big beer party, I'll call you when I get done; and as everybody is coming out of the house and beer bottles are being thrown around, there's your Mom and Dad ready to pick you up and take you back home? Alcohol and driving for young people are mixed. I'm not supporting this bill because I have some intense...I take some intense pleasure in punishing young people. I'm taking this step as a legislator because I don't think the current sanction has the desired effect. It's not substantive enough. It doesn't have their attention. And if this doesn't stop underage drinking, what's your solution? We've gotten tough on the retailers. We've gotten tough on those that procure alcohol. In Antelope County, I saw somebody go to jail for, I think, seven days. A father of a couple of folks of a family and had beer at a party, minors were drinking. He went to jail for seven days. I think that's getting pretty tough. So we've gone after the retailer. We've gone after those that procure alcohol. We've made investments strategically with funding in groups that work to reduce underage drinking, and we still show very high rates of underage drinking. A great number of states in this country have use and lose provisions in their laws. Senator Harms has talked about the difference between a state that has it and a state that don't. Will this solve underage drinking? No. [LB258]

SENATOR ROBERT: One minute. [LB258]

SPEAKER FLOOD: But hopefully, when Mom or Dad have to take son or daughter to wherever they need to go at age 16, they, too, will become part of the solution, more so than now, because right now all that's happening is Mom or Dad is writing a check for \$250 plus \$48 for court costs, and son or daughter goes on with life, and it's considered to be one of the rites of passage as you get older. I guess you have to answer the question if you're going to vote no on this bill, where is the line going to be drawn? If you're not comfortable with this, you must think either we have the perfect situation with underage drinking or you might believe that there's something else that we could do to be more effective. And if that's the case, let's talk about that too. Thank you, Mr. President. [LB258]

SENATOR ROBERT: Thank you, Senator Flood. Senator Conrad, you're recognized. [LB258]

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SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. I think we've had great recap and dialogue this morning on this important issue. And to reiterate from my brief comments yesterday: No one, no one on this floor, no one in this body, no one (laugh) beyond this floor is supporting or promoting underage drinking. What our job is to do is to strike an appropriate balance between the important resource and legal issues involved in this legislation and finding ways to curb, eliminate, or reduce incidence of teen drinking to ensure our shared public safety. Senator Flood, to be very clear, I don't believe anyone thinks that our current system or any system, for that matter, is perfect. There's always room for improvement. And I commend Senator Harms for taking this issue and bringing it forward. The Karpisek amendment, though, does provide an alternative and a solution to improve our current system and leave the discretion where it was intended to be--in the hands of our impartial judiciary. I've heard it said on this floor, well, there's judges out there who just aren't tough enough. Colleagues, we have a remedy for that. It's called a judicial retention election. It does not require a legislative policy solution. If there are judges who are flagrantly abusing their power or not following the law, those issues should be dealt with at the ballot box or through the judicial qualifications committee, and we haven't actually had specific examples of that brought forward in debate. Another issue that I want to bring forward, colleagues, is an issue of cost. It's something that we've all been very concerned about in every piece of legislation that we've looked at this session. And, again, to be clear, the Fiscal Office does the best they can with the information presented. And just because you pull up the fiscal note on LB258 and it says no fiscal cost, that's not the full story. Let me share with you a communication I received from the Lancaster County Public Defender's Office late yesterday afternoon. He writes about the fact that here in Lancaster County, the police department issues about 2,000 citations a year for minor in possession of alcohol. That does not include additional citations that are issued from the county sheriff's office or the University of Nebraska police department or the State Patrol. Currently in Lancaster County, the courts appoint an attorney in only about a fraction of those cases, about 10 percent. Under this legislation, without the Karpisek amendment, the increased penalties that limit discretion will push more cases to full trial and will require more attorneys to be appointed. At the estimated rate of about \$360 per case which will have to be contracted out, those are real, hard, factual fiscal impacts that we will face in our courts in Lancaster County. I encourage you to ask your court systems in your respective districts what their cost will be, because they are real and they are significant. Finally, the public defender's office points out, I think, an important question in terms of the competing policy issues at play in this legislation. Currently, under our existing set of laws for MIP applied to minors who drive with an alcohol content of above .02, you will see for first offense 30 days impoundment for each offense. The provisions that stiffen the penalties under the Harms's legislation actually is much harsher than what we already have in place for the folks who actually do have a registered blood alcohol content versus, as Senator Council noted yesterday, this legislation could encompass and snare those who, yes, have made the poor decision to be in a car where this is present... [LB258]

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SENATOR ROBERT: One minute. [LB258]

SENATOR CONRAD: ...but do not have alcohol in their system. So that's another thing that I want to point out for you. I'll tell you, I, too, have practiced in this area and did an internship at the public defender's office in Seward during law school, and then have served as an appointed counsel in juvenile law cases as well. And I'll tell you, in my home county in Seward, there is a county court judge who is extraordinarily respected as being a leader on juvenile justice issues and known as one of the toughest judges on these kinds of issues affecting children and alcohol. And he has a very clever, very catchy rhyme that he utilizes in sentencing where he says: Minors, you come before me first time, small fine; second time, large fine; third time, jail time; no exceptions. That's how he applies the existing law and that is tough; make no mistake, that is tough. There is... [LB258]

SENATOR ROBERT: Time. [LB258]

SENATOR CONRAD: Thank you, Mr. President. [LB258]

SENATOR ROBERT: Thank you, Senator Conrad. Senator Harms, you're recognized. [LB258]

SENATOR HARMS: Thank you very much, Mr. President, colleagues. It's been good dialogue. I think time is getting close to probably making a decision on this particular aspect. I did want to bring just to your attention a couple of things. First, I believe in transparency. I also believe in being very honest. And I gave you some wrong information that I would like to correct as a matter of record. When I voluntarily said if you go to AA, it's...there's no charge, that is correct. But if you go to MADD, which is one that could be done, would cost you \$40. And at the National Safety Council has one, approximately could charge you about...close to \$100. So there is a penalty there and I wanted to make sure that that was corrected so that there was no misunderstanding on that part, and I apologize for that. On January 2, 2009, our Governor, Dave Heineman, got a letter, and this letter came from the Nebraska Liquor Control Commission. And what this letter talked about, they gave five subjects that he felt...the commission felt that we need to address. Now, they're not in numerical order of importance, but here's what he said about underage drinking, and I quote: Mandatory driver's license suspension for minors purchasing alcohol beverages or attempting to purchase alcohol beverages or in the process of alcohol beverages in adults procuring for minors. And here's what he says: We continue to believe that this may be the strongest and the best message we can send to our youth. Giving minors or those procuring alcohol for minors a slap on the wrist or a penalty at all sends the wrong message. While some judges currently do not hold minors accountable--and that's the very thing I was talking about earlier, they don't hold them accountable in some

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places--may not follow this, a consistent, mandatory, meaningful penalty needs to be placed for those adults, for those youths who are involved in this process. So even our own commission for liquor realizes that this is an issue and it's going to get nothing but worse. And so the question then boils down to this amendment and then whether you want to move this bill forward is the two words--"shall" or "may"--and that's what it boils down to. So we can still continue to have our dialogue. I appreciate everybody's point of view. I respect their point of view and I think this has been good. I think it's one thing that Senator Rogert wanted to have and, Senator Rogert, we've got it. And I enjoy every minute of it. So it's just a point of where we're going to make our decision and move this thing forward or kill it. So that's basically where I am. So thank you, Mr. President. [LB258]

SENATOR ROGERT: Thank you, Senator Harms. Those wishing to speak on the AM1888: Senators Hadley, Schilz, Nelson, Coash, Hansen, Wightman, and others. Senator Hadley, you're recognized. [LB258]

SENATOR HADLEY: Mr. President, members of the body, obviously dealing with underage drinking is one of the severest problems, largest problems we have in Nebraska. We had a case in Kearney a couple of years ago that was absolutely tragic dealing with underage drinking. This is something we should not be taking lightly. One of the problems or concerns I always have in being in this body and in life is trying to be consistent, trying to look at things in a consistent basis so when somebody calls me and says, why did you vote one way on this and a different way on something else? And I want to talk for just a second about LB914. LB914 is a change in the provision relating to the duty to stop after a motor vehicle accident. That bill was heard in Transportation, voted out 8 to 0. LB914 allows judicial discretion in the suspension of a license when there has been a conviction for failure of duty to stop and provide motor vehicle information after an accident. Right now it says the court shall suspend the license to drive up to one year. We voted that bill out 29 to 0 in this body from General to Select, which is the exact opposite of what we're doing right now, because right now we're going from "shall"...or from "may" to "shall." So if I'm going to be consistent, it seems to me I should support Senator Karpisek's amendment. I really don't...I do want to give the judges some discretion. I had a long conversation with one of our judges in Buffalo County this morning who called me about this bill, and he did set the record straight. He said that there has to be basic constructive evidence that the minor was in possession, whether it be in a car or wherever it is. But he also talked about the need for maybe having some discretion. For example, you might want a school permit. You might want some discretion in what it's doing. But, again, it goes back to my wanting to be consistent as I look at these bills. So I'm going to rise in support of Senator Karpisek's amendment because it is consistent with my previous vote on LB914. I would yield the remainder of my time to Senator Krist. [LB258 LB914]

SENATOR ROGERT: Senator Krist, 2:18. [LB258]

