

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

Floor Debate
January 23, 2012

[LB60 LB269 LB418 LB540 LB646 LB804 LB828 LB1089 LB1154 LB1166]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twelfth day of the One Hundred Second Legislature, Second Session. Our chaplain for today is Senator Wallman. Would you all please rise.

SENATOR WALLMAN: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Wallman. I now call to order the twelfth day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Mr. President, your Committee on Reference reports or provides me with a Reference report referring LB1098-1172. Your Committee on Banking, Commerce and Insurance, chaired by Senator Pahls, reports LB269 to General File with committee amendments attached. Health and Human Services Committee, chaired by Senator Campbell, reports LB646 to General File, and LB540 to General File with amendments. And finally, a series of hearing notices from the Banking, Commerce and Insurance Committee; the Education Committee; and the Transportation and Telecommunications Committee, signed by the respective Chairs. That's all that I have, Mr. President. (Legislative Journal pages 319-323.) [LB269 LB646 LB540]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to the first item under motion to withdraw.

CLERK: Senator Lathrop would move to withdraw LB1154. [LB1154]

PRESIDENT SHEEHY: Senator Lathrop, you're recognized to open on your motion to withdraw. [LB1154]

SENATOR LATHROP: Thank you, Mr. President. And, colleagues, good morning. I hope you had a good weekend. My motion to withdraw is very simple. I put two bills in

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

Floor Debate
January 23, 2012

dealing with the same subject matter. I should have left one of them in my office. And I brought all of them over here and introduced them. If you haven't done that, you may have a day where you will. And as a consequence, I need to take LB1154 back to my office, get it off of our agenda and we'll deal with the subject matter in a different bill that I have introduced. So I'd appreciate your support in withdrawing LB1154. Thank you. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening on the motion to withdraw LB1154. Seeing no members requesting to speak, Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is on the withdrawal of LB1154. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1154]

CLERK: 37 ayes, 0 nays, Mr. President, on the motion to withdraw LB1154. [LB1154]

PRESIDENT SHEEHY: LB1154 is withdrawn. (Visitors and doctor of the day introduced.) Mr. Clerk, we will now proceed to the item, first item under General File. [LB1154]

CLERK: Mr. President, LB418, a bill by Senator Nelson, relates to automatic dialing-announcing devices. The bill has been discussed on several days last week. When the Legislature left the issue, Mr. President, we had pending an amendment or, excuse me, a motion by Senator Mello to reconsider the vote taken on AM1717. AM1717 had been adopted. It was offered by Senator Nelson as an amendment to the committee amendments. Senator Mello would like to reconsider that vote, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Nelson, would you like to give us a brief summary of LB418. [LB418]

SENATOR NELSON: Thank you, Mr. President, members of the body. Very briefly, LB418 creates a new exemption from registration with the Public Service Commission when using an automatic dialing-announcing device. Section 86-25(c) in the PSC statutes requires any person using an auto dialing-announcing device, for a reason other than solicitation, to register with the PSC and include a detail of the planned use and message. My bill amends the statute to create another exemption from PSC regulation, when it is a message otherwise regulated and filed under the Political Accountability and Disclosure Act. We then passed AM1717, which by amendment added to LB418 a statement that would be filed to register the use of such a message with the NADC, including the name and address of the person paying for the message, and a detailed description of the planned use. The commission would not charge a fee. Thank you, Mr. President. [LB418]

Floor Debate
January 23, 2012

PRESIDENT SHEEHY: Thank you, Senator Nelson. We will now move to the floor discussion on the motion to reconsider AM1717. Members requesting to speak: Senator Lathrop, followed by Senator Nelson, Senator Dubas, and Senator Mello. Senator Mello, would you like to give us a summary of your motion to reconsider. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. My motion to reconsider AM1717 was based on still the underlying issues that have yet to be addressed by Senator Nelson who introduced the bill and the amendment in regards to the concern of making LB418 unconstitutional based on moving the existing activities, 95 percent of it, out of the Public Service Commission and putting it in the Accountability and Disclosure Commission. Also, AM1717 does nothing in regards to providing the Accountability and Disclosure Commission the powers and ability similar to what the Public Services Commission has in regards to regulating automated dialing devices that utilize political robocalls. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. We'll now return to floor discussion on the motion to reconsider. Members requesting to speak: Senator Lathrop, followed by Senator Nelson, Senator Dubas, and Senator Mello. Senator Lathrop. [LB418]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. I have something new to offer you in this debate, so I hope you'll have an opportunity to follow me as I explain what I think the effect would be of LB418 as amended with AM643. And the importance is to identify the loophole we're creating. Right now anybody who wants to do a robocall is subject to the Public Service Commission, their regulation, which requires that you state who you are at the beginning, and the hours and so forth. And so this looks fairly benign like...and it's been represented as fairly benign, there's confusion--we're just going to send it over to Accountability and Disclosure. It's not. And let me explain to you if I may, and I'll try to do it as clearly as I can, what would happen if LB418 passed with AM643, because we are not moving the regulation from the Public Service Commission over to Accountability and Disclosure, we're only moving some of it there. And the part that's not getting moved over there or that will not be subject to regulation by Accountability and Disclosure is way bigger than I thought it was. And I'll get to that. Let me tell you how I get to that conclusion. Right now, any robocall of any type is subject to the Public Service Commission, with a couple exceptions that apply to people you already have a relationship with--your school, things like that. What Senator Nelson's bill and the Transportation Committee's amendment would do is that it would exclude from the Public Service Commission any activity that is subject to Accountability and Disclosure. That's not any person, that's not any robocall, that's any activity. So literally we are taking everything that is political and taking it away from the Public Service Commission. Let me say that again. Anything that is political robocalls leaves the Public Service Commission. What doesn't happen is that the Public Service Commission picks up jurisdiction to regulate those. So we take away from the Public Service Commission all political robocalls and we move over to Accountability and

Floor Debate
January 23, 2012

Disclosure only those calls that are made that trigger the duty to file. That's a big hole. Let me say that again. The only thing...all political robocalls are no longer under the jurisdiction of the Public Service Commission. And the only thing left regulated is robocalls that would trigger the duty to file an Accountability report. So you say, okay, I understand that much. Where is the hole? Who can...how big is the hole and what's the consequences? Let me tell you, I'm going to list three things, three groups, three activities that will not be subject to any regulation whatsoever if you pass LB418 with AM643. If you have a political committee that is yet to raise and spend \$5,000, you can send robocalls unregulated. Okay? You raise and spend \$4,500 on robocalls on your opponent, you never are subject to filing a report with Accountability and Disclosure, so you can do what you want if LB418 passes. A federal race, okay? Senate race, Congressional race, that's political activity...that's the kind of activity they regulate, which Public Service Commission will no longer be able to do. But Accountability and Disclosure has no jurisdiction there. So federal races are wide open. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR LATHROP: Calls in the middle of the night, don't have to tell them who it is, no regulation whatsoever if LB418 passes with this AM. And here's another huge loophole, huge loophole. If you are doing what's called education, okay, education, you should be thinking super PACs right now that don't tell you to vote or not vote for somebody, but they deal directly with the race, that falls under education. It will not...you will not have to file a report with Accountability and Disclosure when you engage in those activities. So you will...your robocalls will no longer be regulated. Really, what we have done or would do with LB418 along with AM643 is to take...leave regulated those people who aren't the problem and open the door completely to... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR LATHROP: ...those who are. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Nelson. [LB418]

SENATOR NELSON: Thank you, Mr. President and members of the body. I've been listening somewhat to what Senator Lathrop has said. And I simply do not agree with what he's saying there. And I think we need to clear some things up at this time. First of all, LB418 applies only to activities subject to the Nebraska Accountability and Disclosure Act. Activities that fall outside the act, like polling and push polls, will continue to be regulated by the PSC. Robocalls not regulated by the NADC would still be regulated by the PSC. LB418 does not offer a way to slip through the cracks. I think it's very important to understand this. LB418 only regulates calls and monitors calls and has oversight of calls that deal with political activity. Everything else is still regulated by the PSC--the registration of auto dialing devices and everything of that sort. So we don't

Floor Debate
January 23, 2012

have a big hole here. And granted, you know, we hear the argument about the fact that if you don't spend \$5,000 and therefore don't come under the regulation as a committee of the NADC doesn't really make any difference. You're still under the regulation of the Public Service Commission. So I think that we have to put that argument aside. The Supreme Court has said that the government may impose reasonable restrictions on the time, place, and manner of political speech, also known as content-neutral restrictions. This is all that we have done with LB418. The bill merely regulates the time of day a person or entity can send a robocall and requires the person making the expenditures to list their name, address, and a description of the planned use, not the message. So the bill does not restrict any entities right to speak based on content. It merely regulates the time at which they can call and requires them to provide basic information to disclose the identity of the speaker. All political speakers, regardless of their content of message, are allowed to speak freely. LB418 is not unnecessarily restrictive. The bill would overcome even the highest level of scrutiny that a court could apply, which is strict scrutiny. To overcome strict scrutiny, a law must be narrowly tailored to achieve a compelling governmental interest. LB418 is narrowly designed to achieve the compelling governmental interest of providing transparency to the political process. Senator Mello, Senator Lathrop and others have argued over and over again that the state has a vital interest in allowing voters to discover who made a robocall, the location of the person or entity that made the call, and a record of the reasons why a person or entity sent a message. LB418 also furthers the compelling government interest of protecting privacy in the home. The bill limits the time of day in which a person or an entity can send a robocall. Senators Mello and Lathrop and Harr and others have argued that this privacy right must be protected. LB418 will do this. And the Supreme Court, as we know, believes residential privacy is a significant governmental interest. The court has stated that the state's interest in protecting the well-being, tranquility and privacy of the home is certainly the highest order in a free and civilized society. There was reference in previous testimony about LB198... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR NELSON: ...and for the reasons here I just want to address that. In its advisory opinion, in 2007, the Attorney General cited AM705 as the main constitutional concern to LB198. AM705 added the following restrictions to LB198--no more than two such messages shall be disseminated to any one residential telephone line per calendar day. LB418 does not contain this restriction. It does not confine the number of calls. So I think with an elaboration here of this and going through this, I think this will help us shed a little more light on what is actually happening here. We're not unduly restricting calls. But we also are not providing a script of any sort... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR NELSON: ...that could be subject...thank you. [LB418]

