

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

Floor Debate
February 03, 2011

[LB20 LB28 LB29 LB30 LB43 LB72 LB108 LB114 LB181 LB386 LB410 LB435 LB507
LB511 LB629 LR66]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-first day of the One Hundred Second Legislature, First Session. Our chaplain for today is Senator Coash. Please rise.

SENATOR COASH: (Prayer offered.)

SPEAKER FLOOD: Thank you, Senator Coash. I call to order the twenty-first day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. (Gavel)

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

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

CLERK: Your Committee on Banking, Commerce and Insurance, chaired by Senator Pahls, reports LB43 to General File, and LB410 to General File with committee amendments attached, those reports signed by Senator Pahls. Notice of hearings from the Education Committee and rescheduling of a hearing by the Education Committee, those signed by Senator Adams. I have a new A bill...new resolution, excuse me, Mr. President. LR66 is by Senator Hadley. That resolution will be laid over. A declaration of a priority bill: Senator Hansen has selected LB181 as his priority bill for the session. Senator Conrad offers a conflict of interest statement to be noted in the Journal. Urban Affairs Committee will meet 15 minutes after convening, so approximately 9:30 this morning, Urban Affairs Committee underneath the north balcony. And Senator Pahls would move to withdraw LB435. That will be laid over at this time, Mr. President. That's all that I have. (Legislative Journal pages 433-436.) [LB43 LB410 LR66 LB181 LB435]

SPEAKER FLOOD: Thank you, Mr. Clerk. We now proceed to the first item on the agenda, LB20. Before we begin,...actually, Mr. Clerk, please update the Legislature on the status of LB20. [LB20]

CLERK: LB20, a bill originally introduced by Senator McCoy. (Read title.) The bill was presented yesterday by Senator McCoy, committee amendments were offered by the Judiciary Committee and Senator Ashford. There was an amendment to those

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

Floor Debate
February 03, 2011

committee amendments adopted. I have a second amendment to the committee amendments by Senator Lathrop that is pending. Senator Ashford had filed a priority motion, Mr. President, to bracket the bill until June 1, 2011. That is the current pending motion. [LB20]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator McCoy, you have the opportunity to briefly summarize for the Legislature the contents of LB20. [LB20]

SENATOR McCOY: Thank you, Mr. President. Good morning. I appreciate the opportunity to update the body again on what LB20 does. It very simply takes what's already in federal law as far as the written log, combines it in an electronic tracking system to allow not only retailers but law enforcement the opportunity to know when folks are attempting to purchase more than the daily or monthly limits on methamphetamine precursors. I believe this to be critically important as a number of our bordering states have already implemented this tracking system, and we certainly don't want to become a meth haven in the Midwest. I think if you talk to any family, any community that's dealt with meth abuse, especially when there's children involved, anything that we can do in this body to curb meth abuse is a worthwhile endeavor in my view. We've had some great discussion on this. I would ask the body to consider the implications of this. I don't believe that a bracket motion is in order here. I think we need to implement this as quickly as possible. Thank you, Mr. President. [LB20]

SPEAKER FLOOD: Thank you, Senator McCoy. Mr. Clerk. [LB20]

CLERK: Mr. President, the pending motion is Senator Ashford's, which is to bracket the bill until June 1. [LB20]

SPEAKER FLOOD: Senator Ashford, you're recognized to open on your bracket motion. [LB20]

SENATOR ASHFORD: Thank you, Mr. Speaker. And I'm not sure how many lights are on, maybe not very many, on this issue, but I do want to keep the bracket motion up there and I am very serious about it. Let me go back and talk a little bit about how we bring bills to the floor out of the Judiciary Committee. And, obviously, as we all know, the Judiciary Committee has more bills by far than any other committee by the nature of the subject matter that we handle. So there are numbers of bills. And Senator McCoy is absolutely right. Methamphetamine is a plague on our state. And we have in our committee over the years dealt with methamphetamine and other drug issues, certainly the K2 issue that the committee put out immediately to the floor as soon as we could have a hearing on it. And as we saw in the Omaha World-Herald over the weekend, it was certainly a very timely action on the part of the committee and this body to advance the K2 legislation as it is another plague on our youth. And so I applaud this body, Senator McCoy, and the committee for addressing K2 as quickly as it did. The process

Floor Debate
February 03, 2011

because we deal with so many bills and because there are so many interests that are involved in a criminal statute, for example, or a bill like this which deals with enforcement of other existing laws dealing with methamphetamine precursor drugs, there are many interests involved. It is not simple to construct a criminal statute and this is a criminal statute. There is a penalty involved in the failure to comply by a retail establishment. It's a complex matter to draft and to work on and to put out to this body these kinds of pieces of legislation which on the surface may seem simplistic. Well, don't we just want to get rid of meth? Well, sure we do. We want to get rid of meth. We don't want our children having access to meth. It is a scourge. But when we bring other parties into the mix, we're not just dealing with someone who is manufacturing meth, we're dealing with retailers, establishments who purvey legal drugs but who are...that happen to be methamphetamine precursors. There's also the issue of civil liability. What happens...and let me tell you, every time we have a bill, almost every single bill we have to some degree has something to do with civil liability. Should someone be civilly liable as well as criminally liable for failure to act reasonably, for example, in a situation that arises? So in the case of a retail establishment, the question is and was as we discussed this bill, you know, how do you handle civil liability? Well, we want to make sure that these establishments comply with the law. We want to encourage them to be proactive and to enter into this system that we talked about the other day, this technology that does inform about the smurfing activity that goes on when people go from store to store to buy these precursor drugs. We want to encourage these retailers to do what they do best, and that is to track these purchases because they're the ones on the front line. But at the same time we want to make sure that they don't open themselves up as they comply with this particular requirement of state law now that we would be enacting with LB20, we want to make sure that they aren't opening themselves up unduly to civil liability, in fact, being sued for damages for failing to adequately or follow the...enter this information into this database. So the discussion in the committee was and is in all these cases, let's make sure that the civil liability mirrors the...what we're trying to accomplish in the public policy arena which is to discourage the manufacture of methamphetamine. That's the big goal here. It's not our role in the committee nor is it, I don't believe, the role of this Legislature to take a piece of legislation and expand it beyond its boundaries of where it was...what its intent was. Now that isn't to say that Senator Lautenbaugh cannot put a...he voted no on the bill and he put up an amendment that this body voted on yesterday. The problem with it...and every member has the right, certainly, to vote yea or nay on the amendment, the problem is, where do we go from here for the rest of the session--because it dearly does cause me pause in the committee on whether we put any bills out on these issues because every single bill that we put out, almost, have these very difficult civil liability and criminal liability issues. You could take any number of Judiciary Committee bills and expand the civil liability, contract the civil liability and you'd have a different bill. The problem with doing that generally is that you create all sorts of new rights and responsibilities and obligations that were not necessarily considered in the committee when we put the bill out. So what you get is, you'll get somebody behind the glass...and

Floor Debate
February 03, 2011

I'm not suggesting Senator Lautenbaugh did this because he used his own head to come up with the amendment, but, as does Senator Lathrop when he argues against these amendments, but it really does break down the process for us in the Judiciary Committee. We try to draft as narrowly as we can these bills so that they are...and especially the kind of bill we had here that deals with criminal liability and civil liability. And it's dealing really with one subject matter which is the manufacture of methamphetamine. This is a very narrow subject matter and it should be drafted in a narrow way, and that's what we were trying to accomplish. We weren't trying to unduly burden the plaintiffs or unduly burden the defense bar or the drug industry; we were simply trying to get a bill out here that made sense for the purposes that it was designed to address, and Senator McCoy has laid those out. The body can do whatever it wants, obviously, and I don't criticize anyone for their votes. It's just that it gives me pause as Chair of the committee when we address these bills that deal with liability, civil or criminal, that I'm a little wary now. I'm a little wary about any civil or criminal liability bill coming out because quite...and this has happened before where we get beyond the purposes of the bill, we go beyond where we felt as a committee this bill was...at least the majority, seven to one vote, we felt was trying to address. So, you know, quite frankly the bill ought to be bracketed. It ought to be bracketed, either be bracketed or sent back to committee so that we can take a look at the civil liability issues. Now I'm concerned a little about the criminal liability issues. I'm not even sure now whether we ought to have any criminal liability at all for a retail establishment that doesn't properly record this information into the database. I'm not sure that that's fair, quite frankly, now that I have an opportunity to think about this. And as I'm told many times by my friends in the chamber of commerce, we don't want to overly regulate business. We don't want to burden business unduly. Sure, we want to stop meth manufacturer,... [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR ASHFORD: ...everybody wants that, but maybe we ought to just leave it to law enforcement which is what we have been doing up until now. And quite frankly, contrary to my good friend Senator McCoy, we have reduced meth manufacture in this state since most of us together have been in the Legislature. By addressing meth, we have reduced meth manufacture significantly in this state because the State Patrol and other law enforcement agencies have done a great job. I'm not sure we need this bill quite frankly. But at the very least it ought to be sent back to the Judiciary Committee so that we can think about the civil liability issue. Thank you, Mr. Speaker. My message here is, we're trying to address methamphetamine. I don't think we should go beyond that. And with that, I would renew my...and urge the body to vote in favor of the bracket motion. And if that doesn't...if that's not approved, then I think the bill ought to be recommitted back to the Judiciary Committee. [LB20]

SPEAKER FLOOD: Time, Senator. Thank you, Senator Ashford. Members, you've heard the opening on Senator Ashford's motion to bracket LB20 until June 1, 2011.

Floor Debate
February 03, 2011

Turning to discussion on the same, Senator Lathrop, you are recognized, followed by Senators Ashford, Conrad, Loudon, Howard, and Lautenbaugh. Senator Lathrop. [LB20]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I have much to say about this bill, about the bracket motion, and I'm going to do that on another occasion. This morning I want to take this opportunity to apologize for my tone yesterday, apologize for the implication that my colleagues could not have been thinking for themselves if they voted for Senator Lautenbaugh's amendment. I could feel my blood pressure going up after that vote and I probably would have been better off not standing up or offering my amendment at a later time. So I apologize for my tone and I apologize for the implication or the suggestion that my colleagues weren't thinking for themselves. I appreciate that each of you had a reason for your vote and I guess we can leave it to one another to divine what that reason is. And I will have more to say about this. I would make this suggestion to you, and I think it's a crummy apology when you start taking it back by making excuses for yourself and I don't mean to do that. I will tell you that I was very upset with the fact that there was a deal. There was something put together on this bill, and the discussion turned to the suggestion that deals are a bad thing around here or that that isn't what makes this place go around and around and around. And I would suggest to you, as we'll discuss later, that they're an important part of this process when we bring the people together who will do the work and come together to try to resolve the differences on a bill, and that clearly was circumvented with LB20. And I think that's what had me upset and perhaps led me to use a tone and to say some things that were ill-advised, and for that, my apologies to my colleagues. Thank you. [LB20]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Ashford, you are recognized. [LB20]

SENATOR ASHFORD: Thank you, Mr. Speaker, and I appreciate Senator Lathrop's comments, but I would ask if he would want to have my time to talk about the bill or would like to wait for some other later time. I will give my time to Senator Lathrop. [LB20]

SPEAKER FLOOD: Senator Lathrop, you have 4 minutes 45 seconds. [LB20]

SENATOR LATHROP: Thank you, and thank you, Senator Ashford. To the merits. I'm going to go back, if I may, on this occasion and talk about the immunities. Yesterday, you were given a reason to vote for Senator Lautenbaugh's amendment and a reason for leaving the immunity in was...well, one was that it was there before and all we're doing is leaving or providing the same immunity that was there before, and that Senator Chambers voted for this and it must have been a good idea. I think that's paraphrasing a little bit, but that was the main thrust and the reasons that were put forth on why you should vote for FA3. Well, I did a little homework last night. I did a little homework. And I

Floor Debate
February 03, 2011

want to share a couple of things with you so that you can consider this if we get past the bracket motion and to my amendment again, and that is that Senator McCoy's bill does not repeal the existing immunity. Okay? So the immunity that was found in the law that you were told was the reason, well, we're not doing anything new really, we're just replacing it with what was already there, and what harm can come from that? Well, it's still there. So now what we're doing is putting two immunities into the same subject matter and they're not written the same. And here's another thing: The federal government has already immunized this area, so now we have three immunities. And we're going to get to a place where our immunity language is inconsistent because we're so determined to put these in everywhere we want to or think it's advisable. But if you look at the federal regulations that deal with developing these logs for methamphetamine, they already have an immunity from civil lawsuit. So now we have in LB20, Section 6, an immunity on top of a state immunity that's already there and a federal immunity that's already there. And I would submit to you, colleagues, that that's unnecessary, it's going to create confusion, they're not drafted the same so they're inconsistent, and to leave them in there is bad legislating. They are unnecessary to the bill. The immunity is already there. I also went back and looked at the history of this methamphetamine effort. And Senator Nelson argued that since Senator Chambers voted for this stuff, voted for these bills, that that immunity must have been a good idea. Well, he didn't. That was just...I've stood up and shot from the hip. That is not supported by the record. There are two bills, one in '06 and one in 2001, Senator Chambers was opposed to both of them. So I'm not sure what your reason was for voting for FA3 yesterday. Maybe this addresses that concern. I also agree with Senator Ashford. I think we may have, as a committee, jumped the gun on this one and that LB20 should go back to Judiciary Committee where we can look at the federal statute more carefully, look at the federal immunities more carefully,... [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR LATHROP: ...look at the penalties that we put into this bill more carefully, and put out a product that is...enjoys the support of all members of the committee and addresses the concerns of all members of the committee and hopefully we'll have all members of the committee participate in that process. Thank you. [LB20]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Conrad, you are recognized. [LB20]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. And I want to commend Senator Lathrop for helping to refocus this dialogue to a more constructive posture this morning and hopefully forward because I think we all know whether...that our other places of work, at our kitchen tables or here on the floor of the Legislature, personal attacks don't solve a lot of problems. And we have important work to do in front of us and we can do so in a professional and hopefully civil manner. A couple points