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SENATOR KRIST: Thank you. Thank you, Senator Hadley. To finish my conversation earlier on the mike, I, too, was young and, oh, but for the grace of God go I. I was raised in a time where they pulled you to the side of the road, allowed you to get rid of it, took you home to your parents, and you had basically worse judgment by your father than you ever would have had from the judge. I rise in support of the amendment to the amendment to the bill because, as I talked to our judge, my judge, my favorite judge this morning, his answer was: Give me the tools in my toolbox to do what I have to do, don't tie my hands; whether there's a person of wealth in front of me or a person who has a public defender, whether there's a person who has repeated eight times or not, this will be a tool for me to use, not handcuffing me in that case. And, colleagues, we make law. They enforce it. They judge it. They're the people who have to deal with it on a daily basis. Senator Harms, thank you for bringing this bill. It speaks to a tough issue. Thank you for the amendment from Judiciary. I think it was well thought out. [LB258]

SENATOR ROBERT: One minute. [LB258]

SENATOR KRIST: Thank you, Senator Karpisek, for that amendment. I think it is the answer; it makes a good bill better. Thank you. [LB258]

SENATOR ROBERT: Thank you, Senator Krist. Senator Nelson, you're recognized. [LB258]

SENATOR NELSON: Thank you, Mr. President and members of the body. I will be brief. A lot...I had my light on practically all day yesterday. I'm finally getting to speak. A lot has been said that I intended to say, especially Senator Conrad covered a number of things about giving discretion to the judges. I think Senator Flood talked about it being a badge of honor. I don't know that we can ever persuade 18-year-olds and younger that they shouldn't be drinking. They probably will find a way to do it. So I'm looking at the issue here of Senator Karpisek's amendment where the judge will have discretion the first time around and perhaps more; that it will be "may" rather than "shall." I come out in support of that amendment because I really...we have judges there for a purpose. There are times when they have to have discretion because either the young person or their parent got roped in very innocently and there are extenuating circumstances why they should not lose their license for 30 days, which is not a long time but it does make a big difference. For those and many other reasons, I am in support of Senator Karpisek's amendment, which is AM1888, and I would give the rest of my time to Senator Karpisek if he chooses to take it. Thank you, Mr. President. [LB258]

SENATOR ROBERT: Senator Karpisek, 3:30. [LB258]

SENATOR KARPISEK: Thank you, Mr. President. Thank you, Senator Nelson. Have talked to Senator Harms and he has agreed that if...that he will go along with this

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amendment if we vote the bill forward. So that is my intention, to vote for AM1888 and then also to vote for LB258, the underlying bill. I think that it gets us a lot closer to where I would want to be. It still addresses the problems. I think it's a step in the right direction. I realize that Senator Harms doesn't really like it. I don't know that I like the bill. So I guess we're both giving here and trying to do the right thing. I think that's the bottom line. We realize there's a problem. We want to do something about it. I think Senator Gay said yesterday, we can always come back and amend this in another year. I think that's the right move. I think it doesn't overburden our court system too bad because I know there will be a lot of appeals. I think it doesn't punish a kid that made one dumb move. It still could. The judges can still do this. And, again, it does put the judges in control. It gives them one more tool in their toolbox. In a lot of this state, Senator Harms is right, the judges probably do know these kids and know the families. Maybe they know better than anybody what will work in one situation and what will not. So instead of just a one-size-fits-all, they can adjust it to how they see fit. So with that, I would hope...this is not my closing, I would hope that you do vote for AM1888 and the underlying bill. Thank you, Mr. President. [LB258]

SENATOR ROBERT: Thank you, Senator Karpisek and Senator Nelson. Senator Hansen, you're recognized. [LB258]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. In 2007, my first year down here, one of my bills was to change one word from "may" to "shall," and that was a tough thing to do. Senator Chambers came over and said that it was going to be a fight and he would filibuster the bill if I didn't change that and go a different direction. He told me that judges don't like to be told what to do. Well, judges are told what to do all the time. Judges are told that they are to enforce the speed limits and we set the speed limits. Reasonable speed limits are enforced by judges. Judges shall enforce points of pollution into our ground water, in our runoff systems, in our creeks. Judges enforce laws that we pass. If this is a rite of passage, if teenage drinking is a rite of passage, they maybe...they might get off with a lenient sentence. The judge, if we adopt AM1888, they might get off with less of a penalty than we really intend on them getting. I'd like to ask Senator Karpisek a couple of questions if I could, please. [LB258]

SENATOR ROBERT: Senator Karpisek, will you yield to a question? [LB258]

SENATOR KARPISEK: Yes, I will. [LB258]

SENATOR HANSEN: Senator Karpisek, thank you. Did this come...were you lobbied by the judges to...in order to change this "shall" to "may" or what was your thinking behind this amendment? [LB258]

SENATOR KARPISEK: I had the amendment drawn up before I talked to anyone,

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truthfully. They did have a bill out or an amendment out in the lobby, but I already had it drawn up before I talked to anyone. [LB258]

SENATOR HANSEN: Okay. In Section 3(1)(a), if this was to be written the way you would intend it to be, on line 16, a judge may impound such license on the first offense. Is that correct? [LB258]

SENATOR KARPISEK: Correct. [LB258]

SENATOR HANSEN: Okay. In subsection (b) then, a judge might impound such license or permits for 90 days on the second offense. Is that correct? [LB258]

SENATOR KARPISEK: That's correct. [LB258]

SENATOR HANSEN: And then correspondingly, for a third and subsequent offense a judge might impound the license for 12 months. [LB258]

SENATOR KARPISEK: Correct. [LB258]

SENATOR HANSEN: I used the word "might" because I think it's interchangeable with "may." Thank you, Senator Karpisek. I think if we don't tell the judges what to do, we're not telling them to do anything. I think we need to stick with Senator Harms's bill and keep the word "shall" in there. I have a bad feeling that if we give them the word "may," and Senator Conrad is concerned about judges not doing what they're supposed to do, the perception of those judges not doing what they're supposed to do is going to bring that to light. They're going to say, well, I have this authority, I have this leeway, and Senator McCoy would say they have that wiggle room. And they're not going to present this bill, this act, if passed, in a way that some of us feel like it should be enacted. I think we should vote this amendment down and carry on with the bill. And I agree with the underlying bill, LB258. Thank you, Mr. President. [LB258]

SENATOR ROBERT: Thank you, Senator Hansen. Senator Carlson, you're next and recognized. [LB258]

SENATOR CARLSON: Mr. President and members of the Legislature, I, too, am listening to the argument for changing "shall" to "may." And I'm struggling with that issue. But another thing in this whole discussion that I'm struggling with goes back to something that Senator Loudon said yesterday and talked about being determined to be guilty on circumstantial evidence. And as I look at Section 53-180 I don't see some of this addressed. And what I'm going to say now doesn't pertain directly to Senator Harms's bill but it's still a factor. We shouldn't have a system that somebody innocent is convicted on circumstantial evidence. And to try and make my point here I'd like to address Senator Council, if I could. [LB258]

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SENATOR ROBERT: Senator Council, will you yield to a question? [LB258]

SENATOR COUNCIL: Yes. [LB258]

SENATOR CARLSON: Senator Council, if we have a 17-year-old driving and the police pull that 17-year-old over for some suspected violation, automatically can that officer request a Breathalyzer test? [LB258]

SENATOR COUNCIL: If...they can request it if they have reasonable suspicion that alcohol has been consumed, yes. [LB258]

SENATOR CARLSON: Okay. They have to have reasonable suspicion. Then they can request...and they can perform that on the spot, can't they? [LB258]

SENATOR COUNCIL: Yes, with a breath alcohol test. [LB258]

SENATOR CARLSON: Is that an expensive test? [LB258]

SENATOR COUNCIL: They have these portable devices that you can blow into and they register. The question is how many of them they have on them at any particular point in time. Otherwise, that individual has to be transported in for that test to be conducted. [LB258]

SENATOR CARLSON: So is the answer to that it's not an expensive test on the spot? [LB258]

SENATOR COUNCIL: No, it's just a question of whether they have...if they have enough of them on them to administer the number of tests that may need to be administered. [LB258]

SENATOR CARLSON: Okay. Let's take that circumstance and now move it to a raid on a party. And so law enforcement comes in and there's alcohol and it's the smell of alcohol and they know that it's being consumed. In that particular situation, do they have the right to administer a Breathalyzer to everybody that is present? [LB258]

SENATOR COUNCIL: They can...you know, it's under the zero...see, the zero tolerance legislation deals with operating a vehicle. So they...although the statute talks about consumption, possession or control of alcohol, the operative fact is the mere presence of alcohol at the location. And they ordinarily would not administer a breath alcohol test because a vehicle is not being operated. [LB258]

SENATOR CARLSON: Okay, thank you, Senator Council. This brings up something

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that I think is pretty important in the whole process that maybe in another time, in another place we need to look into. When a party is raided, and I had a son, my oldest son, involved in this. He had nothing to do with it. [LB258]

SENATOR ROBERT: One minute. [LB258]

SENATOR CARLSON: But he got stuck in a position. Had there been a raid, by what I'm listening to, he would have been guilty, and he wasn't guilty of anything. In fact, he was trying to figure out every way to get out of that situation and really couldn't do it at that time. So if a Breathalyzer test was...shall be administered to everybody that's present at a party like that, it offers the opportunity for those that are innocent, at least in terms of consumption, to prove their innocence. And if innocence can be proven and we no longer rely on circumstantial evidence, then it's a stronger argument for having "shall" in the wording of a law that pertains to possession and use of alcohol. Thank you, Mr. President. [LB258]