Floor Debate
January 23, 2012

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Dubas. [LB418]

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor. Good morning, colleagues. I stand up this morning to take ownership for my actions. We have some protocol that we follow in the Legislature. And among that most important protocol is honoring the committee system. And I'm afraid that my actions on the floor have not demonstrated that honoring of the committee system. I voted to advance this bill out of committee. I raised questions during the hearing in regards to the concerns that I've also expressed on the floor here today. I raised those questions with the intention of following up to get further information before we did the committee vote. Unfortunately, I didn't follow through with that. So in light of the fact that there was no opposition to the bill, I hadn't really followed up and did my homework like I should have before the committee vote, I thought this bill was probably relatively benign and I voted to advance it. Well, we typically know that when you give a yes vote to advance a bill out of committee you support that bill on the floor. And I believe that is the way it should be done. I owed my committee members an explanation as to why I was changing my mind and I didn't do that. I did eventually follow up with some of my constituents and others in regards to the questions that I raised during the hearing. And the information that I was able to gather from those further conversations led me to believe that this bill wouldn't serve the public interest. I knew how hard Senator Schimek and others had worked on the existing statute, that there was a great deal of compromise that went into that. And as I continue to investigate this, I thought the parameters that were in place were not onerous, they weren't causing problems, it was serving the public as far as consumer protection, and again it wasn't onerous, the people who were using this process are understanding of it. Public Service Commission as well as Accountability and Disclosure have worked very hard to help those people who use the robocall system understand what their requirements are. So again, I just felt like this bill would weaken those parameters that we have in place. And I'm sure all of you hear from your constituents about robocalls, most of them would like us to absolutely get rid of them. We know that that's probably not something we should do or can do. So I think the statutes that we put in place several years ago have gone a long way to protecting the consumers and helping them understand what's going on. So, you know, I didn't change my mind because someone was pressuring me one way or another, I changed my mind because I did my homework. I did it late but I did my homework. And that's why I have done what I have done on the floor. But again, I respect the committee process, but my actions have not demonstrated that, so I would like to take the opportunity to make a public apology to my committee members. It's belated, again, I should have gone and talked to them before this debate even took place. Unfortunately, I didn't, and now I'm having to take ownership of my actions. But I still feel very strongly that I certainly understand where Senator Nelson is coming from with this legislation. But in light of the information that I was able to gather I have changed my mind and wasn't able to continue to support this. So, you know, this was a lesson for me. And I hope it's something that for the newer

Floor Debate
January 23, 2012

members I can help you understand again the committee process works so well for the Legislature, and it gives our citizens an opportunity to come in and share their views. And I think it's also a lesson for those who had concerns about this bill. They should have come to the committee and expressed those views, because we rely on those committee statements. I think every one of us during... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR DUBAS: ...debate pull those committee statements up to see who testified either for or against. So again it just reiterates the importance of the committee process. I respect the committee process and I don't want my actions to undermine that process whatsoever. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Members requesting to speak on motion to reconsider, we have Senator Mello, followed by Senator Burke Harr, Senator Ashford, Senator Council, and Senator Lathrop. Senator Mello. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. To recap a little bit what we heard this morning and what we've heard over the last week. My good friend and colleague Senator Nelson, while we have disagreements on some issues, we have a tendency to agree on a lot of issues. This is one issue we disagree on. And unfortunately, I've yet to hear a compelling public policy reason of why we need to change an existing regulatory framework that currently exists right now where we've had no complaints, no one has been denied their ability to send these calls out, and ultimately provides an air of transparency for the public to see who are doing these political calls in our state. Now beyond that lack of public policy goal or change that we've yet to hear, I want to speak to a couple of issues that we've heard last week and heard this morning. First off, under AM1717 the committee amendment and the underlying bill, by moving what Senator Nelson said is political activity that's being regulated by the Accountability and Disclosure Commission away from the Public Service Commission and to NADC, we see a very large, gaping loophole that's created. I spoke with Frank Daley a minute ago and asked him, so let's say a federal super PAC is created to focus on federal election activity. Under these amendments that we have adopted and are considering, by moving just state regulated political activity that's garnered under the Accountability and Disclosure Commission away from the Public Service Commission, are these super PACs at all regulated in regards to the kind of calls that they would be able to do? In a sense, do they have to file with NADC or the Public Service Commission? The answer was a resounding no, because they fall outside the Nebraska Accountability and Disclosure Act and they fall within a certain segment of the federal election commission activity and the IRS, they are not required to file anything if we adopt this amendment, we adopt the committee amendment and adopt the bill. So is what we've heard in the press lately in regards to the influence, these unregulated super PACs, in regards to the millions of dollars that no one knows

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

Floor Debate
January 23, 2012

who is contributing to them and what they're doing to influence our democracy. We heard from our own Accountability and Disclosure Commission that they would be able to do the same thing in Nebraska with no regulations, because right now we actually have regulations that would garner what they could or could not do. When it comes to political robocalls they would have to follow the same rules that everyone else in our state does when they want to use an automated dialing device. Colleagues, that adds another glimpse or another issue to this whole issue. Beyond the fact that we've not heard a compelling reason of why to change the existing law, and the reasons we've heard of why we should consider it involves political free speech, which I will remind the body what Frank Daley said in the committee testimony, the reason it's in the jurisdiction of both agencies was several years ago there was an attempt to regulate robocalls and place the entire authority with the Accountability Commission. And it was the opinion of a number of folks, I believe the Attorney General included, that because it regulated just political speech, that it was potentially unconstitutional. There is the political speech argument we've heard throughout this debate that essentially, as history will remind us, is unconstitutional. So let's take that argument out of why we need to pass LB418 and the other amendments. The last issue in the sense of why we need to do this is it's more efficient, it provides efficiency for people to be able to go to one entity or one agency to provide these political robocalls to the consumers and voters who despise them. Well, I offered an amendment, AM1705, that does exactly that. It moves all of the... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...political activity that was in the Accountability and Disclosure Commission, roughly 5 percent, and I'm being generous with that, maybe 2 percent that garners all of this issue, and moves that 2 percent over to the Public Service Commission. This body did not adopt that amendment. And the reasons why were because it deals with political things, it should go under the Accountability and Disclosure Commission, disregarding what statute lays out of what both of these entities are charged to regulate. The Accountability and Disclosure Commission has informed us they do not have the legal authority to go after businesses or companies that provide these calls. Even adopting AM1717, we provided a toothless registration of saying, tell us who you're using. But we don't have the ability to actually do anything about it. We can't investigate them. We can't provide a public hearing the same way the Public Service Commission can, which if they're found guilty of breaking a state law, we can revoke their license. [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Burke Harr. [LB418]

Floor Debate
January 23, 2012

SENATOR HARR: Thank you, Mr. Lieutenant Governor. And welcome back, fellow members of the Legislature. I trust you all had a very nice weekend. I was home last weekend and talking to constituents. And they asked, hey, what are you doing down in Lincoln? Anything exciting? And I said, you betcha. We're making it easy for special interests to call you during your dinnertime. They said, ha, ha, ha, you must be kidding. You're not that dumb, are you? And I said, well, this...we're working on a bill right now that changes the rules of the game. And they said, well, what's wrong with the rules right now? Are they unconstitutional? No, they're not unconstitutional. No one has made the argument or presented any case law that says current law is unconstitutional. Oh. Well, are people having a tough time making robocalls? Because I sure seem to be able to get them. Well, that's the argument, near as I can tell, is that you have to go to two agencies and that's too heavy of a burden placed on individuals by the government. And so that's why we're making this change. And that's the burden of proof for this change. It's my opinion that if we change current law, the person bringing forth the change has the burden to say, this is why we need to change it. And the reason is because it's too hard to go to two agencies. Would Senator Nelson yield to some questions, please? [LB418]

PRESIDENT SHEEHY: Senator Nelson, would you yield to Senator Harr? [LB418]

SENATOR NELSON: Yes, I will. [LB418]

SENATOR HARR: Thank you, Senator Nelson, and good morning. So you've heard what I've been talking about that one of the arguments is that you have to go to two different agencies. Let me ask you a question. If I were to do a push poll that said, would you be more or less likely to vote for Jim Smith if you knew he didn't like puppies and that he killed puppies for fun? Would that be reportable? [LB418]

SENATOR NELSON: Reportable to whom? [LB418]

SENATOR HARR: Good question. Would anyone have to report, the person paying for that phone call have to report it to the Nebraska Accountability and Disclosure Commission? [LB418]

SENATOR NELSON: I do not believe that they would. [LB418]

SENATOR HARR: Okay. Would they have to report it to the Public Service Commission? [LB418]