Floor Debate
February 03, 2011

that I do want to note for the record, and I actually drafted a recommit motion yesterday so, I guess depending upon where we go today, we can see what course we do need to look at. I think it's important to keep in mind on this specific piece of legislation and a variety of other bills that come out of Judiciary that affect our legal climate and legal processes that there's a few important things to note for the record before we proceed further. Number one, according to the U.S. Chamber of Commerce and many other pro business groups, Nebraska has a very, very high and favorable litigation environment. In fact, I was just looking on my laptop, in the last and most recent rankings, in 2010, we were ranked third in the whole country because of the fairness in our judiciary and the tort reforms that have been implemented. So it's not as if Nebraska is a Wild West of frivolous litigation to start off with, so let's be conscious of that. Number two, in regards to frivolous litigation, every attorney licensed to practice law has to adhere to an ethical code, professional rules of responsibility and otherwise. And according to the Supreme Court rules here in Nebraska, 3-503.1, addressing meritorious claims and contentions, if a lawyer brings a frivolous lawsuit they subject themselves to penalty from the...a lighter range to a very extreme range, from censure to disbarment, etcetera, etcetera. So I think that to...there was a couple of things pointed out in the debate yesterday about the potential for frivolous litigation, but there are checks and balances that exist beyond this legislation on members of the bar to ensure good faith before any tribunal and candor. And so to use that kind of heated rhetoric about lawyers, litigation, tort reform, and the status of the administration of justice, let's be applicable and specific to what's happening in Nebraska. We have a very fair legal environment. We have very clear legal, ethical regulations and parameters that prevent frivolous litigation from moving forward, and I think that's important to note for the record. Senator Ashford mentioned some of these issues that...actually last night when I had a chance to review this legislation and the proposed amendment that prompted some questions in my mind. And to be clear, I've never practiced in the area of tort law, but there's a variety of different things when you're looking at criminal penalties which are contained in the bill, and then there's some immunity provisions which are at issue in the various amendments and trying to figure out exactly what the immunities apply to. It appears it applies to the civil context... [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR CONRAD: ...but there is indeed criminal penalties, and those are some areas that I think necessitate further clarification. Additionally, in going back and looking at my old tort books from law school, there's something called negligence per se. When a party would violate a state statute that provides a presumption to the litigants that there is indeed some sort of negligence to be found if you can establish duty, breach, causation, and damages which, of course, are important, have their own standard of proof and apply in a very specific sense. So I'm interested to see where the debate goes on this, this morning. I'm hopeful we'll be able to find some resolution, but it may behoove us to send this back to committee for proper time to address all of these and

Floor Debate
February 03, 2011

various other considerations. Thank you, Mr. President. [LB20]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Louden, you are recognized. [LB20]

SENATOR LOUDEN: Thank you, Mr. Speaker and members of the body. I usually don't get involved in some of these issues where we have the ten lawyers on the floor already discussing it. But as the questions of why we voted for some of this, and I will point out some of the consideration that I've done, that I've followed through with. As I read the bill, we're talking about an exchange. And what that is, is that's a place where you will send information to, and someone is supposed to compile that so that they can come up with some type of a trend or issue that's going on with this. And this is when we talk about the National Association of Drug Diversion and their exchange, and I think it goes on to say in there, in the descriptions that that's what we will call an exchange. And as I see this, why this is...the exchange has to be available to all the sellers that sell these type of drugs and prescriptions. As I'm not familiar with that exchange, but I am familiar with something that the Department of Agriculture asks us ranchers and I presume some of the farmers, but we get an information folder about twice or three times a year and they want us to fill it out to how many cattle we have, how many died, what the gender are we're keeping, and that's more or less an exchange is what it is, is where they compile the records to get some handle on what's going on in the livestock industry in the state of Nebraska. Now as we go ahead and fill that all out, when you get to the end of the folder, you sign your name and it also points out that if you don't do this correctly that there is a penalty on there that they can bring suit against you if you fill it out wrong. And what that's for is so that somebody don't put numbers in there that may have a problem with their compiling their facts later on in the time frame. So that's what that's all for. And as I see this bill, this is what this is all about. This is an exchange. If you...I think page 3 there, if you knowingly fail to follow into this exchange, why, you're guilty of a Class IV misdemeanor. But I guess the only part that I would have more concern about is that (b) in I think it's in Section 8, and that is they have the authority to machine..."scan machine-readable information encoded on an operator's license." Now that's all in there and that's all new language. The only part that would probably perhaps cover that is when you get to the last page, page 7 there and it says, "Except as provided in subdivision (4)(a)," which lists some other regulations that a retailer that does that and sells that information is guilty of a Class IV felony. So that's the part in there that you have to leave in there if you're going to scan someone's driver's license. But as far as the bill and turning information over to an exchange, I don't see no problem with it. We have to do it all the time. We do it in agriculture. We do it with our livestock, farming. They'll ask you how much hay you grew, and if you have storage for grain, and that sort of thing. So I don't see what the big fuss is about this as far as giving information to an exchange. If this is something that's going to help on some of these drug cases then so be it. But as I look the thing over, it's more or less a place to gather information and go from there. Thank you, Mr. Speaker. [LB20]

Floor Debate
February 03, 2011

SPEAKER FLOOD: Thank you, Senator Louden. (Doctor of the day introduced.)
Continuing with discussion on LB20, Senator Howard, you are recognized. [LB20]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I've listened to the debate on this and not being an attorney, I don't have the attorney references to give you this morning. I think we've been fortunate to have those already. But I will give you a viewpoint from an average consumer. And it's very troubling to me that we put an amendment in a bill that limits the liability and basically limits the consumer's ability to get redress when they feel there's been a wrong. I don't see that this is really our place to be restricting that. Sure, we can do it. We can put it in any number of bills that come out, but is that the right thing to do for just the average citizen who is hoping that they're not going to be in this situation, where they're not going to have to have something develop that they have to consult an attorney over? They're not interested in that. They want things to be done right. But if we relieve everyone of the responsibility, what really is the reason to be concerned? I think we have to be very careful about restricting this. Yesterday in the Health Committee, another bill came in with this very same restriction, this very same limitation of a liability. And I worry that there may be sort of a trend toward doing this. Trend may not be the right word, but I think we really need to be very careful about how we restrict individual's rights to seek redress when they feel that they're in a situation where there's a serious wrong. I called Senator Ashford yesterday evening and I thanked him for really standing up and basically saying to all of us: Take a step back; look at this. Let's really consider the implications of this. And I think that's...we have to do that not only on this bill but on any number of the bills that come up and we're going to be restricting an individual's ability to say, I've been harmed, my family's been harmed, and I really need help with this. I'm going to offer the remainder of my time to Senator Ashford if he would want it. Thank you. [LB20]

SPEAKER FLOOD: Senator Ashford, 2 minutes 40 seconds. [LB20]

SENATOR ASHFORD: Thank you, Mr. Speaker. And I thought Senator Louden made some great points as did Senator Howard. This is a larger debate about the access of citizens to the courts to redress wrongs that may have been committed or negligent acts that may have been committed. And Senator Louden made a great analogy to the agricultural sector. And I'm starting to warm up to this (laugh). The other day I was in Senator Lathrop's committee in the...what is that, Labor and Business Committee, Business and Labor Committee that (laugh) Senator Lathrop is Chair of, as it's euphemistically called. But, anyway, I was...we received a letter on a bill from the chamber of commerce on a bill that had to do with employment and using I think it was credit checks in employment decisions. And it's an interesting debate in question about whether an employer should be required...or would be precluded from using certain credit-check information. But the letter really didn't talk about that bill, but what it did say is that the chamber of commerce is very concerned about the fact that its members see

Floor Debate
February 03, 2011

this encroachment of regulation on their business activities. And when I read the letter I thought, my goodness gracious. Nebraska, as was said earlier today, is the number one state or third state or whatever it is to do business in the United States. It's the number one state to live in. [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR ASHFORD: And I thought, well, you know, this is a bigger issue, maybe we ought to take some time and think about regulations, and every bill we pass has some regulatory scheme involving citizens. And Senator Howard is absolutely right. Where do we draw the line? Where does the...does civil liability kick in and where should it not kick in? But also, where should criminal liability kick in? And do we want to take a retail establishment that is not making meth, as far as I know, and make that establishment criminally liable? I think that's a regulation that is going to be...could be chilling and could result in that establishment not selling items. The point is, these are great issues. These are the great issues of our time, quite frankly, is how far should government go? We incarcerate a lot of people in this state and in this country because every time... [LB20]

SPEAKER FLOOD: Time, Senator. [LB20]

SENATOR ASHFORD: Thank you, Mr. Speaker. [LB20]

SPEAKER FLOOD: Thank you, Senator Ashford. Senator Lautenbaugh, you are recognized. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. These comments will be measured and directed to the bracket motion and nothing else yet. I oppose the bracket motion. We presumably passed this bill out of committee in good faith because it was an important bill. And now we're trying to kill a bill effectively that would help us fight meth production in this state. Senator Ashford, I'm wondering if you'd yield to a question. [LB20]

SPEAKER FLOOD: Senator Ashford, will you yield to a question from Senator Lautenbaugh? [LB20]

SENATOR ASHFORD: "Yup." [LB20]

SENATOR LAUTENBAUGH: Senator Ashford, what has transpired since, well, yesterday that convinces you we need to either recommit or bracket this bill? [LB20]

SENATOR ASHFORD: Since yesterday? Well, I moved to bracket it yesterday, so nothing has changed since yesterday. I still think we ought to bracket the bill or

Floor Debate
February 03, 2011

recommit it. [LB20]

SENATOR LAUTENBAUGH: And what has...what would we do if we recommitted this bill to Judiciary? [LB20]

SENATOR ASHFORD: We'd talk about the issues that Senator Loudon raises and the issues that Senator Howard raises about the extent of civil liability in these kinds of situations, these regulatory environments where we asking citizens or businesses to help us enforce criminal laws. [LB20]

SENATOR LAUTENBAUGH: And you were here yesterday when we changed the bill so that we took out the word, "solely," which was the only amendment we made yesterday. Is that correct? [LB20]

SENATOR ASHFORD: Right, and that expands civil liability and that's what I was...immunity and that's what I was concerned about. [LB20]

SENATOR LAUTENBAUGH: Now you were here yesterday also when Senator Lathrop argued that there's no conceivable way there could be civil liability under this bill regardless of what we do. Is that correct? [LB20]

SENATOR ASHFORD: Correct, but then we shouldn't put anything in on civil (laugh) liability then. I mean, yes, you're right. If it could never happen, then we should reconsider this and take the entire paragraph out. [LB20]

SENATOR LAUTENBAUGH: And are you willing to see this bill die because of this concern? [LB20]

SENATOR ASHFORD: I'm willing to take the bill back into committee and work on it, but I'm...that's what I'm willing to do. [LB20]

SENATOR LAUTENBAUGH: Do you anticipate a further hearing on this bill when we get it back in committee? [LB20]

SENATOR ASHFORD: No, but what I do anticipate is a more thorough discussion on civil and criminal liability as it relates to innocent businesses that are asked to help enforce criminal laws, and I think that's the issue. [LB20]

SENATOR LAUTENBAUGH: Is there a reason we can't have that discussion now since we are and then maybe deal with it on Select if there really is something more you feel we need to do? [LB20]

SENATOR ASHFORD: We could, yes. We can have it this morning and tomorrow

Floor Debate
February 03, 2011

morning and lots of other mornings, but I think it's a bigger discussion than just the "solely," but I do think we can have the discussion now if you want. But I think we should take it back and take a look at this. [LB20]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. Colleagues, I rise in opposition to this motion to bracket and I will go no further in the spirit of the tenure that we're trying to set today than to say, there's no reason to bracket this motion or this bill. There's no reason to recommit this bill. There's ample reason to pass this bill. And I hope this is not the part of a...start of a filibuster on a bill that is this important that we put out seven to one in good faith after working on it in committee. And then we had an amendment and I explained why I opposed one word in the amendment and I voted against the amendment and I voted against the bill in committee. And I brought my amendment to change that one word, and you were told that that was meaningless yesterday because there's never going to be civil liability anyway. And now you're being told, well, maybe we should derail this legislation entirely and go talk about it more. Senator McCoy brought this for a reason. [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR LAUTENBAUGH: Thank you. This is important stuff we're dealing with here. This needs to go and it needs to go now. It needs to pass. States around us have adopted this electronic registry, that means there's an incentive for people to come here and buy their meth precursors because we haven't done it yet. And, again, I'm not going to go any further than to say at this point it's unwarranted to bracket this bill and it's unwarranted to recommit this bill. This bill needs to be passed. And I think we all need to move forward in good faith and pass this bill. Thank you. [LB20]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator Lathrop, you are recognized. [LB20]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I support the motion to bracket. I'd probably be more enthusiastic about a motion to recommit because I believe taking it back to Judiciary Committee would be appropriate. You know, that's a committee that takes up a lot of different subject matters, and you all bring stuff in there. And in the early part of the session, that committee was being regularly contacted, and its members were, about getting bills heard early and bills out early and to the floor. And I think honestly in this occasion, we put this to the floor without giving some consideration to a number of things. And I share Senator Ashford's sentiment that when I read the letter from the Omaha Chamber of Commerce I was reminded that we are regulating businesses too much, and this bill certainly does that. And I know there are a lot of people here that don't like regulation for business, certainly unnecessary regulation for business. And that brings me to another question that we never really took up, and that is what are the feds doing? Is the federal government already in this area?