SENATOR ROBERT: Thank you, Senator Carlson. Senator Stuthman, you are recognized. [LB258]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to ask Senator Harms a couple of questions. [LB258]

SENATOR ROBERT: Senator Harms, would you yield to a question? [LB258]

SENATOR HARMS: Yes, Mr. President. [LB258]

SENATOR STUTHMAN: Senator Harms, in your bill it has, require such persons to attend an alcohol education class. What does this class involve? How many hours is it? Is the instructor required to be certified? And, you know, where are these classes going to be held? Is there any details on that yet? [LB258]

SENATOR HARMS: Yes, there are. There are classes that already have the curriculum, AA has the curriculum, as far as I know. The MADD has one, the National Safety Council does have, and in some cases the highway patrol actually or police will do it. I think they have a certified instructor in many cases with it. But I know that they do have a curriculum as far as I know. I don't know what the actual length of it is, what the length of it is, Senator, but we can sure check. [LB258]

SENATOR STUTHMAN: But, Senator Harms, there's already in place the education classes that they can attend? [LB258]

SENATOR HARMS: Yes, as far as I know. I just went through those places that they do have it. I don't believe the judge would refer a teenager to any place that didn't have a

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program. [LB258]

SENATOR STUTHMAN: So in other words, these classes would be something like what is already in place for Alcoholics Anonymous, those groups that have these meetings. It would be just something that, you know, they would be referred to take a class on alcohol consumption or minor in possession. [LB258]

SENATOR HARMS: Well, yeah, it brings up all the things that are...of the danger, what happens to the brain and all those sort of things, and what those issues are about. That's my understanding, Senator. [LB258]

SENATOR STUTHMAN: Do you...are you aware of where these classes are held? Are they held throughout the state of Nebraska? Are they held just in the eastern part or in the western part? Are some of these youth, are they going to have to travel 70 to 150 miles to attend these classes? [LB258]

SENATOR HARMS: That's a possibility, Senator. I know that they're held in Scottsbluff and other places a little bit bigger, and they may have to travel some distance. I don't know what the distance is. I would assume if there was a large number of teenagers that were picked up for this that they may move those classes. But as far as I know, they probably will have to do some traveling. [LB258]

SENATOR STUTHMAN: Okay, thank you, Senator Harms. [LB258]

SENATOR HARMS: Uh-huh. [LB258]

SENATOR STUTHMAN: This is a concern that I have that, you know, it may be not convenient, but should they be made convenient for these youth that are partaking of alcohol before they are of legal age? I think, in my opinion, the youth needs to be responsible for what they are partaking in. I think that should be taught to these youth, you know, from the parents. But we run into a lot of situations, you know, where there are parents that are not teaching their kids. And there are children that do not have the support of the parent or parents to try and set them in the right direction. I just...I think that the penalty should be harsh, especially for the second and third offense. The first offense, in my opinion, you know, anybody could get caught. But that should be a lesson. That should be a lesson because the next time the penalty is going to be a lot worse. And the youth of today needs to be responsible. You have to be responsible for your actions, just like everyone here in the legislative body. We need to be responsible for what we do and how we act and how we present ourselves to the full body. I think that's very important. And I think we need to teach the youth to be responsible. We need to advise them and set them in the right direction. [LB258]

SENATOR ROBERT: One minute. [LB258]

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SENATOR STUTHMAN: We need to make sure that the youth get the education that they need to be respected citizens in the time to come. I just had a couple of those concerns about, you know, where these education classes would be held at and what the expense would be. But I am aware that there are education classes for this already. So with that, thank you, Mr. President. [LB258]

SENATOR ROBERT: Thank you, Senator Stuthman. Senator Christensen, you're recognized. [LB258]

SENATOR CHRISTENSEN: Thank you, Mr. President. Yesterday, when I talked, I talked of all the reasons why I support this bill. And I missed my second opportunity to speak yesterday, and I'm going to share some of the reasons why I'm concerned about this bill, that is the case of when someone isn't drinking and they do get a ticket for minor in possession. They don't have to have it in their hands, they don't have to have it in their system but yet they can have a ticket. That is one of the reasons why I like this amendment, is it gives the judge flexibility. I also know there's personal responsibility and they should not have been at the party. If they get there, they see it, they should leave. I can remember walking over a mile myself to avoid it because I never drank in high school. And I think that's the responsibility that they need to have. But at the same time, I also know that you could step into a house, the cops could follow you in and you would be wrote. And so that's one reason I do like this amendment. And I'm sure I will probably vote for that because I believe there should be some flexibility there or at least have one offense they could get without, unless they're going to check alcohol levels, do a breath test, something that way. Then I have no mercy. So I think this is something we got to think about. I'm glad there's been a lot of debate on this, a lot of discussion. I think we need to continue thinking about what the right approach here is. I never want to get innocent people put into a position that they become accused or basically have a ticket for being "unlawabiding." So I think we got to walk carefully here. At the same time, as I mentioned yesterday the testimony in committee from an individual, I'm also dealing with another letter from one of my constituents who can't get into medical school. His parents have asked me why. He's got fabulous grades, top in his class, graduating amongst the top, graduating in the university, can't get in. I know the kid. I'm sure it deals with minor in possession; I would lay money on it. I haven't asked the question yet but I'm sure that's probably one of the issues. Again, another kid getting in trouble can't fulfill the destiny that they like because they made poor choices. And I think we got to think about that as we're making laws here. I don't hold anybody to make one mistake, especially one like this one. If we're talking murder, it's a different situation. But at the same time, I think it's very important that we give a good deterrent to doing this. And I know I've seen kids talk about and laugh at what an MIP is right now. I appreciate Senator Harms bringing this bill. I believe something needs to be done. I do like the amendment part of it because I want to be able to get the potential innocent at least one break and see the penalties get more firm as we go on. So if I can, I'll continue to listen

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to debate. I appreciate the very good discussion we've had on this. And... [LB258]

SENATOR ROBERT: One minute. [LB258]

SENATOR CHRISTENSEN: ...I'll conclude with that, Mr. President. [LB258]

SENATOR ROBERT: Thank you, Senator Christensen. (Visitors introduced.) Senator Karpisek, you are recognized. [LB258]

SENATOR KARPISEK: Question. [LB258]

SENATOR ROBERT: The question has been called. Members, do I see five hands? I do see five hands. The question before the body is, shall debate cease on AM1888? All those in favor vote yea; opposed vote nay. Mr. Clerk, please record. [LB258]

CLERK: 25 ayes, 1 nay to cease debate, Mr. President. [LB258]

SENATOR ROBERT: Debate does cease. Senator Karpisek, you're recognized to close on AM1888. [LB258]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. We have had a good discussion on this. Senator Harms has reluctantly agreed to go along with the amendment and I have reluctantly agreed to go along with the bill. I will have another amendment on Select File. I have agreed to put that on, on Select as not to make it look like I'm trying to filibuster this bill, because I am not. That amendment will talk about controlled substances and we will have a germaneness question on that. And we'll see how that goes, but just something to put in your mind. We will see how this vote goes. If it doesn't go...if it doesn't pass, we may come back with an amendment to put "may" in on the first and "shall" on the others. That would be my second choice. I would rather this one pass and work with it and maximize the flexibility for the judges. With that, Mr. President, I would like a call of the house, please. Thank you, Mr. President. [LB258]

SENATOR ROBERT: Thank you, Senator Karpisek. There's been a request for a call of the house. All those in favor vote yea; opposed, nay. Mr. Clerk, please record. [LB258]

CLERK: 32 ayes, 0 nays, Mr. President, to place the house under call. [LB258]

SENATOR ROBERT: Members, the house is under call. All members return to the Chamber and check in. All unauthorized personnel please step from the floor. The house is under call. Senator McGill, check in. Senators Cornett, Campbell, Janssen, Nordquist, Mello, Council, Fulton, and Avery, please check in and return to the Chamber. The house is under call. Senator Karpisek, how would you like this vote to proceed? [LB258]

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SENATOR KARPISEK: Board vote. [LB258]

SENATOR ROBERT: Senators Janssen and Nordquist, please return to the Chamber. The house is under call. Members, you've heard the closing to AM1888. The question before the body is, shall AM1888 be adopted to the committee amendments? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB258]

CLERK: 34 ayes, 9 nays, Mr. President, on the adoption of Senator Karpisek's amendment to the committee amendments. [LB258]

SENATOR ROBERT: AM1888 is adopted. With that, I raise the call. Returning to discussion on the Judiciary Committee amendment, those wishing to speak: Senators Dubas, Pirsch, and Langemeier. Senator Dubas, you're recognized. [LB258]

SENATOR DUBAS: Thank you very much, Mr. President, members of the body. I would have a couple questions. And if Senator Harms would be willing to visit with me a little bit. [LB258]

SENATOR ROBERT: Senator Harms, will you yield to a question? [LB258]

SENATOR HARMS: Yes, I would, Mr. President. [LB258]

SENATOR DUBAS: Thank you very much, Senator Harms. And thank you so much for introducing this bill. It's a discussion that we really need to have. You know, it's unfortunate that we as adults in this society send many, many, many mixed messages to our young people. And it's those mixed messages, I think, that put these kids in these kinds of situations. This has been raised as a concern by several other senators, too, about kids who end up being someplace maybe that they really didn't want to be, can't get away from. They aren't engaged in drinking or anything. But because they're in the vicinity of alcohol being there, they end up being charged with MIP. [LB258]