SENATOR NELSON: Yes, they would because it doesn't come under the purview of the NADC. Push polls and polls, polling stays with the PSC. [LB418]

SENATOR HARR: Okay. Now if I said, vote for Burke Harr, he loves puppies, who

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

Floor Debate
January 23, 2012

would that have to be reported to? [LB418]

SENATOR NELSON: If there's no message there, if it's a question, it goes to the PSC. [LB418]

SENATOR HARR: So vote for Burke Harr, he's a good guy, would go to the PSC? Is that correct? [LB418]

SENATOR NELSON: Yes. [LB418]

SENATOR HARR: And would it also go to the Accountability and Disclosure Commission because I'm advocating for, in this case, myself, a very worthy candidate? (Laughter) [LB418]

SENATOR NELSON: I would suppose it could, but if it's a poll or a question then I wouldn't see any necessity to give it to the NADC. [LB418]

SENATOR HARR: Well, and this one it wasn't a question. It was...well, let me ask you this, if it says...if there's a question and an advocacy, to whom would that party have to register? [LB418]

SENATOR NELSON: I suppose to be safe you would register with both of them. [LB418]

SENATOR HARR: Okay, thank you. And that makes my point, ladies and gentlemen. We don't know. We have taken something, muddy the argument is, and now we're making it muddier. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR HARR: There now are questions of when, where, and whom do you report to? The previous law--clear, concise--you report to both. Now what we've done is this bill encourages reckless mudslinging because groups that benefit from the attacks do not have to take responsibility for the calls or for their accuracy. What we want to do is...well, what this bill does is makes it easier for special interest groups to make more robocalls because they have the insider knowledge, they have the ability to hire the lawyers. I think the current law as it stands is clear, a bit difficult, but clear and concise. Now we have questions. Well, maybe here, maybe there, to be safe, I'm not quite sure. Let's keep the law as it currently is. Thank you very much. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Harr. Senator Ashford. [LB418]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. I'd like to ask some

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

Floor Debate
January 23, 2012

questions, I'm not sure to whom I should direct them. But maybe both Senator Nelson and Senator Mello, one after the other. But let me just...let me ask Senator Mello a question real quickly. [LB418]

PRESIDENT SHEEHY: Senator Mello, would you yield to Senator Ashford? [LB418]

SENATOR MELLO: Absolutely. [LB418]

SENATOR ASHFORD: Since this bill passed in '08 has there been any kind of decrease in use of robocalls for political activity? [LB418]

SENATOR MELLO: That's...I wouldn't be able to answer that question, Senator Ashford. [LB418]

SENATOR ASHFORD: I mean, I don't know the answer to that. What I'm trying, this is not a trick question. I'm just trying to get at what we're trying to address here. [LB418]

SENATOR MELLO: That's the question I've been asking as well. [LB418]

SENATOR ASHFORD: No, not only with this bill but with the other bill, I mean, with the bill we passed in '08. I agree with you, Senator Mello, that we do need to have appropriate regulation of these calls. And I think what I said last week is that I feel much more comfortable with this regulation or this addressing of this issue at the level of NADC so that we place it in the agency that has general jurisdiction over these matters generally. So let me ask this, if you know, and I really...I don't know. When the PSC receives notification of the registration of a robocall machine, what is it? Is it a number or a description of the machine or do you know? [LB418]

SENATOR MELLO: A company that seeks to provide or do these services in Nebraska has to file a permit or request a permit and file the appropriate paperwork with the Public Service Commission to show who they are and what they're doing. [LB418]

SENATOR ASHFORD: Okay, so... [LB418]

SENATOR MELLO: An individual person though, after that's done, after the company has filed a permit, the individual user, whether it's a political candidate, a committee or a business has to provide... [LB418]

SENATOR ASHFORD: The script. [LB418]

SENATOR MELLO: ...what their intended use of this is, as well as provide a script of what they're intending to say on each individual call that they seek to do. [LB418]

Floor Debate
January 23, 2012

SENATOR ASHFORD: Okay. Now... [LB418]

SENATOR MELLO: But I would remind you,... [LB418]

SENATOR ASHFORD: Now let me just ask this, you can remind me later (laugh), but let me just ask this. The...does the PSC do research or analysis into before a permit is approved? Or do they just approve the permits? [LB418]

SENATOR MELLO: That is something you would have to probably ask the Public Service Commission more details of their interactions or how they do their regulatory process. My understanding is that anyone who has applied, there's not been anyone who's been denied a permit to do these calls in the state. [LB418]

SENATOR ASHFORD: I guess what I'm...and I think part of my problem with this issue is, one, we have so many important issues ahead of us to take up. But that doesn't mean this is less important, because political speech is a significantly important issue. To some extent my concern is that we have...the NADC has lost some of its essential powers. [LB418]

SENATOR MELLO: That is to the contrary. What actually Frank Daley has mentioned both when the bill originally passed as well as in the... [LB418]

SENATOR ASHFORD: No, no, not on this bill, not on this bill. We've seen fit to, you know, we've reduced and eliminated the public spending in campaigns. So we've actually gone the other way on that issue, on those issues. But what I'm trying to ferret out here is, number one, are we really having an impact on this vitriolic speech that we're talking about? Are we really stopping or even putting some kind of a roadblock of some kind or obstacle in the way of very vitriolic, meanspirited, awful stuff that we're talking about here on the floor? And I guess do you think we are? [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: Senator Ashford, I appreciate that question and thank you for clarifying a little bit. Our current regulation process holds everyone accountable through...to...by the same means and measures. By adopting this amendment, the committee amendment and the underlying bill we create loopholes, depending upon the type of committees that are formed, which means these loopholes allow people to do these vitriolic calls whenever they'd like and there's no transparency behind it. [LB418]

SENATOR ASHFORD: All right. Right and there's the type of committee, the spending limit and so forth and so on in the bill. [LB418]

SENATOR MELLO: State or federal activity as well. [LB418]

Floor Debate
January 23, 2012

SENATOR ASHFORD: And it may be that, and agree with you that it does create loopholes in the bill. But what I'm trying to get at is the essential critical issue, which is telling the public that somehow these robocalls are going to go away one way or the other. And I just...they're not in my view. I mean, they're not going to go away. The meanspirited speech is going to go out there. And it's going to be...and is not at thoughtful... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR ASHFORD: ...discourse. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Council. [LB418]

SENATOR COUNCIL: Thank you, Mr. Lieutenant Governor. Again, I rise in opposition to LB418 as amended. We have heard a lot of discussions about the constitutional aspects of free speech and the alleged infringement of free speech rights in the arena of political speech under the current law. Certainly, I take issue with that because under the current law all robocallers have to provide a script to the Public Service Commission. So there is no distinction, there is not specific infringement on any constitutional right of free speech. But I think a broader constitutional issue has been ignored in this debate. I believe that LB418 as amended is unconstitutional. I think we ignore the fact that the Public Service Commission of Nebraska is an independent constitutional agency. It is provided for by the Constitution of the state of Nebraska. And that constitution places within the jurisdiction and authority of the Public Service Commission regulation of common carriers. Included in that is regulation of telecommunications common carriers. There is case law in this state. The Nebraska Supreme Court has previously held that this body cannot take authority over common carrier regulation away from the PSC and give it to any other governmental agency or department. The Nebraska Supreme Court has held that. The most recent decision was 1989. What the Legislature can do in that instance is occupy the entire field and we can pass a law that says we would regulate this specific area of telecommunications common carrier operations. But I submit that we would be violating the Nebraska Constitution by taking authority over the regulation of a telecommunications common carrier, which is implicit in this bill, and giving it to the Nebraska Accountability and Disclosure Commission. We are constitutionally prohibited from doing that. And that is precisely I'm sure why the legislation--LB720, which is sought to be amended by this bill, was drafted the way it was drafted. It keeps regulation, the regulation of automated dialing devices within the jurisdiction of the Public Service Commission with some limitation. And that limitation is there's no fee charged in certain situations. But the authority and the jurisdiction over the regulation of telecommunication common carriers and their operations rests solely and exclusively within the jurisdiction of the Public Service Commission unless this Legislature takes action to preempt that field and we,

Floor Debate
January 23, 2012

the Legislature, regulates that aspect of a common carrier. We cannot by constitution transfer the duties of the Public Service Commission to the Nebraska Accountability and Disclosure Commission because what we're doing by LB418 is transferring the authority to regulate telecommunications common carriers in this small area of political automated dialing... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR COUNCIL: ...device usage. And I submit to you that that is unconstitutional. We do not have the authority to do that. There is no reason for us to do it. Again, the initial issue was people only want to have to go to one place to get a permit. Well, that one place should be the Public Service Commission because they are the constitutionally mandated commission with the authority over such regulation. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Council. Members requesting to speak on the motion to reconsider, we have Senator Lathrop, followed by Senator Mello, Senator Avery, Senator Burke Harr, and Senator Nelson. Senator Lathrop. [LB418]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I want to talk about AM1717 and the pending motion to reconsider that. Let me visit for just a second about what AM1717 did. It requires now that you...if we, as part of LB418, AM1717 would require that we file with Accountability and Disclosure, let's assume that you're in the narrow class of people that will be regulated going forward, and you want to do a robocall. Now I don't know about you, maybe you've never done one. I had to do a couple in my race. And they were always in response to some mailer that came out. Right? Somebody sends some lie into your district and you need to communicate that to your constituents. And so you want to tell them, you just got something in the mail, it is a complete fabrication, it is a lie by the other guy or one of his surrogates. And now you want to file or do a robocall. And assume with me that your mail, the mail that your opponent or one of his surrogates sends in happens on a Saturday. Okay? AM1717 would require that before you can respond to that scandalous piece of mail that just hit your district, you have to file something with the Accountability and Disclosure, which by the way is not open on Saturday. And it's not open on Sunday. So now you got to wait until Monday. Okay? Now, of course, your neighbors have all gone to church, they've all talked about that scandalous piece of mail that landed in their mailbox on Saturday. And you can do nothing about it. You can't engage in this form of political speech until Monday when you file something that Senator Nelson's amendment would require. I'm going to tell you I think that's unconstitutional. And we can stand around here and talk about the constitution and you have people that stand and say, that's unconstitutional. I can tell you, you cannot restrain political speech. And this would effectively restrain political speech for a couple of days and that's too long. The Supreme Court is clear, you cannot prohibit spontaneous political speech, and that's exactly what AM1717 does. So regardless of where we're at in this process, regardless of where you're at on this