Floor Debate
February 03, 2011

How have they regulated? Is our bill consistent with the federal regulations? Are we going to put these pharmacists, these mom-and-pop small businesses that we all care so much about in a bind as they try to deal with federal regulation and now with state regulation? Well, I think those are things that are fair to discuss. And I'll also tell you that while I have spent a good deal of time talking about civil immunity, we're going to criminalize some of this stuff these guys don't do in this bill. Now I know there's a lot of people here that probably went door-to-door and knocked on doors and went and had fund-raisers and stood up and said, I'm opposed to regulating small businesses. Well, we're doing it. We're doing it. And we ought to do it deliberately and thoughtfully and carefully. And the one thing we ought to do is make sure we're not putting them in a spot where they're complying with a federal law and out of compliance with a state law. And, honestly, I don't think we had that discussion in the Judiciary Committee. And I think...I appreciate the Omaha Chamber of Commerce reminding us that it's important to look when we regulate, at small businesses, and I think that's another reason we ought to take this back. We also ought to have a discussion about scanning driver's licenses. Some of you weren't here when that bill went through but that's a big deal. There were a lot of people that didn't like that idea that someone was going to take the information off your driver's license, and that Target or Hy-Vee or Baker's or whomever on an alcohol sale was going to have that information about your driver's license. And we legislated in that area very carefully. And that's something we might want to take a look at to make sure that we're protecting the privacy of those people who do nothing more than go into the Walgreen's and buy Sudafed. Now those are just a couple of good small business concerns that we ought to take into account. And I know a lot of you share my concern about overregulating small businesses, particularly when we're putting criminal penalties on small businesses. How much time do I have left, Mr. Speaker? [LB20]

SPEAKER FLOOD: One minute seven seconds. [LB20]

SENATOR LATHROP: Okay. I want to share another thought that I had on this immunity question, and that is yesterday the argument for leaving immunities in this bill, Section 6, was that all we're doing is leaving in place the immunity that was there before. I got news for you. Read the bill. We're not getting rid of that immunity. So now we have two immunities. And maybe you're smiling to yourself and going, really? Yeah, yeah, that's in the bill. We didn't get rid of the immunity that you were told was what we were replacing. And then the feds have immunized some of this conduct, too, with different language, so we now have inconsistent immunities. And what's a small business to do? What's a pharmacy to do when they read the federal regulations and two different statements of immunity in our state statute? [LB20]

SPEAKER FLOOD: Time, Senator. [LB20]

SENATOR LATHROP: Thank you. [LB20]

Floor Debate
February 03, 2011

SPEAKER FLOOD: Senator Ashford, you are recognized. This is your second time.
[LB20]

SENATOR ASHFORD: Thank you, Mr. Speaker. This is serious (laugh) stuff here. As Senator Lathrop talked about the two immunities and there is in statute, at 28-453, a general immunity that we have put in, in this Legislature, dealing with methamphetamine production and distribution. And the immunity says this, "Retailers reporting information to the Patrol in good faith shall be immune from civil liability." So there is a general liability that already exists in statute that totally immunizes these retailers. The immunity that we...let me just go back a second. Senator McCoy in good faith and he called me on the phone and we spent the summer working on K2. And he came to me and he said, we've got to work on methamphetamine as well. Senator McCoy has done an excellent job, in my view, of raising these issues. We discussed with Senator McCoy in the process of going through this legislation that we had some amendments and changes to be made to address issues including immunity, realizing that there was a general immunity already in statute. And the immunity that we talked about for this reporting issue was an immunity that related to the reporting. We have given that immunity to the retailers. We did that so that we could address the issue of civil immunity. And as Senator Lathrop has said, he's concerned now and I am, too, about the criminal liability section that arises out of this proposal. But we did indicate to the introducer, to Senator McCoy, that we were going to have an immunity section in here that addressed the issue of the reporting so that retail establishments that made this reporting...that engaged in this reporting process on this smurfing or on these purchase of pseudomethamphetamine (sic) drugs would not be in fear of being sued for some sort of negligence in making the report on the system. We've done that. We've done that. That is enough. That is enough immunity. And as Senator...I don't mind this debate with Senator Lautenbaugh about immunities. He's good at...and Senator Lathrop, they're both great at these issues. They do it for a living. They're good at it. But the problem is (laugh) we've already covered the problem and we put the bill out. And when we discussed this issue in committee, we did discuss the criminal penalties. I remember saying...and we discussed this with Senator McCoy and he agreed that any criminal penalty be moved out a year, that we not start the criminal penalty section until 2012. So there was concern about the criminal liability portion of this bill. We discussed it with Senator McCoy (laugh). We moved the date out a year. The Attorney General has great interest in this bill, they agreed to that, and we moved it out a year. We made some other changes in the bill (laugh) so that it would be fair to everybody. That's what we did. This bill does not need to be...and, again, I respect this body's decision to make this amendment on removing the word "solely," that's fine. You did it. But having done that, I believe what's happened is we have opened up a Pandora's box on the liability issue as it relates to retail establishments. [LB20]

SENATOR FISCHER PRESIDING

Floor Debate
February 03, 2011

SENATOR FISCHER: One minute. [LB20]

SENATOR ASHFORD: That goes way beyond what the Judiciary, at least a majority...and I know Senator Lautenbaugh in fairness did not vote for this, it goes way beyond where the committee felt we should go in just dealing with the specific problem. So, yes, I want to stop meth. Yes, I want to do all those things. But we had a bill that came out here that addressed specifically the issues that...I won't use the word stakeholders (laugh) again, but the interested parties and Senator McCoy were concerned about. So either the bill (laugh) needs to be bracketed so that we can go back and figure out what the liability repercussions are or sent back to committee because we have opened a Pandora's box here, in my view. Maybe Senator Lautenbaugh disagrees because he says immunity will never come into play here. So why are we changing it if it's never going to come into play? Thank you, Madam President. [LB20]

SENATOR FISCHER: Thank you, Senator Ashford. Senator Conrad, you are recognized. [LB20]

SENATOR CONRAD: Good morning. Thank you, Madam President. A couple of points I just wanted to clarify for the record. As I look at my agenda this morning, we are on the twenty-first day of the One Hundred Second Legislature. As you all well know, we are in a long session this year. We have a 90-day session. There is ample, ample time to fully address these concerns either on a bracket or a recommit motion. There is plenty of time for us to do our work in a thoughtful, respectful, and careful manner and be responsive to legitimate questions that have been brought forward in regards to this legislation and corresponding amendments. I think that it goes without saying that everyone in this body and beyond the glass, all those involved have a deep and abiding commitment to mitigating the disastrous and negative effects of meth, meth production, meth use in and within our communities, and that in order to fully carry out our responsibilities and duties to ensure that we are making policy changes in a clean, uniform, and appropriate manner, we don't have to sacrifice either philosophy, intent or objective. We can take the time to work with all of those who have an interest in this important legislation to make sure that it is implemented in the most appropriate manner, and we have plenty of time to do that. Again, today is the twenty-first day. We're in a 90-day session here, and I'm fully...I have full confidence in the fact that the Judiciary Committee, its committee counsels, and those who have expressed interest in this legislation can take a moment to address these legitimate concerns, come back with a cleaner piece, and we can move forward and all feel good about our commitment to doing all we can to help further the legitimate goals brought forward by Senator McCoy, the Attorney General's Office and others in regards to this legislation. We should applaud them for that effort, but we have time to make sure that we do our job in the best way that we can. Thank you. [LB20]

Floor Debate
February 03, 2011

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Ashford. Senator Lautenbaugh, you are recognized. I'm sorry, Senator Conrad. Senator Lautenbaugh, you are recognized.
[LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I'll be brief this time. I just want to help us all keep track of what we're hearing: that we've granted immunity previously, we're granting immunity in this bill and the feds have granted immunity. In some unspecified way, they're inconsistent, and that raises concerns. I don't know how. I don't know why, but that raises concerns. We've heard that this dramatically expanded civil liability...immunity by taking out the word "solely" to the point where we're opening a Pandora's box. It was not me who stood here yesterday and said that civil liability could never attach under this bill if passed. That wasn't me. But I did point it out and now we're being told that somehow what we did with immunity yesterday has opened a Pandora's box of potential yet nonexistent civil liability, depending on who you listen to, and we need to send this bill back. Let me, again, reiterate: Iowa, Missouri, Kansas have all adopted this electronic system. If we do not, what we are left with is being the destination of choice for people who want to buy meth precursors because we have the much less effective paper system. Make no mistake about what's going on here. This is an important bill. It needs to go forward. We did talk about the criminal penalties in Judiciary, as you heard. We did talk about the civil liability in Judiciary, as you've heard. You're being told that for some reason we need to take a second bite at the apple in Judiciary and discuss it again. I don't believe that's correct. We put this bill out here. You should be able to rely on the fact that we put this bill out here. We made a modest change yesterday. I can't even remember the number of times I've seen a bill recommitted but it wasn't over something this trivial. And I can't remember...more times I've seen a bill bracketed but it wasn't something this important over something this trivial of a change. Please vote against the bracket motion, please vote against the pending amendment, and let's move this serious and needed legislation forward. It is just plain the right thing to do and it's necessary. The pharmacists are willing to do this, and I found out yesterday that they don't get reimbursed for the equipment. The manufacturers are setting up the national system that the information is aggregated in. This is on the pharmacist's nickel to install this equipment, and they're protecting us by complying. And, yes, there's a sanction if they don't, a criminal one. Yesterday we made it clear that they won't face civil liability. The original draft of this bill mirrored exactly the liability limitation that was set forth in existing law. The trial attorneys came in and objected to that, so it was changed to the language that came out of committee, which basically accomplished the same thing but left some wiggle room with the word "solely" in there. We took that one word out. You've been told there's no possibility of civil liability under these sections anyway. You were told that unequivocally yesterday. I questioned it and I said that's why we need the

Floor Debate
February 03, 2011

immunity and that's why it was there before. We don't need to recommit this. We don't certainly need to bracket this, that goes without saying. We need to move this bill forward. [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR LAUTENBAUGH: And I'd appreciate your support in doing just that. [LB20]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Mr. Clerk. [LB20]

CLERK: Mr. President, I understand, Senator Ashford, at this time you would like to withdraw your bracket motion. [LB20]

SPEAKER FLOOD: Senator Ashford, is that your intention? [LB20]

SENATOR ASHFORD: Yes. [LB20]

SPEAKER FLOOD: So ordered. It is withdrawn. [LB20]

CLERK: Mr. President, a priority motion. Senator Ashford would move to recommit LB20 to the Judiciary Committee. [LB20]

SPEAKER FLOOD: Senator Ashford, priority motion, you're recognized to open on your motion to recommit LB20 to the Judiciary Committee. [LB20]

SENATOR ASHFORD: Thank you, Mr. Speaker and members. This matter needs to go back to the Judiciary Committee for all of the reasons that have been mentioned. The immunity section, I don't know whether the trial attorneys came in and objected or not. I didn't speak to any of their representatives. I don't really know what their...I can't even recall. I suppose I'd have to look in the record and see if they appeared on the bill, I don't know if they did. LaMont? They did appear--against it or for it--neutral. So I didn't really have any discussion with the trial lawyers. What I do know is this: There is a blanket immunity section already in the law. If we change this "solely" language and take out "solely," there is a potential conflict between the two statutes, in my view, there is an expansion of liability potentially. None of those things were discussed that I know of in the committee. We did not think about what would happen if we were to utilize the amendment that Senator...or implement the amendment that Senator Lautenbaugh is proposing. If there is no possibility of liability and that is a...and I realize now, Senator Lautenbaugh, that maybe it was not you that made that statement, somebody made it, but if there is no potential liability here, though that's hard to guess at because liability crops up, as we all know, from places we never expected it to come from, then it really doesn't matter whether the word "solely"...whether we put the word "solely" back in or not, does it? It really doesn't. The word "solely" was put in there not by me, because of

Floor Debate
February 03, 2011

the trial lawyers, or any other group; it was put in there because I don't like to get...when I get in trouble as Judiciary Chair is when I put bills out here that deal with liability issues, whether criminal or civil, beyond the context of the law we're dealing with. My concern was and still is that if we...whether or not there ever would be liability attached, if we pass a bill that goes beyond what I think is the purpose of the bill, which is the reporting to this database, then I think it is not good public policy to do that in any event in any bill. So Senator Lautenbaugh and I have a difference of opinion, I guess. But if it doesn't really matter, if that's what we're being told, and Senator Lautenbaugh appears to agree with that statement that it really is very rare that this could happen, then the word "solely" needs to go back in there. For heavens sakes, it needs to go back in there. Then we have a bill that Senator, you know, McCoy agreed...as the introducer, agreed to, as far as I know, everybody that looked at the bill from outside the glass agreed to. The Attorney General tells me it's an exceedingly important bill, I don't doubt him. The State Patrol thinks it's a good bill. I don't understand why we're changing it. And I don't want to change it on a liability issue without the opportunity for more discussion here, which is...you know, quite frankly we could get onto other bills or give it back to the committee, we'll send it back out after we take a look at it. And we can explain to this body when it comes back out this civil liability issue in more particularity. This is not about the trial lawyers versus the insurance companies or these other people that get involved in these issues. This is about how we construct our bills in the Judiciary Committee when we put it out on the floor. I try to balance my opinions on these liability issues between those two sides, so to say, insurance companies or businesses and trial lawyers. I try to listen to both sides. I think that's what we did here, that's what we did here. I mean, Senator Lathrop may have...I don't know, but may have wanted language that struck the whole section. I mean, I don't know. He did, I think, probably. And, but this was a balance between all these groups. We put it out with the introducer's support. It's an important piece of legislation. We all hate meth. So it seems to me we either take that word out or change that amendment, put "solely" back in, or we recommit it so that we can take a look at what we're really talking about here because otherwise we've taken this puzzle and we've kind of put it in a box and juggled it up and we're trying to put it together again on the floor. And I just don't want to do that as Chair of the committee. And as Chair, I would ask this body to either go back to the original, and I don't know how we could reconsider the vote on the amendment or whatever it is or recommit it back so that I can come out here and give you, quite frankly, more adequate information on this civil liability question. It wouldn't be so important...Senator Lathrop is absolutely right, it wouldn't be so important except we're dealing with retailers who all they're doing is selling a product which is legal. That's all they're doing here. And we are asking them to be part of the enforcement mechanism to stop the distribution of meth. That's what we have done in this body before with meth and pseudoephedrine and ephedrine products...we have...products that have those ingredients. We have done that. So we're asking them to be a part of this and they are gladly willing to do that. That's fine. I'm for that. We should do that. But there really isn't a reason to change what came out on that issue of civil liability, maybe on criminal