SENATOR HARMS: This bill, that's correct, they would. [LB258]

SENATOR DUBAS: Are you open to any ways that, you know, we could maybe on a first offense make some changes? You know, I've heard from some kids who are really good kids who are trying to do what they're supposed to do and toe the line. But especially in small communities, sometimes you go with your friends and then all of a sudden you're someplace where you wouldn't make that choice to go but you don't have any way of getting out of it. [LB258]

SENATOR HARMS: Well, Senator, I would tell you this, and that is that first of all life is

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a matter of a series of choices. And we know that teenagers sometimes don't always make the best choices. But I think that what this bill really does for the teenager, it gives that teenager the opportunity to say to his friends or her friends, look, I have no intent of losing my license and I'm not going to do this. That's where I'm...this is what this is all about for me, it's the matter of the principle of the thing. And you could surely, you know, if you want to amend it, you can amend it and see if there's enough there. I don't support that. I think that, first of all, and I don't mean to be mean to teenagers. That just has nothing to do with it for me. I'm just trying to get them to save their lives. And I'd rather have them lose some points or lose their license for 30 days than their life. So even a kid who's there, from some of the teenagers that I have spoken to, and I don't want to use too much of your time,... [LB258]

SENATOR DUBAS: No, that's fine. [LB258]

SENATOR HARMS: ...some of the teenagers that I have spoken to over the last three years in just putting this together in a process said that what happens, that eventually you get brought into that aspect of the drinking. You're just around it, kids are having fun and pretty soon you're kind of forced into it. So they're at a place where they shouldn't be. And that's what we're saying to them, this is the possibility that will happen to you, and hope we can encourage the student or the teenager not to get involved in this whole process because this is really what this is all about for me. And so I don't know if I've answered your question, but you surely have a right, either on General File or now, to do an amendment to it and see where it falls. [LB258]

SENATOR DUBAS: I don't know that I have anything concrete to offer as far as an amendment goes. And again, I totally support what you're trying to do here. I was involved, when my kids were in high school, in trying to, you know, give them alcohol-free social events to attend and supported the kids in my community who were making that choice. But I do also know again in small towns sometimes you just get where you never had any intention of being. And, you know, if you're out of town, you know, our kids often travel to other towns for social events. You don't have any other way home but with who you came to. [LB258]

SENATOR ROBERT: One minute. [LB258]

SENATOR DUBAS: You know, again, I'm thinking about the good kids who are trying to do the right thing but who, unfortunately, you know, through no choice of their own, they've gotten into a place where they really don't want to be. [LB258]

SENATOR HARMS: Yeah, I have talked with county attorneys who have said in many cases they don't keep...they talk to the kids, they find out they haven't been drinking, they don't charge them. So I think it depends on where you're at, what county you're in and what process. And I know from the discussions I've had that a lot of them just

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don't...they call the parent, have the parent come, pick them up and say, okay, here's what your kid was doing or your child was doing; next time they won't be so lucky. So a lot of the county attorneys are fairly flexible with this. [LB258]

SENATOR DUBAS: So they still would have that discretion with the law. [LB258]

SENATOR HARMS: Well, that's up to them. The law doesn't tell you that but they surely have the discretion before they actually bring the charge. [LB258]

SENATOR DUBAS: Thank you again for your efforts. I do appreciate it. [LB258]

SENATOR ROBERT: Thank you, Senator Dubas. Senator Coash, you're recognized. [LB258]

SENATOR COASH: Thank you, Mr. President, members of the body. I want to add a little bit of a different perspective on LB258. And this is something that I'm going to continue to bring to the members of this body to think about. If you go to Chamber Viewer, you're going to notice that LB258 has no fiscal impact. But, members, that does not mean that this will not cost somebody some money. As with most legislation of this type, when we create a new crime or increase the penalty we sometimes fail to take into consideration the impact that these laws have on our justice system. We need to think about that. If we increase the penalties by adding license suspension, there is going to be more cases where the courts are going to have to appoint attorneys, more contested cases. It's important that we remember this, colleagues. When we make decisions here and we don't see a fiscal impact, it doesn't mean there's not a fiscal impact. I would encourage the members of this body, between now and Select, if we get that far, to contact their judges, contact their prosecutors and their public defenders. Ask them, do you anticipate seeing more cases because now we've added licenses into the mix? And then ask them, what's that going to do? Are you going to have to add clerks? Are you going to have to add public defenders in order to take care of the increased caseload? I say this because we need to keep this in mind. It doesn't mean that LB258 doesn't have merit. We're trying to solve a problem here, and Senator Harms has given us a mechanism to do that. But we have to remember what happens on the other end. These bills have fiscal impact. So, colleagues, once more I'll ask you to consider that. And I'll ask you to call your home county public defenders and say, what's this going to do, what would you anticipate to see? Because they know, they know how much they're seeing. For example, in Lancaster County, Lincoln Police alone issued 2,000 citations, around 2,000 last year for minors in possession of alcohol, which does not include citations from the county sheriffs or the University of Nebraska police department or the State Patrol. Currently, the courts appoint attorneys in only a fraction of these cases, only 10 percent, because most of the judges do not consider jail time as an appropriate sentence for many of these cases. Now I know we're not adding jail time, but if 10 percent right now are getting court-appointed attorneys, the only way this will go is up. I

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think it's going to be different for every county. And we need to have that information in front of us as a group, and we need to have this information in front of us individually. Thank you, Mr. President. [LB258]

SENATOR ROBERT: Thank you, Senator Coash. Senator Wightman, you are recognized. [LB258]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I had intended to engage Senator Pirsch in some questions. I don't see him here at the present time. I do want to bring up the possibility that probation is still going to be, I think, a major issue with regard to the consideration of this bill and the amendments. Whether we provide it "shall" or whether it's provided that it "may," I think that both the prosecutor and the county judge could order probation, in which case I do not believe the impoundment will take place. I don't see Senator Pirsch here. I might ask Senator Council if she's familiar at all with that. [LB258]

SENATOR ROBERT: Senator Council, will you yield to a question? [LB258]

SENATOR COUNCIL: Yes, sir. [LB258]

SENATOR WIGHTMAN: Senator Council, I don't know if you engage in any representation of minors in possession, but I'm sure you have over the years and probably represented people in DUI cases. Is that correct? [LB258]

SENATOR COUNCIL: Yes, sir. [LB258]

SENATOR WIGHTMAN: My understanding is that even if we say "shall" in this instance that between the county attorney, the prosecutor, and the county judge, that they could order probation in a particular case. Is that correct? [LB258]

SENATOR COUNCIL: In fact, if I may elaborate, Senator Wightman--and I raised this issue with Senator Harms--I, quite frankly, don't understand why LB258 does not have a fiscal note. In addition to the license impoundment, at each stage of escalating offenses, there is a requirement for attendance or completion of particular alcohol classes as well as community service. Quite frankly, the only way I know that that can be supervised or undertaken is under an order of probation, which would involve the Probation Department. [LB258]

SENATOR WIGHTMAN: And the terms of probation could be that the impoundment sentence is not even carried out. That would frequently happen, probably, isn't that the case? [LB258]

SENATOR COUNCIL: If the language said "shall" be impounded, they would be

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impounded as a part of the... [LB258]

SENATOR WIGHTMAN: Even under terms of probation? [LB258]

SENATOR COUNCIL: Yes. [LB258]

SENATOR WIGHTMAN: Because frequently in speeding cases probation is granted and the points are not even reported to the Motor Vehicle Department. Am I not correct? [LB258]

SENATOR COUNCIL: Now, see, the...yes, you're correct, but the difference here is if you look at the language of LB258, the green copy, it says it's a Class III misdemeanor and "shall"...and the order "shall" include. So you could have an order of probation on the Class III, you know, the judge could impose probation on the Class III misdemeanor, but by having "and shall include," that probation order would need to provide for impoundment, attendance of the classes, and the required community service. So that's why I questioned why there was not a fiscal note because I can't think of any other entity in the judicial system, in the justice system who would be capable of ensuring that the classes were completed and that the community service hours were completed. Those are things that are normally terms of a probation order. [LB258]

SENATOR WIGHTMAN: So you're more concerned about the fiscal note. And you believe that the judge could not fail to carry out the mandatory provisions if "shall" is the word that is used. [LB258]

SENATOR COUNCIL: That's correct. [LB258]

SENATOR WIGHTMAN: Obviously, if it's "may," the judge could order probation or order a presentence report and put the person on probation and not carry that out. Is that correct? [LB258]

SENATOR COUNCIL: That and as well, if the language is "may," the court could order probation... [LB258]

SENATOR ROBERT: One minute. [LB258]

SENATOR COUNCIL: ...and include every one of those provisions as conditions of probation. [LB258]

SENATOR WIGHTMAN: Thank you, Senator Council. I am still in support of the bill. I do think people need to know what the situation would be...will be, and I think Senator Coash and Senator Council point that out with regard to the possibility of fiscal notes involved with this. Certainly, if the case is...if the defendant is granted probation, there

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will be costs associated with this. But as I say, I still do support both the committee amendment and the bill. Thank you, Mr. Chairman. [LB258]