Floor Debate
January 23, 2012

bill, AM1717 has just loaded LB418 with an unconstitutional provision. And I would strongly encourage you to support Senator Mello's motion to reconsider. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Mello. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. And thank you, Senator Lathrop, for bringing that point back to light. I think part of the underlying concern that seems to be more apparent, more and more you dig into the Nebraska Accountability and Disclosure Commission's statutes in regards to what is or is not regulated raises the concern Senator Lathrop just mentioned that ultimately we are creating more loopholes than were actually problems we're trying to solve by removing the legal oversight that rests in the Public Service Commission and moving it to the Accountability and Disclosure Commission. Now I expressed to Senator Nelson last week, and I appreciate his consistency. And as there are other members of this body who have fought and been consistent in regards to trying to deregulate our political campaign finance laws, to try to deregulate any kind of regulation that oversees our political campaigns, of trying to remove some of the transparency that's engaged. And I expressed to Senator Nelson that he's been consistent, that he feels that political speech should not be inhibited whatsoever. And I told him that's a legitimate policy position that me and him just have a fundamental disagreement on. He's a good man, he's got a good soul, he's a good colleague to work with on the Appropriations Committee. This is just one issue we disagree on. I think unfortunately, as Senator Lathrop mentioned, we are seeing more and more loopholes created in our political campaign finance law. Senator Ashford asked the question, if we adopt this will these terrible, vicious, slanderous calls keep coming? Yes, they will keep coming. And the reality is LB418 removes the transparency that's currently put in place to require entities to stand by what they put on the telephone. Public Service Commission is not regulating what they can say, but you have to file a script of what you're going to say. So if someone wants to say something damaging, that's a lie, that's slanderous against Senator Ashford, they do an automated call under our current law, he or a volunteer or the public at large can go to the Public Service Commission, see who paid for that call, see the company who did the call and get a copy of the script which was used against him. That, colleagues, is providing transparency in our political process. It's providing transparency to voters who want to know who are behind these slanderous calls. You add an extra loop now with the Citizens United ruling last year, opens up a loophole in our federal campaign finance laws in regards to what these, quote unquote, super PACs can do. As Senator Harr mentions and Senator Lathrop mentioned earlier today, those entities now, if we adopt this bill, are completely unregulated whatsoever of any political activity utilizing automated dialing devices. They can do and say whatever they want, there's no repercussions because they fall outside of what Senator Nelson put in AM1717. They don't follow state laws and they don't follow federal laws. So that means more than likely you will get phone calls that are untrue, that slant an angle, slant an

Floor Debate
January 23, 2012

issue to benefit one entity or another. And I've not talked to one voter neither in south Omaha or across the state who thinks we should be passing laws that opens up our political democracy to more of that. People want to know the truth. People want to know what's going on in their government. And when someone says something they want to be able to verify what they're saying. Our current regulatory framework over these automated dialing devices provides that. As I've mentioned before and I'll mention again, there's been no entity that's been denied the ability to do these calls. There's not been one candidate, one independent committee or PAC... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...who has said that their political speech has been infringed on, because it's not. They simply have to follow the same rules that anyone else in our state who chooses to use these devices have to follow. Political speech is sacred. And this Legislature and the Governor understood that when they passed the initial legislation to provide regulations over this industry and over this subject. We have an ability to stop a bad bill, colleagues. We have the ability to stop a bill that does nothing but cause more headaches for consumers, more headaches for political candidates, and causes more headaches for our democracy. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Avery. [LB418]

SENATOR AVERY: Thank you, Mr. President. We have spent almost eight hours discussing this issue and I don't think that the issue is any clearer now than it was when we started. And that's a bit disturbing. I recall back in '08 when we passed the law that LB418 would overturn we were trying to grapple with and resolve a growing problem. And all of us who were on the ballot in '06 probably had to deal with robocalls, many of them malicious, many of them completely false. And there was the feeling that we needed to have some way to hold these robocall vendors accountable. We wanted to have transparency. And I recall that we decided that the best place to put the enforcement of the law that we were passing at that time was in the agency in this state that has the most experience dealing with robocall companies, and that's the Public Service Commission. They work with robocalling vendors all the time, they know who the firms are. There are only a number, a handful of these around the country. And when someone is seeking to do robocalling they only have a certain number of companies they can go to. And the PSC knows who they are and they work with them, they know the industry. So that was why we placed the enforcement of the law we passed in '08 with the PSC. If we move that enforcement to the NADC we'll be placing enforcement with an agency that does not know the industry, they don't have staff experience dealing with this industry, they don't have the knowledge of the industry that the PSC does. Now that does not in any way say that the Accountability and Disclosure Commission is incompetent, I don't even mean to suggest that at all. It's just to say that if we want to have adequate enforcement of the controls that we sought to put on this

Floor Debate
January 23, 2012

industry in '08 it ought to be in the agency that has the knowledge and experience and the bureaucratic infrastructure to deal with it effectively. Here is what I think would happen if this passes. The Public Service Commission still will be dealing with robocalling firms. What they'll have to do is sort the messages of these firms to determine whether any the messages have political content. If they are determined to have political content, then they'll have to forward that information and the robo vendor to the NADC. The NADC does not have any effective means to identify these vendors in advance. They don't know where they are, they don't know who they are. So what will happen it seems to me is that we'll have a less transparent, less effective enforcement infrastructure. And it may take years before the NADC can develop the expertise, develop the knowledge of the industry and develop the infrastructure for effective enforcement. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR AVERY: I have a fear that if we pass AM1717 and then go on to pass LB418 that we will create a more confusing and convoluted system. In fact it might be so confusing and convoluted as to be completely impotent, therefore ineffective. So I urge you to vote no on AM1717 and to vote no on the underlying bill. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Burke Harr. [LB418]

SENATOR HARR: Thank you, Mr. President. Well, it seems like this debate is rather one-sided. We've been able to poke some holes in this bill. And I haven't heard a lot of defending of this bill or amendment. And I'm just wondering why. Why are people afraid to stand up and say, I want special interests to make more robocalls; my constituents want to get more robocalls from special interests. But they don't just want more robocalls, they want less accountability because it's a waste of their time for the paid for by citizens for whatever at the beginning. My constituents, I'm sure a lot of people would argue, want to hear just the message and they want to be able to determine if it's truthful or not and that's good. But in order to determine the truthfulness or as we like to say "truthiness" of a message I think it's important that we know who's sending it so that we can better...we have a better idea and we can follow up and say, you know what, I don't like that group that did that if it's not truthful, and I'm not going to support what they support. And I think you'd be surprised how many people would say that. But fortunately with this bill we don't have to worry about that. So that's good. Now last weekend my constituents told me just the opposite. They said, you know what, we understand robocalls exist and that's just a fact of modern society. But those guys down in Lincoln did a good job a couple of years ago, they passed a bill, and it was clear where you had to report, who you had to report to. And because of that bill I know who's paying for it because it says, paid for by right at the beginning. And that's great. And then because sometimes I get so excited I don't remember what they say, I can call down and I can

Floor Debate
January 23, 2012

get a copy of the script and I can find out what that person said. And I think that's a good thing. Well, if that's what you think, this bill would change that. I haven't heard a good public policy reason for changing the bill. I've heard, well, you should vote for this bill because it's constitutional. Well, there's more than just is a bill constitutional. The question is, is it good public policy? And then if it is, if you agree with the underlying that push polls wouldn't have to be reportable to Accountability and Disclosure, the next question is, are there unintended consequences? And the answer is, well, we don't know all of them, but I'm sure there will be. But let's try to figure out what there are. And when we look at what they are it's that they're...we don't know necessarily who's sending them and we don't have a copy of the script. If you believe in something stand up for it. I think the people making the robocalls should not be afraid to say, you know what, I said that. I'll say I paid for it because I did, as a matter of fact, I'll give you the script. Here you go. What's wrong with, if you believe in something, standing up and advocating for it and not hiding behind a law that says I don't have to. Stand up, be proud. I challenge my fellow members--stand up, be proud of this bill. Tell me why you're for it, why you think it's good public policy to make it easier for special interest groups to make robocalls to your constituents at dinnertime, when they're enjoying time with their family. Go ahead, say it, be proud. Instead what I hear is the cone of silence. And so maybe when this does get passed and they get angry they can say, you know what, I never stood up and advocated for that bill. I don't know, I don't know the reasoning. All I'm left to is speculate because no one stood up and said this bill is... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR HARR: ...necessary. Without this bill special interests can't robocall during my constituents' dinnertime. Special interests right now are overly burdened, they have to report what they're saying. Special interests are overly burdened because they have to go to a number of agencies. Special interests are burdened because they have to file a script. I stand up for the hardworking middle class. I have no problem with robocalls, but if you're going to do them let's make sure we know what's being said. And if there's a challenge or a question about it we know who sent it and what they said. Seems fair to me. If you feel otherwise, I would encourage you to get up and say, no, I want special interests to be able to do robocalls more easily. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Harr. Senator Nelson. [LB418]