Floor Debate
February 03, 2011

liability there is. Quite frankly, we're imposing a misdemeanor penalty on retail drug stores. I don't know it that's such a good idea now. Why don't we just...you know, and I want to look at that issue, why don't we simply ask these drug stores and these retailers to do what they're going to do anyway? They're going to do it. They want to stop meth. They already get people to sign the sheet as it is now. This is not about Senator Lathrop or Senator Lautenbaugh's disagreement on the issue of liability now because I respect both their opinions. They're both good at what they do. But this really is about my role as committee Chair and now I'm worried about the bill I got out here. I'm worried about the civil liability issues. I'm worried about the criminal liability issues. And this is not a filibuster. I'm dead serious about this. You know, I remember on...so many times, people, we've got this horrible crime we want to stop or we've got this we want to stop, and let's get that bill out, the Attorney General wants it. Yeah, and we do that and, quite frankly, I do it too much. And I think the message needs to go out we're not going to be as easily persuaded to put bills out as we have been, and that is the message to this body. I have to say I need to get better at this. My friend Senator McGill has reminded me of that not just today as she nods her head but on other occasions where she scolds me. And I don't mind being scolded by Senator McGill that much but it...you know. But we need to be very careful about bills that come out of the Judiciary Committee. I'm the Chair. I'm the responsible party, you know, and I've got to be better at it. And there are about 100 more bills for us to hear. Senator Louden. No. (Laugh) There are...we have lots more bills to consider in the Judiciary Committee and I have a...it's not...so I guess the message to everyone has to be: We're dealing with people's lives. We're dealing with a terrible drug. We want to stop it. Our Judiciary Committee wants to stop it. We want to stop K2, that's why Senator...you know, that's why Senator McCoy was so right in doing the work he did on K2, and that's why I'm proud of the work this body has done in advancing the K2 legislation within hours because that was an emergency. That was an absolute emergency. It is a crisis. It needs to be dealt with; we dealt with it. But for those issues,... [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR ASHFORD: ...other issues like this where now we have to start thinking about regulations on businesses and, you know, I think we...my view or my offer or whatever you want to call it, let's go back to the original bill that came out or recommit this thing so that we have an opportunity to move forward. Otherwise I really just don't think it's good policy to move this bill forward with the amendment without recommitting the bill. Thank you. [LB20]

SPEAKER FLOOD: Thank you, Senator Ashford. Returning to discussion now on the recommit motion. Senator Lathrop, you are recognized, followed by Senators McGill, McCoy, Lautenbaugh, and Nelson. Senator Lathrop. [LB20]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I feel way more

Floor Debate
February 03, 2011

comfortable with a recommit than I do a bracket of this bill. I think Senator McCoy has brought to the Judiciary Committee an important subject matter, and this bill enjoyed my support before it came to the floor. And now we have just a host of serious, serious concerns, and there are intervening circumstances. That letter from the Omaha Chamber of Commerce got me going. You know, we're over in Business and Labor trying to do the right thing, and sometimes that committee has to regulate in the employer/employee relationship. And we were reminded that these regulations that we pass are burdensome on businesses. And now we're about to impose on people, that are doing nothing more than selling legal Sudafed, criminal penalties. And we're going to scan people's driver's licenses and store that information. And if you weren't around, that's a touchy subject and it hasn't even been discussed. But we're dealing with a small business. Over in the Business and Labor Committee, we had a bill put in by Senator Mello, and the bill would have required certain steps be taken and notice to be given to certain industries or businesses when agencies want to regulate in an area that affects them. So if Health is going to regulate in the area of pharmacies, pharmacies would find out this has happened and they could come in, say: Well, there's an easier way, a less restrictive way, a better way to get to where you're going that won't impose expensive burdens on us. Now LB20 has a very solid purpose. Senator McCoy, thanks for bringing it to us. But I share Senator Ashford's concern and, man, I've got to be appreciative to the Omaha Chamber of Commerce for bringing that letter into the Business and Labor Committee and telling us and reminding us of the importance of not regulating businesses without thinking about the consequences. And now we have a bill that's going to have three different immunities. These people aren't going to know what to do with this pseudoephedrine, which thing to send it to, when they can do it and when they can't, and we need to coordinate with the federal statutes better than we have. It's a problem. And taking it back to the committee, now you may say this is a terrible problem. Yesterday, Senator McCoy even raised his voice, and I can hear Senator Lautenbaugh is getting close to raising his voice because, by gosh, this is a big problem, we need this done. Other states next to us have it, we got to get it done. There's no emergency clause on this. If it was a big deal, we'd have an emergency clause on it, make it law as soon as the Governor signed it. We don't. We have the time. As Senator Conrad said, we're just a few days into this session. We've got plenty of time to be more deliberate with this bill, to take it back to the Judiciary Committee, to give some consideration to what we're doing to these small businesses in this regulation, to make sure that we've looked at the...where the federal government is on this topic, and to make sure we're not passing inconsistent laws in the state of Nebraska. Then we'll bring it back to the floor, and it'll be right and it will have been given full consideration. I'm going to say one thing about the Judiciary Committee. That's a group of good lawyers in there. All right. It's a group of lawyers with divergent backgrounds. Senator Larson is there, too, and Coash; they give us a great perspective believe me. But we have some quality lawyers in there with different points of view and it works. And it works when... [LB20]

Floor Debate
February 03, 2011

SPEAKER FLOOD: One minute. [LB20]

SENATOR LATHROP: ...all of them participate in that process. Did you say one minute? [LB20]

SPEAKER FLOOD: Yes. [LB20]

SENATOR LATHROP: Okay. It works when all of them participate in the process, when they're there at the committee and participating, all of them, that's when we do our best work and when we put out our best work. And I think I can assure you that if you'll send this back to the Judiciary Committee, as the Chair and the Vice Chair are asking you to, that we'll take care of this bill, we'll put it in the shape it needs to, we'll put an E clause on it, and make it law in the state of Nebraska quicker than it would on the course it's on right now. Thank you. [LB20]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator McGill, you are recognized. [LB20]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I rise as a member of the Judiciary Committee and in support of the recommit motion. This is an incredibly important piece of legislation, but I do want to add to the debate that when the State Patrol was there testifying, I asked them about how effective the creation of this registry was in the first place in stopping meth houses in the state. And they said it was over 90 percent effective. So while smurfing is a serious problem, it isn't the same thing as K2 where every high school kid in Nebraska has access to K2 and it's an immediate situation we have to fix. We're trying to go with this bill. We're trying to go after that small number of meth operations that are still happening in Nebraska. Very important. This is a bill I support, but it doesn't have the urgency that the K2 bill had. Senator Lautenbaugh right now wants us to move forward with this bill because it's so important and because we're debating such a trivial issue at this point in "solely." But he voted against the bill in committee over the same trivial matter that we're still debating. So right now he is just trying to incentivize you to vote for it because the bill is in the shape that he likes right at this second. But I'm assuming his no vote in committee didn't mean that he didn't support the overall view of the bill. He does support the overall view. So moving to recommit this bill is not a vote against the bill; it gives us a chance to go back and continue to work on this issue because the second point I want to make is that we did vote this bill out of committee on good faith. But what does good faith mean out here in the body? When you have an introducer of a bill that comes and works out a compromise, we voted that bill out of committee based on that compromise. I know that Senator Lautenbaugh is not held to that because he voted no, and I have no problem with floor amendments or that he brought one on this. But we had a deal that we thought that the bill introducer was a part of as well. What does good faith mean? When we go to vote a bill out of committee, I assumed that it meant that a bill's sponsor was

Floor Debate
February 03, 2011

going to stick with that deal that got the bill out of committee. I'm going to be a heck of a lot more careful about what I vote out of committee if it's just going to come to the floor and the people who have made the deals are going to renege on them. I have a serious problem with that in our committee system and it is disrespectful to the committee process. I've seen other bills come out of Judiciary that I supported out and had to vote no on because of floor amendments, but in those cases, at least the bill introducer didn't vote for those changes and wasn't pushing people in a certain direction. We're going to be a heck of a lot more careful, folks, even if it's on legislation that is as important and well-meaning as a bill like this. Thank you, Mr. President. [LB20]

SPEAKER FLOOD: Thank you, Senator McGill. Senator McCoy, you are recognized. [LB20]

SENATOR McCOY: Thank you, Mr. President, members. I do not support the motion to recommit. I think this discussion ought to happen this morning if we're going to have it or continue to have it for a couple of real simple reasons. Iowa implemented similar legislation and it went into effect September of last year. I mentioned in my opening that they were one of ten states, including two other of our neighbors, Kansas and Missouri, that have done so. Iowa has had 10,000 stopped sales in the first three months, so the end of 2010--10,000. That's 4 percent of their sales attempts. I don't think we should wait on this. I don't know why we can't have the discussion that some members of the Judiciary Committee are talking about having right now. Let's figure this out. It's my belief Nebraskans expect us to do everything we can to address meth as quick as we can. And I would say that whether this legislation was any one of the other 48 senators on this floor. It just so happens my name happens to be on this legislation, but to me that's inconsequential. We shouldn't delay a day. I don't know why we can't fix this right now. I agree with Senator Ashford and Senator Lathrop. We have some very, very qualified attorneys that are part of the Judiciary Committee that are extremely good at what they do, among other attorneys on this floor as well. And it isn't just attorneys that would know how to fix this, I think we probably all have useful things to add to this dialogue. Let's fix this now. Why would we recommit this? What message does that send to our constituents and to folks across the state about our commitment to doing everything that we can to address meth? Senator Ashford says it's a scourge on our society. I'd agree with that. Let's address it as a scourge. Let's take care of it. And let's not recommit this to committee. Let's move this legislation forward. Thank you, Mr. President. [LB20]

SPEAKER FLOOD: Thank you, Senator McCoy. Senator Lautenbaugh, you are recognized. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. Senator Ashford, would you yield to a question? [LB20]

Floor Debate
February 03, 2011

SPEAKER FLOOD: Senator Ashford, will you yield to a question from Senator Lautenbaugh? [LB20]

SENATOR ASHFORD: Yes. [LB20]

SENATOR LAUTENBAUGH: Thank you, Senator, and I understood your prior comments that in your mind of taking out the word "solely" opened a Pandora's box. Did I also understand your offer that if we put the word back and adopt the committee amendment that we can get past this motion to recommit? [LB20]

SENATOR ASHFORD: Yes. [LB20]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. So it would appear as we go forward the concerns about criminal liability and regulating small business seem to be of a lesser tier, and that disturbs me. This whole thing disturbs me and a few minutes ago we crossed a tripwire, someone did, and we're going to have a little talk about who did what. In committee, I voted against the amendment and I offered to take out the word "solely" and support the amendment and I was told no. And my comment at the time was, well, we have to have something to fight about on the floor. That's not exactly hiding the ball. Nobody on that committee should be very surprised that I did exactly what I did yesterday because I said I was going to do exactly what I did yesterday. And now here we are with a motion to recommit. I'm assuming then one of the proponents of this motion will be willing to prioritize this bill, because that's what it's going to take to get debate on it if we send this back to committee. We need to stop talking about people breaking deals here and people not participating in the process somehow, and that if a deal is struck we're all supposed to accept it. I know for a fact that Senator McCoy didn't know I was bringing my amendment yesterday. I probably should have told him but I did not. I know Senator McCoy tried to get an assurance that if my amendment failed or was withdrawn that other amendments would be withdrawn and he was told no. So if there was an agreement and if it was violated, it was not by me and it was not by Senator McCoy. And yet we just heard this morning that we're going to somehow show a flintier face to people who come to committee seeking to work things out and not be as trusting. I'm starting to wonder if all of you are going to be very trusting of our committee as we go forward based upon what you're being told today, that we may or may not need to think harder about this bill so please give us another bite at the apple leaving aside it will need to be prioritized and may in all likelihood die. Senator Lathrop, will you yield to a question? [LB20]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Lautenbaugh? [LB20]

SENATOR LATHROP: Sure. [LB20]

Floor Debate
February 03, 2011

SENATOR LAUTENBAUGH: Do you know what the federal immunity from liability provision states? [LB20]

SENATOR LATHROP: Yep. I actually looked it up. [LB20]

SENATOR LAUTENBAUGH: What does it say? [LB20]

SENATOR LATHROP: It's found in the Code of Federal Regulations, Title 21, Section 1314.45, and it says: A regulated seller who in good faith releases information in a log book to federal, state, or law enforcement authorities is immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton or willful misconduct. [LB20]

SENATOR LAUTENBAUGH: Now is it your belief that any state immunity could change that federal immunity? [LB20]

SENATOR LATHROP: I think they're inconsistent. [LB20]

SENATOR LAUTENBAUGH: How so? [LB20]

SENATOR LATHROP: One talks about good faith; one doesn't. One talks about releasing the information to federal and state authorities; the other doesn't. You were the one that represented yesterday that they were essentially this, all we were doing with Section 6 was doing the same thing that was already in existing law. In fact, that immunity is staying. It's not even being repealed by this. [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR LAUTENBAUGH: Is there a problem with making the state immunity that applies to existing law restated and applied to this innovation in law, if you will? [LB20]

SENATOR LATHROP: Here's my concern right now. I'm worried about small businesses and whether this is going to cause them to look at it and say, I can't tell what I'm immune from and what I'm not immune from. [LB20]

SENATOR LAUTENBAUGH: Well, I think the two state provisions are very clear. Do you see either of those giving rise to confusion for these small businesses? [LB20]

SENATOR LATHROP: I do. I do. I'm concerned about the inconsistencies and having three different laws governing the subject matter of immunities for the conduct as we are making it criminal. Yeah, I do. [LB20]

SENATOR LAUTENBAUGH: But this...we're talking about civil liability, wouldn't you

Floor Debate
February 03, 2011

agree? [LB20]