SENATOR ROBERT: Thank you, Senator Wightman. (Visitors introduced.) Returning to discussion, those wishing to speak: Senators Gloor, Sullivan, Harms, and Council. Senator Gloor, you're recognized. [LB258]

SENATOR GLOOR: Thank you, Mr. President, members of the body. I voted against AM1888 but will support AM1803 in spite of that and, of course, LB258. By way of my objections to AM1888, I'd like to point out that alcoholism, substance abuse, specifically alcoholism is considered a disease. This is a medical determination that is taught in healthcare schools, it's defined that way by insurers when it comes to paying for substance abuse programs. Substance abuse, alcoholism specifically, is a disease. And if you buy into the fact that it's a disease, with our youth it is considered epidemic. We're dealing with an epidemic here, one that I think deserves a stern approach, which is the reason that I felt it was appropriate to say "shall," not "may." We operated a substance abuse program and I was always aghast at the number of youngsters, for want of a better term, that were in the substance abuse program we had. If you sat down, and I did, and visit with some of those clients, patients, you found that almost every one of them got into using harder core drugs because they started using alcohol and alcohol at a younger age. Alcohol is considered a gateway drug. Adolescents under the influence of alcohol become more susceptible to use bad judgment, to use other drugs, and one thing leads to another. I point that out so that when we get into this discussion about should there be a fiscal note and what's going to be the impact of this particular treatment of a disease on the bottom line, ask yourself how much is currently spent in law enforcement and the courts treating drug-related offenses that are out there, and I think we would all agree a considerable number, a very considerable number. We get back to this issue of preventative care, we get back to being penny wise, pound foolish. I do think anything that holds youth accountable for the difficult lives they live and poor decisions they make as they go through life is a good thing in the long run and I think will pay dividends for us in the long run. Anything we can do to make it more difficult to not reward but to hold accountable our youth for making decisions about the use of alcohol makes it a little more difficult for them to, as a gateway drug, use that alcohol as a way into using harder drugs and, therefore, more expense further down the line. Again, I rise in support of AM1803, LB258. I wish I could figure out an amendment that would put a harder edge on both of these to hold the youth more accountable; I cannot. But I will take what we are presented with as at least a step in the right direction. Thank you, Mr. President. [LB258]

SENATOR ROBERT: Thank you, Senator Gloor. Senator Sullivan, you are next and recognized. [LB258]

SENATOR SULLIVAN: Thank you very much, Senator Robert and members of the

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body. Even though I did not vote for the previous amendment, I still rise in support of AM1803 and the underlying bill. As I thought about this and also talked with senators off the mike, I thought to myself, are we sending a message and should we be sending a message with legislation? And at the end of my thought process I've decided, yes, we are and we should be. We are sending the message that we are concerned as a body, as a state with underage drinking and that we want to send a message that there will be consequences for underage drinking. Yesterday, when I spoke on this legislation I mentioned the challenge of peer pressure. And that's been alluded to in some of the situations where they're concerned about a youngster being with someone that is drinking and the other person, the young child, isn't. I would suggest to you that with these stiffer penalties that we're potentially putting in place that the peer pressure has the possibility of swinging the other way, that there will be young people who realize the consequences and realize that they are going to be put into a comprise predicament and will stand up to those young people who are in fact drinking. That's precisely one of the things that I hope will happen with these stiffer penalties. Along those lines, it's been suggested that stiffer penalties don't act as deterrents to underage drinking. And I know that Senator Harms is involved in a conversation right now, but I wondered if he would have time for a quick question. Senator Harms. [LB258]

SENATOR ROBERT: Senator Harms, will you yield to a question? [LB258]

SENATOR HARMS: Yes, Mr. President. [LB258]

SENATOR SULLIVAN: Sorry, Senator Harms, to interrupt your conversation, but you've done more research on this than I have. And what I was starting to say was that it's been brought up that stiffer penalties such as these that we're looking at don't actually act as a deterrent. You've done more research on this than I have. And what little I've seen, I believe that it does. Can you elaborate and does in fact it act as a deterrent to underage drinking? [LB258]

SENATOR HARMS: Okay, that's a great question. Thank you for asking it. Yes, in fact, it does deter students or teenagers. In a study that was recently done by the Reuters Health report, last year, that use and lose laws in 36 states, which there are 36 states that have it now, and the District of Columbia indicate that there's a drop in those states that have this kind of law by 5 percent in actual fatal crashes. And, Senator, when they look at it across the nation, it averages out for these states to be about 132 teenage lives that we've saved. So, yes, it does have an impact and it is a positive impact in regard to that particular issue. And it's clear when you...I don't know if you've had a chance to look at the map I gave you, it really stands out, Nebraska just stands out. And there are very few states left that aren't attacking this problem. Some have modified approaches, and this is really what this would be, is a modified approach. I never brought that up because I didn't like it. But this will work just fine. And we'll keep the statistics and data and we'll see how it works out if we decide to pass it. [LB258]

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SENATOR SULLIVAN: Thank you, Senator Harms. It's always amazing to me how a trend or an idea travels so quickly through the youth community. And I would suggest to you that what we're doing here today will in fact travel through the youth community. The message will be heard... [LB258]

SENATOR ROBERT: One minute. [LB258]

SENATOR SULLIVAN: ...and I believe that, thank you, Senator, that it will not only lead to a deterrent and be a deterrent in underage drinking, but I also believe that those...there will be young people out there that will counter peer pressure for underage drinking and in fact will stand up to it and, hopefully, we'll see less occurrences. Thank you. [LB258]

SENATOR ROBERT: Thank you, Senator Sullivan. Senator Harms, you are next and recognized. [LB258]

SENATOR HARMS: Thank you, Mr. President and colleagues. As we've had pretty full discussion in regard to this particular issue, and I would have to tell you in all honesty, I guess I'm just pretty transparent about how I feel, I don't like the amendment that we passed. I voted for it, because I don't believe the votes were here. It's still a victory. It's a victory for the kids. I got into this issue because of teenagers and what I saw and what was happening. And I think we still have that opportunity to make a difference. I said in my opening comments a week ago this is about public policy. This is about this great state taking a stand against the teenagers who are willing to impair their mind, destroy their mind and later become alcoholics. And once you become that alcoholic, and I've had friends who have been alcoholics, it is truly a battle for the rest of your life. I mean, it's a battle that in many cases you just don't win. And this bill still in the process allows for us to intervene really early where the younger kids who get caught in this and start the alcohol at 9 and 10 years old, we have a chance to begin to make a difference. And I think for me, personally, that's what this has been about, it's to make a difference in this great state, to have a public policy that says to our teenagers we are no longer going to tolerate allowing you to kill yourself. And I've said here on more than one occasion on this floor during this debate that I would rather lose...see a teenager lose their driver's license for 30 days or 90 days, whatever it might be, than their life. And I think for all of us I have learned in the four years that I have been here that politics is the art of compromise, and if you aren't willing to compromise as you get near the end, you're not always successful. I don't like the compromise, and to be very frank with you I don't feel very good in my stomach about it. But it's the right thing to do. The votes, hopefully, will be here. We will make a difference in our teenagers and I respect that. And I will also tell you that I don't hold anything personal. This is just a bill that we've introduced, that we've debated, and tomorrow we'll be on something completely different and probably in the same boat together. That's what it's about. But it's just

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about making a difference, and that's what I want you to understand. By voting in favor of this bill you will, you will change the lives of a lot of young teenagers. So thank you, Mr. President and colleagues. [LB258]

SENATOR ROBERT: Thank you, Senator Harms. Seeing no other lights on, Senator Ashford, you're recognized to close on the Judiciary amendment, AM1803. [LB258]

SENATOR ASHFORD: Thank you, Mr. President. And I, too, am going to vote for the amendment and for the bill. But I didn't like the amendment and I don't like the amendment. And I hope by the time we get to Select File we can...Senator Price had a great idea, I thought, on having the suspended license occur on the second offense. But let me tell you why, very briefly, and I know we've talked a lot about it. And I apologize for taking any additional time. But throughout the last couple of years and working in the juvenile justice area in the Judiciary Committee and traveling around through this Models for Change organization, which is the...Senator Council and I and Senator McGill have been to those conferences and others where we've been taught about juvenile justice and where I think quite a bit of the gap still remains is that with a juvenile, we're not being nice to juveniles by not being clear to them what the consequences are for their actions. And with a juvenile it doesn't really matter what the consequence is necessarily, but it needs to be clearly stated and it needs to be acted upon. In our...in my county, in Douglas County we have significant issues with juveniles getting into trouble who are in the system. We heard so much evidence, and I've heard so much evidence over the last three years in dealing in these issues with young people who come in and say to me, well, if they'd only have been tougher with me at the beginning, I wouldn't have gone off the deep end and done something worse. I am so absolutely convinced that if we don't, in this MIP area we have an opportunity to deal with so many of the young people that do get into trouble later in their lives, to say to them that if you are found to have violated the MIP statutes you are going to lose your driving privileges for 30 days, period. There is no discussion, there is no debate, there is no maybe you will or maybe you won't; you will. We're going to be, hopefully, if the committee agrees to put our bill out on juvenile justice, we're going to be debating this issue over and over again in the next several weeks. What are the appropriate consequences for a juvenile's actions? And the tragedies that are going on in my city are horrific. The gun violence is horrific. It is not getting much better. And one of the problems is that, in my view, is that, number one, these kids don't start out as violent people. They're good kids. In fact, my experience is they're wonderful kids. But something has gone wrong. Somebody has not told them that they can't do what they are doing. And they continuously do that to the point where somebody just goes off the deep end and finds a firearm and shoots his friend or her friend. It happens all the time, not just in north Omaha, not just in south Omaha, but in west Omaha and throughout the whole place. This is a humongous crisis in our state, it certainly is in my county, it certainly is in my county. I think this bill...with this bill we have an opportunity to shift how we deal with juvenile issues. Senator Harms is so right. He's spent his whole entire