SENATOR NELSON: Thank you, Mr. President, members of the body. I want to address some of the comments that have been made up to this point. First, let's talk about what Senator Council was maintaining, that the PSC is to control all and monitor and regulate all telecommunication common carriers. Yes, they are. But we also find that in the current law there are exemptions that have been put in place by the Legislature. And we know what some of those exemptions are. And I'm not going to

Floor Debate
January 23, 2012

recite them. What we're doing here is creating another exemption that exempts any calls that have to do with political messages or with political discourse. So I don't find any unconstitutionality in that. I think it's something that we've done all the way along, in other words employers can send out robocalls to their employees, schools can send it to parents. We're just saying that they don't have to come under the purview of the Public Service Commission and neither do we when we're dealing with political discourse. I'm just going to pose a question as to Senator Lathrop's contention that we've got unconstitutionality because you can't get to the NADC on a Saturday. Well, is the Public Service Commission open on a Saturday? And you're supposed to file under the existing law a script of what you're going to do and all the things that you're going to do. And you may want to do that in a hurry, yes, if you're trying to refute someone at the last minute. But I don't think you're going to find the PSC open on Saturday or Sunday. You're simply going to have to wait until Monday. So you still have the problem. Does this open up a loophole? Does LB418 and AM1717 do that? Members, we already have the loopholes, they're there. We aren't creating any new loopholes. And when we hear my esteemed colleague, Senator Avery, say that the PSC knows all of the carriers that handle robocalls, yes, they do. But we're talking about entities that don't file either with the Public Service Commission or with the NADC. And I might add, as far as the Public Service Commission is, they might find out about illegal robocalls and they have jurisdiction over anything that comes into the state of Nebraska. But if those entities are located outside the state of Nebraska, they don't have...they can't enforce it anyway, they can't do anything about that. They can advise and say, please don't do this. But...and I would point out that we have pretty much under the NADC the same enforcement policies that the PSC does. But if you can't control a renegade or abuse outside the state of Nebraska from some of these, then there's nothing that we can do about that. It would be nice perhaps if we could do away with robocalls altogether, but we know that we can't do that. I just would like to point out that there is a Supreme Court case, Rowan v. Post Office Department, where the United States Supreme Court upheld a statute that allowed recipients of advertising mail they found sexually offensive to notify the Postmaster General then who would order the sender to stop. The NADC has the power to enforce penalties for violations... [LB418]

SENATOR FISCHER PRESIDING

SENATOR FISCHER: (Gavel) [LB418]

SENATOR NELSON: ...after the robocalls are made, not before. That's the difference here. In the interest of First Amendment rights and political discourse I'm maintaining here with LB418 and the amendment that that message... [LB418]

SENATOR FISCHER: One minute. [LB418]

SENATOR NELSON: ...should not be filed and need not be filed, that all we need to do

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

Floor Debate
January 23, 2012

is file a statement of the intended use of that statement. And then we take it from there.
Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Nelson. Members requesting to speak on the motion to reconsider, we have Senator Ashford, followed by Senator Mello, Senator Schumacher. Senator Ashford. [LB418]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. I really think we need...Senator Schumacher, you know lots of things. Can I ask you a question? [LB418]

PRESIDENT SHEEHY: Senator Schumacher, would you yield to Senator Ashford? [LB418]

SENATOR SCHUMACHER: I will. (Laugh) [LB418]

SENATOR ASHFORD: I am...thank you, Senator Schumacher. And I'm not being flip. I truly would like to understand what's going on here. [LB418]

SENATOR SCHUMACHER: Me, too. [LB418]

SENATOR ASHFORD: And you've reviewed this matter, have you not, and have read the amendments? [LB418]

SENATOR SCHUMACHER: I've been...yes, sir, I have. [LB418]

SENATOR ASHFORD: Okay. Let me...can you tell me or do you know what happens today if a political robocall, political speech-like robocall comes into the state and there is not a registration of that device, do you know what happens? [LB418]

SENATOR SCHUMACHER: No, I don't. [LB418]

SENATOR ASHFORD: Does anybody know what happens? Senator Mello, may I ask him a question? [LB418]

PRESIDENT SHEEHY: Senator Mello, would you yield? [LB418]

SENATOR MELLO: Yes. [LB418]

SENATOR ASHFORD: Do you know what happens if a company does not file its required application for a permit before a robocall occurs? [LB418]

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

Floor Debate
January 23, 2012

SENATOR MELLO: A consumer can file a complaint with the Public Service Commission, providing they can provide some kind of ample evidence that these calls were made, to determine whether or not they had filed or not filed. And if a company was deemed to do this without filing, there would be a public hearing held, according to the statute, a consumer complaint could draw a public hearing with the Public Service Commission, which when fines would be levied. And depending upon the severity of the issue they could ultimately remove their ability to do business in Nebraska. [LB418]

SENATOR ASHFORD: Let me ask Senator Schumacher another question, if I could. [LB418]

PRESIDENT SHEEHY: Senator Schumacher, would you yield? [LB418]

SENATOR SCHUMACHER: Yes. [LB418]

SENATOR ASHFORD: If, and of course that all happens after the fact, the robocall has already occurred and the damage has been done. But I agree that that would have some...may have some impact on that, especially a purveyor of the robocalls that wishes to do it on a recurrent basis. Under this bill that Senator Nelson has put forward, and I have talked to Senator Nelson about this. And I am absolutely convinced that he does...that Senator Nelson does not support lack of transparency. And I just...I don't think...he may support other things, but he doesn't support that. And I think it's a good faith effort to address the issue. But if we...an issue that is very, very confusing. But if we were to provide that the Public Service Commission could still receive the application for a robocall device and allow the NADC to receive whatever information we delineate that it should receive, do you find that to have constitutional infirmity under the Nebraska Constitution or any other? Have you looked at that issue? [LB418]

SENATOR SCHUMACHER: In fact that's why I pushed my button to talk. We do have an issue because the Nebraska Constitution says that there will be a Public Service Commission consisting of not less than three, nor more than seven members as the Legislature shall prescribe. The powers and duties of such commission shall include the regulation of rate, service and general control of the common carriers as the Legislature may provide. But in the absence of specific legislation, the commission shall exercise the powers. To the extent this is regulation of a telephone or related service, a common carrier service, there is a Supreme Court decision that goes back to 1989 which seems to suggest that the Legislature cannot take regulation from the Public Service Commission and put it in some other place. It can rule the roost on its own if it wants to, but it can't shift it around. So I think that's the... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR SCHUMACHER: ...problem with this particular issue on the constitutional

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

Floor Debate
January 23, 2012

level. [LB418]

SENATOR ASHFORD: Okay. Can the Public Service Commission, in your opinion, on its own motion or its own initiative take action against a common carrier under that Supreme...whether or not there is an actual filing of a robocall device? [LB418]

SENATOR SCHUMACHER: I think it probably could, but this whole regulatory scheme is absurd in the age of Internet because you don't go attaching boxes onto lines anymore. You do this all with computers that are already attached. [LB418]

SENATOR ASHFORD: And I guess that's...thank you, that's an excellent answer. And I think Senator Council suggested the same issue. I don't have anything else to add, except there's a great deal of confusion here. I really...I don't think this body...the best thing for us to do is maybe to stand back, spend some time on this bill and then come back to the body. I don't think any of us has a clear understanding of... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR ASHFORD: ...what we should be doing here. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Mello, and this is your third time. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I don't disagree with Senator Ashford. Maybe it would be best if we take a step back and not move forward on passing legislation that, one, we question what it does; and, two, we question what actually it will accomplish. For clarification purposes though I know there was a conversation, Senator Nelson and Senator Lathrop were discussing separately in regards to what actually happens in regards to filing scripts now. If you get on the Public Service Commission's Web site you can see that after your automated dialing device has received its permit, you simply can e-mail or fax the script any time you choose to do a call. So in the sense of the commission being opened or closed on a Saturday or Sunday, it states very clearly on their Web site that you can e-mail your script or fax your script on weekends and they will get it on Monday and thus your call would be legal following the LB20 regulation framework. So I think to put that rumor to rest I think that's some clearly defined information on the Web site. The issue still at hand is no one has provided a compelling reason to change why we have what we have. I mean, with all due respect to my colleague Senator Ashford, who's a friend, and I understand his desire to want to see something happen, there has been no claim made of what is wrong with the existing system. Political speech is not infringed upon. I just said if you choose to do these calls on a Saturday, as long as you register your company or your company registers well before then, you simply just have to file a script or e-mail a script in. The PSC can't regulate what you say. But the public does get a right to know what