SENATOR LATHROP: Immunities...well, I suppose immunities can deal with criminal liability as well. In this case, I think... [LB20]

SPEAKER FLOOD: Time, Senators. Senator Nelson, you are recognized. [LB20]

SENATOR NELSON: Thank you, Mr. President, members of the body. We have excellent lawyers on the Judiciary Committee. We have people saying mea culpa, mea culpa, we didn't do what we should have done, we need to go back and take another look at this. Colleagues, I think it's very simple. We have three immunity statutes here. We've talked about the federal statute, which is basically immunity unless there's some gross misconduct. I don't know the exact words. We have, since 2001, had the initial immunity section which said reporting under this section shall be voluntary. Retailers reporting information to the Patrol in good faith shall be immune from civil liability. That's absolute immunity. We have fixed Section 6 here in the amendment. We took out the word "solely" so we have immunity now. We have three immunities. I would suggest that probably the federal controls, even if the language is somewhat a little inconsistent. Nothing needs to go back to the committee. I take it from their vote that they considered the criminal penalties. What are we wanting to change there? Why would we take a criminal penalty out that's already been discussed and was found okay? Why waste any more time? We can fix this here. We have fixed it. So I rise in opposition to the recommit to the committee. I realize there are times that things should be sent back but they should be on major things. This is a minor thing and this is just going to cause a long...possibly a long delay. So I would urge you to vote against the motion to recommit and I will give the rest of my time to Senator Lautenbaugh, if he chooses to take it. Thank you, Mr. President. [LB20]

SPEAKER FLOOD: Senator Lautenbaugh, 3 minutes. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator Nelson, but I will waive that opportunity to speak. [LB20]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Lathrop, you are now recognized. [LB20]

SENATOR LATHROP: Thanks. Colleagues, this is kind of an important deal and I know it's trying...the other side, those who oppose the recommit, are trying to trivialize it, and it was a big deal yesterday when they wanted it and now it's not a big deal. But it is. There is a problem with these people smurfing, with these people going around to retailers and buying little bits of Sudafed at different retailers and then putting it all in a pile and making meth with it. I'm not even sure how they do that but I'm not a chemist. It is a problem. There is, on the other hand, no emergency clause in this bill, so there is

Floor Debate
February 03, 2011

no emergency with moving it, right? If it were an important subject matter that needed to be dealt with immediately, there would be an E clause on it which would make it law when the Governor signs it. No, this thing is going to...no matter what we do with the recommit, whether it goes back for more thoughtful consideration in the Judiciary Committee or not isn't going to make a difference in what the effective date of this bill is. I'm sincere when I tell you that I believe in the underlying proposition of LB20, and I'm also sincere when I tell you that I have concerns about what we are doing in this area when we now have, if we pass this as it is, three different...three different laws on the subject of immunity. This stuff isn't meaningless. We're making law. [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR LATHROP: We're making law here. And for the lawyers that open these books every day and try to prosecute people or try to handle litigation, what's the message from the Legislature? Well, we had this debate and the thing on the floor and, you know, we really wanted to get to the meth and this is our work product. And it's not in the proper form. And now folks who were so strongly in support of the motions that we heard yesterday say, well, let's work it out. Here's part of the problem. Who do we work it out with? Who do I work that out with? And what's going to happen on Select File if I had some kind of an understanding with whomever I'm supposed to work it out with? There's something bigger at play here. There's something bigger at play. And you're not going to find it, you're not going to find it in the rules, all right? You're not going to find it in the rules what's at play here. But if we're to work it out today, who do we work it out with? Who should I bring to the table? [LB20]

SPEAKER FLOOD: Time, Senator. Thank you, Senator Lathrop. Senator Ashford, you are recognized. [LB20]

SENATOR ASHFORD: Thank you, Mr. Speaker. I want to respond. Senator Lautenbaugh is good at cross...he's better at cross-examination than I am at answering cross-examination questions. I thought the question that was asked of me was, would you...and it was asked of me, would you withdraw your motion if we took "solely" out? Well, obviously I will, because that's the bill we passed out of committee and that's the bill that I discussed with Senator McCoy and that's the bill that this committee voted 7-1 to put out. That doesn't mean on Select File or in further debate on this bill we could talk about the criminal penalties. I think that is a big issue. I mean do we want to criminalize the degree we have retail establishments in our state? But the question that was asked of me gets to the crux of what Senator Lathrop and Senator McGill are talking about and that is this. There are 49 people here. There aren't two legislative bodies. There aren't 400 members like New Hampshire. There aren't parties. There aren't the kinds of rules committees that prevent bills from coming to the floor if they don't fit into a particular agenda that a particular partisan group has or some group or whatever. We're actually just 49 people from Nebraska that get together for six months and we're put into a room

Floor Debate
February 03, 2011

or sort of hermetically sealed, but there are ways of getting out from time to time. And we're all friends, I know that. Everybody in this room is my friend. And we...it isn't deals...when we talk about deals or...we're not talking about deals in the underhanded context of some sort of deal that leaves the public out of the process. We can't leave the public out of the process. It's impossible. There are only 49 of us. There aren't any parties. Every bill has a public hearing. We cannot leave the public...it is impossible to leave the public out of this legislative process and that's why George Norris suggested to the citizens of the state that we have this kind of process because he said in 1937 if you pass this, citizens, if you pass this Unicameral legislation we will get rid of political bossism. Well, I think we've done a pretty good job of getting rid of political bossism in this body, in my view, because without hesitation I will say that in dealing with issues in this body, when we get down here and hunker down and make decisions, political bosses can go fly a kite on all sides, whatever political party they're in. So deals in the sense of underhanded deals that is the norm in most Legislatures and certainly is the norm in Congress or we wouldn't have trillions and trillions of dollars of debt, we don't have that because we work together. We're friends; we do the right thing in this body. We may disagree. We may disagree. Senator Lautenbaugh and Senator Lathrop may disagree but they're friends and at the end of the day they're going to make the right decisions for the state of Nebraska. When Senator Lautenbaugh asked me would I remove my bracket motion or my whatever motion I got up there, of course I will, of course I will, because that is the deal I made. My deal, if you want to call it a deal, was to Senator McCoy, are you okay with this? Yes. Boom, it's out, because meth is a scourge, K2 is a scourge. Why do you think these bills are out here? Children are getting firearms and they are shooting teachers and administrators... [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR ASHFORD: ...in this state. [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR ASHFORD: Children are getting drugs and they are not going to school. It is a scourge. This debate about the word "solely" is ridiculous. The deal we made is the deal I will keep. This bill goes forward as is, and if it gets changed on Select File so be it. That's the deal I made and that's the deal I will keep. That's how we operate here. That's why it's the greatest legislative body in the world, in my view. [LB20]

SPEAKER FLOOD: Thank you, Senator Ashford. Senator Burke Harr. [LB20]

SENATOR HARR: Thank you, Mr. Speaker. That's kind of hard to follow up. You know, this came out of Judiciary and there are a lot of deals made and there are a lot of issues I had problems with. I look over at Senator Lautenbaugh and I'm reminded of the old Paul Masson wine add with Orson Welles that says we shall pass no...we shall sell no

Floor Debate
February 03, 2011

wine before its time. Variation of that is we will pass no bill before its time. There's obviously a problem here. We had a deal. It was negotiated. I personally have a problem with the whole driver's license part. I don't like that part. I don't like retailers having my personal information. I don't know what they're going to do with it. And there is a liability issue there and that's my issue with this bill. And most of our meth isn't even from the United States, let's be honest. It's from Mexico. We do have a problem with meth in Nebraska, there's no doubt about it. It's generally amateurs who make the meth. I personally have made meth for my job, by the way, when I was a deputy county attorney. It's not hard to make, there's no doubt at it. We need to have something out there to stop it. I don't doubt that either. But my problem is, is this the best way about going at it? I was a little intimidated in the Judiciary and maybe I voted this out too quickly, and I apologize for that, but I think maybe this does need to go back to Judiciary so we can have more time to debate this. There is...we're wasting a lot of floor time on this and I think maybe it needs to go back to Judiciary. If you look at the majority of the speakers here, they're people on Judiciary. The problem is within our house in Judiciary. Let it come back to us. Let us deal with it where it needs to be dealt with and we'll bring it back out and I guarantee you we'll have a solid bill then. Thank you very much. [LB20]

SPEAKER FLOOD: Thank you, Senator Burke Harr. Senator Ken Haar, you are recognized. [LB20]

SENATOR HAAR: Thank you, Mr. President. I guess my stand at this point is I would like to see it go back to committee. It sounds like there are some problems with it and, although I admire the great oratory power of the lawyers in this body, I think we need to move on to other issues. I'm also concerned that we get bills right before we pass them. I wasn't lobbied by anybody on this bill but it sounds to me like there are some problems. That's what I like about the committee system, is that committees try and get it right and we have that opportunity that even if a bill gets out of committee and the committee wants to take it back and make it better, we can do that. So I rise in support of returning this to committee because I'd like to get on with other things. I think it's a very (microphone malfunction) bill, but I want to make sure that it's right. Thank you very much. [LB20]

SPEAKER FLOOD: Thank you, Senator Ken Haar. Senator Lautenbaugh, you are recognized. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. There is one thing that I have neglected to point out but I think it's very revealing. This bill as originally written contained the exact same language for immunity from liability as is in existing law. That language was opposed by the trial attorneys and it was negotiated into something different that contained the word "solely," which gave wiggle room. I successfully brought an amendment yesterday that took the word "solely" out so now

Floor Debate
February 03, 2011

both immunity clauses function identically. They provide complete immunity from civil liability. And now you're being told there's a problem because they are inconsistent. Well, in operation they're not inconsistent; in wording they're different because that was the objection voiced--oh my gosh, we can't have an immunity from liability that's absolute, we have to add the word "solely" in there. But as originally submitted by Senator McCoy, the verbiage was exactly the same and it was fine, and we are back to it with my amendment yesterday. The practical effect is the same. No one has been able to articulate how these inconsistencies alleged in the operation of these immunity statutes, immunity provisions would open a Pandora's box or do much of anything. And I will again--and we're all trying to keep the lid on and some of us, I can speak from personal experience, are very angry right now--I will offer on Select File an E clause to this. It's an oversight that it's not there, but we need to move it along. If we recommit this, someone is going to have to prioritize it. And I think what we've heard today, that if we put the word "solely" back in, the bill doesn't need to be recommitted. Well, I'm sorry, if that will do it, then there are not sufficient reasons to recommit this bill and I would urge you to vote against it. And we are all keeping our comments today fairly measured but I would caution us against saying there are bigger things at work, whether something is going on under the surface here or that, you know, make observations as to who the people are who are standing up and speaking because, yes, a lot of them are from Judiciary. A lot of them have other things in common, too, and that's a road we don't need to go down. We don't need to attack people's motives. We can hopefully just take what is said on the floor at face value. Hopefully we can do that. But there is no reason on God's green earth to recommit this bill to committee today. It needs to go forward, it needs to pass, it does need an E clause added to it and we can do that very readily. But this has to go and the longer we talk about this, and I'm going to stop talking about it now, longer we talk about this, this is turning into something that would, I think, be unconscionable on this bill. And I'm not saying yet that we're playing games with the bill but we're flirting with it. We're surely flirting with it. And it's all well and good to say this is so important that we need to get it right. There's nothing wrong with this bill. It came out 7 to 1, and you know why I was the 1 and it had nothing to do with the merits of the bill or anything other than the word "solely," which we've addressed. And if that has somehow been the tripwire changing supposedly an ineffective immunity provision because there's no conceivable civil liability we've heard anyway, well, maybe Senator Lathrop is right. Maybe there are things bigger at work here than we're talking about. But this motion is, frankly, just nonsense and it needs to come to a vote and it needs to be voted down. [LB20]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator Karpisek, you are recognized. [LB20]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I'm concerned that if this does go back to the Judiciary Committee if it will come back out on the floor, and I know I've talked to some of the members and they assure me that it will. I don't

Floor Debate
February 03, 2011

know that that will happen. I think the bill is very important. I think we need to move on the bill. I don't know if it would be worth moving it to Select and working on it in between. I don't know the right answer but I think that we need to move the bill. I did vote for the amendment yesterday because I feel, as a former business owner, something that we are mandating on them to give them a little more of a chance. Now whether that was right, wrong, or indifferent, I guess that's what I have to live with. My main concern is LB20. I don't want to lose site of that. And I think Senator Ashford has said that and almost everyone has said that, but we have spun off other places. And I understand that Senator Lathrop and Senator Lautenbaugh feel very strongly about this one issue. I'm sorry, that is not my main issue in this. I want to see LB20 passed. I think that it's important. I think the committee got it out here. If they did get it out here too fast, so they did. But I think we need to work it out. I am concerned about it not coming back out. I think we need to do it this year, work it out. I know that they've been working it out, trying to, and I appreciate that. I hate that we're stuck up on...hung up on one small part to me. Maybe I don't see that whole picture the way others of you do. But I do support LB20. I hope we can move on it. I don't want to do anything to jeopardize the underlying bill. Thank you, Mr. President. [LB20]

SPEAKER FLOOD: Thank you, Senator Karpisek. Senator Schumacher, you are recognized. [LB20]

SENATOR SCHUMACHER: Thank you, Mr. Speaker. Maybe I'm just demonstrating some of my newbiness here, but I think maybe we've tripped across a systemic issue and that is we're relying upon the committees to draw upon resources to bring to the floor a proposal in which everything has more or less been addressed. And whether it's the streams and currents out in the lobby or the sheer volume of the bills that we've got to deal with, I'm getting a sense that some of that process is being really neglected and we're getting proposals out here in which all of a sudden something that becomes or should look like very simple becomes all muddled up. And it's clear that significant members of the committee now have problems with it. And from just the very early review that I've done with some of the bills that are getting voted out, this isn't the only one that that's happening in. The K2 legislation, I got some real questions about that. I trust that somehow in the committee that's been worked out but, nevertheless, I'm not sure. I hear that this is a matter of utmost importance in the methamphetamine bill here, that kids are dying because of this, that this is really terrible, but there's no emergency clause on it. Well, is it an emergency or isn't it an emergency? I hear arguments about, listen, there's three different standards of immunity here. Well, they may be three complementary standards. They may be three conflicting standards. I haven't heard an analysis one way or the other, whether they're conflicting or complementary, and, frankly, sitting in that chair there, I don't have the resources to make that decision in my own mind and I don't think anyone else in this room does either. So maybe, and I think I'm shifting from being...saying let's roll this thing through to saying let's send it back to committee simply to send a message to ourselves. If we're going to move this stuff out