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career dealing with these young people at the Western Community College. He knows what he's talking about. If we don't get serious about consequences for juveniles, they are going to get worse, they are going to commit worse acts, somebody is going to get shot or they're not going to get into college, they're not going to get a Pell Grant and they're going to come back and they're going to call us up. Senator Christensen was right when he talked about his constituent who could not get into medical school. It happens every single day in our state. It is a huge problem, it is a crisis. We have a tradition in this body of dealing with children. I'll never...Senator Stuthman isn't there, but I'll never forget when he was on NBC one morning on the Safe Haven Act bill, and he said to the reporter on national television when asked, are you embarrassed about the safe haven law, and he said, embarrassed? In the Nebraska Legislature we take care of our children and in our state we take care of our children, that's what we do here, it is our number one priority. We spend a billion dollars on state aid to education. We do it because we are a state that cares deeply about its children in every single aspect of their lives. [LB258]

SENATOR ROBERT: Time, Senator Ashford. [LB258]

SENATOR ASHFORD: Thank you. And I would urge the adoption of the committee amendments and advancement of the bill. Thank you. [LB258]

SENATOR ROBERT: Thank you, Senator Ashford. Members, you have heard the closing to AM1803, the Judiciary Committee amendment. The question before the body is, shall the amendment be adopted? All those in favor vote yea; opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB258]

CLERK: 36 ayes, 1 nay, Mr. President, on the adoption of committee amendments. [LB258]

SENATOR ROBERT: AM1803 is adopted. [LB258]

CLERK: I have nothing further on the bill, Mr. President. [LB258]

SENATOR ROBERT: Returning to discussion, Senator Harms, there are no lights on. You're recognized to close on LB258. [LB258]

SENATOR HARMS: Thank you, Mr. President. Senator Ashford, thank you very much for your comments. I really agree with what you've said. I would just ask...we've had full debate on this bill. It's been a great debate. I think we're about to change, hopefully, the public policy for teenagers. And I would just urge you to vote for this. I think it starts moving in the right direction. Thank you, Mr. President. [LB258]

SENATOR ROBERT: Members, you have heard the closing to LB258. Question before

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the body is, shall the bill move to E&R Initial? All those in favor vote yea; opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB258]

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB258. [LB258]

SENATOR ROBERT: LB258 does advance. Items? [LB258]

CLERK: Priority bill designation: Senator Ashford has selected LB1070. Health and Human Services provides a notice of hearing. Reference report referring LB1110. Urban Affairs, chaired by Senator McGill, LR295CA is one of their two priority designations; Banking Committee, LB931. Senator Pirsch offers a new resolution, LR321. That's all that I have, Mr. President. (Legislative Journal pages 547-548.) [LB1070 LR295CA LB931 LR321]

SENATOR ROBERT: Thank you, Mr. Clerk. Next item on the agenda. []

CLERK: LB987 was a bill originally introduced by Senator Krist. (Read title.) The bill was introduced on January 19 of this year, at that time referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM1778, Legislative Journal page 490.) [LB987]

SENATOR ROBERT: Senator Krist, you're recognized to open on LB987. [LB987]

SENATOR KRIST: Thank you, Mr. President. Members of the body, I want to thank Chairman Avery, my colleagues on the Government, Military and Veterans Affairs Committee, and the members of the body who are cosponsors on LB987. As indicated on the committee statement, LB987 advanced from the committee on a 7 to 0 vote. Colleagues, we are today a collective experience...collective of our life experiences. Lung cancer and its devastating effects have personally impacted my family. It is through that life experience that I am compelled to do my part to do so that others may avoid the suffering and pain. That is why I introduced LB987 and designated it my priority bill. LB987 requires the Department of Veterans' Affairs to contract with the University of Nebraska Medical Center, Eppley Institute for Research in Cancer and Allied Diseases for a clinical study for the early detection of lung cancer. This study will include up to 500 Nebraska veterans with one-time funding coming from the Health Care Cash Fund. And I understand there is an amendment that will follow. Let me say that again: 500 Nebraska veterans will be part of the clinical study. The money will be spent on our veterans in this state. LB987 employs cutting-edge technology currently under clinical trial for the detection of lung cancer using an inexpensive, noninvasive test. Technology is the key for saving lives. Until now, widespread lung cancer screenings were cost-prohibitive due to the nature of the testing required. Now that inexpensive technology could be available to identify those with lung cancer and

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treatment can be initiated sooner. As with any type of cancer, early detection is imperative. Unfortunately, lung cancer in most victims isn't caught until it is in the last stages, stage III or IV, meaning the cancer has progressed beyond the point of having treatments be successful. Diagnosis is a death sentence. Survivability rates for other cancers...other types of cancers, notably prostate cancer and breast cancer, are high because public awareness campaigns emphasizes the need for early screenings and public participation. As you can see from the handout that I sent out, the five-year survival rates for prostate and breast cancer are 99 percent and 87 percent respectively. The five-year survival rate for colon cancer is 64 percent. By comparison, the five-year rates for lung cancer--15 percent, 15 percent. New technology will help us improve the rate significantly. Moreover, when dedicated soon enough, the treatment can be undertaken, 92 percent of those with early stages of lung cancer are alive for five years. John Hilgert, state Veterans' Affairs director, in his testimony to the committee hearing for LB987 had an excellent quote from the Commander of the American Expeditionary Forces during World War I, our own Nebraska Hall of Famer, General John J. Pershing. So important was the use of tobacco among troops in his time that, when asked, Pershing quoted, You ask me what we need to win the war, I answer, tobacco as much as bullets. In 1917, Pershing called tobacco, and I quote, indispensable to the daily routine. It is for these reasons that the veterans in Nebraska are 25 percent more susceptible to developing lung cancer. We can readily identify who should be tested in that base. Simply put, this bill is good for veterans, it's good for the citizens in this state, and an appropriate one-time transfer of the funds from the Health Care Cash Funds. I understand the concern expressed about utilizing Health Care Cash Fund monies. While Senator Heidemann and Senator Gay can answer specific questions about the funding source for LB987, I would like the record to reflect that the Medicaid Intergovernmental Transfer Trust Fund and the Tobacco Settlement Trust Fund are the revenue sources for the Health Care Cash Fund. According to our own Liz Hruska in the Legislative Fiscal Office, the Legislature sets the appropriations for the Health Care Cash Fund, and the amount of funds transferred from a combination of these two funds is set in statute at an amount that is adequate to cover the appropriations. The balance in the Tobacco Settlement Trust Fund as of December 31, 2009, was \$196 million...\$196,760,514. The amount in the Medicaid Intergovernmental Transfer Trust Fund on that same date was \$113,304,476. The combined total of this cash fund, \$310,364,990. An analysis of the fund using various assumptions regarding the rate of return and revenues in the cash indicates that the two funds would be exhausted at the current rate between 2036 and 2042. There's a very large dependency on the market as it stands. I, too, want to see our trust fund monies, specifically the Tobacco Settlement monies, judiciously guarded and kept intact as long as possible. With that said, I believe you would be hard-pressed to identify a better cause to appropriate these monies than saving lives, especially those who have served our country and already sacrificed so much. In closing, I would like to thank Nebraska Veterans Council, the American Cancer Society, the Nebraska Department of Veterans' Affairs, the University of Nebraska Medical Center, Creighton University, and

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BIOMODA, most importantly all the veterans who have contacted my office in support of this bill. I ask for the advancement of LB987 to Select File following the adoption of the Government Committee amendment, AM1778. And I do understand that there is another amendment to follow. Thank you, colleagues, for your attention. [LB987]

SENATOR CARLSON PRESIDING []

SENATOR CARLSON: Thank you, Senator Krist, for your opening on LB987. Speaker Flood for an announcement. [LB987]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. A quick note on priority bill designations: This Friday at adjournment you have to have your committee and senator priority designations in to the Clerk and my office. Again, this Friday at adjournment is the deadline for senator and committee priority bill designation. In addition, if you are requesting a Speaker priority, you have to have that letter to my office by adjournment on Friday. Just know that in the past we have refused to accept Speaker priority requests after adjournment. That is a hard and fast time, it will be followed. So if you would like a bill to be considered for a Speaker priority, it has to be in my office by adjournment. Thank you, Mr. President. []

SENATOR CARLSON: Thank you, Speaker Flood. There are committee amendments. Senator Avery, as Chair of the Government, Military and Veterans Affairs Committee, you are recognized to open on AM1778. [LB987]

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. The committee amendment is pretty straightforward. It provides that the Eppley Institute for Research in Cancer and Allied Diseases may, in consultation with the Department of Veterans' Affairs, include any postsecondary institution in Nebraska which has a college of medicine in the conduct of the study. The effect of this amendment will allow Creighton University to be included in the study after consulting with the Department of Veterans' Affairs. Creighton came to the public hearing on this bill and asked to be included in the study. And that seemed to the committee to be reasonable. The amendment has the support of both the Eppley Center at UNMC and, of course, the support of Creighton University. The bill with the amendment advanced from the committee on a 7 to 0 vote with 1 member being absent. I urge you to vote yes on AM1778. Thank you, Mr. President. [LB987]