Floor Debate
January 23, 2012

you do say on these calls. That's the underlying issue beyond people not wanting to see these automated robocalls is whether or not we want people to stand behind their message. Under the current Accountability and Disclosure Commission we have no statutes that require someone to say, I approve this message, whether you're an independent group or a candidate. To what Senator Lathrop and Senator Harr mentioned, nameless, faceless entities, in the words of Senator Lautenbaugh, who's used that multiple times over the last three years in arguing why we should scrap our campaign finance laws, nameless, faceless entities can do these calls whenever they want if we move forward on this bill. Why? Because they're not regulated under this act by the adoption of AM1717 and AM643. Senator Lathrop mentioned also if you are a federal campaign activity that falls under the definition of a, quote unquote, super PAC, which is now being more prevalent in our federal campaign activities, you wouldn't have to file with anyone. Forget about filing the script 24 hours after the fact. You don't have to report to the Public Service Commission or the Accountability and Disclosure Commission which, colleagues, begs the question, why do we want to deregulate something that works and provides transparency for voters and consumers? I've heard people who are supporting this bill argue against that same concept when we discussed getting rid of the campaign finance laws. They want people to stand by their materials. They want people to provide phone numbers, addresses, names. They want people to stand by the materials they send in our mailboxes, but we already have a law now that requires people to stand by what they send over the telephone. But yet for some reason that's not good or we've been unable to make arguments consistently of why we need to do it. But we just need to do it. Colleagues, we don't pass laws this way. If this really is an issue then we should recommit it to committee. If it's really an issue we need to study, then let's recommit it to committee. Otherwise, let's do an interim study on it. There has been no definitive answer or explanation... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...of why we need to change what we need to change. Senator Council has mentioned some questionable issues in regards to carriers and existing state statute that may make this unconstitutional. Colleagues, I appreciate the candid debate we've had over the last seven days. I just have not been compelled to see, one, a compromise that exists; and, two, what the public policy that we're actually trying to achieve. When there's been no complaints filed, there's been no fines levied, people have followed the existing process, no constituent said this is burdensome for me. Why are we changing a process that works? This is a solution in search of a problem. And I urge you to move to reconsider AM1717. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Schumacher. [LB418]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. When I first pushed my light on it was to comment on the constitutional issue that Senator

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

Floor Debate
January 23, 2012

Ashford took care of. But over the weekend I was talking with a young entrepreneur about the opportunities that apparently are here in the world of robocalling. And in today's world you can make your computer dial phone calls over the Internet to the regular phone system or to other Internet telephones or to cellular phones. And so you can make your computer do that. And whether or not it would be possible to build a Web page in which one would go to, one would upload a message, just like you upload a music tune or an MP3 file, enter in the prefix or arrange the phone numbers you wanted dialed and swipe your credit card and for so many cents a call this machine would do it. And anybody could do this, you can spend 10 bucks, you can spend 100 bucks, you could even spend up to the reporting limit of 5,000 if you were so of a mind-set. Senator Nelson, would you yield to a question? [LB418]

PRESIDENT SHEEHY: Senator Nelson, would you yield to Senator Schumacher? [LB418]

SENATOR NELSON: Yes, I will. [LB418]

SENATOR SCHUMACHER: Senator Nelson, if I were to go to such a Web page and upload my "nastygram" and give a list of phone numbers to the computer as to who I wanted, what phone ranges I wanted dialed, and swipe my credit card and say it came to \$500, would I have to report to anybody? [LB418]

SENATOR NELSON: I didn't hear your previous discussion, but I don't believe you would have to. [LB418]

SENATOR SCHUMACHER: Thank you. The whole point of this is this entire regulatory scheme is designed for another age when long distance calls were expensive, when this thing made sense, when people came into a phone exchange, plopped down a big box and started dialing. And that needed to be registered because it overloaded phone systems and it was just a...adding those kind of things to an exchange made sense for the Public Service Commission to regulate. Robocalls are a big problem. This regulatory scheme with or without this particular LB418 does not fix anything. And why don't we just move on? Thank you, Mr. President. [LB418]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Schumacher. Mr. Clerk. [LB418]

CLERK: Mr. President, I have a priority motion. Senator Nelson would move to invoke cloture on LB418. [LB418]

SPEAKER FLOOD: Senator Nelson, for what purpose do you rise? [LB418]

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

Floor Debate
January 23, 2012

SENATOR NELSON: I would ask for a call of the house, Mr. Speaker, and also a roll call vote in regular order. [LB418]

SPEAKER FLOOD: Members, before we deal with the motion to invoke cloture, there has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB418]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB418]

SPEAKER FLOOD: Members, the house is under call. Senators, please record your presence. All unauthorized folks please leave the floor. Those unexcused senators outside the Chamber please return to the Chamber. The house is under call. Senators Burke Harr, Pirsch, Larson, Council, Lautenbaugh, Christensen, Hadley, please return to the floor and record your presence. The house is under call. Senator Pirsch, the house is under call. Please return to the Chamber and record your presence. Senator Nelson, all members are present or otherwise accounted for. The Chair will now consider your request to invoke cloture pursuant to our rules, Rule 7, Section 10. It is the ruling of the Chair that there has been full and fair debate on LB418. Members, the first vote is the motion to invoke cloture. All those in favor vote aye; all those opposed vote nay. We will do a roll call vote in regular order. Mr. Clerk, please read the roll. [LB418]

CLERK: (Roll call vote taken, Legislative Journal page 324.) 26 ayes, 17 nays on the motion to invoke cloture, Mr. President. [LB418]

SPEAKER FLOOD: The motion to invoke cloture is not adopted. I raise the call. Mr. Clerk, we now proceed to LB60. Prior to moving to LB60, any items, Mr. Clerk? [LB418]

CLERK: I do, Mr. President. Thank you. Mr. President, your Committee on Natural Resources, chaired by Senator Langemeier, reports LB828 to General File with committee amendments attached. I have hearing notices from the Natural Resources Committee, the Agriculture Committee, the Education Committee, and the Appropriations Committee, all signed by their respective Chairs. Also, a hearing notice from the Business and Labor Committee. (Legislative Journal pages 325-327.) [LB828]

Mr. President, the next bill, LB60, a bill by Senator Krist. (Read title.) The bill was introduced on January 6 of last year, referred at that time to the General Affairs Committee for public hearing. The bill was advanced to General File. I have no amendments at this time, Mr. President. [LB60]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Krist, as the introducer of LB60, you're recognized to open on the same. [LB60]

Floor Debate
January 23, 2012

SENATOR KRIST: Thank you, Mr. President, and good morning, Nebraska; good morning, colleagues. I appear before you today in introduction and ask for your support of LB60, a bill I introduced on behalf of the Nebraska Licensed Beverage Association. Before I start on any specifics, I want to point out you have two handouts that have been given to you. One are the actual "Guidelines for Using Underage Cooperating Individuals during Compliance Checks," and I think that if you've never read through those guidelines, it would be instrumental to today's debate. And then another article from the World-Herald on fake IDs and how our bouncers and our retailers deal with those issues. At the bottom of that piece of paper, take reference to a statute, "53-180.06 Documentary proof of age," which gives the allowable identifications that should be used to prove age. LB60 prohibits law enforcement officers and minors who are conducting compliance checks from consuming alcohol or liquor during the course of their compliance checks. The bill also requires any person under 21 years of age to assist with compliance checks to provide truthful answers to all questions posed by a retailer, notably questions about their age. I have been asked...because I had the privilege of having this lay over for the year, I've been asked so many times, what is my motivation? Two. First of all, I don't think that any law enforcement officer on duty or off who is performing a compliance check and has in tow an underage person potentially driving from place to place should have to consume alcohol while performing a "compliance check," and I use the word "compliance check" in quote, because I think there's a decisive difference between proving age in a compliance check, which is law enforcement making sure that people are doing things correctly, and potentially engaging in a sting operation. And I'll go over two definitions for you in just a second. I would like to go through the guidelines but I think I won't insult your intelligence by reading it to you. It is indeed...this handout comes directly from Hobie Rupe who is in a position to give me the exact information. And I think what I'd like to see is fair and honest debate and understanding what a compliance check is and how our law enforcement goes about those compliance checks with other partners in the activity. Let me say at the onset, this is in no way an attempt to circumvent the absolute proof of age or to make it easier for underage folks to either obtain tobacco or alcohol illegally. Let me say that again: not an attempt to circumvent the procedure right now. The only procedure that's reliable in my estimation, in law enforcement's estimation, and in the statute: the primary use of an ID, the primary proof of your age, is your identification. Those identifications that are allowed by our statute are very clear. They are a state ID; a driver's license; a Nebraska state identification card, which is one and the same pretty, much without driver's privileges; military identification card; alien registration card; or a passport. If I'm a bartender in a situation, a retailer in a situation, I'm going to ask you for your identification. If I'm not doing that, I'm stupid--let's just be blunt. We need to ask for an identification because we need to make sure that that ID proves your age. Now if you read the article in the World-Herald by Josefina Loza, you'll see that some folks are extra, extra vigilant. They have had fake IDs put across them. So again, this is no attempt on my part to circumvent law enforcement's ability to go out and catch