Floor Debate
February 03, 2011

here and we're going to work with the committee system, then let's make sure that it's done right. And if this means going back to committee and somebody having to burn up a priority in order to bring it back here then so be it. Thank you, Mr. Speaker. [LB20]

SPEAKER FLOOD: Thank you, Senator. Senator Lathrop, you are recognized. [LB20]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Thank you, Senator Schumacher. I think you pretty much said it all, and I appreciate your thought. I do want to talk about a concern expressed by Senator Karpisek that somehow this is some sort of a ploy to take LB20 back and bury it in Judiciary Committee and it will never see the light of day. That is not the case and I'll tell you--I've served on that committee, this is my fifth year--that committee cares about these issues and that committee is good at putting things out. How do I feel about where this is at and putting "solely" back in? Frankly, I'm okay if you don't. I'd rather see it recommitted so that we can look at a variety of issues, from the point of view of a small businessman, primarily, and the drug stores that are trying to do the right thing and we're now going to saddle them with criminal sanctions if they're not careful enough. The only reason, like Senator Ashford, that I would agree to have it go forward is because I gave my word. Okay? I gave my word. But just to illustrate why it needs to go back, let me give you the score on immunities, all right? Just that subject, not...well, the criminal we can talk about at another time. We had...listen to this because this is turning into some kind of a silly power struggle where somebody has got to have their language. The bill as originally composed by Senator McCoy had an immunity that's exactly like the one that's already in there. Okay? The concern was I got a problem with the immunity. People do that all the time. So, no, we're not going to take it out because, by gosh, I want the immunity in there. It was the same language. (Laugh) Do you see how ridiculous this has gotten? It was the same language as is already in statute, but they insisted on their own language, all right? Now we got three. Now we got three and we're told, hey, it's not a big deal, it's not a big deal, let's just roll this thing through. Well, it is a big deal. And who do we talk to about making the changes? Right? I'll tell you, if you're new here, this is a big deal that we're talking about. We're talking about something that isn't in the rule book. How did this thing get derailed and off track and messed up? The answer isn't in the rule book but it's as important as any rule in there. This, you have my word, you have my word, this goes back to Judiciary Committee, we work on the issues. We will look at the recording of driver's licenses, we will look at the inconsistent immunities, we will look at the federal statute to see what we need to be doing and what's already being done by the feds, and we will bring a bill to the floor that is in the proper shape to pass and it will have an E clause and it will have my support. The idea that we're going to move a bill or not support the recommit and try to work it out on the floor, if haven't noticed, is impossible. There's no working something out. We don't know who to talk to. Who's committed when there is an understanding made? This is a big problem and it affects the way we function and it's good to have the conversation... [LB20]

Floor Debate
February 03, 2011

SPEAKER FLOOD: One minute. [LB20]

SENATOR LATHROP: ...early and we'll resolve it by sending this back and you have our assurance that when it gets to Judiciary it will be given the attention it needs and be brought back out here and it will be in the shape it needs to be in when that takes place. Thank you. [LB20]

SPEAKER FLOOD: Thank you, Senator Lathrop. That was your third time. Senator Ashford, you are recognized. [LB20]

SENATOR ASHFORD: Let me...thank you, Mr. Speaker. Let me go over this one more time from my perspective. It isn't a mea culpa, Senator Nelson, though it's...I'm not criticizing you for your criticism or your suggestion that it is. We went about this bill like all of the committees do. The only difference is, is that...and Senator Schumacher is absolutely right and he does a great job in the Urban Affairs Committee asking questions about securities law which I don't have answers to because I got a D in securities law at Creighton University, my worst grade. So I'm glad he's there. But look it, here, this bill can move to Select File and the committee can reconvene and think about some of these issues and talk about them on Select File, or we can recommit the bill back to committee. I looked at the immunity issue in this way, and I said to Senator McCoy, I said to him, look it, we've got immunity conflicts here. What I don't want to do is I don't want to...and let's think about what are the possible lawsuits that could happen or the liabilities that could occur under this bill, considering the fact that we have other immunities, federal and state, that apply to these particular establishments. And I...to me, to me the issue was solely this, and I said it before: I was agreeable to language that immunized the retail establishments for negligence or some other negligent act in the reporting of this information because that was the purpose of the bill and that is the purpose of the bill. I don't know what the trial lawyers think about it, to be honest. I don't know what the pharmacists think. I don't care particularly what they think today about this. I can think for myself. And I believe, as I said to Senator McCoy, that if we delay the criminal penalties, because I was bothered by the criminal penalties, we delay them for a year, we could come back, quite frankly, we could come back next year. If there is difficulty in doing...the reason I did that, the reason I suggested that to Senator McCoy was so there could be a time frame to see how the reporting is going so that the pharmacists or the retail people could come back and say to our committee, Senator Ashford, this reporting thing is screwed up, the providers of the technology aren't as good as they said they were, criminal penalties would be obnoxious and wrong. That's why we did it. We spent a lot of time on this bill. I don't know, if we take...and Senator Lautenbaugh is right, we don't really know for sure, if we change the language and take out "solely," what sorts of other liabilities we're dealing with here or what other immunization we're involved in. That's why it seems to me the best course of action is to remove the word...or to put "solely" back in, because, quite frankly, I don't know if it does make a difference. Let's...we can then move the bill, the committee can talk about

Floor Debate
February 03, 2011

these other issues that have been raised, though I will say with Senator McCoy and I when we discussed this--we spend a lot of times on these bills as do all of you in your committees--I'm worried about the criminal penalty, Senator McCoy. [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR ASHFORD: So the answer is, let's move it. Let's move the criminal penalties. Let's move the criminal penalties out a year so that we can check with the retailers to see how it's going. Let's use the word "solely" not for the trial lawyers. I don't know where this is even coming from. I don't care what the trial lawyers say. I don't care because the bill related to the subject matter of the matter, which is reporting on sales of pseudoephedrines or ephedrines or precursor drugs. If we don't remove that...I don't know the answer because it's new language. Maybe Senator Lautenbaugh is right, it doesn't matter, but I think Senator Lathrop is right and Senator McGill is right. It really is the integrity of the system, it really is. This bill could be changed on Select File. [LB20]

SPEAKER FLOOD: Time. [LB20]

SENATOR ASHFORD: It's fair game on Select File. [LB20]

SPEAKER FLOOD: Time, Senator. Thank you, Senator Ashford. Senator Pahls, you are recognized. [LB20]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I have a feeling it's getting towards the tail end of our discussion so let me throw in a couple of ideas. I've heard the word "deal" so many times within the last hour, I almost thought I was in a state where we have gambling. And I understand that we always are going back and forth negotiating. It also brought me back to my childhood when there was a show called "Let's Make a Deal," and some of you can remember Monty Hall. And there's a little bit of a joke here but there's a little bit of seriousness. I've listened to attorneys on both sides arguing, and we have some great people who can debate and, to some degree, maybe even twist the details, not intentionally but that's part of the trade. I know because I have a sister who's an attorney and I still love her. I am trying to find out what's best and, by listening to Senator McCoy, this is a significant piece of legislation that needs to be put out to help. And most of you know, I mean, I do have a certain desire to help kids out just because of my past background. And Senator Ashford made a comment that something happened not too long in the district that I happen to serve in, so this has some meaning to me. What I'm asking us that I'm going to look at because I think he's a major player in this and I've heard this from him, but I'm going to ask him for a commitment. Senator Lathrop, you are telling me that you are going to make every effort, if we do send this back, that this will be out this year for us to vote on this bill. I'm not saying in what quality but it's going to be back out on the floor. [LB20]

Floor Debate
February 03, 2011

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Pahls?
[LB20]

SENATOR LATHROP: Yes, I will. And, Senator Pahls, you have my commitment that we will do everything humanly possible to return this bill back and it will be done at the earliest opportunity. [LB20]

SENATOR PAHLS: And you...this is...and you know I'm doing this because this is not an attempt to derail, even though there are some disagreements on both sides and I know, in fact, yesterday you had some concerns about the voting issues and all that. I think that's been cleared up. But you're telling me that. See, then, you've actually opened door number three for me on the "Let's Make a Deal," because behind that door I'm assuming, what you're saying, it's going to come out with all your help out of the committee. [LB20]

SENATOR LATHROP: Yeah. We...the committee is completely and totally committed to addressing... [LB20]

SENATOR PAHLS: Okay. [LB20]

SENATOR LATHROP: ...the underlying concern of Senator McCoy. It's going back to take care of the detail. [LB20]

SENATOR PAHLS: Okay. [LB20]

SENATOR LATHROP: And you have my word that we will work on that diligently, soon, and get it back here as soon as we can. [LB20]

SENATOR PAHLS: Okay. And that's...and if we...I feel comfortable with that and I feel maybe the chess match on the floor needs to be put to sleep and let's make sure that we can get this bill moving in the direction, whether it's going back to the committee, which I have no problem with now, and move on. Thank you. [LB20]

SPEAKER FLOOD: Thank you, Senator Pahls. Senator Smith, you are recognized.
[LB20]

SENATOR SMITH: Thank you, Mr. Speaker. Thank you, Senator McCoy, for bringing forward LB20 and I really appreciate Senator Ashford's passion in his prior statements. I've always looked up to Senator Ashford and watched him for a number of years and, you know, he has a tremendous care and concern for our youth in our community and I appreciate that passion that he showed. But it's for that same reason that I'm going to oppose the recommitment to the Judiciary Committee. We are very close to having this resolved and be able to move forward on a very critical issue to our youth and so that's

Floor Debate
February 03, 2011

why I'm going to oppose the recommitment. Also, and to a lesser...and that's my primary reason for opposing the recommit. But on a secondary note, there's been some comments made about overregulation of business, and I appreciate the concern that's been given to the overregulation of business, but I hope equal concern will be given to the risks that businesses face continuously on litigation and the insurance costs to avoid litigation. That's a serious concern as well, as much as regulation is. And from what I heard from Senator McCoy and I believe some of the testimony yesterday, the business industry group that was represented by this legislation was not opposed to this legislation, so the small business group, if you would, that is most affected by this, from what I understand, was supportive of this legislation. Now I'm not an attorney. I do not know law. I did stay at a Holiday Inn Express one time and I know a few attorneys. So what I've been told and from what I understand from that good night's sleep is that immunity is not going to eliminate the responsibilities of businesses to be responsible to show due diligence. Even with the immunity clause in there, I believe, my understanding is that if a small business is reckless and they're negligent, that they will be responsible in a court of law. So we're not removing any responsibility from business, from my understanding. We're simply creating a hurdle that protects businesses that do their due diligence, that are responsible. So with that, I just ask my fellow colleagues to vote against the recommitment to the Judiciary Committee. Thank you. [LB20]

SPEAKER FLOOD: Thank you, Senator Smith. Senator Ken Haar, you are recognized. [LB20]

SENATOR HAAR: Mr. President, members of the body, I have a question for Senator Lathrop, if he's willing to answer. [LB20]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Ken Haar? [LB20]

SENATOR LATHROP: Yes, I will. [LB20]

SENATOR HAAR: I trust your word and I trust the word of other members of this body when they give it. Now just for again to explain to me, and I've been here two years, how will this bill then, if you take it back to committee, get that priority status that we'll need to discuss it? [LB20]

SENATOR LATHROP: Well, it's...I would expect that if it requires a priority status that Senator McCoy has expressed his passion for this bill and we'd probably see him prioritize it. [LB20]

SENATOR HAAR: Okay. So it can come out of...could come back out of committee and we'll still get to hear it this year. [LB20]

Floor Debate
February 03, 2011

SENATOR LATHROP: It's possible. You know, each year the Judiciary Committee typically constructs two bills, committee bills, with priority. One is generally dealing with sort of the administration of justice; the other oftentimes is a criminal bill. So I suppose it could be in the...what we generally refer to as the Christmas tree bill coming out of Judiciary Committee, in which case no priority would be required. [LB20]

SENATOR HAAR: Okay. And that...because I share the concern that Senator Karpisek has expressed. And just a comment: I love our passion. Sometimes it may get out of hand but we serve in this Legislature because of passion, certainly not for the pay. So thank you very much. [LB20]

SPEAKER FLOOD: Thank you, Senator. Senator McGill, you are recognized. [LB20]

SENATOR MCGILL: Thank you, Mr. President. Members, sometimes we make mistakes in here. Since I've been here, we've passed several pieces of legislation that we've had to go back and fix because we weren't thorough enough the first time around. And if we would have taken the time and attention to, in many of those cases, maybe recommit, then we wouldn't be coming back the next year to fix problems that still existed. We saw it firsthand on a national scale with safe haven. But last year, and the entire Judiciary Committee would agree with me on this, but last year we passed a law dealing with the sex offender registry that had consequences that we did not foresee, and we're going to have to come back and fix that, and it's not going to be very popular in the press and amongst some of our colleagues or constituents. But we took three levels of the sex offender registry and all made them into one. We had a high level that was public and then two other levels that were not public before, and we made all of these people, even if they were almost done with their sentences, open to the public because we didn't take the time to be as thorough as we should have been in the Judiciary Committee, and I was a member of that. And when we got to the floor, we didn't debate as thoroughly as Senator Schumacher was saying we need to be doing. We made a tremendous mistake. We need to be taking more time to do more research on issues when they come about in this manner and do it as soon in the process as possible and not necessarily just wait until Select File to try to work it out. This is a sort of debate that we need more expert advice from the outside on as well. On safe haven we, in the body, all 49 of us, debated amongst ourselves. We didn't take enough time and consideration and input from the outside, and we messed things up. This takes more time and more expertise than just the 49 of us. We need to be willing to go back and do more research and trust the Judiciary Committee to bump the bill back out again. And trust, trust is a word that goes right up there with goodwill. And when people ask me about the Legislature and if we're really a partisan body and how we function, I say that the longer we're here the more we get to know each other and trust each other and the partisanship starts to fade away because we know where other people are coming from, we know who we can trust, we know people's intentions. I would beg all of you to trust us on the Judiciary Committee, many of us have been around for a while, that we can