SENATOR CARLSON: Thank you, Senator Avery. (Visitors introduced.) The floor is now open for debate on AM1778. Those senators wishing to speak: Price, Gay, Gloor, Avery. Senator Price, you're recognized. [LB987]

SENATOR PRICE: Thank you, Mr. Chair. And thank you, members of the body. I just rise to bring about just more information so you can understand the gravity of what

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we're dealing with here today and what brought it about. As you know, I did a few years in the military. And one of the things...and there are others here who are also veterans, and one of the very first things you learn in basic training was if you wanted any downtime you learned the term smoke 'em if you got 'em. I think that's been said probably in a lot of different movies. And it's very true because what you had to do was you either went and you did more training or exercise, whatever it is, or you could stand around, take a 10-, 15-minute break and have a cigarette. And I vividly remember a lot of guys standing around the butt can turning green because they've never smoked before in their life, but they're more than willing to pick up the habit to get a couple of minutes off. And I remember when C rations were out there, now they were a little before my active duty time, but I remember breaking into my dad's C rations and Lucky Strike cigarettes were right there. You had your matches, your Lucky Strikes and your John Wayne bar, and who cared about the rest of it because it wasn't very palatable unless you were really hungry. But there we were and the most common thing. And if you go to a certain training school, survival schools, they'll tell you, you can't pack any food, but you go ahead and get yourself a couple cans of Skoal and that would tide you over. And you'd be amazed the number of veterans who are around just pure tobacco products. I remember being overseas and you would get a ration card for getting some things from a Class VI store, that would be alcohol, and your ration card for cigarettes and traded those. Those could be traded almost like for gold, but that's what you did, and when you were out there you did the tobacco. But then there's even more insidious things out there. I'm sure that Senator Janssen could probably do a very good job of describing being out on naval ships and being surrounded with carcinogens all the time because they were very prevalent on naval war ships there, you know. And so these types of things were what we were submitted to when we went and served. So I believe that you heard it mentioned, the incidence of lung cancer in veterans is extraordinarily high compared to the regular public. So this is a very important opportunity to help out the veterans, but also what they were bringing about is the idea that this study, as it comes to fruition, can provide such a simple and quick diagnostic to detect lung cancer early. And how much...you know, we stand up here, we talk on many bills about what the benefit is if we get intervention early. You know, we try to have smoking cessation now in the military, we try to do it everywhere. We have a smoking ban, we all recognize it. But now what we have to do is deal with the consequences of what happened before and a test that all someone has to do is cough. And they're doing it anyway. You've all heard them cough. You know that smoker's hack. All we have to do is have them cough and we can test and get an early diagnosis. So this is very important. Again, it has wide-reaching impact to our society, both here in Nebraska, nationwide, even worldwide if we have to. You know, tobacco use, as we started the deglamorization of tobacco, tobacco companies have moved off shore. So now they have other users of their product off shores. And I'm not here to vilify tobacco. But I am here to say that the consequences of tobacco or the consequences of asbestos, those types of things are things that we need to deal with. And we can get it sooner, it will be a lot cheaper, it will be better for our citizens. And this is a tremendous... [LB987]

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SENATOR CARLSON: One minute. [LB987]

SENATOR PRICE: ...opportunity. Thank you. And with that, I would urge your support of this to see past how the funding mechanism is going because it's there. That was why it was put there. And again, I urge all of you to give due consideration and support of the amendment and the underlying bill. Thank you. [LB987]

SENATOR CARLSON: Thank you, Senator Price. Senator Gay, you're recognized. [LB987]

SENATOR GAY: Thank you, Mr. President. I handed out kind of an update, it's about a five-page sheet about the Health Care Funding Act and the Health Care Fund. I think, if anything, I'd like to have a discussion on what this does for members because it's very important. And you're talking a lot of money. But in these pages you can kind of see the structure of where the payments come from, where they go, who they go to. When I was speaking with Senator Krist earlier on his bill--this was referenced to Government, not Health--but I said, well, where would the money come from and who would you be taking it from? I'm supportive of the concept of helping this cause. It's a very good cause, that's for sure. But the amendments that follow, if we can talk about those some more, is very important too. Senator Heidemann and I have talked with Senator Krist, he's been very helpful, too, about getting cash not coming from someone else right at this time, without letting those people know. If we would have said that, by the way, the cash is going to come from the developmental disability community, of course, Senator Krist wouldn't have gone there, behavioral health, CHIP, some of these important issues, that there certainly would have been some opposition even to a good cause. So I think what we need to do is look where our money goes. And this is a fairly updated list of where that money does go. So I'd like to just take that opportunity and talk about it and the sustainability of some of these issues because there's a lot of times people come to this cash fund, \$58 million, and they say, well, I've got a good idea for it. We're looking at, you know, what are those as priorities. And it is good to look at this. But the sustainability, right now we're looking there would be \$59 million generated in 2019. Now is this a fund that's going to be sustainable ongoing or is it something that if we found some good causes that we're going to use them for those causes and those immediate concerns? I think when this was created, obviously, the idea was a sustainable fund. The amendments, I think, envision that and found some cash and those will be talked about coming up. But if you can listen in to this debate, it's very important because what we're doing is deciding where this money goes. You're setting a precedent and we need to get all members involved on how that works. So for that, I wanted to give that out for the members to look at and maybe go from there. If Senator Krist would yield to a question. [LB987]

SENATOR CARLSON: Senator Krist, would you yield? [LB987]

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SENATOR KRIST: Sure. [LB987]

SENATOR GAY: Thank you, Senator Krist. Senator Krist, when we were talking, and I know you did...you've worked very hard on this to find out where we could get the dollars. And I'm jumping a little bit ahead, but I just wanted to tell you I appreciate that. And you understand all the different factors where this is coming from. But in your conversations, when you were transferring this, did anyone else contact you at all as far as the money coming from their cause or any concern? [LB987]

SENATOR KRIST: Well, the concern is that we give this money out on a recurring basis to the institutions. They've obligated this money for their purposes. And you highlighted well that this would track where the money actually goes. And their concern was that they didn't want the money taken out of their current budget because it was allocated. Other than that, no, I had no concerns about where the money might come from. [LB987]

SENATOR GAY: Yeah. In our conversations I know you've been very helpful in where we found out. I'm going to leave it until we get to the...I will talk on that amendment. But I just wanted to, this is just for the members to look through because I think many times I'd heard, well,... [LB987]

SENATOR CARLSON: One minute. [LB987]

SENATOR GAY: ...let's get the money from there. Senator Krist has done a good job identifying that he wouldn't take money that comes from the fund that wouldn't keep it sustainable. But even down the road, that could be even an issue that we talk about, is there a need so pressing now that we need to look at this and say this isn't a perpetual fund, it's...it is what it is and we're going to use those funds. So with that, I will look forward to an active debate on this bill. Thank you, Mr. President. [LB987]

SENATOR CARLSON: Thank you, Senator Gay and Senator Krist. Those still wishing to speak: Senators Gloor, Avery, Janssen, and Hadley. Senator Gloor, you're recognized. [LB987]

SENATOR GLOOR: Thank you, Mr. President, members of the body. I have had conversations with Senator Krist about LB987 and am supportive. I'm still trying to understand and will listen to the amendments. I understand it has more to do with process and clarification on the dollars and how those dollars get shifted from box A to box B. But I want to point out to the body what I consider to be an important component of history that we need to keep in mind, and that is this all comes as a result of Tobacco Settlement money. A legal historian could go back and talk about the class action lawsuits that go back a long, long time that resulted in settlement monies that went to

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each state. And when those monies came to the states, there was hope that we would be able to use those monies not necessarily to treat disease, which is what we're talking about under LB987, but to slow down the use of tobacco and tobacco products in our individual states. And if you look at the listing of where the dollars now go, you'll see that precious little of it goes to smoking cessation. In fact, we've gotten so far away from the original intent that we don't even call it Tobacco Settlement money anymore. We talk about it as the Health Care Cash Fund, as if it's a till that we can dip into, pay for any number of things that interest us, whether it has to do with public health, behavioral health, biomedical research, etcetera, etcetera. I'm not going to argue that those are inappropriate uses. I am going to point out to the body that we had a lengthy, lengthy discussion about our adolescents and their exposure to alcohol. It's worth pointing out, I believe, that we have a problem with our youth when it comes to smoking. And the amount of money that we have allocated out of the Tobacco Settlement monies to address that over the years has been minimal, has been minimal. I'm comfortable with Senator Krist's bill because I believe it goes to address an issue that clearly is tobacco related. And because of that, I'll be supportive of LB987. But I would encourage, as Senator Gay has said, a good and spirited discussion about the Health Care Cash Fund and its origins through the Tobacco Settlement years ago and what the intention of those dollars were and how, over the years, the Legislature has addressed a number of issues, not that those issues are inappropriate, but do they relate to the original cause for which those monies were delivered to the state of Nebraska? Thank you, Mr. President. [LB987]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Avery, you're recognized. [LB987]