Floor Debate
January 23, 2012

a bad actor by stinging them in the operation. I have a couple of quotes or a couple of definitions that I'd like to share with you. The first one is in terms of a compliance check: an act or process of complying with the demand or recommendation; observance of an official requirement. The definition for a sting: a complicated confidence game planned and executed with great care, especially an operation implemented by an undercover agent or agents. Now I think there's a misunderstanding at the highest level in this government of the difference between the two, and I'll quote for you what one of our commissioners had to say about a compliance check. "The use of underage undercover to catch alcohol sales to minors often leads to fines and license suspensions, but the liquor commission says retailers must be assured they've been, quote unquote, stung fairly." These aren't compliance checks. We are borderline going into sting operations where--and I can give you many examples and I'm sure we will have the discussion where I can--where we've gone above and beyond to make sure that it actually borders on a sting. Again, my hope is that today, maybe into tomorrow, that we have a fair and honest debate; that we understand the difference between the IDs--and let me make one other comment about that, those of you who are not familiar with it. If you have someone who is less than 21 years of age and they're asked to show an identification, and it's a state identification in the state of Nebraska, that landscape is vertical, meaning that the license is in vertical form. Now the compliance check should end right there. This person is not legal to buy alcohol. If you want to buy a pack of cigarettes, now it becomes a little math, because you have to prove on that vertical ID that the individual is 18 years old. This in no way keeps us from looking at the primary source as the ID, but it redefines what a compliance check is across the state of Nebraska. Thank you, colleagues, for your attention, and I would welcome fair and honest debate on this issue. [LB60]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Krist. You have heard the opening to LB60. Members requesting to speak: Senator Coash, followed by Senator Carlson. Senator Coash. [LB60]

SENATOR COASH: Thank you, Mr. President. Good morning, colleagues. If you look at the committee statement on LB60, you will see that I was one of the two members on the General Affairs Committee that voted not to advance LB60, and I want to explain why. And as Senator Krist said, we do need to have a debate about this. There are two parts to this bill, and I want to focus my comments on the second part of this bill, which says that a person used in a compliance check cannot...has to be truthful with regard to indicating their age. Senator Krist has laid out his case. He said that this will make the process more fair and it is not the intent of those...but that is not the intent of those who supported this bill in the hearing. The folks who came and supported this part of the bill in the hearing do not want to see compliance checks more fair; they want to see compliance checks go away. I don't believe that was Senator Krist's intent but that is

Floor Debate
January 23, 2012

certainly the intent of those who came and supported this bill. I've sat on the General Affairs, now this is my fourth year, and I've come to realize my responsibility on that committee is to assure that those who have licenses to sell alcohol do it in a responsible manner. And we have a responsibility in that committee to assure that there are tools that allow law enforcement to hold them accountable and to comply with the law. Colleagues, I want you to put yourself in the position of someone who owns a retail establishment that sells alcohol, on-sale or off, and what will occur if this bill is put into law as written. If law enforcement engages an underage person, who by the way, as the guidelines state, has to use their correct ID--so if you look at their ID, it says they're 19 years old. If you owned an establishment, and you decide--and you saw this come through--what would you tell your employees to do? You'd say, hey, the Legislature passed LB60 and they have to tell you now if they are working with law enforcement or not. They can't be dishonest about that. So what I want you to do, every time somebody comes in, is I just want you to ask them: Hey, are you working with law enforcement? And if LB60 is law, they'll have to say, yep, that's it. This will breed laziness with those who are charged to make sure that folks who purchase alcohol have a legal right to do so, because they'll just ask if they're working for law enforcement. And the young person who's working with law enforcement will have to say, well, yes I am. Compliance check over. LB60, as written, weakens our ability to make sure that we have compliant license holders. I reached out to our local law enforcement in my community, and I would encourage you to do that as well. And I asked them, what's going to happen if LB60 as written goes into law; will you still engage in the practice of doing checks to make sure that alcohol is not getting in the hands of underage people? The answer I got, colleagues, was: We're just going to end it; we don't see how we could effectively do compliance checks if the young people we use to do them, while using their correct IDs, cannot be dishonest about their age. And that's what the folks who supported this in committee wanted. They want these checks to go away. And I will tell you, if LB60 goes through as written,... [LB60]

PRESIDENT SHEEHY: One minute. [LB60]

SENATOR COASH: ...what's going to happen is the message is going to go out real quick: Everybody has to tell the truth, so if you see a young person and you're not quite sure, don't worry about checking their ID; just ask them if they're working for law enforcement. If the answer is yes, well obviously, don't sell them any booze; but if the answer is no, you don't have to worry about them being for law enforcement. Now those reputable vendors will still check IDs. But, let's be real, we're not going to have to worry about compliance checks if LB60 goes through. Folks, we need a mechanism to hold license holders accountable. That's why this was put in there. That's why law enforcement participates in these and I think it's our reasonability, colleagues, to assure that law enforcement has the tools necessary in order to do this. [LB60]

PRESIDENT SHEEHY: Time, Senator. [LB60]

Floor Debate
January 23, 2012

SENATOR COASH: Thank you, Mr. President. [LB60]

PRESIDENT SHEEHY: Thank you, Senator Coash. Senator Carlson. [LB60]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'd like to address a couple of questions to Senator Krist if he would yield. [LB60]

PRESIDENT SHEEHY: Senator Krist, would you yield to Senator Carlson? [LB60]

SENATOR KRIST: Absolutely. [LB60]

SENATOR CARLSON: Senator Krist, LB60 is really aimed, as I look at the summary of the bill, is to prevent minors from consuming on the job. Is that correct? [LB60]

SENATOR KRIST: Both the law enforcement officer who is the escort, and the juvenile, should not consume on the job. [LB60]

SENATOR CARLSON: Okay. And the second part is to require those that are on the job to tell the truth. [LB60]

SENATOR KRIST: That the underage individual who is involved in the compliance check must tell the truth. It does not restrict someone who is of age using a false ID or trying to do a sting operation, which would not fall into compliance. But strictly in compliance, yes. [LB60]

SENATOR CARLSON: Okay. Now if, if the business, the employee, the person representing the business asks for ID, is LB60 necessary? [LB60]

SENATOR KRIST: Absolutely not. If every time a retailer, a provider of liquor to any person, would ID...in fact, the Liquor Commission and Hobie Rupe, when he teaches the class, says if they look older than your grandfather, ask them for your ID. And if the ID comes up vertical and it's a state ID, they are indeed underage. [LB60]

SENATOR CARLSON: All right. Now part of this is aimed at what's referred to as an unfair sting. What's an unfair sting? Would you describe that. [LB60]

SENATOR KRIST: Well, the definitions that I have found for sting operations completely...if you could give me just one second, Senator. Let me address it in the opposite way. If compliance checks are conducted properly, they may be alleged in a...if improperly, they may be alleged in the court to be used entrapment. I can give you several examples of how that works. But basically, if you're up-front and personal with a compliance check, and you're going in to check to make sure that the minor cannot buy,

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

Floor Debate
January 23, 2012

then if the minor is ID'ed, there should be no question. [LB60]

SENATOR CARLSON: All right. The only way that there can be an unfair sting is if the employee, the business, doesn't ask for an ID. Is that correct? [LB60]

SENATOR KRIST: That's correct. [LB60]

SENATOR CARLSON: It's simple then. I don't understand...and we can't...we don't want to legislate that you have to ask for an ID, because then if somebody didn't ask me for one, they would be in violation. I haven't been asked for an ID for 50 years. But it seems to me, pretty simple, ask for the ID and everything is solved. Would you agree with that? [LB60]

SENATOR KRIST: Yes, sir, I would agree with that. [LB60]

SENATOR CARLSON: Okay. [LB60]

SENATOR KRIST: My only caveat would be that as you've stated, we do not want to legislate that. We want to refer them back to the state statute that says that the primary source of identifying age is an ID. [LB60]

SENATOR CARLSON: And I just think that that's the way to go about this. That's the way it should be. And a responsible business will ask for an ID, and if they don't they ought to suffer the consequences. But thank you, Senator Krist, for your response to these questions. [LB60]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Krist. [LB60]

SENATOR KRIST: Am I the only light left on? No. Okay. Then I'll make just a couple of brief comments and we can move on. In the interest of fair and honest debate, I want to tell you that what was disappointing about all of this is the misinterpretation that many...many of you in the Omaha delegation received a letter from a deputy chief, specifically saying that if a person underage could not lie, then they could not do compliance checks. You've heard Senator Coash say that the folks in his constituency have said, we'll just quit doing them. Well, guess what? They have to. They're law enforcement. They have to make sure that the laws...that we are abiding by the laws. So I'm not sure that just saying if you change anything we're going to stop doing compliance checks is even a valid argument. I respect Senator Coash's opinion. He is a fellow, General Affairs Committee, and I take my responsibility of making sure that alcohol and tobacco stays out of the hands of underage as seriously as I know he does, and I respect that. But this is about two things for me: One, if you have an underage person in tow when you are doing a compliance check, then don't set it up to be a sting. I will tell you one of the situations that I was told about, and it just...it epitomizes some of

Floor Debate
January 23, 2012

the bad actors on both sides. Two people go into a bar--and this is not a joke. Two people go into a bar and they're sitting at the end of the bar. They're both obviously of age to drink. They both ordered their second beer. In walks a young person and sits in the middle of them; it's that good old Uncle Charlie routine. And the young man says, I'd like to purchase alcohol. The bartender says, give me your ID. The young man says, I left it in the truck. Uncle Charlie says, yeah, he left it in the truck. What would you do if you were the bartender? You wouldn't serve him. And Senator Carlson is absolutely right, you either have an ID or you don't. There are many establishments out there that go above and beyond. Some of the bartenders tell me, I can't even sell cigarettes to somebody if they have a vertical, because I'm not going to do the math; I'm not going to put my livelihood on the line by trying to do the math to see if he's 18 rather than 21. I think we're in the business of making sure that good people who are respectable retailers, who have licenses to sell alcohol, do not suffer the consequence of being stung, as the Commissioner said; that they comply with the law; and as Senator Carlson says, they ask for an identification, because that is the primary source. So two parts: you don't drink when you're doing compliance checks--I think that's bordering on entrapment; and two, I don't think our kids need to be taught to lie. Thank you. [LB60]

PRESIDENT SHEEHY: Thank you, Senator Krist. Senator Karpisek. [LB60]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I agree with Senator Krist on the bill about the part of a sting. I think that a compliance check and a sting are two very different things. A compliance check is a minor going into a bar, restaurant, wherever, having to use their real ID and asking for a drink or to buy alcohol. If they don't get asked, I think then the person behind the counter should be in trouble. Where we have a sting is where, just like Senator Krist talked about, two officers go in the bar, sit down on the barstools, have a few drinks, get friendly with the waiter or waitress, get to know them. All of sudden, here comes the young minor in, hops on the barstool in between them. One of them says, oh, get him a beer. It makes it tough, especially if the bar is very busy. Now I'm not saying that they shouldn't check that ID. They absolutely should. But when they set it up to fail, it's a lot easier to get someone in trouble. Again I do not say that they should be serving minors, but there's ways to make it a lot harder on these people trying to do the right thing. It's busy; they wait until it's very busy; there's one bartender flying around. Maybe they come in the back door, don't really pay attention. There's a bunch of people at the bar, and they serve them. To me it just seems like it's not playing fair. They're out instead of worrying about not serving the person, I feel it's a game of gotcha. I don't think that that's what we want to do, that that's the way we want to treat our businesses. Senator Krist's bill talking about the minors being able to lie, I don't think that they should be able to lie. Senator Coash says that that will, in effect, shut down compliance checks. He and I have talked this over. I don't have a good argument for him other than they still should be asking for that ID. We've talked quite a bit on this. I can't disagree with him. I hope that it wouldn't shut

Floor Debate
January 23, 2012

them down. That's not the intention of this bill. But it is to get away from the game of gotcha and just to make sure that they're doing things right. I did vote this bill out of committee if for no other reason to say that we don't want to play gotcha. We want to make sure you're doing the things right and let's all be up-front and honest about it. We may see some amendments on this bill, but that's how I feel about it as of right now and we'll see where it goes. Thank you, Mr. President. [LB60]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Coash. [LB60]

SENATOR COASH: Thank you, Mr. President. I continue to work with Senator Krist, and I do believe, colleagues, there's some middle ground here, because we don't want to take this tool away from law enforcement. And I've listened to the discussion so far about how law enforcement might go about doing their business, and I was hoping Senator Cornett would be here to answer some of those questions about law enforcement. But I want us to just again put ourselves in the place of that business, and you sell alcohol, and, all of a sudden, LB60 as written becomes law. What will common sense tell you you'll do? You'll say, well, I shouldn't have to worry about law enforcement coming into my business and telling me that somebody working for them wants to buy alcohol, because I'll be able to know right up front. And that's a big deal, colleagues. If you hold a license to sell alcohol in this state, we've put some barriers in front of you. We make sure that you have...we have the Fire Marshal come out, we have the inspectors come out, we have background checks. Not just anybody in our state gets the opportunity to sell alcohol to anybody, to produce alcohol, to brew it, to distill it. We take it real seriously, because alcohol is a substance that we as a state have said, you know what?--It's not like selling candy. People who use alcohol, if they don't do it in a responsible manner, they put the rest of us at risk. So we put a lot of things in place. And in order to make sure that those folks who have the responsibility to do that, do it effectively, we ask law enforcement to help us. Now I've heard Senator Krist and then Senator Karpisek say, look, if LB60 goes through, they'll still do compliance checks. Well how? They'll go get a young person...and by the way, they're not getting 12-year-olds to do this. They're getting 19-year-olds, they're getting 20-year-olds to do this, somebody who when you look at them on the face could or couldn't be 21. And what's going to happen? They're going to...law enforcement is going to say, well, I'm going to have to get a 20-year-old. I'm going to send them in and the teller is going to say, well, are you working for the cops? And the young person is going to have to say, yep. How is that a compliance check? That's a check to see who you are working for, not to see if you're being a responsible vendor of alcohol. That's our responsibility here, colleagues. So would Senator Krist yield to a question? [LB60]

PRESIDENT SHEEHY: Senator Krist, would you yield to Senator Coash? [LB60]

SENATOR KRIST: Absolutely. [LB60]

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

Floor Debate
January 23, 2012

SENATOR COASH: Thank you. Senator Krist and I, we've been working on this, and I think we may be...we'll be able to come to some middle ground between now and, well, probably tomorrow. But, Senator Krist, how would...could you describe for us how you would see a compliance check operating if LB60 as written was enacted? [LB60]

SENATOR KRIST: Sure. I can give you an example of how I would see it. All my bill is going to do is not allow law enforcement to drink while they're on...during...participating in a compliance check. And it would not allow the individual to lie about any question that is asked of them in the execution of buying that...buying alcohol. And, Senator Coash, as I previously said, the real answer to this is bartenders and retailers... [LB60]

PRESIDENT SHEEHY: One minute. [LB60]

SENATOR KRIST: ...need to card; they need to ID. So if the individual holds up a vertical ID in the state of Nebraska, the bartender says, thanks for your ID; would you like a Coke? [LB60]

SENATOR COASH: Senator Krist, do you think... [LB60]

SENATOR KRIST: Pepsi. [LB60]

SENATOR COASH: Do you think if the young person said I'm working for law enforcement, that the retailer or the bartender is going to continue? [LB60]

SENATOR KRIST: You know, Senator Coash, the beauty of having this time in-between is that I've been able to go out and do my own investigation. And every bartender that I've talked to in my district, and some of those restaurants that I have visited, that's not a suitable substitute for confirming the age. Now I'm sure that there are bad actors out there, but most of the folks that I have asked in the profession of bartending or distributing alcohol have said, that's not going to sway me one way or the other; I have to make...my livelihood depends upon being able to serve drinks. [LB60]

PRESIDENT SHEEHY: Thank you, Senator Coash. Senator Schumacher. [LB60]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. Will Senator Krist yield to a question? [LB60]

PRESIDENT SHEEHY: Senator Krist, would you yield to Senator Schumacher? [LB60]

SENATOR KRIST: Absolutely. [LB60]

SENATOR SCHUMACHER: In the current context with a vertical ID, that means that you're underage. Correct? [LB60]

Floor Debate
January 23, 2012

SENATOR KRIST: Under the age of 21. [LB60]

SENATOR SCHUMACHER: Okay. In the operation of the sting on a bartender, if the individual flashes a vertical ID, what is the bartender's obligation to take that ID under the light and look close to make sure that it kind of looks legitimate and the date is, in fact, accurate? [LB60]

SENATOR KRIST: Most of those that I have asked in terms of their obligation is, once the vertical ID comes up, they would remind the individual that they are not of age. Usually the only response...the only valid response to that is: I turn 21 at 12:01. [LB60]

SENATOR SCHUMACHER: So if somebody...is it permissible for the officers conducting a sting operation to flash a horizontal ID? [LB60]

SENATOR KRIST: If the person is underage, under the compliance check that we currently have, it is not allowed for the underage individual to use a false identification. If they're using anything but a vertical, they're not using their own. [LB60]

SENATOR SCHUMACHER: So it is not proper then for law enforcement to have something that looks horizontal in the darkness of the bar in order to try to get the bartender to sell. [LB60]

SENATOR KRIST: Senator Schumacher, if you use someone who is over the age of 21, you can use a false identification and you can try to entrap. That's not a compliance check; that's a sting. [LB60]

SENATOR SCHUMACHER: Okay. Bartenders and bar owners across the state really hate these things, and it's not because they don't want to enforce the law; it's not because they want minors to drink. It's because they feel they are tricked. And, in fact, that's the name of the game: to use a minor to lie, to trick a bartender into selling. And there are times that people are susceptible, more susceptible to being tricked: when they're busy; when the person certainly looks of age; when there is a circumstance which they just feel they've been set up on. Kind of like what you would feel is if somebody started riding your bumper down the road and stayed right on it, and you took it up over the speed limit to get away from them, and it turned out to be a policeman. You somehow would feel that even though that was a compliance check, you were stung; it was unfair. It's probably okay for law enforcement to lie if you're trying to stop a terrorist attack or investigate a murder or catch a criminal that is in the act of perpetrating a crime. But at some point, common sense may also say it's not okay to teach our kids to lie and to try to get our fellow citizens in a pickle because you're taking advantage of the circumstance of the moment. And that's what's done and it makes this really, really tough. And the very fact that these things create such a hard feeling on the

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

Floor Debate
January 23, 2012

part of many bar owners who try very hard to check and try very hard to be religious, that they are set up, should give us pause as to whether or not we want to enforce the law that particular way. If a bartender has got a reputation of selling to minors, they don't need to trick them. They can sit in there and watch, and watch a sale go down. There's a certain level of decency that law enforcement needs with members of our community who are hardworking businesspeople. And I don't think we need to lie to them. Thank you. [LB60]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Mr. Clerk, you have items for the record. [LB60]

CLERK: I do, Mr. President. Senator Ashford would like to withdraw LB1166. An amendment to LB418, it's by Senator Howard, to be printed. And a hearing notice from the General Affairs Committee signed by Senator Karpisek as Chair. Name adds: Senator Mello to LB1089 and Senators Coash and Fulton to LB804. (Legislative Journal pages 328-329.) [LB1166 LB418 LB1089 LB804]

And, Mr. President, Senator Brasch would move to adjourn the body until Tuesday morning, January 24, at 9 a.m.

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