Floor Debate
February 03, 2011

come back with a better solution. And I also ask everyone here to reflect on their own behavior and what their word means and sticking with their word, because we can't function if we don't trust each other. We cannot function if we don't trust each other. I don't want to stand up here and say I'm going to start voting against more things in the Judiciary Committee because I'm afraid of what's going to happen. And I know Senator Lautenbaugh totally has the right to put up this amendment. I knew where he was coming from and I knew this was coming. He was very open about it. But if we don't trust each other, and I've seen it happen in years before where things change out here that weren't what was agreed on originally, and we wouldn't have voted the bill out then. And, yeah, we have different opinions. Senator Lautenbaugh and I have different opinions and later today we'll be laughing about something in Judiciary together because we are friends. But each of us in here come from different perspectives and different views and we build committees in a very democratic way, and some committees share more ideals with one another and, you know, think along the same lines, and other committees have a broad spectrum of opinions, and Judiciary Committee is one of them. There's a broad spectrum of opinions on that committee. And so sometimes on a bill it does take more work to satisfy all the members of that committee. [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR MCGILL: But we all elected people to put people on committees that we trust to do a good job and right now the majority of the committee is saying that this is not the way we intended, not that we're unhappy with a particular amendment that got thrown up but this whole process has become convoluted. There are new issues that we're concerned about. And many of us did vote for this based on an understanding that we all had on all...on not all sides, and Senator Lautenbaugh made his concerns very clear, so this is not about a disagreement with Senator Lautenbaugh. But we had faith and trust in a decision that had been made that didn't get followed through on. We need more time to reconsider more of the ideas that have come to fruition here on the floor and I think putting it off is not what we need to be doing. [LB20]

SPEAKER FLOOD: Time, Senator. Thank you. [LB20]

SENATOR MCGILL: Thank you. [LB20]

SPEAKER FLOOD: Senator Karpisek, you are recognized. [LB20]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I want to clarify maybe what I meant to say, if I didn't say it right. I'm not saying I don't trust the Judiciary Committee at all to send it back. That...I don't think there's some devious plan to bury this thing. That's not my...what I was trying to say, and if I did think that I would say that, but I don't. I just don't know that if we can't get this hammered out, out here,

Floor Debate
February 03, 2011

how sending it back is going to change that and how they can get it hammered out in committee to send it back out here. And I do hear everyone talking that they intend to get it back out here and I appreciate that, but I don't know. I guess in my experiences in committee we still talk, but if the two opposing sides are right there, how do we get over that? So that's my question. Would Senator Lathrop yield to a question, please? [LB20]

SENATOR LATHROP: Yes. [LB20]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Lathrop? [LB20]

SENATOR LATHROP: Senator Karpisek? [LB20]

SPEAKER FLOOD: Yeah. [LB20]

SENATOR LATHROP: Yes, I will. [LB20]

SPEAKER FLOOD: Senator... [LB20]

SENATOR KARPISEK: Thank you, Senator Lathrop. Do you see where I'm coming, Senator Lathrop? I just want to know how we can get past this if it goes back to committee, how you can work it out in committee. [LB20]

SENATOR LATHROP: I guess I'd just tell you... [LB20]

SPEAKER FLOOD: (Gavel) [LB20]

SENATOR LATHROP: ...I'd just tell you that we have a good committee and that it's important. Here's...you ask why, why should we send it back there instead of working it out here. We get done with this recommit, we still have another amendment or two or three, and the idea of sending it back to the Judiciary Committee is that we can take it back there,... [LB20]

SPEAKER FLOOD: (Gavel) [LB20]

SENATOR LATHROP: ...we can get on to the barber pole bill and let the Judiciary Committee clean this mess up and bring it back. And what's the advantage? The advantage is we won't spend today and tomorrow on amendments dealing with immunities when we ought to be dealing with it as a committee in the Judiciary Committee and then bring it back out, and then we will have a bill that will enjoy widespread support by members of the Legislature. [LB20]

SENATOR KARPISEK: Thank you, Senator Lathrop. And that makes a lot of sense and

Floor Debate
February 03, 2011

I do want to get moving on to the rest of the agenda too. I guess, from my viewpoint, I don't see any compromise here and maybe I am not seeing what is there. I don't see it. And that's my only concern. I don't think that there's any intent to bury this thing, I don't think, at all; however, the Chair did put up a bracket motion on this and so then it would have been gone. So that concerns me just because it looks like we're at an impasse. And if we are at an impasse in the committee, then I'm concerned that it won't come back out. Now I know that I have heard assurances from everyone on the committee that it will come back out and it will be settled. That is my concern. I appreciate Senator Lathrop giving his word that he will get...that they will get it hammered out, and Senator Ashford, and get it back out here, but I still have a concern about that. I again want LB20 to move. Thank you, Mr. President. [LB20]

SPEAKER FLOOD: Thank you, Senator Karpisek. Members, if you're having conversations about the bill under consideration, please move those conversations to under the balcony. We will maintain order in this Chamber and we will proceed to the next individual identified to speak. That's Senator Lautenbaugh; this is your third time. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I'd like to call the question on the motion to recommit. [LB20]

SPEAKER FLOOD: The question has been called. Do I see five hands? I see five hands. The question is, pursuant to Rule 7, Section 4, shall debate cease? All those in favor vote aye; all those opposed vote nay. Senator Lautenbaugh, for what purpose do you rise? [LB20]

SENATOR LAUTENBAUGH: I would request nothing at all. Thank you. (Laughter) [LB20]

SPEAKER FLOOD: Mr. Clerk, please record. [LB20]

CLERK: 28 ayes, 7 nays to cease debate, Mr. President. [LB20]

SPEAKER FLOOD: Debate does cease. Senator Ashford, you are recognized to close on your motion to recommit LB20 to the Judiciary Committee. [LB20]

SENATOR ASHFORD: Let me try to say again what I think the appropriate path is here. Senator McCoy came to me this summer with the K2 bill. Senator McCoy then came to me with the meth bill and the reporting technology bill which we have before us. Our staff and Senator McCoy's staff worked on both bills. It is my belief that when this bill came out of committee, I know we were talking about it wasn't ready, I think the bill generally was ready. I had concerns about the...or we wouldn't have had a vote on it. We had concerns about the issue of the criminal penalties and we addressed those.

Floor Debate
February 03, 2011

Senator McCoy and I addressed that issue and it's in the bill. We knew about the other...may I have a gavel, please? May I have a gavel, Mr. Speaker? [LB20]

SPEAKER FLOOD: (Gavel) [LB20]

SENATOR ASHFORD: We had discussions about the immunity issue. I was fine with the amendment. I don't know, I'm being told it came from the trial lawyers but, quite frankly, I'm still struggling with what...how Senator Lautenbaugh's amendment changes what we had before. I'm struggling with that and I think...and because I do think we've immunized to a great degree these establishments in the bill as it came out. I think we did answer the questions that we need to answer in the Judiciary Committee. Here's the issue. Senator, this is how we do things here, folks. Senator McCoy and I, we can use whatever word we want to use, we came together on this bill. I told the committee that I felt the bill ought to come out because it was dealing with a terribly important matter. Senator McCoy put a lot of effort into the bill. (Laugh) My staff put a lot of effort into the bill. The bill should advance, all right, but it should advance in the form it came out. At least Senator McCoy and I...the understanding we had on the language of that bill ought to be the language that moves forward on General File unless there's some overriding reason why that language wasn't any good. By taking "solely" out, which the body did and, as I've said, I respect that decision but, quite frankly, I'm not exactly sure what it does. I know that there is immunity now for these establishments under the bill that came out. Senator McCoy and I had an understanding. Then Senator Lautenbaugh, which is his right to do, put up an amendment. But I need Senator McCoy to stick with me on this because, quite frankly, that's why the bill came out. And I understand that there are lots of undercurrents of conversations and I understand that and I know people's feelings are hurt and I know people are angry. Senator Lautenbaugh and Senator McCoy's feelings are hurt about some things that went on, I understand that, but we need to get past that. What needs to happen here is this bill needs to be advanced without the Lautenbaugh amendment. The Judiciary Committee can have discussions in Exec Session about these issues that have been raised on the floor and when this bill gets back on Select File we'll talk about those issues and give you our opinion. Does the Lautenbaugh...and Senator Lautenbaugh can redo his amendment if he wants but at least we will have had some time to talk about the language. That's how we keep the bill on track. I ask Senator McCoy to stick with where we were... [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR ASHFORD: ...when this bill came out. I will withdraw the motion to recommit, whether...if it's defeated it will be withdrawn, but I would ask, if it is defeated or not, that we step back here and we reconsider the vote on Scott's amendment, we put the original language back in--no trial lawyers are talking to me about it because I don't think it necessarily opens up lawsuits anyway--that Senator McCoy and I, what we're putting forward to this body in this meth bill, be allowed to go forward on General File. If

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

Floor Debate
February 03, 2011

it's changed, that's the right process. If it's changed on Select File, so be it, but at least this committee has a...that's the commitment I made to Senator McCoy. That's how I operate here. I may make mistakes from time to time, but that's how I work. That's how we all work. I'm not blaming... [LB20]

SPEAKER FLOOD: Time, Senator. [LB20]

SENATOR ASHFORD: ...Senator McCoy, but it's time to get... [LB20]

SPEAKER FLOOD: Time, Senator. [LB20]

SENATOR ASHFORD: Thank you. [LB20]

SPEAKER FLOOD: Members, you've heard the closing on Senator Ashford's motion to recommit LB20 to the Judiciary Committee. The question before the body is, shall LB20 be recommitted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB20]

CLERK: 15 ayes, 24 nays, Mr. President, on the motion to recommit. [LB20]

SPEAKER FLOOD: The motion to recommit is not adopted. [LB20]

CLERK: We're back to consideration of Senator Lathrop's amendment to the committee amendments. (FA4, Legislative Journal page 429.) [LB20]

SPEAKER FLOOD: We're back to floor discussion on FA4 to AM64. Senator Lathrop, this is your amendment. Would you refresh the body's recollection as to what this does? [LB20]

SENATOR LATHROP: I'd be happy to. Thank you, Mr. President. Colleagues, FA4 very simply strikes Section 6 of the bill, which is the civil immunity. Yeah, that's what it does and I'll speak or address the merits of my motion on my turn to talk. Done with the update. [LB20]

SPEAKER FLOOD: Senator Ashford, you are recognized. [LB20]

SENATOR ASHFORD: Did I get...I'm sorry, where are we, Mr. Speaker? [LB20]

SPEAKER FLOOD: Your light was on. We're discussing FA4 to AM64. [LB20]

SENATOR ASHFORD: Thank you, Mr. Speaker. The process that should be undertaken here and the way to get through this situation is to go back to the bill that was advanced to the floor that was worked on with Senator McCoy, and that I urged my

Floor Debate
February 03, 2011

committee to advance on the theory that it was...we worked out whatever issues needed to be worked out, whether it's the immunity issue, the criminal penalty issue or whatever. Between General File and Select File, the committee will--I'll guarantee you we're going to do it anyway--are going to think about this bill and the issues that have been raised on the floor, and we will come back. I assume Senator Lautenbaugh will reintroduce his amendment and the body will have a chance to vote on it again. At least the committee will have an opportunity to have its own discussion about the liability issue with staff and bring to the body our best judgment on the impacts of leaving the bill as is, as it came out of committee, or changing the liability provisions or possibly, as Senator Harr has brought up, the driver's license information storage issue, which is an issue we addressed last year in this body. But at the end of the day, we cannot proceed in any reasonable way if, when a bill comes out here with the introducer and the committee Chair in agreement, changes are made by...agreed to by the introducer changing...and again, I understand that there are things going on behind the scenes I was not aware of that caused the introducer to change his mind or to agree with Senator Lautenbaugh. That's all...I can't change that. I can't change it. But we need to go back to the bill as it came out that Senator McCoy and I worked on throughout the summer and fall, this whole package of bills dealing with drugs. It is an important issue. It needs to advance. But I will not stand down if this bill...if we are going to proceed to advance the bill with Scott's amendment on General File. I'm not going to do it. I suppose eventually there will be cloture invoked and we can go to the next bill, but I'm going to stand up here until that changes, because if I don't, we will never...this process, it will have been broken and it cannot break. Senator Lautenbaugh may very well be successful with his amendment on Select File. He may be absolutely right. I don't think I've said he isn't right in this discussion. But, but this issue is not the issue of methamphetamine. It's an issue of how we move forward. I'm sorry there are disagreements on the floor between members of the Judiciary Committee. I hate that. I love my committee and I respect every member tremendously for their skill and for their amazing ability to take on all these issues that it takes on. I just sit there, quite frankly. My staff does a wonderful job. Senator Lathrop does a great job, Senator Lautenbaugh, attorney Senator Harr,... [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR ASHFORD: ...they do a great job. I think the bill is generally ready to come out or I wouldn't have voted it out. This is not a case of the committee not doing its work. This is a situation where the introducer and the committee Chair had an understanding of how the bill would proceed. I understand Senator McCoy has got issues with what happened when it got to the floor. I don't know about that. All I know is we had an understanding. I will stand down if this bill proceeds to Select File as is and we have an opportunity as a committee to think about it and then come back to this body with better, as Senator Schumacher suggests, better explanation--he's right to say it--better explanations about some of these issues which are important issues. Thank you, Mr.