SENATOR AVERY: Thank you, Mr. President. I want to talk about why this bill is important. Lung cancer is a stealth disease. It usually takes decades to develop, it usually fails to show obvious symptoms until it's already spread well beyond its original site. In the general population only 16 percent of lung cancers are being diagnosed at an early localized stage, when it can be treated and cured. Cancers with widely used screening methods, such as mammograms for breast cancer, PSA testing for prostate cancer, colonoscopies for colon cancer, these have very high survival rates. Currently, the five-year survival rate for breast cancer is 89 percent; for prostate cancer, 99 percent; and for colon cancer, 66 percent, all because of early detection. The five-year survival rate for lung cancer is still only 15 percent. And this reflects the persistent lack of adequate research funding and the pervasive blame associated with the disease. Neither is appropriate in addressing the unmet needs of veterans who, by virtue of their service, are at higher risk. And I'll address that later if I have time. Late stage lung cancer is twice as costly to treat as early stage lung cancer. Even conservative estimates place the cost of lung cancer to the VA at \$1 billion a year. A study was published in April of '09, in the Journal of Clinical Oncology that predicts the incidence of cancer overall will increase by 45 percent over the next 20 years while the incidence of

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lung cancer specifically will increase by 52 percent. It is essential that we do something about early detection, and that is particularly important for targeting our at-risk veterans. Veterans are at risk because of, in most cases, it's not just tobacco use but it's also exposure to caustic chemicals while in service. In fact, we have Gulf War veterans today are already experiencing a health impact of service. The Department of Defense has placed a high priority on continuing to review lung cancer incidence among Gulf War veterans. What they're finding is that some of the metals used in weapons, some of the metals used in vehicles and armor are highly toxic and some of our veterans are suffering the effects. In 1998, the Institute of Medicine began studying the high impact of lung cancer for Gulf War veterans, particularly these veterans that were exposed to depleted uranium. This is the residue that's left after nuclear grade uranium is extracted. Depleted uranium can give off radioactive products decay that can be... [LB987]

SENATOR CARLSON: One minute. [LB987]

SENATOR AVERY: ...carcinogenic. And what they found is that the incidence of lung cancer associated with these chemicals and associated with these metals is high enough that now the Department of Defense is giving a high priority to this. We already know that veterans from the Vietnam War have been exposed to Agent Orange and other kinds of chemicals that cause lung cancer. We also have credible evidence from the Korean War and from World War II about this. So it's not just a smoking issue, it's also a service-connected disability. The VA has already begun issuing automatic VA compensation for lung cancer victims who are veterans. So I think that this is an important bill because it will give us the ability to do vital research to engage in... [LB987]

SENATOR CARLSON: Time. [LB987]

SENATOR AVERY: ...in early detection. Thank you, Mr. President. [LB987]

SENATOR CARLSON: Thank you, Senator Avery. Senator Janssen, you're recognized. [LB987]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. I rise in support of LB987 after talking to Senator Krist about the need for this bill and sitting on the Government Committee. A lot of times we hear let's do it for this group or let's do it for that group. And a lot of times I hear let's do this for the veterans, let's do this for the veterans. And a lot of times I say, you know, I am a veteran and I don't think we need to do this because a lot of times we can use that excuse for anything. We hear it a lot, you know, let's do it for the kids, let's do it for this. And there's other stuff involved in it. It's just not that simple. This is one of those cases where it is just that simple. Senator Price talked a little bit about it. During my naval career, there was smoking on the ships and we were stuck inside the ships. There was actually had radar consoles that had

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ashtrays built into them. And they just put the smoking ban in on ships right when I arrived at my ship in the late eighties. And you could still smell the smoke in there. And they allowed smoking outside the skin of the ship, as we called it, the exterior of the ship. And people still smoked. There was a culture of smoking that happened in the military, not unlike anything that we've heard before that came before us. But that said, smoking was our culture not only in the military but outside of that. So why not expand this to everybody? That would be nice. But in reality, many times in the military we're forced into positions, we have to react first and ask questions later. We're forced to be put into environments with asbestos, because that's the cheapest and quickest way we can build this ship or barracks to get the job at hand done. And the veterans are forced to be there. Of course, we volunteered. Actually, the Navy stands for Never Again Volunteer Yourself, but here I stand in the Legislature after volunteering my services. But we go and we don't ask questions at the time. But I think it appropriate at this time that we use these funds to check for this screening. I watched the screening, I saw how the process happened in our committee. I think it's a very simplified way to screen for this. And we'll save money down the road. You know, you want to talk about the pressure, even in the time I was in, to smoke, when we woke up in the morning they said, reveille, reveille, you know, all hands truss up, the smoking lamp is now lit. That's every morning you woke up to that, the smoking lamp is lit, smoke 'em if you got 'em. Yes, that went around. And I didn't smoke. When I arrived at my first schooling in the Navy, I was in Dam Neck, Virginia, there was a smoking tree. The tree wasn't actually smoking; you were supposed to smoke around it, I believe. And that's where everybody went. And I didn't know anybody. I was a kid from Nebraska, I didn't know anybody. I said, what are all those people doing out there? Well, that's where the smoking lamp is at. So what did I do? I walked over to the Navy exchange, I bought a pack of cigarettes, I walked back by that tree, I lit a cigarette, I took a drag, I about threw up, I looked very much like I didn't belong there, but I gave my cigarettes to somebody else, I believe, but I did continue to go out there just to socialize with people. So that...it did happen and it was the culture. And I'm sure several people didn't get sick with that first drag or second drag and continued smoking. In the Navy we sleep in very small bunks, they're called coffin bunks, they're three high. Had a guy that was in for 25 years that slept right above me. And every morning before his feet hit the deck he had a cigarette lit. Even though it wasn't allowed, that cigarette was lit in there. And what was I going to say? I was an E-1, which is the lowest rank, this guy is an E-6, which is a very high enlisted rank, so I was below grade, below the deck in a ship smelling this smoke right off in the morning, not to mention his personal hygiene wasn't that great either. So the smoke may not have been that bad. I used to joke that...and you're right... [LB987]

SENATOR CARLSON: One minute. [LB987]

SENATOR JANSSEN: ...thank you, Mr. President. People would take time off to smoke. I would say I was going to a smoke break and do something else. And I joked that I became a search and rescue swimmer so I could jump off the ship to get away from the

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smoke. And that was a joke then, but now it comes back to me. When I was in college, I got a letter and it said something about questions for Persian Gulf Syndrome. You were exposed there, I did two tours of duty there. I filled out this questionnaire. And that reminded me of we had to react then and we couldn't ask questions. So now we need to act now to take care of the people that didn't get to answer questions then. I thank Senator Krist for bringing this bill and I fully support it. Thank you, Mr. President. [LB987]

SENATOR CARLSON: Thank you, Senator Janssen. Those still wishing to speak: Hadley, Gay, and Wallman. Senator Hadley, you're recognized. [LB987]

SENATOR HADLEY: Mr. President, members of the body, would Senator Krist yield to a question? [LB987]

SENATOR CARLSON: Senator Krist, would you yield? [LB987]

SENATOR KRIST: Yes. [LB987]

SENATOR HADLEY: Senator Krist, just so I understand this, the study will be of veterans. But will the outcome of the study then be applicable to the entire population? [LB987]

SENATOR KRIST: In terms of being accountable for the money that we asked for to participate in the final testing for the FDA, the target that we chose was our veterans because they're 25 percent more susceptible. The outcome, the ideal outcome is that this tool for the physician will be applicable to everyone across the state. Because at the end of this study we will have participated in, we will gain benefit of millions of dollars in protocol that will affect the entire citizenry of Nebraska. [LB987]

SENATOR HADLEY: Okay. So basically, we're using the veterans as our sample group because of the relatively high incidence of lung cancer. So we want to be sure that the drug does work in detecting, is that correct? [LB987]

SENATOR KRIST: I am not a physician but I follow that logic and I would say that, yes, we actually followed the example set by the state of New Mexico Legislature. They did the same thing, participating in Phase I and Phase II. [LB987]

SENATOR HADLEY: Thank you, Senator Krist. [LB987]

SENATOR KRIST: Thank you. [LB987]

SENATOR HADLEY: I just did do some reading on this. And I think a key point, we've talked a lot about smoking and obviously lung cancer, but I think with a number of our

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veterans there are other reasons that we should be concerned that they're an at-risk group for lung cancer and that is everything from Agent Orange to asbestos in the ships to many different things that they have been exposed to over their careers in the military. So while smoking is obviously an important part of it, I think that they're an at-risk group because of the many things that they were confronted with in their tours of duty. Thank you. [LB987]

SENATOR CARLSON: Thank you, Senator Hadley and Senator Krist. Mr. Clerk for items for the record. [LB987]

CLERK: Thank you, Mr. President. Your Committee on Transportation and Telecommunications, chaired by Senator Fischer, reports LB924 to General File. Transportation Committee has selected LB805 as one of the committee's priority bills. Senator Fischer has selected LB764 as her priority bill. An announcement: General Affairs will have an Executive Session tomorrow morning at 10:30; General Affairs, tomorrow morning at 10:30. (Legislative Journal pages 548-549.) [LB924 LB805 LB764]

And I do have a priority motion. Senator Flood would move to adjourn the body until Thursday morning, February 18, at 9:00 a.m. []

SENATOR CARLSON: Thank you, Mr. Clerk. You've heard the motion. All those in favor say aye. Opposed, the same. We are adjourned until Thursday morning, February 18, at 9:00 a.m. Thank you. []