Floor Debate
February 03, 2011

Speaker. [LB20]

SPEAKER FLOOD: Thank you, Senator Ashford. Senator Lathrop, you are recognized. [LB20]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, you may wonder when we talk about immunities for a cause of action that almost everybody in here agrees is never going to happen, why we're spending two days on it, right, and there is something bigger. It's about the currency we use in our transactions in this place. All right, now it's turned into a power struggle, but it started out and this ultimately is about what happens when somebody who works on a bill strikes an agreement or an understanding with those people that would otherwise be in opposition, and once they have that agreement, what's their responsibility to live up to the agreement, to stand behind the agreement, and to enforce it. That's what's at stake, and it's going to happen in one of your bills. It's going to happen in one of your bills. You may think this doesn't apply to you and you may think you want me to sit down and stop talking about immunities. This is bigger and it's going to happen to you, and you're going to want to know that when you enter into an understanding with people that have an interest in your bill that there isn't somebody that's going to come along, whether by design or by chance, and mess it up. And anybody here has a right to drop an amendment, okay? But I think we can see what actually happened here, what the deal is, and that this is turning into a power struggle. My motion that we're here on right now would strike the immunity language, and what would that leave us with? It would leave us with the very language that Senator Lautenbaugh said we needed, because there's immunity in this bill already. There's immunity in the law already. There's immunity from the federal statutes already. All this immunity does is follow things up. And I'll tell you, frankly, I didn't do this. Okay? People that have an interest in this did. They had an agreement with the sponsor. Frankly, this is how idiotic this has gotten and how it is clearly a power struggle, but the original language in Senator McCoy's bill is exactly, almost exactly like the language that's already in the law in Nebraska. So why not pass this amendment? No, we're not going to. No. It's a power struggle now. We're going to show you a new way of doing business. But I'm going to tell you, we are devaluing the currency that we use in this place to get things done, devaluing it. If we pass FA4, you know what, there's still immunity. And you know what, it's the same immunity that he had in his original bill. Do these guys stand up and support it? No, because we're in a power struggle and we're going to have a new sheriff in town and a new way of doing business, and the new way of doing business is I'm going to cut a deal or an understanding with Senator Harms. Then I'm going to get Senator Harr to introduce something to amend it. Maybe I don't have to ask him. Maybe it's a wink or maybe I know that I should bring him in but I haven't because I can count on him to drop the amendment. If you're just showing up here, it's a problem. It's a problem and that's why we're talking about immunities for three days, because we better figure out not what should be in the rules but how we do business around here. Literally, if we adopt my amendment, we go back to the same

Floor Debate
February 03, 2011

immunity he had... [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR LATHROP: ...in his original bill. We have the protection from the federal statute and everybody is happy. So are we going to do the right thing or are we going to have a power struggle for another two days, because I have other amendments if this one doesn't work. Thank you. [LB20]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Lautenbaugh, you are recognized. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. Senator Lathrop, would you yield to a question? [LB20]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Lautenbaugh? [LB20]

SENATOR LATHROP: Yes. [LB20]

SENATOR LAUTENBAUGH: Senator Lathrop, if we took the language that is in existing law and substituted it into this pending bill, taking out the immunity section as you request and using the language that's already in law, would you accept that? [LB20]

SENATOR LATHROP: I think it would be idiotic. I think it would...Senator Lautenbaugh, and for what purpose? [LB20]

SENATOR LAUTENBAUGH: To make it clear that the immunity applies to these new provisions, which is how the law was drafted in the first...the bill was drafted in the first place. [LB20]

SENATOR LATHROP: You know what, I don't have a problem with that but it strikes me, honestly, as idiotic. This is our work product and we're sticking stuff into the statutes that is meaningless. [LB20]

SENATOR LAUTENBAUGH: Well, Senator, didn't... [LB20]

SENATOR LATHROP: To duplicate the very same language, Senator Lautenbaugh, I think as people who are engaged in a trade, making law, that strikes me as just the ultimate in we're having an arm wrestle and now I need to get my...somebody needs to beat me. Is that the point? The point is there is immunity without this section and it's the same immunity Senator McCoy wanted and it's the same immunity the federal government already gives, and what are we doing sticking stuff in the statute over a

Floor Debate
February 03, 2011

power struggle because I'm still mad about an election? [LB20]

SENATOR LAUTENBAUGH: I don't mean to interrupt you, Senator, but I would like you to make that speech on your time. I think you answered my question, but aren't you the one who negotiated the immunity provision that's in AM64 with other parties? [LB20]

SENATOR LATHROP: No. No. [LB20]

SENATOR LAUTENBAUGH: Well, who did? [LB20]

SENATOR LATHROP: Senator McCoy. [LB20]

SENATOR LAUTENBAUGH: And you had nothing to... [LB20]

SENATOR LATHROP: There were people out there in the...two interest groups that had an interest. They had me come out there briefly and I was on my way to somewhere else, and I left Senator McCoy and somebody from the trial lawyers and somebody from the pharmacists. [LB20]

SENATOR LAUTENBAUGH: But you approved the provision that's in AM64. [LB20]

SENATOR LATHROP: You know what, what I did is I said, if there is an understanding I will stand by it, as I do when I give my word. [LB20]

SENATOR LAUTENBAUGH: So is that a, yes, you approved the provision that's in AM64, the one that you now are arguing would be surplusage because we already have it in existing law? [LB20]

SENATOR LATHROP: No, I didn't approve it. I was not part of an agreement, but there was an understanding struck and, honestly, Senator Lautenbaugh, that's what this is about. Do I feel happy about it? I think it's still silly. Do I think that made sense for them to do this? No, I don't. But I gave my word and I'll stand by it. [LB20]

SENATOR LAUTENBAUGH: And you voted for that amendment to come out with the surplusage in it. [LB20]

SENATOR LATHROP: Yes. I'm standing by my word. [LB20]

SENATOR LAUTENBAUGH: Thank you, Senator Lathrop. Let me make perfectly clear here, Senator McCoy did not break his word. We've just heard it implied that somehow Senator McCoy communicated to me with a nod and a wink that I would bring my amendment so he could get out of his deal. I brought my amendment as a floor amendment yesterday with no consultation with Senator McCoy whatsoever. It's also

Floor Debate
February 03, 2011

my understanding that, well, first Senator McCoy didn't want me to do it, and then inquired of other parties if Senator Lautenbaugh's amendment fails or is withdrawn will you withdraw yours, and the answer was no. And at that point, the deal was off. That was not Senator McCoy's idea, that was not my doing, but that's how it happened. And I am not going to sit here and listen to people say that Senator McCoy did something wrong here or that he somehow colluded with me on this. The deal was broken. It just wasn't broken by Senator McCoy. [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President. And you're right, this is a power struggle, but it isn't me doing the power struggle here. I passed my amendment which now I'm hearing I may have to pass again on Select File somehow. This is a good bill with no problems that is being filibustered at this point and it is ridiculous. The immunity provisions are not contradictory. There's immunity in existing law. I just asked Senator Lathrop if he would accept that same provision in this bill and the answer was, well, that would be ridiculous. Well, why? What would be more ridiculous? Maybe spending three days talking about this bill over something this inconsequential. And make no mistake, there's a power struggle involved, the lobbyist for the trial attorneys was quoted yesterday as saying, see you at noon on Friday. What do you suppose that means? That means the filibuster is on, folks, and we're all a part of it. And this is ridiculous and I was not part of any compromise and I expressed my concerns clearly to the committee. And if Senator Lathrop thought the liability language was... [LB20]

SPEAKER FLOOD: Time, Senator. Thank you. Senator Ashford, you are recognized. [LB20]

SENATOR ASHFORD: I hate power struggles and there may be a power struggle going on. I don't know. My nature is not to take sides in power struggles because I think it's counterproductive, and I think that is probably where we're at here. There may be a power struggle between lobbyists and that's why, when I get up here and talk to everybody about what I think is one of the things that we've got to think about seriously, when we reach back and remember what George Norris taught us, was that we make the decisions in here, not the lobbyists. But I don't know what went on or who said what to whom. All I know is Senator McCoy (laugh) and I worked on these drug issues for several months. I respected and do respect his commitment to these issues, and that's why my staff, LaMont and my staff, worked with his staff to make these bills appropriate. I asked the committee to vote these bills out, the K2 bill and the meth bill. I was not aware of any discussions that Scott talks about or Steve talks about, and he references his short conversation with the pharmaceutical people. I get these guys all mixed up and I never quite know what side they're on because so many of them have so many clients, you never know who they're talking to you about when they talk to you. But that's the process so, you know, I just try to stay away from all that. But what I do care about is

Floor Debate
February 03, 2011

my relationship with Senator McCoy. Senator McCoy and I had understanding of how this bill would advance out of committee, and I was not aware of Senator Lautenbaugh's amendment and Senator McCoy, I believe him, was not aware of it either, but I think that Senator McCoy and I owe it to each other to stick with the idea that we will be together on this bill as it advances off General File. There have been...and he can vote however he wants but that's how I view it. In order for this to be reconsidered, there needs to be a motion filed by somebody who voted for the...Scott's amendment. That wasn't me. I voted against it so I can't file the motion. We need some time to think about the issues that have been raised on the floor and the committee will do that. I have no problem advancing the bill that I worked with Senator McCoy on. This debate about whether "solely" should be in or out is making my head ache too. All I know is I have an understanding and that's why the bill came out as quickly as it did. Senator Lathrop was really not involved, nor was Senator Lautenbaugh that I recall, that much in the discussion about the bill. You know, it was really me, so I take...Senator Schumacher, I take responsibility for all those mistakes that probably were in the bill. And I'll make them again probably, because I like to get these issues on the floor because generally the body can work them out. But I would ask Senator McCoy or Senator Lautenbaugh or somebody on the side that voted for the amendment to reconsider this. I can't do it. Let's move this bill to Select File. Senator Lautenbaugh can redo his amendment or maybe there are other amendments that are more consistent with federal law and state law, and let's move on. But I will not give up on this. I will stand here until the eight hours are up, because otherwise I can't do business and my credibility and not only mine but the credibility of my colleagues on the Judiciary Committee are on the line. It wasn't intentional for Senator Lautenbaugh to do that. [LB20]

SPEAKER FLOOD: One minute. [LB20]

SENATOR ASHFORD: I'm not accusing Senator Lautenbaugh of anything. Thank you, Mr. Speaker. [LB20]

SPEAKER FLOOD: Senators Lautenbaugh, Ashford, Lathrop, and McCoy, please come to the podium. Mr. Clerk, some items in the meantime? [LB20]

CLERK: Mr. President, I do have items. Your Committee on Agriculture, chaired by Senator Carlson, reports LB108 to General File, LB114 to General File with amendments, and LB181 to General File with amendments; those signed by Senator Carlson. Mr. President, your Committee on Enrollment and Review reports LB72, LB28, LB29, and LB30 to Select File. I have a series of hearing notices, first of all from Health and Human Services, signed by Senator Campbell; Government Committee, signed by Senator Avery; and several notices from the Appropriations Committee, those signed by Senator Heidemann, as Chair. I also have an amendment to be printed to LB629 by Senator Sullivan, and Senator Christensen would like to withdraw LB511. That will be laid over at this time, Mr. President. (Legislative Journal pages 436-441.) [LB108 LB114]

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

Floor Debate
February 03, 2011

LB181 LB72 LB28 LB29 LB30 LB629 LB511]

SPEAKER FLOOD: The Legislature will stand at ease until further notice. Returning to discussion on LB20, the Chair recognizes Senator Lathrop. [LB20]

SENATOR LATHROP: Thank you, Mr. President. And in accordance with our discussion with the Speaker, I'll move to pull my FA4. [LB20]

SPEAKER FLOOD: FA4 is withdrawn. There are no other lights on. Senator Ashford, you're recognized to close on AM64. [LB20]

SENATOR ASHFORD: I forgot where we were. It's my understanding, Mr. Speaker, that this bill, this amendment if it's adopted and the bill itself with the Lautenbaugh amendment will move to Select File. During that time, we will work together with Senator McCoy and Senator Lautenbaugh and Senator Lathrop to iron out the issues, liability issues and other issues, and that the Speaker will then make a decision on when to place this bill back on Select File...well, it will be on Select File but bring it up for discussion on Select File after the parties have an opportunity to work together or the various senators who have been involved in this discussion will have an opportunity to discuss the issues. And at that time the Speaker will make his own judgment as to whether it should go back on or when it will go back on for debate. [LB20]

SPEAKER FLOOD: Thank you, Senator Ashford. Members, you've... [LB20]

SENATOR ASHFORD: I would move the AM. [LB20]

SPEAKER FLOOD: Thank you, Senator Ashford. Members, you've heard the closing on AM64. All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB20]

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of the committee amendments. [LB20]

SPEAKER FLOOD: AM64 is adopted. There are no other lights on. Senator McCoy, you're recognized to close on LB20. [LB20]

SENATOR McCOY: Thank you, Mr. President. Members, as you've just heard and I appreciate the advancement of AM64, Senator Ashford, Senator Lautenbaugh, Senator Lathrop, and myself have committed to resolving the issues that are before us on the immunities and otherwise between General and Select, before Speaker Flood puts this back on the agenda on Select File. My hope is at that point we will have these issues put to rest and I look forward to a fruitful discussion in order to make that happen and will be able to return back to you, hopefully sometime soon, on this on Select File where

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

Floor Debate
February 03, 2011

we can move what I believe to be this important legislation forward. And I would appreciate your vote on LB20 to move to Select File. Thank you, Mr. President. [LB20]

SPEAKER FLOOD: Thank you, Senator McCoy. Members, you've heard the closing on LB20. The question is, shall LB20 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB20]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB20. [LB20]

SPEAKER FLOOD: LB20 advances to E&R Initial. (Visitors introduced.) Mr. Clerk, items for the record. [LB20]

CLERK: Mr. President, Senator Mello would like to add his name to LB507, Senator Cook to LB386. (Legislative Journal page 441.) [LB507 LB386]

And a priority motion: Senator Sullivan would move to adjourn the body until Friday, February 4, at 9:00 a.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel)